This column addresses the legislative and regulatory activity and topics of interest currently being addressed in various jurisdictions. All of the following legislative activity discussed below is current status as of December 12, 2011.

The 2011 Legislative Session began with Maine opening on December 1, 2010 while Louisiana’s session was the last to open in late April. Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, the District of Columbia, and the federal Congress are currently in regular session. Virginia and Washington are currently in special sessions.

Hot Topics in Legislation for Physical Therapy

It is hard to forecast from year to year which issues will emerge as the most pressing for the physical therapy community. Two years ago the issues below were not even on the radar screen for PT; now they are two of the most contentious.

Concussion legislation

Fueled by an increased public awareness of the increased rate and severity of concussive injuries, the number of bills introduced regarding concussion managements has skyrocketed. A lawsuit in 2006 by retired NFL players began to shed some light on the problems associated with concussions and encourage players of all ages and coaches to take it more seriously. The NFL has urged states to pass youth concussion laws in 2010. Americans have also heard much more about concussions during Congressional hearings on the incidence of concussive injuries in the military during the Afghanistan and Iraq wars. As of September 2011, over 80 bills were introduced in 34 states and DC; over 20 of those bills have been enacted. Primarily, the bills address the concern that informal guidelines were not being applied uniformly and with the aim of preventing Second Impact Syndrome.
The contentious parts of the bills are the determinations of fitness to return to play after concussive injury. The legislation typically identifies which providers are appropriate to make the return to play call. The bills may be general, stating “appropriate licensed healthcare provider” or restrictive and specifically name providers such as MD, RN, NP, PA, DO, ATC, PT, SLP, or neuropsychologist. Currently, Iowa, Nevada, and Pennsylvania have enacted laws specifically naming PTs as a determining provider. A Vermont bill name PTs specifically.

Another common issue with these bills is identifying which groups are responsible for implementing the law. A number of state agencies are possibilities: Department of Education, Health Department, or individual professional state boards. Depending on agency, the familiarity with healthcare providers may be limited. To muddy the waters further, many of the schools belong to high school athletic associations which mandate to their members who is able to determine return to play. In some cases, the athletic association requirements might be more restrictive than the law or regulations.

There are implications for physical therapy state boards with regard to concussion management legislation. Physical therapy boards may be seen as a resource for information regarding concussion management and the scope of practice of PT. In some cases, the board may even be required to write regulations for implementation of the law.

Dry Needling

Dry needling is a topic that most physical therapy boards had not even discussed a few short years ago. However, now, it is a significant issue in a number of states. Many boards have been approached to give an opinion as to the ability for physical therapists in that jurisdiction to legally perform dry needling. There has been strong opposition by other professional associations and some regulatory boards, most namely those in the acupuncture profession, to physical therapists performing dry needling. PT boards are being accused of expanding the scope of a physical therapists and allowing PTs to do acupuncture. A complicating matter is that acupuncture is regulated in many states by the medical board, thus the PT board is then pitted against the medical board.

The rulings on dry needling as part of PT scope of practice vary from state to state. Only one state, Georgia, specifically includes dry needling in the PT Practice Act. Sixteen states in regulation or administrative opinion state that dry needling is within the scope of physical therapy practice: AL, CO, DC, KY, LA, MD, MT, NM, NH, NJ, OH, OR, SC, TN, VA, and WY. Alternately, in the last year, three state boards (PA, SD, and UT) have ruled that dry needling is not included in the physical therapist’s scope of practice.

Referral for Profit

California

SB No. 543 approved by Governor in early October.
In 2009, Assembly Bill 1152 was brought forward by the California Podiatric Medical Association (CPMA) to determine the legality of podiatrists owning a physical therapy practice. It was determined that it was illegal for the podiatrists to have the PTs as employees. The next session bills lobbied for by the CPMA and later joined by the CA Medical Association and CA Chiropractic Association, were brought forward to amend Section 2406 of the Business and Professions Code and Section 13401.5 of the Corporations Code to add licensed physical therapists to the list of healing art practitioners who may be shareholders, officers, directors, or professional employees of medical, podiatric or chiropractic corporations. In July 2009, the Senate Business Professions and Economic Development Committee did not pass the bill.

In November 2010, the California Legislative Counsel rendered an opinion that it is illegal for PTs to be employed by any professional corporation except for those owned by PTs and Naturopaths. A PT is prohibited from providing physical therapy services as an employee of a medical corporation and may be subject to discipline by the Physical Therapy Board of California for doing so. In 2011 the opponents (professional association of podiatrists, chiropractors, and physicians) failed to secure legislative approval for a bill to authorize medical corporations to hire their own therapists.

Somewhat surprisingly, in August 2011 the Legislative Audit Committee voted 12 to 2 in favor of a five-month examination of the Physical Therapy Board of California Board. Although the Board was not being scrutinized before this point and the audit will cost Californians $180,000, the Legislative Audit Committee is moving forward. Incidentally, this audit was sponsored by Assemblywoman Mary Hayashi, recipient of large contributions from California Medical Association.

The opponents of the prohibition on PTs as employees were tenacious in their efforts. In September 2011 Assemblywoman Hayashi received permission from Senate President Steinberg to attach an amendment to an appropriations bill (SB No. 543) which addressed the issue. The amendment, which prohibits the PT board from taking disciplinary action against a licensee providing physical therapy services as a professional employee of a medical corporation, podiatric medical corporation, or chiropractic corporation until January 1, 2013, was included in the full appropriations bills which was passed and approved by the Governor in early October. Essentially, the opponents gained a reprieve on the enforcement of the law; however, the law itself has not changed.

**Connecticut**

Public Act No. 11-209 *An Act Concerning the Department of Public Health’s Oversight Responsibilities Relating To Scope Of Practice Determinations For Health Care Professions* was signed by the Governor on July 13, 2011.

Connecticut has a unique method of discussing scope of practice questions. Effective July 1, 2011 any healthcare profession that seeks to establish a new or change to scope of practice may submit a written scope of practice request to the Department of Public Health by an August 15th deadline of the year preceding the commencement of the next regular session of the General Assembly. By November, the Commissioner shall select a scope of practice review committee within certain parameters for each timely scope of practice request submitted. The committee, upon concluding its review and evaluation.
of the scope of practice request, by February, shall provide its written findings to the joint standing committee of the General Assembly. The committee ceases to exist upon submitting its report to the joint standing committee.

The bill includes a mandatory review of the effectiveness of the process to be reported back to the General Assembly on or before January 1, 2013.

**Practice Act/Regulatory Changes**

The following changes were enacted (with one exception) to the respective PT practice acts or regulations.

**Kansas** - Specifically added DPT and Doctor of Physical Therapy to the allowable and protected terms to be used by physical therapists. Gives guidance that when using DPT or doctor, must be specific in stating to the patient that the provider is a physical therapist.

**Kentucky** - Limiting excessive co-payments legislation passed

- Physical therapy services were being categorized by managed care companies as specialty services, thus resulting in co-pays of $50 to potentially as high as $75 per physical therapy visit.

- The bill limits a copayment or coinsurance amount for a physical therapist or occupational therapist visit to no greater than the copayment or coinsurance amount charged to a patient for a physician or an osteopath for an office visit and requires insurers to clearly state the availability of therapies under their plans including all related limitations.

**Maryland** – Removed prohibition from PTs utilizing x-rays; clarifies that PTs cannot take x-rays.

**New York** – Changed minimum education requirement from bachelor’s to master’s for new licensees.

**Ohio** - Added academic coursework, clinical instruction, and mentoring to approved continuing competence activities.

- Continuing education activities identified above do not require an Ohio approval number.

- Continuing education will be granted in the reporting period in which the academic coursework, clinical instruction, mentoring, tool, residency, or fellowship is completed.

**Virgin Islands** - Legislation is still under development: comprehensive revision, adopting most of the MPA language; unrestricted direct access, full definition of “practice of physical therapy.”

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Fall 2011 Forum
West Virginia – Approval by legislature of new regulations for the Board of PT. Biggest issue was new regulations related to PT/PTA supervision (ratio, setting, etc.).

**Removal of Referral Requirements**

There were no successful bills in 2011 to remove referral requirements or improve direct access to physical therapists.

**Alabama**- Original bill was unrestricted direct access. Amended by the AL PTA to add a 90-day restriction and those amendments were favorably voted into the bill.

**California**- Referred to appropriations committee for vote; died in committee.

**Indiana**- Bill was unsuccessful.

**Michigan**- Bill was introduced in early May and there has been no further action.

**Oklahoma** - Bill to add direct access to PTs for the purpose of fitness and wellness.

**Texas**- Bill to remove all direct access restrictions died in committee.

Please follow the legislative and regulatory developments in your own and other states by going to the FSBPT website at For Members/For Review. There you will find the most up-to-date tracking information.

Questions regarding the above legislative and regulatory issues or other Professional Standards issues can be directed to Leslie Adrian, PT, MS, MPA, FSBPT Director of Professional Standards at ladrian@fsbpt.org.