

TENNESSEE LEGISLATIVE RECAP  
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# DISCLOSURE OF CONFLICTS OF INTEREST

Courtney Atnip has no real or apparent financial relationships to disclose.



**CAPITOL & 5TH**  
PUBLIC STRATEGIES

## 2022 LEGISLATIVE OVERVIEW

By: Courtney Atnip



## SESSION RECAP

Two hot button issues this legislative session were criminal law and education. The House and Senate speakers' Truth in Sentencing legislation, and the Governor's Tennessee Investment in Student Achievement (TISA) bill, were frequently debated and ultimately passed by the TN General Assembly.

### **Truth in Sentencing SB2248/HB2656**

Requires that a person convicted of certain offenses, including aggravated assault, vehicular homicide, attempted first degree murder, serve 100 percent of the sentence imposed before becoming eligible for release.

### **TISA SB2396/HB2143**

TISA legislates the Basic Education Program (BEP) funding formula. It includes provisions associated with criteria of directors serving on the advisory group for outcome incentive dollars and outcome goals, LEA accountability requirements, the progress review board, and school health plans.



## SESSION RECAP

In the healthcare space, there were several items on the legislative agenda.

### Bills Passed:

- **Professional Privilege Tax: SB884/HB519** Exempts physicians and osteopathic physicians from the occupational privilege tax.
- **Telemedicine:**
  - **SB2453/HB2655** Telehealth services reimbursement regulations.
  - **SB1846/HB1843** Expands the definition of provider-based telemedicine to include HIPAA compliant audio-only conversations.
- **Ivermectin Pharmacy Prescription: SB2188/HB2746** Authorizes a pharmacist to provide ivermectin to a patient, who is 18 years of age or older, pursuant to a valid collaborative pharmacy practice agreement.
- **Breast Imaging: SB2771/HB2544** Requires a benefit plan that covers an annual screening for patients 35 years and older, of low dose mammography screening for breast cancer. Includes required coverage for diagnostic imaging and supplemental breast screening.

### Bills Failed:

- **Medical Cannabis: SB2532/HB2641** would have established a medical cannabis program with a patient registry of patients or designated caregivers qualified to possess medical cannabis. The bill failed in Senate Judiciary committee and was taken off notice in the House Criminal Justice Committee.
- **White Bagging: SB2459/HB2233** Changed the date from January 15 to February 1 of each calendar year for TennCare to annually report on pharmacy benefits under the medical assistance program. The bill was taken off notice in Senate Commerce and Labor Committee and House Insurance Subcommittee.



# PBM LEGISLATION

Two primary pieces of legislation addressed pharmacy benefit managers in the realm of department authority and enforcement mechanisms.



## DEPARTMENT AUTHORITY

- **SB2457/ HB2660** This legislation authorizes the commissioner of commerce and insurance to promulgate rules to effectuate the purposes of policies regarding pharmacy benefits and pharmacy benefits managers (PBMs).
- This puts the regulation of PBMs on the same level as insurance companies. It also authorizes the department to provide additional oversight where the legislature has already determined that PBMs are restricted to ensure patient access to affordable drugs
- These rules include but are not limited to: **(A)** Implementing PBM audits that are necessary to ensure compliance **(B)** Provide for additional requirements for PBMs to obtain licensure **(C)** Implement a compliant and administrative hearing process to enforce sanctions for PBMs that violate any portion of part 31. **(D)** Authorizes the commissioner to charge a fee to be paid by PBMs for costs associated with administering compliance of the rules, including the auditing of a PBM. These rules must be promulgated in accordance with the Uniform Administrative Procedures Act.
- From § 56-2-305: Sanctions includes:
  - (1) The insurer, person, or entity to cease and desist from engaging in the act or practice giving rise to the violation;
  - (2) Payment of a monetary penalty of not more than one thousand dollars (\$1,000) for each violation, but not to exceed an aggregate penalty of one hundred thousand dollars (\$100,000), unless the insurer, person, or entity knowingly violates a statute, rule or order, in which case the penalty shall not be more than twenty-five thousand dollars (\$25,000) for each violation, not to exceed an aggregate penalty of two hundred fifty thousand dollars (\$250,000); and
  - (3) The suspension or revocation of the insurer's, person's, or entity's license.



## ENFORCEMENT MECHANISM

- **Enforcement mechanism: SB2458/HB266** | The purpose of this bill is to clarify the law from last year regarding PBM's and the reimbursement to pharmacies for the actual cost of drugs.
- Section 1 established the requirement for pharmacies to be reimbursed at least the actual cost of a drug and sets up the appeals process to enforce it.
- Section 2 sets a dispensing fee for small pharmacies( currently 65,000/year) at the TNCare rate. Because TNCare has its own federal reimbursement plan, they are excluded from this act, same as last year's bill.
- Section 3 clarifies that the actual cost requirement applies to all plans, including ERISA plans. Some exceptions for unique coverage insurance.
- Section 4 makes it clear that any willing pharmacy law applies to ERISA plans.
- Section 5 bans PBM's from steering customers to a pharmacy that they own.
- Section 6 restates the language of any willing pharmacy in the PBM section of the code.
- Section 7 & 8 clarifies that all ERISA plans fall under the PBM requirements added in this law.
- Section 9 makes the audit information that was passed in SB2457 earlier this year confidential
- Section 10 makes PBM's that violate this law subject to sanctions
- Section 11 is a severability clause
- Section 12 is the effective date. Immediate for rulemaking, and Jan. 1 for plans renewed or contracted after that date.





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# HOW TO BE INVOLVED IN THE “OFF SEASON”



# ELECTIONS

The most influential way to effect change at the state legislature is by voting- and there are several races to watch!

**Statewide primary election: August 4, 2022**

**Statewide general election: November 8, 2022**

- 2 seats are open in the Senate, as incumbents Brian Kelsey (R-Germantown) and Mike Bell (R-Riceville) announced their retirement earlier this year.
- 13 seats are up for grabs in the House. The list of retiring incumbents include: Eddie Mannis (R-Knoxville), Mark Hall (R-Cleveland), Kent Calfee (R-Kingston), Jerry Sexton (R-Bean Station), Mike Stewart (D-Nashville), Jason Potts (D-Nashville), Brandon Ogles (R-Franklin), Glen Casada (R-Franklin), Jason Hodges (D-Clarksville), Michael Curcio (R-Dickson), Bruce Griffey (R-Paris), Curtis Halford (R-Dyer), David Byrd (R-Waynesboro)
- In the Senate, Katrina Robinson's (D-Memphis) seat was filled following her expulsion by, then House Representative, Senator London Lamar. Senator Lamar will face 4 challengers to her seat in the upcoming election.
- In the House, former Representative Robin Smith (R-Hixson) resigned amidst federal charges, and her seat was filled by Greg Martin (R-Hixson) who will face two democratic opponents in the upcoming election.