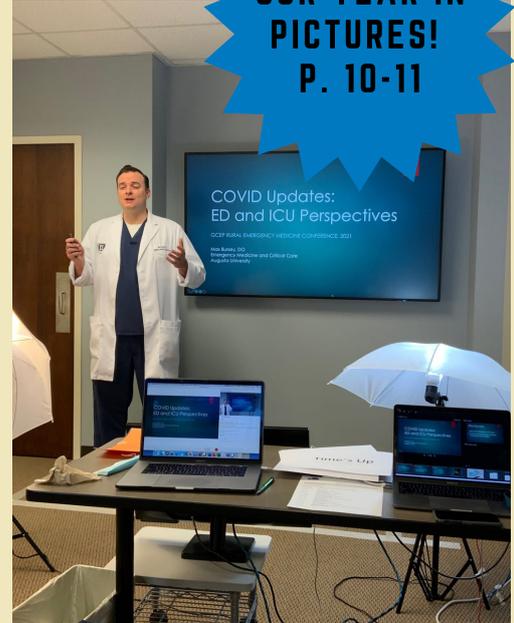


EPIC

The Magazine of the Georgia College of Emergency Physicians



**OUR YEAR IN PICTURES!
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PRESIDENT'S MESSAGE

LOOKING AHEAD TO 2022

by GCEP President James L. Smith, MD, FACEP

*"Nobody told me there'd be days like these. Strange days indeed."
—John Lennon, c.1980*

Although this song is more than 40 years old, this lyric rings eerily true today. I doubt many, if any, foresaw what the practice of emergency medicine would be dealing with in this current period. Obviously the COVID pandemic has strained our resolve both physically and emotionally like no other health crisis in remote history. Add to that recurring legislative and insurance battles along with job shortages, and I think that every emergency physician reading this can agree that our specialty is under attack on multiple fronts.

In the midst of all this, I've been proud of how GCEP has risen to the occasion time after time, year after year. Because of the tireless efforts of your board and the crucial support and work of our amazing membership, emergency medicine physicians are a known and respected specialty both at our state capitol and on the national level. We have recently scored a major legislative victory with the January 2021 implementation of House Bill 888. This bill is considered the "gold standard" for other state EM chapters looking to pass legislation on out-of-network billing.

GCEP also helped defeat legislation that would have further weakened our tort reform, as well as several bills that would have expanded scope of practice for NPs and PAs. Concurrently, the GCEP Diversity & Inclusion Committee established a scholarship for underrepresented minority medical school applicants in Georgia. On the educational front, GCEP has adapted through the pandemic and found ways to continue providing world-class training and teaching through remote, hybrid and in-person conferences and meetings. As you can see, GCEP continued to move the ball down the field in multiple categories.

In the coming year, we will continue to hold the line at the Capitol as well as push Senate Bill 82, our "Prudent Lay Person" Legislation, across the finish line. We will also continue to work with the Insurance Commissioner's Office to ensure that the Out-of-Network Billing process is implemented as it was intended. As a new initiative, GCEP is forming a task force to work on the ED psychiatric patient boarding crisis. We are joining forces with our colleagues in the State Psychiatry Association and the Sheriff's Association to evaluate, plan and implement changes to improve pre-hospital psychiatric evaluations, as well as improve timing on transfer and placement of psychiatric ED patients. As of this writing, we look forward to resuming in-person conferences for our Leadership & Advocacy Conference on Dec. 2-3 as well as our Rural EM Conference on Feb. 19-20 (registration now open for both events!). The time to be back among friends has been a long time coming.

On a final note, although the initial glory of "Heroes" that was bestowed upon us by the media and public has seemed to fade, nothing has truly changed. You are still heroes. You give your all every shift, to every type of patient, never knowing what personal cost you will incur. These truly are "strange days, indeed" but you, the emergency physicians, are the reliable constant no matter how bad it gets.

I am proud to represent you, and to fight for everything you stand for.



“

*As you can see,
GCEP
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NATIONAL UPDATES

Senate Passes Dr. Lorna Breen Health Care Provider Protection Act

ACEP is pleased to announce that the Senate has approved S. 610, the "Dr. Lorna Breen Health Care Provider Protection Act." This comes on the heels of hundreds of ACEP members joining together to lobby for this legislation during the Leadership & Advocacy Conference, conducting 287 meetings with legislators and staff from 44 states.

This bill "aims to reduce and prevent suicide, burnout, and mental and behavioral health conditions among health care professionals" according to drlornabreen.org.

EM Physician Workforce of the Future:

- The EM Workforce Report Session from the recent Leadership & Advocacy Conference is now available. Listen in as ACEP leaders discuss the data & next steps.
- The Young Physicians Section hosted a Q&A session with ACEP President Elect Dr. Gillian Schmitz and EMRA President Elect Dr. Angela Cai, asking workforce-related questions submitted by YPS members.
- "The Emergency Medicine Physician Workforce: Projections for 2030" was recently published in *Annals of Emergency Medicine*.
- New ACEP Policy Statement: Emergency Medicine Workforce

Get the latest workforce updates at www.acep.org/workforce.

ACEP21

ACEP21 is Oct. 25-28 - in-person in Boston or virtually! Registration is now open at acep.org/acep21. Use the promo code ACEP21CHAP for \$100 off the in-person meeting price.

Get the support you need

Stress is high right now on so many levels. ACEP is offering the following free support services for members:

- Strictly confidential crisis counseling/wellness sessions available 24/7
- Peer support line for physicians and medical students available 24/7
- Let's Talk forum, our only forum to allow anonymous posts

Improve the quality of acute care to patients with ACEP accreditation

When you choose accreditation, you are choosing to pursue a commitment to excellence across the spectrum of care that will help attract more patients and elevate your institution - providing a competitive edge in the marketplace.

- Strengthen community confidence in the quality and safety of care, treatment and services - achieving accreditation makes a strong statement to the community about an organization's efforts to provide the highest quality services.
- Provide a framework for organizational structure and management - accreditation involves maintaining a high level of quality and compliance with the latest standards. Accreditation provides guidance to an organization's quality improvement efforts.
- Align emergency departments with one of the most respected names in emergency health care - being accredited by ACEP helps organizations position for the future of integrated care.

Learn more at acep.org/patient-care/accreditation-programs/.

EMBRs Workshop

The Emergency Medicine Basic Research Skills Workshop begins Nov. 29 in Fort Worth, Texas. This workshop is specifically designed to help you hone and improve your research skills or program. Learn more and register at acep.org/embrs.

RESPONSES TO PROPOSED 2022 CMS SCHEDULE

ACEP has submitted a comprehensive response to the Centers for Medicare & Medicaid Services' Calendar Year 2022 Physician Fee Schedules and Quality Payment Program proposed regulation. CMS must review all public comments and issue a final regulation implementing policies for CY 2022 by Nov. 1 (60 days prior to the start of the calendar year). *Below is a partial review of some the CMS proposals and ACEP's response.*

MEDICARE PAYMENT CUTS

CMS Proposal: In this proposed reg, CMS proposes a PFS conversion factor of \$33.58, a decrease of \$1.31 or 3.75 percent, from the CY 2021 PFS conversion factor of \$34.89. The conversion factor reflects the expiration of a 3.75 percent bump up that Congress added to the conversion factor in 2021.

ACEP Response: Physicians must continue to deal with annual updates to Medicare payments that do not cover the increased costs due to inflation of providing care. Along with the 3.75 percent across-the-board reduction, the 2 percent sequestration reduction continues to apply year after year. Furthermore, there is another "Pay-Go" sequester of 4 percent that is scheduled to begin at the start of 2022, making the total overall projected cut starting Jan. 1 at 9.75 percent. *ACEP requests that CMS do everything within its authority to mitigate the reduction.*

EMERGENCY DEPARTMENT SERVICES

CMS Proposal: CMS lists activities that can count when time is used to select E/M visit level when performed and regardless of whether or not they involve direct patient control - and then seek comments on whether there should be a different listing of qualifying activities for purposes of determining the total time and substantive portion of split (or shared) ED visits, since those visits also have a unique construction.

ACEP Response: Given that time is not a component of ED E/M services, ACEP believes that the proposed list needs to be refined to remove time-based activities and to better represent medical decision making as the driving force determining the substantive portion of an ED visit.

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2021 BILL REVIEW SUMMARY

provided by Travis Lindley & Devin Krecl, Capitol Strategy Group, LLC

The following notable bills that were passed in the respective chambers and have officially become law. The Governors bill review period began Thursday, April 1 and ended on Monday, May 10. As a reminder, all bills took effect July 1, 2021 unless otherwise specified in the bill. As a reminder, 2021 was the first term of a two-year legislative session. Any bills that did not pass in the 2021 session remain in the committee of jurisdiction for 2022.

SB 80 Ensuring Transparency in Prior Authorization Act

Sen. Kay Kirkpatrick

The law improves the prior authorization process by 1) requiring insurers and PBMs to be more transparent about the prior authorization process and requiring them to notify physicians and health care providers when they change their prior authorization process or requirements and 2) requiring the opportunity for a physician or other provider in the same or similar specialty before prior authorization determinations and appeals decisions are made and 3) requiring insurers to respond to prior authorization requests within 15 calendar days between Jan. 1, 2022 and Jan. 1, 2023 and within seven days after Jan. 1, 2023, for non-urgent care and within 72 hours for urgent care and 4) preventing insurers and PBMs from revoking, denying, or changing a prior authorization approval for 45 days unless the prior authorization is for a Schedule II controlled substance, and requiring payment when a prior authorization is granted.

Failure to comply with the deadlines in this legislation would result in automatic authorization.

HB 112 COVID-19 Immunity Liability Extension

Rep. Trey Kelley

Amends multiple Code sections to extend COVID-19 liability protections for one year after the Aug. 5, 2020 effective date of the original legislation to July 14, 2022 (SB 359 in the 2020 Legislative Session).

HB 234 Surprise Billing – Self Funded Opt-In

Rep. Lee Hawkins

Provides an option for self-funded healthcare plans, exempt from state regulation under federal law, to opt into Georgia's Surprise Billing Consumer Protection Act.

HB 307 Georgia's Telehealth Act

Rep. Sharon Cooper

Amends the Georgia Telehealth Act to authorize health care providers to provide telemedicine services from home and patients to receive telemedicine services from their home, workplace, or school. The law also provides that no insurer may require a deductible or an in-person consultation before providing coverage for telemedicine services. Additionally, institutes restrictions on utilization review and requires insurers to allow open access to telehealth and telemedicine services, including the provision of prescription medications.

HB 454 Continuity of Care

Rep. Mark Newton, MD

Provides certain coverage requirements concerning

providers that become out-of-network during a plan year. When an insurer's provider directory includes a provider as a participating provider for a network plan at such time as a prospective covered person selects his or her health benefit plan, the insurer would be required cover the provider charges at in-network rates for 180 days, or to the end of the contract year for the covered person, regardless of whether the provider remains a participating provider in the insurer's network plan. The legislation would also ensure that the covered person shall not be responsible for more than the amount for which they would have been responsible had the services been delivered by an in-network provider under the network plan. Additionally, the insurer's provider directory accessed through the insurer's website must accurately display the provider's network status, including any future date on which such provider would become out of network, 15 days prior to the beginning of the designated open enrollment time frame.

LEGISLATIVE UPDATE

2022 NOTABLE ACTIVE LEGISLATION

SB 1 Georgia All-Payer Claims Database

Sen. Dean Burke, MD

Seeks to require that entities that receive state income tax credits and provide self-funded, employer-sponsored health insurance that is not subject to the regulatory authority of the Commissioner of Insurance report insurance claims information to the Georgia All-Payer Claims Database. The legislation requires compliance with the reporting requirement beginning January 1, 2022, as a condition to continued receipt of any such tax credits

SB 82, Prudent Lay Person

Sen. Michelle Au, MD

Deemed Prudent Lay Person Legislation, proposes a measure requiring insurers to pay for emergency services, regardless of the interim or final diagnoses of the patient.

2021 GEMPLAC CONFERENCE

The GCEP legislative team and GCEP leadership have been working diligently to host a great 2021 GEMPLAC conference. The following legislators have agreed to join us in December to discuss the 2021 Legislative Session and 2022 Legislative Priorities:

- Sen. Michelle Au, MD – Senate Health Committee
- Sen. Chuck Hufstetler – Senate Health Committee
- Sen. Kay Kirkpatrick, MD - Senate Health Committee
- Sen. Nan Orrock - Senate Health Committee
- Sen. Ben Watson, MD – Senate Health Committee Chair
- Rep. Sharon Cooper – House Health Committee Chair
- Rep. Demetrius Douglas – House Health Committee
- Rep. Lee Hawkins - House Health Committee
- Rep. John LaHood – House Health Committee
- Rep. Jodi Lott – House Health Committee & Administration Floor Leader
- Rep. Jesse Petrea – House Health Committee
- Rep. Mark Newton, MD – House Health Committee

Register now for our Annual Fall Meeting, Dec.2-3 at The Ritz Carlton Reynolds at Lake Oconee. Learn more and register at gcep.org.

The Georgia Emergency Medicine PAC proudly supports the following candidates for their support on key issues of importance to our patients, our practices, and our profession.

- Sen. Michelle Au, MD
- Sen. Dean Burke, MD
- Sen. Gloria Butler
- Sen. Bill Cowsert
- Sen. Mike Dugan
- Sen. Ed Harbison
- Sen. Tyler Harper
- Sen. Chuck Hufstetler
- Sen. John Kennedy
- Sen. Kay Kirkpatrick, MD
- Sen. Butch Miller
- Sen. Jeff Mullis
- Sen. Nan Orrock
- Sen. Chuck Payne
- Sen. Blake Tillery
- Sen. Lindsey Tippins
- Sen. Ben Watson, MD
- Rep. Jon Burns
- Rep. Sharon Cooper
- Rep. Katie Dempsey
- Rep. Karla Drenner
- Rep. Chuck Efstrotation
- Rep. Terry England
- Rep. Spencer Frye
- Rep. Houston Gaines
- Rep. Matt Hatchett
- Rep. Lee Hawkins
- Rep. Penny Houston
- Rep. Rick Jasperse
- Rep. John LaHood
- Rep. Jodi Lott
- Rep. Mark Newton, MD
- Rep. Mary Margaret Oliver
- Rep. Butch Parrish
- Rep. Jesse Petrea
- Rep. David Ralston
- Rep. Trey Rhodes
- Rep. Kim Schofield
- Rep. Mickey Stephens
- Rep. Bill Werkheiser



ASSET PROTECTION STRATEGIES

provided by Ben Yin and Nolan Pendleton, written by Matt Pate, JD, LL.M., CVP, The Nautilus Group

Asset protection strategies are gaining the attention of wealthy persons as the legal system is becoming increasingly subject to predatory and unwarranted litigation. Asset protection is about protecting assets before the need arises; it is not about protecting assets from existing creditors. In other words, the implementation of asset protection strategies is appropriate in situations where an individual is concerned about the claims of future creditors.

REQUIREMENTS

Threshold issues

The goal of asset protection planning is to insulate assets from claims of future creditors without perjury or tax evasion. Bankruptcy protection has a similar goal, and the two practice areas often operate in tandem. When a debtor has few assets, the bankruptcy route is likely preferable. When the debtor has significant assets, however, asset protection offers several solutions.

The four threshold issues that must be analyzed in each asset protection case are described below:

- **The type of debtor seeking asset protection planning.** If the debtor is an individual, is the individual married and is his/her spouse also liable for the debt? If the spouse is not liable, is it possible to enter into a postnuptial agreement to change the character of the spouses' assets from community property to separate property, or vice versa (called a transmutation agreement)? If the debtor is an entity, did any individual guarantee the entity's debt? Is

there a statute available that will render any individual personally liable for the obligations of the entity? Is it likely that the creditor will be able to pierce the corporate veil or otherwise access the assets of the individual owners of the entity?

- **The nature of a creditor's claim.** Do specific claims exist or are asset protection steps taken due to a general desire to insulate assets from lawsuits? If the creditor's claim has been reduced to a judgement already, then what specific assets does the judgement cover or encumber? Is the claim dischargeable through bankruptcy?
- **The creditor's identity.** Is the creditor a government agency? Some government agencies, such as tax authorities or those providing health and human services, possess authority to seize assets where other government agencies do not.
- **The nature of the assets.** To what extent are the assets exempt from a creditor's claims? Some assets are granted protected status by statutes such as the exemption of the assets under a qualified retirement plan governed by the Employee Retirement Income Security Act of 1974, discussed in greater detail below.

Beware of fraudulent transfers

For asset protection to be effective, it is critical that there be no fraudulent transfer of assets. If a court finds that a fraudulent transfer occurred, the court can undo the transfer and force a transfer of assets to the debtor's creditors. The key factors

considered in a fraudulent transfer case are:

- **Timing.** Did the asset transfer occur before or after the "claim" arose? If the claim existed prior to the transfer, the transfer will likely be considered fraudulent.
- **Sales and exchanges.** Did the transferor receive in return equivalent value when in exchange for making the transfer? If the individual receives equivalent value in return, the risk of a fraudulent transfer determination is reduced.
- **Insolvency.** If the debtor is insolvent (unable to pay debts) before the transfer, the transfer may well be considered fraudulent.

VARIOUS ASSET PROTECTION OPPORTUNITIES

Asset protection strategy - statutory based

Every state and the District of Columbia has statutes protecting certain assets from creditors. The exemptions vary broadly from state to state. While the strategies listed do not include all asset protection possibilities, the list below provides an overview of some of the types of techniques available:

- **Homestead declaration.** Many states have enacted homestead exemption laws to protect all or part of a debtor's primary residence from the claims of creditors. Generally, these laws require that the homestead be personally owned as opposed to being held in a family limited partnership or some other type of business entity.
- **Life insurance and annuities.**

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Some states have a statute protecting life insurance and annuities from creditors' claims. The amount of protection of life insurance (cash values and death benefits) and annuities varies from state to state, and whether protection is afforded may be based upon additional factors such as who must be named as beneficiary and to what extent of the policy proceeds and/or cash value. The law of the specific state should be reviewed.

- **Qualified retirement plans.** Most qualified retirement plans (e.g., defined benefit, profit sharing, 401(k), employee stock ownership plans, etc.) are generally protected from judgment creditors due to ERISA's anti-alienation provisions. In bankruptcy, qualified retirement plan assets should be protected from almost all creditors, while IRAs and Roth IRAs are currently protected up to \$1,362,800 per person effective April 1, 2019. This amount is adjusted every three years for inflation and is scheduled to be adjusted again in April 2022. However, some circumstances exist in which non-bankruptcy creditors may have access, such as alimony/child support or federal tax claims.

Asset protection strategy - entity design

Where assets are not afforded statutory protection, entities can be established to protect assets from creditors as well as maintain control. However, asset protection may be lost if the owners do not follow business formalities and respect the type of business entity.

- **Limited partnership (including family limited partnership).** Only the general partners are personally liable for partnership debts. A

limited partner's liability is limited to his/her investment. Each state's laws vary as to creditor's rights. In many states, a creditor's sole remedy against a limited partner is to get a charging order from the court. With a charging order, the creditor can get partnership distributions but has no right to vote or ability to seize the underlying partnership assets.

- **Limited liability company (LLC).** In general, no member of an LLC is liable for LLC debts unless the member makes personal guarantees. In most states, judgment creditors of an LLC member cannot get to the LLC assets. Creditors can only petition the court for a charging order. As mentioned above, a charging order generally gives creditors no voting power so the creditor cannot normally compel a distribution from the LLC. The creditor only has access if a distribution is actually made. Note that charging order protection varies from state to state. Some states, such as California and Florida, have enacted legislation that would allow a court to liquidate the LLC interest to the extent necessary to satisfy creditors.
- **Corporations.** Generally, shareholders are not personally liable for corporate debts unless the shareholder makes personal guarantees. However, corporate stock may be subject to attachment by a creditor of the shareholder. A buy-sell agreement between the corporation and its shareholders (or among the shareholders themselves) may allow the corporation (or other shareholders) to purchase the stock that a court may order distributed to a shareholder's creditor.

Asset protection strategy - use of trusts

Other possible strategies involve use of some type of trust arrangement.

- **Qualified personal residence trust (QPRT).** QPRTs offer effective asset protection for a residence. However, QPRTs come at a significant cost. The individual no longer owns the home and, if the home is the primary residence, the individuals will lose the \$250,000 capital gain exclusion and possibly the homestead exemption.
- **Domestic asset protection trust (DAPT).** Normally, if a trust is "self-settled" (i.e., the grantor is also a beneficiary), the grantor's creditors will be able to access trust assets. However, several states have adopted laws that allow a grantor to be a beneficiary of a discretionary trust to some extent without jeopardizing creditor protection. The trust must be irrevocable. The trust document must contain express language stating the trust will be governed by the laws of the state in which the trust will be located. Generally, some of the trust assets must actually be located in the governing state. The grantor can receive distributions from the trust, but only in the discretion of an independent trustee. The trust must contain a spendthrift provision, which means the language of the trust states the beneficiaries cannot transfer their interests to other parties (e.g., creditors). Prior to signing a DAPT, the client typically has to sign an affidavit of solvency.
- **Foreign asset protection trusts (FAPT, or Offshore trusts).** A significant benefit of a foreign trust is that the creditor will generally have to commence

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an action in the foreign jurisdiction. Since foreign law will control the availability of those assets and certain other aspects, such as the statute of limitations, there is considerable discouragement for any creditor who wishes to seek recovery in the foreign jurisdiction.

- **Discretionary domestic trust.**

In a discretionary trust, the grantor makes contributions to the trust, and a third-party trustee (who is not the grantor) has complete discretion as to distributions to the beneficiaries, e.g., family members. The protection of the discretionary trust is based upon the nature of the beneficiary's interest, i.e., distributions are made only if the trustee decides to make them and when. Normally, if a beneficiary has no legal claim to trust property, then neither does his/her creditor. Discretionary trusts can be created during the grantor's life or at death according to the decedent's will and/or revocable trust. Many individuals prefer for the beneficiary to be the trustee and therefore create a trust with distributions limited to those needed for the beneficiary's "health, education, maintenance, or support." HEMS trusts may not offer as much asset protection as discretionary trusts but may be the better option for some individuals.

CONCERNS

Note that the federal Bankruptcy Reform Act of 2005 added a provision that allows a bankruptcy trustee to avoid any transfer made within 10 years prior to the date of filing the bankruptcy petition if "such transfer was made to a self-settled trust or similar device ..."

and the "debtor made such transfer with actual intent to hinder, delay, or defraud." Legal commentators expect the existing bankruptcy laws may reduce the use of foreign trusts.

The National Conference of Commissioners on Uniform State Laws adopted the Uniform Voidable Transactions Act in July 2014. The UVTA may adversely affect a debtor who lives in a non-DAPT state that has adopted the UVTA and makes a transfer to a DAPT in another state that has not adopted the UVTA. In comments accompanying the UVTA, the Commissioners indicated that because the transfer was made from an UVTA state, the transfer to the DAPT in another state could be voided without regard to whether the transfer affects an existing or identified creditor. This result is not certain, but counsel should be especially careful when a transfer to a DAPT in another state is made from a state that has adopted the UVTA.

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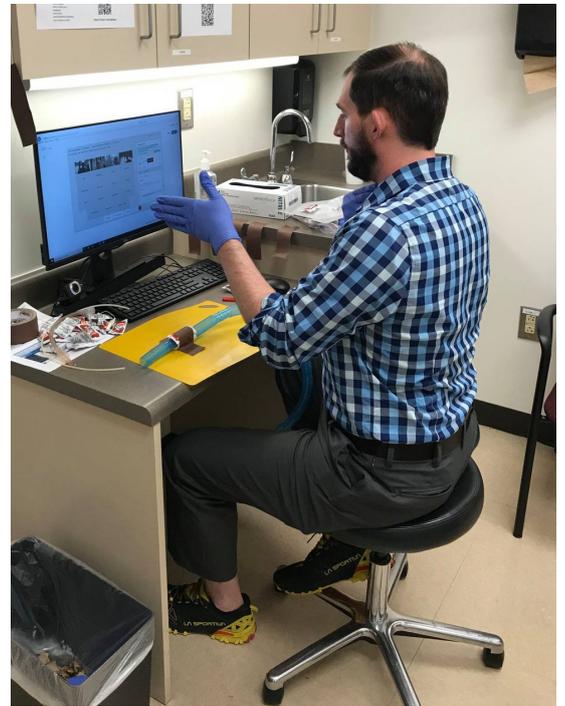


OUR YEAR IN PICTURES

From our Leadership & Advocacy Conference in December 2020 to all of our 2021 events, it's been quite the year! We're looking forward to seeing everyone again in 2022.



OUR YEAR IN PICTURES



Join us at The Ritz during the Holidays!

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