

Practice Update

Florida Legislative Session 2013: Healthcare Summary

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The 2013 Florida Legislative Session concluded on May 3, 2013. The following is a partial summary of healthcare-related bills that may impact your business or practice. Note that some of these bills have become law, but others might be vetoed in the days to come.

Notably absent from this list is a provision for the expansion of the State's Medicaid program. When faced with either accepting or rejecting the Affordable Care Act's provision extending Medicaid coverage to Florida residents at or below 138 percent of the federal poverty level, or otherwise increasing coverage for these individuals, House and Senate leadership were unable to reach an accord as to the appropriate course of action. At stake is potentially \$50 billion in federal funding over the course of 10 years that is associated with this expansion. The debate is likely to continue. At the present time, no special session on this issue has been scheduled.

The Legislature had greater success in reconciling the state insurance code with the Affordable Care Act and in deciding to let Washington (at least for the time being) set up the online insurance exchanges which are required under the Act's

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provisions. These, and other issues are addressed in greater detail by the summaries provided below.

The full text of each bill listed is available at www.flsenate.gov/Session/Bills and www.myfloridahouse.gov/Sections/Bills/bills.aspx.

Medicaid

HB 0939 – Medicaid

- Provides that Medicaid provider agreements shall require providers to report a change of ownership or a change in any principal of the provider to the Florida Agency for Health Care Administration (“AHCA”) within 30 days after the change occurs.
- Authorizes, rather than requires, AHCA to perform an onsite inspection of a Medicaid provider’s service location.
- Removes the exception to Medicaid background screening requirements for providers who have undergone screening in the past 12 months.
- Allows AHCA to enroll an out-of-state provider as a Medicaid provider if he or she is licensed as a physician in Florida and interprets diagnostic testing results at a distance through telecommunications and information technology.
- Grants Medicaid recipients a right to an administrative hearing to contest AHCA’s recoupment of Medicaid medical expenses paid by third parties.
- Requires AHCA to impose the sanction of termination for cause upon Medicaid providers who voluntarily relinquish their Medicaid provider number after receiving notice that AHCA is investigating them for suspected noncompliance.
- Prevents a Medicaid provider from presenting records to contest an overpayment or sanction unless the records were made contemporaneously with the service provided and, if requested, were furnished to AHCA upon request.

- Provides that arrangements to repay Medicaid overpayments must be made within 30 days after the date of the final order determining an overpayment, instead of at the conclusion of legal proceedings.
- Effective July 1, 2013.

SB 1520 – Medicaid (2013 Conforming Bill)

- States that a hospital licensed as a rural hospital during the 2010-2011 or 2011-2012 fiscal year shall continue to be a rural hospital through June 30, 2015 if the hospital continues to have 100 or fewer licensed beds and an emergency room.
- Requires AHCA to set Medicaid reimbursement rates for inpatient hospital services using a prospective payment methodology that categorizes services by diagnosis-related groups instead of by allowable costs. Allowable costs will continue to be used to set reimbursement rates for outpatient services.
- Establishes the Statewide Medicaid Residency Program to generate federal matching funds and establishes a formula for distributing the funds to participating hospitals.
- Grants Medicaid recipients a right to an administrative hearing to contest AHCA's recoupment of Medicaid medical expenses paid by third parties. Requires recipients to prove by clear and convincing evidence that a lesser portion of third-party payments should be provided to reimburse AHCA.
- Provides that Medicaid recipients with HIV/AIDS who fail to choose a Medicaid managed care plan will continue to be assigned to an HIV/AIDS specialty plan.
- Provides a formula for calculating counties' required contributions to the Florida Medicaid program.
- Effective July 1, 2013.

Health Care Providers

HB 0239 – Optometry

- Expands optometrists' scope of practice, allowing them to prescribe certain oral medications. Optometrists are required to complete a 20-hour training course and report adverse incidents, and the Florida Board of Optometry is tasked with developing a formulary of oral medicines that may be prescribed in addition to the topical ocular medicines already allowed.
- Effective July 1, 2013.

SB 0142 - Relating to Intellectual Disabilities

- Substitutes the Arc of Florida for the Association for Retarded Citizens for purposes of certain proceedings relating to children.
- Substitutes the term “intellectual disability” for the term “mental retardation”. for purposes of matters relating to the criminal laws and court rules, etc.
- Amends Section 641.31, F.S. replacing the term “mental retardation” with “intellectual disability.”
- Effective July 1, 2013.

SB 0398 – Physician Assistants

- Clarifies that supervisory physicians can delegate authority to physician assistants to order medications in hospitals for the supervisory physicians' patients, and that such an order is not a prescription.
- Effective July 1, 2013.

SB 0604 – Practitioners

- Revises the process for payment of license fees related to emergency medical services.

- Requires the Florida Department of Financial Services to defend claims or lawsuits brought against impaired practitioner consultants related to an emergency intervention conducted by the consultants.
- Effective July 1, 2013.

HB 1129 – Infants Born Alive After Attempted Abortion

- Requires a health care practitioner to act to preserve the life and health of an infant born alive during or immediately after an attempted abortion. A failure to do so is a first-degree misdemeanor. Requires facilities that perform abortions to report to the Florida Agency for Health Care Administration the number of infants born alive during or immediately after an attempted abortion.
- Effective July 1, 2013.

Hospitals and Other Health Care Facilities

HB 1159 – Hospitals, Retirement Communities, and Cancer Treatment

- Authorizes the Florida Department of Health to designate hospitals that are located in areas with limited access to trauma services as level II trauma centers,
- Provides expedited state review of certificate-of-need applications for new community nursing homes in certain retirement communities,
- Provides that specialty-licensed children's hospitals in counties with a population of at least 1.75 million may provide obstetrical care to pregnant women whose pregnancies or deliveries are deemed high risk by an examining physician,
- Requires health insurance plans and HMOs that cover cancer treatment medications to cover oral cancer treatment medications. The cost-sharing

applicable to such oral medications must not be less favorable to the consumer than cost-sharing requirements applicable to intravenous or injected cancer treatment medications covered under the policy,

- Adds pediatric cardiology, perinatology, and anesthesia clinical facilities to the types of facilities exempt from clinic licensure requirements,
- Allocates \$500,000 to the Florida Department of Health to fund the Prescription Drug Monitoring Program,
- Effective upon becoming law.

HB 1071 - Relating to Health Care Accrediting Organizations

- Conforms provisions to revised definition of term “accrediting organizations,” for purposes of hospital licensing,
- Specifies accrediting agencies for physical therapist assistant programs,
- Effective July 1, 2013.

Health Insurance

SB 1842 – Patient Protection and Affordable Care Act

- Provides that the provisions of the Florida Insurance Code apply unless they prevent the application of a provision of the Patient Protection and Affordable Care Act (“PPACA”),
- Authorizes the Florida Office of Insurance Regulation to review insurance forms and investigate market conduct to determine compliance with PPACA in addition to state law,
- Requires individuals working as navigators under PPACA to register with the Department of Financial Services in order to assist consumers with the selection of qualified health insurance plans. Sets forth qualifying criteria for navigators,

- Exempts non-grandfathered individual and small group health plans from rate review by the Florida Office of Insurance Regulation for plan years 2014 and 2015. (Rate filings are still required for informational purposes.) Requiring such plans to include a specific notice describing or illustrating the estimated impact of PPACA on monthly premiums,
- Provides that the 5-year prohibition on selling a new policy with similar benefits to a discontinued policy does not apply to policies discontinued because they do not comply with PPACA,
- Dissolves the Florida Comprehensive Health Association by September 1, 2015,
- Authorizes health insurers and HMOs to non-renew individual conversion policies if the policyholder is eligible for other coverage with similar benefits,
- Effective upon becoming law.

SB 1844 – Florida Health Choices

- Expands the eligibility criteria for employers and individuals wishing to purchase insurance coverage through the Florida Health Choices marketplace,
- Effective July 1, 2013.

HB 0383 - Relating to Interstate Insurance Product Regulation Compact

- Provides for establishment of Interstate Insurance Product Regulation Commission,
- Specifies commission as instrumentality of compacting states,
- Specifies commission as separate, not-for-profit entity,
- Provides powers and organization of commission,
- Designates Commissioner of Insurance Regulation as representative of state on

commission,

- Provides for qualified immunity, defense, & indemnification of members, officers, employees, & representatives of commission,
- Provides rules & operating procedures,
- Provides that commission is subject to certain state tax requirements,
- Authorizes commission to adopt rules,
- Requires OIR to prepare & submit report by certain date to Legislature on effect of compact on consumer protections,
- Except as specified for particular provisions, this bill is effective July 1, 2014.

SB 0356 - Relating to Mutual Insurance Corporations

- Provides that General Mutual Insurance Corporations include licensed mutual insurers as well as licensed stock insurers,
- Provides that certain dividends or distributions by a not-for-profit insurance company to its mutual insurance holding company are permitted under part I of ch. 628, F.S., relating to stock and mutual insurers,
- Amends definitions relating to mutual insurance holding companies to add provisions for not-for-profit insurance companies and nonprofit health care plans, etc.,
- Sections 3-8 are effective January 1, 2014. The remainder is effective upon becoming law.

SB 0648 – Long-Term Care Insurance Marketing Materials

- Allows long-term care insurers to immediately begin using advertising materials, removing the 30-day period insurers currently have to wait for approval by the Office of Insurance Regulation. The Office may still order immediate

discontinuance of advertising that violates a law or regulation,

- Exempts small group health insurers from requirements to file their advertisements with the Office of Insurance Regulation,
- Effective July 1, 2013.

SB 1802 - Relating to State Employee Health Insurance

- Modifies the terms “full-time state employees” and “part-time state employee” for the purposes of expressly excluding persons paid from other-personal-services funds who work less than a certain number of hours per week from the state group insurance program,
- Revises provisions relating to employer contributions to employee health savings accounts,
- Provides that an OPS employee meeting certain criteria is eligible to participate in the state group health insurance program, etc.,
- Effective July 1, 2013.

Pharmaceuticals

HB 0365 – Biosimilar Drugs

- Allows pharmacists to dispense a substitute biological product for a prescribed biological product if the substitute is biosimilar, the prescriber does not prohibit substitution, and the pharmacist notifies the person presenting the prescription,
- Effective July 1, 2013.

SB 0662 – Workers Compensation / Prescription Drugs

- Establishes a reimbursement rate for repackaged or relabeled prescription medication dispensed

by a prescriber to a worker's compensation claimant. Sets that rate at 112.5% of the average wholesale price plus an \$8 dispensing fee. Specifies a method for calculating average wholesale price,

- Prohibits a dispensing practitioner from possessing medications for dispensing to workers compensation claimants unless the practitioner has paid for the drugs within 60 days after taking possession,
- Effective July 1, 2013.

SB 0284 – Epinephrine in Schools

- Allows public and private schools to purchase and store a supply of epinephrine auto-injectors on school premises for use if a student is having an anaphylactic reaction,
- Provides the school district and others immunity from liability for any injury arising from the use of an epinephrine auto-injector administered by trained school personnel,
- Effective July 1, 2013.

Budget

SB 1500 – General Appropriations Act (GAA).
Specific provisions include:

- 2013-14 state budget of \$74.5 billion,
- Directs Florida Agency for Health Care Administration to seek federal approval for enrollment of children under 138% FPL to enroll in Title XXI Children's Health Insurance Program or Title XIX Medicaid,
- Provides for transfer of children under 138% FPL who will transition from Florida Healthy Kids Corporation to Medicaid (as authorized by the Affordable Care Act),
- Adjusts Florida Healthy Kids Corporation dental plan rates to no more than \$12.57 pmpm. Effective

July 1, 2013,

- Funds 2013-14 anticipated KidCare enrollment growth,
- Funds Enrollment Broker Services as part of the Managed Medical Assistance Component of the Statewide Medicaid Managed Care program. (\$19.6 million appropriated),
- Funds development of Florida Diagnostic Related Groups (DRG) for Medicaid hospital inpatient services (\$1.0 million appropriated),
- Requires Florida Agency for Health Care Administration to establish a DRG methodology for hospital inpatient service as directed by 409.905(5)(c), F.S.,
- Funds the Public Benefits Integrity Data Analytics and Information sharing Initiative to detect and deter fraud, waste, and abuse in Medicaid and other public benefit programs. (\$3 million appropriated),
- Provides funding for the Florida Agency for Health Care Administration to contract for consultant services for the Statewide Medicaid Managed Care expansion. (\$420 thousand appropriated),
- Funds increased reimbursement rates for primary care services provided to eligible Medicaid recipients per the Affordable Care Act. (\$667 million appropriated),
- Provides a rate increase for Private Duty Nursing services provided by LPNs. (\$9.3 million appropriated),
- Provides a rate increase for Home Health services provided by LPNs and RNs. (\$213 thousand appropriated),
- Includes freestanding dialysis clinics in Medicaid program and limits payment to \$125 per visit. (\$17.9 million appropriated),
- Increases outpatient cap for adults from \$1,000 to \$1,500 per year. (\$17.3 million appropriated),

- Directs Florida Agency for Health Care Administration to seek federal approval to implement a supplemental, payment program for medical school faculty who provide services to Medicaid beneficiaries enrolled in capitated managed care plans,
- Provides funding to restore the reduction to HMO and PSN capitation payments resulting from reduction in outpatient hospital rates, effective September 1, 2012. (\$887 thousand appropriated),
- Funds HMO and PSN capitation payments as a result of increased hospital inpatient reimbursements. related to the implementation of the DRG reimbursement methodology. (\$23.3 million appropriated),
- Eliminates the AIDS supplemental payment to nursing homes,
- Provides funds to create a supplemental payment for the care of medically complex, technologically dependent adults residing in nursing homes. (\$2.5 million appropriated),
- Expands current community based care diversion programs (increases slots) under additional funding effective July 1, 2013. (\$5.5 million appropriated),
- Funds incentive payments to eligible Medicaid providers and hospitals for the adoption and meaningful use of certified electronic health records technology. (\$76 million appropriated),
- Effective the later of July 1, 2013, or upon becoming law.

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