

Practice Update

2019 Legislative Session - Health Bill Summaries

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The 2019 Florida legislative session was prolific in terms of proposed legislation that could impact the healthcare industry. A brief synopsis of some of these bills are detailed below. First, we have provided an analysis of legislation that passed and has become, or is expected to become, law in Florida. Next, we list very brief summaries of some of the legislation that did not pass, but may arise again in the future.

Bills that Passed:

Direct Health Agreements – HB 7: Section 627.24, Florida Statutes, establishes that direct primary care agreements are not insurance and are not subject to Insurance Code regulations.

Currently, the direct healthcare agreement insurance exemption only applies to primary care services, and the exemption only applies when services are offered by primary care providers licensed under Florida Chapters 458 (medicine), 459 (osteopathic medicine), 460 (chiropractic medicine), 464 (nursing), and primary care group practices.

HB 7 adds Chapter 466 (dentistry) to the list of providers authorized to offer direct care agreements. Additionally, the bill expands the scope of direct care agreements by authorizing provider groups to enter

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into direct care agreements for any healthcare service within their scope, competency and training.

If approved by the Governor, the legislation will take effect July 1, 2019.

Prescription Drug Importation Programs – HB 19:

Establishes two programs allowing for the importation of, federal Food and Drug Administration approved, prescription drugs into the state and provides specific eligibility criteria for these drugs including importation processes, safety standards, testing requirements, and penalties for violation of these requirements.

The first program established by the bill is the Canadian Prescription Drug Importation Program (CPDI Program), which is to be controlled by the Agency for Health Care Administration (AHCA). The CPDI Program's main focus will be on providing savings and options for specific public programs, including, but not limited to: Medicaid recipients, county health department and free clinic clients, Department of Correction inmates, developmental disability center clients, and certain mental health facility clients.

The other program, to be established by the Department of Business and Professional Regulation (DBPR) and the Department of Health (DOH), is the International Prescription Drug Importation Program (IPDI Program).

Both programs will be required to adhere to specific bonding requirements and federal product tracing requirements. Additionally, Florida's ability to move forward with both programs is contingent upon federal approval.

If approved by the Governor, the legislation will take effect July 1, 2019.

Certificate of Need (Hospital Licensure) – HB 21:

Revises AHCA rulemaking authority with respect to

minimum standards for hospitals; requires hospitals that provide certain services to meet specified licensure requirements; revises duties and responsibilities of AHCA relating to issuance of licenses to health care facilities and health service providers, etc.

For additional information see our prior blog on this topic, [Florida Legislature Repeals its “Certificate of Need” Law](#).

If approved by the Governor, the legislation will take effect July 1, 2019.

Telehealth – HB 23: Establishes standards of practice for telehealth providers; authorizes certain telehealth providers to use telehealth to prescribe certain controlled substances under specified circumstances; provides registration requirements for out-of-state telehealth providers, etc.

For additional information see our prior blog on this topic, [2019 Legislative Session – The Passage of Telehealth \(HB 23\)](#).

If approved by the Governor, the legislation will take effect July 1, 2019.

Ageing Programs – SB 184: Currently, both the Department of Elder Affairs (DEA) and AHCA have rule making authority for certain programs where AHCA is the sole agency for licensing and inspection. These programs include hospice care, assisted living facilities, adult family care homes, and adult day care programs. This bill transfers all rule making for these programs to AHCA.

Signed by the Governor April 26, 2019 – Chapter Law 2019-11; takes effect July 1, 2019.

Health Plans – HB 322: The bill, as a result of 2018 federal regulations, amends the Florida Insurance Code relating to preexisting condition exclusions,

essential health benefits, association health plans, and short-term limited duration.

The bill, specifically:

- Allows insurers to provide short-term health insurance for a period of up to 12 months with renewal opportunities up to a total coverage period of 36 months.
- Specifies short-term health insurance in individual health insurance contracts is not subject to pre-existing condition provisions of the Florida Insurance Code.
- Allows flexibility with some medical underwriting when offering short-term policies in a manner consistent with the use of these policies as bridges between comprehensive policies.
- Requires the Florida Office of Insurance Regulation (OIR) to evaluate the state's current essential health benefits (EHB) benchmark plan and complete a study comparing Florida's plan and overall costs to EHB-benchmark plans in other states.
- Increases insurer flexibility in designing EHB-compliant plans to meet the requirement of providing at least one service or coverage under each of the 10 EHBs by allowing insurers to replace one or more current EHBs coverages with those available in another state or by creating a new EHB plan that meets federal requirements.

Finally, in the event of either Congress repealing or the Supreme Court invalidating the federal Patient Protection and Affordable Care Act, the bill requires insurers and health maintenance organizations (HMO) issuing major medical policies or contracts in Florida to offer at least one comprehensive major medical policy or contract that does not exclude, limit, deny, or delay coverage due to one or more preexisting medical conditions.

This legislation, if approved by the Governor, will take effect upon becoming law.

Nonemergency Medical Transportation Services – HB 411: HB 411 authorizes transportation network companies (TNC) in compliance with state and federal Medicaid requirements to provide nonemergency medical transportation services to Medicaid recipients if it (is):

- Under contract with a Medicaid managed care plan;
- Under contract with a transportation broker under contract with a Medicaid managed care plan;
- Under contract with a transportation broker under contract with AHCA; or,
- Receives referrals from a transportation broker under contract with a Medicaid managed care plan or AHCA.

Additionally, the bill requires AHCA to update regulations, policies, etc. to reflect such authorizations and provides limits on requirements for TNCs and TNC drivers.

If approved by the Governor the bill will take effect July 1, 2019.

Insurer Guaranty Associations - HB 673: HB 673 adds life insurers, annuity insurers, and most HMOs to the Florida Life & Health Insurance Guaranty Association (FLAHIGA) assessment base to fund long-term care insurers in the event of impairment or insolvency; and provides for powers and duties of the Florida Health Maintenance Organization Consumer Assistance Plan (HMOCAP) in the event of a long-term care insurer impairment or insolvency.

Additionally, the bill removes the interest rate cap on the FLAHIGA's coverage for long-term care or any other health insurance benefit; clarifies that Medicare, Medicaid, and the Children's Health

Insurance Program are excluded from the FLAHIGA's coverage and assessments; and, adds an exclusion for structured settlement annuity benefits to which a payee, or a beneficiary if the payee is deceased, has transferred his or her rights in a structured settlement factoring transaction.

Lastly, the bill amends FLAHIGA's powers and duties and adds two director positions to the FLAHIGA board.

This legislation, if approved by the Governor, will take effect upon becoming law.

Office Surgeries – SB 732: Requires the DOH to issue an emergency order suspending or restricting the registration of certain facilities upon specified findings; requires an office in which a physician performs certain procedures or office surgeries to register with DOH; requires an office and physicians practicing at the office to meet certain financial responsibility requirements, etc.

If approved by the Governor, the bill will take effect January 1, 2020.

Health Care – HB 843: SB 843 was the final companion to HB 7078. The final product includes, but is not limited to, provisions relating to:

- The Dental Student Loan Repayment Program and the Donated Dental Services Program within DOH;
- Patient safety and quality measures;
- Relay of information from hospitals to patients and patients' primary care providers or specialists;
- Ambulatory and pediatric surgical centers;
- Licensed facility observation reporting requirements; and,
- Step-therapy protocols.

Except as otherwise specified, the bill will take effect July 1, 2019, if approved by the Governor.

Continuing Care Contracts – HB 1033: Revises and provides provisions related to continuing care contracts including financing, refinancing, procedures and standards for certificates of authority and provisional certificates, escrowed funds, provider acquisitions, expansion of facilities, rulemaking, filing of information, management contracts, minimum standards, procedures for providers not meeting standards, and composition of Continuing Care Advisory Council.

If approved by the Governor the bill will take effect January 1, 2020.

Health Insurance – HB 1113: This bill creates the Patient Savings Act, allowing health insurers to create a voluntary shared savings incentive program to encourage insured individuals to shop for better (“higher quality and less expensive”) healthcare services and share any savings realized as a result; provides specific requirements for health insurers and HMOs offering these programs, requiring review and approval by OIR.

Except as otherwise specified, the bill will take effect July 1, 2019, if approved by the Governor.

Mental Health – SB 1418: Requires service providers to disclose information from a clinical record under certain circumstances relating to threats to cause serious bodily injury or death; requires psychiatrists to disclose certain patient communications for purposes of notifying law enforcement agencies of certain threats; revises responsibilities of the Department of Education and the Statewide Office for Suicide Prevention, etc.

If approved by the Governor the bill will take effect July 1, 2019.

Bills that did not Pass in 2019:

Department of Health – SB 188/HB 7031: Revised healthcare practitioner licensure application requirements; revised licensure requirements for a person seeking licensure or certification as an osteopathic physician; revised requirements for examinations of dental hygienists; revised athletic trainer licensure requirements; revised qualifications for licensure as a massage therapist; revised requirements for licensure by endorsement or certification for specified professions, etc.

Health Care Practitioners – HB 821: Authorized autonomous practice for specified healthcare practitioners; required the Board of Health or DOH to register physician assistants or advanced practice registered nurses if applicants met criteria; authorized such autonomous healthcare practitioners to perform specified acts without physician supervision or supervisory protocols; provided DOH appropriations and authorized positions.

Health Care Licensing Requirements – HB 885/SB 1620: Exempted certain healthcare practitioners from specified licensing requirements when providing certain services to veterans in the state.

Price Transparency in Contracts – HB 935/SB 1560: Prohibited insurer limitations on provider disclosures of cash price or availability of more affordable options; prohibited insurer requirements of insured payments in excess of price without insurance.

Health Innovation Commission – HB 961/SB 1348: Created the Health Innovation Commission (“commissioner”) within AHCA; provided purpose, membership, meetings, and duties of commission; provided requirements for innovative proposals and requests for exemptions from specified laws or rules; required commission to review such proposals and provide its findings and decision to applicants within specified timeframe; required AHCA to submit an annual report to the Governor

and Legislature; provided rulemaking authority; authorized positions and provided appropriations.

Patient Access to Records – HB 1035: Required certain licensed facilities, providers, and healthcare practitioners to furnish and provide access to records and reports within a specified time frame after receiving a request; authorized facilities, providers, and practitioners to charge reasonable costs associated with reproducing or providing access to such records and reports.

Dispensing Medicinal Drugs/Automated Pharmacy Systems – HB 1115/SB 1124: Authorized certain individuals to prescribe and dispense limited supplies of medicinal drugs to patients of hospital emergency departments or patients discharged from hospitals under certain circumstances; authorized community pharmacies to use automated pharmacy systems under certain circumstances; and, required the Board of Pharmacy to adopt rules.

Nonmedical Changes to Prescription Drug Formularies – HB 1273/SB 1180: Required insurers issuing individual or group health insurance policies to provide certain notices to current and prospective insureds within a certain timeframe before the effective date of any change to a prescription drug formulary during a policy year; specified requirements for a notice of medical necessity that an insured's treating physician may submit to the insurer within a certain timeframe; required small employer carriers to comply with certain requirements for any change to a prescription drug formulary under the health benefit plan, etc.

Assisted Living Facilities (ALF) – HB 1349/SB 1592: Revised requirements and standards relating to ALF licensure, inspections, resident criteria and rights, staff training and continuing education.

The bills passed during the 2019 Legislative Session that have not already been enacted await signature by Governor DeSantis. Once a bill is sent to the

Governor, he has 15 days to sign or veto the legislation or it automatically passes into law. Akerman stands ready to assist should you have any questions regarding the pieces of legislation outlined herein.

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