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HEALTH UPDATE

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## Legislature likely to face reruns in its health care legislation

BY CATHERINE LACKNER

When it comes to laws that affect healthcare, next year's session of the Florida Legislature will probably revisit issues that have been brought up in previous sessions.

"It is likely that, once again, we may see a bill filed that repeals in whole or part the state certificate of need (CON) program," said Steven Grigas, healthcare partner at Akerman LLP, via email.

Anyone who wants to open a new facility or expand a current one must be able to demonstrate there is a need for it. The CON seeks to eliminate excess capacity, in which too many facilities battle for the same patient base.

A bill to eliminate CONs for hospitals died in committee last year, he said. "Florida is one of the few remaining states with an active CON program. Given the continuous efforts at repeal, its lifespan may be coming to a close."

Telemedicine is another issue that has been debated in Tallahassee for years. "A universally acceptable regulatory structure for the use of telemedicine/telehealth in Florida has yet to be approved," Mr. Grigas said. "The decision as to who can treat patients remotely remains a subject of considerable debate among those providers who would necessarily be impacted. This issue is likely to

resurface as the healthcare needs of Florida's population continue to outpace the number of providers available to meet them."

In 2016, advanced registered nurse practitioners and physician assistants won the right to expand their services, which legislators saw as a way to relieve demands on physicians, especially where there are shortages. "Additional increases seem likely to be proposed," Mr. Grigas predicted.

Senate Bill 80 would allow patients to contract directly with their doctor for basic health services, bypassing insurers and it "appears to be a softer version of a similar bill filed by Senator Lee in the 2017 session," Mr. Grigas said. "The 2018 bill eliminates language that ultimately led to its rejection in 2017."

"Also similar to bills filed in previous years, Senate Bill 98 focuses on prior authorization of the procedures, treatments and drugs used to treat an insured individual's medical condition. It requires that sufficient notice be given prior to any changes in prior authorization protocols by an insurer," he said.

"Similar to last session's SB 102, this year's SB 162 addresses a long-standing complaint of providers who render services in good faith upon verified authorization

by a health insurer only to have their service claim retroactively denied," Mr. Grigas said. "The denial is due to eligibility issues discovered by the insurer after such services have been authorized and rendered. Significantly, the bill as filed does not apply to Medicaid managed care plans."

Medical marijuana and the opioid crisis are relatively new issues.

"While the special session of 2017 and Senate Bill 6A did much to provide a framework for the state's medical marijuana industry, it can be expected that the 2018 legislative session will continue that effort and will address new and remaining issues of concern," Mr. Grigas said. "The lawsuit filed by attorney and advocate John Morgan regarding medical marijuana regulation will likely factor into associated bills that may be filed. We may see an allowance for the smoking of medical marijuana debated in the chambers."

"The current crisis that Florida and other states find themselves in with respect to opioid addiction and abuse will likely engender multiple bills being considered by legislators in the 2018 session," he uncertain at this time how much state match will be provided. Legislators are likely to consider and debate how best to assist local governments and other sources in



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**Steven Grigas**

funding the state’s match so as to ensure that a maximum return of federal dollars from the LIP is received.”

Medicaid is another federal program to give low-income people access to healthcare. In Florida, Medicaid is administered through a managed care model.

“The re-procurement of the five-year statewide Medicaid managed care (SMMC) program of medical managed assistance and long-term care that is currently underway will be a high priority consideration of the upcoming legislative session,” Mr. Grigas said. “A review of the existing SMMC seems likely, with consideration being given as to what might be done differently to further enhance the program, and to correct perceived deficiencies in its administration.”

Healthcare issues dominate the state’s \$84 billion budget, with \$34 billion dedicated to medical or health expenditures, said Gregory Black, an attorney with Gunster in Tallahassee. He called the potential \$1.5 billion award of LIP funds “a very significant win for uncompensated care.”

The opioid crisis is expected to spark a lot of discussion during the 2018 session, he said. “It’s taking a financial toll on local governments,” he said. Delray Beach estimates that it spends \$2,000 on each overdose case, he said. Ohio, Mississippi and Missouri have sued pharmaceutical companies, following a similar logic to the campaign against tobacco companies, he added.

Debate will ensue over Narcan (naloxone) pens that administer an opiate antidote, Mr. Black said. A Gunster client, Kaleo, manufactures Evzio, a pen that dispenses naloxone, and has donated 200,000 of them to groups that work with addicts, including to law enforcement.

The question is whether families should keep the pens around if they suspect a member has a drug problem, and who, other than emergency personnel, should have them.

“There have been a number of bills filed, for which there is bipartisan support,” to combat the crisis, he said. There’s an effort to apply stiffer penalties to traffickers in opioids, including those who mix them with other substances, he said.

On the marijuana front, the state put in place a complicated process to become a licensed grower but did not create the infrastructure that would support the trade, observers say. Banks, for instance, often refuse to accept deposits of cash from the sale of legal marijuana.

“It’s a safety concern for growers to have that much cash around,” Mr. Black said. “Medical marijuana is new right now, but it’s going to be a above-the-fold, top-line issue.”

The intent of Senate Bill 98 puts in place protections “so that insurers cannot deny patients the most expensive drugs,” he said. “It sets up a process and metrics that assure the doctor makes the determination and the patient’s needs are met.”

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By Monday, only around 150 bills had been filed, he said. “It’s early in the session, because more than 2,000 bills will eventually be filed,” Mr. Black said. “There will be a number of healthcare bills, some of them having to do with tech, including telemedicine.”

He returned to the issue of opioids. “I don’t think we’ve seen the full effect of it yet,” he said. “People have been impacted, but I don’t think we understand the extent of the crisis.”