



2016 FMA LEGISLATIVE REPORT

The 2016 Legislative Session concluded on Friday, March 11 at 6:45 p.m. The FMA tracked 211 bills and numerous amendments on behalf of our members. Of the 1,638 bills and proposed constitutional amendments filed for the 60-day session, the Florida Legislature passed 272 and has sent them to Gov. Rick Scott for his signature.

Following are highlights of some of our key legislative issues.

Legislation That Passed

Hospital Obstetric Department Closures

After several years of advocacy by the FMA and FMA President and Board of Governors Chairman Ralph Nobo, Jr., M.D., the Florida Legislature finally passed HB 471 by Representative Colleen Burton and SB 586 by Senator Kelli Stargel. This bill requires hospitals to provide 120 days' notice to physicians with medical staff privileges at their facilities when a decision has been made to close an obstetric department. Previously, Florida law did not require that a hospital notify its physicians with privileges prior to closing an obstetrical department. This legislation ensures that vulnerable patients will not be left without needed medical care. SB 586 passed the Senate unanimously and passed the House by a vote of 106-1 in the final week of session.

Miami-Dade Infectious Disease Elimination Act (I.D.E.A.)

Led by Hansel Tookes, III, M.D., the FMA's Medical Student Section has succeeded in getting the Legislature to pass a key piece of public health legislation aimed at saving lives and taxpayer dollars. HB 81 by Representative Katie Edwards and SB 242 by Senator Oscar Braynon authorizes the University of Miami and its affiliates to establish a five-year pilot program to offer free, clean, and unused needles and syringes as a means to prevent the transmission of HIV/AIDS and other blood-borne diseases among intravenous drug users. This legislation enjoyed bipartisan support in an attempt to alleviate the heroin and HIV epidemic in South Florida. SB 242 passed by a 37-2 vote in the Senate and a 95-20 vote in the House before the final week of session. This is a great accomplishment for our medical students.

Catastrophic Fund Exemption For Medical Malpractice

Several years ago, a number of insurance lines were added to the Catastrophic Fund's assessable base. The exemption for medical malpractice premiums from emergency assessments was set to expire in 2016. The FMA was successful in amending HB 651 by Halsey Beshears and SB 992 by Senator Jeff Brandes to extend the expiration date for the exemption to 2019. The Cat Fund exemption is a great economic incentive that helps offset some of the other escalating costs that impact physicians. This legislation passed unanimously through the House and Senate.



Prior Authorization

Previously, every insurance company used different forms of varying length and complexity that physicians had to complete in order to obtain prior authorization for a medical procedure, course of treatment or prescription drug benefit. Insurance companies often made this process so burdensome that it was difficult for physicians and medical staff to obtain the prior authorizations. HB 221 also included a provision that now requires a health insurer to use a uniform, two-page prior authorization form, as approved by the Financial Services Commission in consultation with AHCA, to obtain a prior authorization for a medical procedure, course of treatment, or prescription drug benefit. This creates uniformity and will lessen the burden on physicians by streamlining the current lengthy, complicated process for prior authorizations.

ARNP and PA Prescribing

The FMA was able to work with SB 676 sponsor Senator Denise Grimsley to reach a compromise that would allow Advanced Registered Nurse Practitioners (ARNPs) and Physician Assistants (PAs) to prescribe controlled substances under a physician protocol. The bill included several limitations and safeguards, including: a limit to prescribing only a seven-day supply of authorized controlled substances, a prohibition from prescribing psychiatric mental health controlled substances for children younger than 18 years old unless the ARNP is a psychiatric nurse, and a prohibition from prescribing controlled substances on the premises of a pain management clinic. The bill also updates the grounds for disciplinary actions against an ARNP or PA for violating standards of practice related to the prescribing of controlled substances. ARNPs and PAs must complete at least three hours of continuing education on the safe and effective prescribing of controlled substances. The House companion, HB 423 by Representative Cary Pigman, M.D., did not contain the above-mentioned restrictions and the FMA was able to secure the Senate language for final passage. Florida was the last state in the country to allow controlled substance prescriptive rights for ARNPs and PAs. SB 423 passed unanimously in the Senate and by a 117-1 vote in the House during the final moments of session.

Surprise Medical Bills in the Emergency Setting

The FMA worked tirelessly on the issue of balance billing and eventually was able to reach a compromise with the bill sponsors: Representative Carlos Trujillo (HB 221) and Senator Rene Garcia (SB 1442). Non-contracted physicians will no longer be able to balance bill PPO patients for ER services, or services provided in hospitals where the patients had no ability to choose the physicians. Physician payment will be the lesser of (1) the physician's charges, (2) the usual and customary charge for similar services in the community where the services were provided, (3) or the mutually agreed upon charge between the physician and insurance company.

If the physician disagrees with the payment rate, the bill provides for a dispute resolution process. The physician or the health insurer may offer to settle the claim dispute. If the offer is not accepted and the final order amount is more than 90 percent or less than 110 percent of the offer amount, the party receiving the offer must pay the final order amount to the offering party. The amount of an offer made by a physician to settle an alleged underpayment by the health insurer must be greater than 110 percent of the payment amount the physician received. The amount of



an offer made by a health insurer to settle an alleged overpayment to the physician must be less than 90 percent of the alleged overpayment amount by the health insurer. Both parties may agree to settle the disputed claim at any time, for any amount, regardless of whether an offer to settle was made or rejected.

This was an improvement from previous versions of the bill, which would have mandated an unfair arbitration resolution process and set payment at less favorable rates. HB 221 bounced between the House and the Senate until the final moments of session, where it passed 118-1 in the House and unanimously in the Senate.

Prescription Drug Monitoring Program

Since the implementation of the Prescription Drug Monitoring Program (PDMP), only the pharmacist, prescriber or dispenser could access the PDMP database. This restriction created inefficiencies, as physicians were not able to delegate this task to designees, cutting into patient time and other important responsibilities. The FMA supported SB 964 by Senator Denise Grimsley and HB 313 by Representative Ray Pilon, which cure this inconvenience by allowing a designee of a pharmacist, prescriber or dispenser to have access to the database. SB 964 also allows an impaired practitioner consultant to review the database information of an impaired program participant who has agreed in writing to be evaluated or monitored through the program.

Expedited Partner Therapy

HB 941, the Department of Health package sponsored by Representative Julio Gonzalez, primarily made multiple changes to programs overseen by the DOH. Included in the package was a provision that allows a physician licensed under chapter 458 or 459 to provide expedited partner therapy if the patient has an STD, has engaged in sexual activity before the diagnosis and indicates that his or her partner is unlikely to seek clinical services. The package passed unanimously through the Senate and by a vote of 112-3 in the House on the final day of session. This is another positive piece of legislation that promotes public health and accomplishes an FMA resolution.

Telehealth

The Florida Legislature once again took up the task to create telehealth legislation. There was conflict between the House (HB 7087 by Representative Chris Spowls) and Senate language (SB 1686 by Senator Aaron Bean), regarding whether telehealth practitioners should be required to obtain a Florida license. The FMA worked with the bill sponsors and was adamant that Florida licensure was the only way to ensure the safety of Florida patients, as that is the best way to give the Board of Medicine jurisdiction over any disciplinary violations committed via telemedicine. HB 7087 bounced between the House and Senate several times. Ultimately, the passing bill only authorizes AHCA to conduct a study on telehealth utilization and insurance coverage and creates the Telehealth Advisory Council, which will provide recommendations based on the information collected in the study no later than June 30, 2017. The Council shall consist of 15 members, including two health care practitioners of different specialties and two representatives of organizations that represent health care practitioners. HB 7087 passed unanimously through the House and the Senate.



Free and Charitable Clinics

The FMA worked with the Florida Association of Free and Charitable Clinics, Inc. (FAFCC) and was able to successfully secure funds in HB 5001, line 466, in the amount of \$10,000,000 to the FAFCC. The appropriation provides grant funding to support free clinic operating costs and the expansion of access to health care services for low-income and uninsured persons. Funding will focus on delivery of direct patient care and expansion of clinic and network capacities to provide the same. The allocation methodology ensures that funds are distributed such that the free clinics are able to serve the needs of the greatest number of low-income and uninsured persons.

Transparency in Health Care

Due to significant changes in health care delivery and payment, the Legislature sought to create more transparency in health care costs. HB 1175 by Representative Chris Sprowls and SB 1496 by Senator Rob Bradley require AHCA to contract with a vendor for an all-payer claims database, which will provide an online, searchable method for patients to compare physician price and quality, and a Florida-specific data set for price and quality research purposes. HB 1175 further requires a facility to provide an itemized statement or bill within seven days after the patient's discharge or upon a request, whichever is later.

Initially, the limitations for the vendor requirements would have allowed for only one known vendor to submit a bid. The FMA worked with the bill sponsor to create a more open bidding process for potential vendors to ensure the best database. The FMA was also able to combat a provision that would have allowed the consumer advocate to set the rate for fair charges. If a physician charged more than the set fair rate, the physician would then be subject to disciplinary actions by the Board of Medicine. The FMA did not think this was a fair provision and was able to strike out the language before final passage. HB 1175 passed in the House by a vote of 116-1 and 34-1 in the Senate on the final day of session.

Legislation That Failed

Foreign-Trained Physicians

HB 1277 by Representative Daphne Campbell and SB 1626 by Senator Travis Hutson would have provided an alternative option for graduates of foreign medical schools to use to meet the education requirements for licensure by examination. The FMA was concerned that this additional option was not adequate under current Florida licensing standards. As a result of the concerns raised by the FMA, this bill died in committee. The FMA is committed to maintaining the highest standards of licensure in the country.

Direct Primary Care

Direct Primary Care (DPC) is a primary care medical practice model that eliminates third-party payers from the primary care physician-patient relationship. The FMA supported legislation by Representative Fred Costello (HB 37) and Senator Denise Grimsley (SB 132) that would have provided that a DPC agreement and the act of entering into the



agreement are not insurance and not subject to regulation under the Florida Insurance Code. The bill would have also exempted a primary care physician or primary care group practice from any certification or licensure requirements in the Code for marketing, selling or offering to sell an agreement. HB 37/SB 132 successfully passed through all referenced committees and passed through the House unanimously, but was never taken up in the Senate.

Ambulatory Surgical Centers

HB 85 by Representative Heather Fitzenhagen and SB 212 by Senator Don Gaetz related to Ambulatory Surgical Centers (ASCs) and Recovery Care Centers (RCC). HB 85 initially changed the allowable length of stay in an ASC from less than one working day to no more than 24 hours, which is the Medicare payment length of stay standard. It additionally defined an RCC as a facility with the primary purpose of providing recovery care services, to which a patient is admitted and discharged within 72 hours, and which is not part of a hospital. The Senate was not comfortable with the RCC component and removed the language. The Senate additionally added Direct Primary Care, Fail First and One Beacon provisions. The House rejected the additions and stripped HB 85 back to its original form. The bill eventually died in returning messages.

Health Insurance Legislation

The FMA supported legislation that would have prevented retroactive denials, allowed physicians to override fail first protocols, and provided a fix to One Beacon. The insurance companies vigorously fought our attempts to accomplish these goals. Fail first and One Beacon were in a package (HB 85) that passed out of the Senate but was rejected by the House. Retroactive denial passed through the Senate on multiple vehicles (SB 676, HB 85 and HB 221) and was also refused by the House. The FMA will continue fighting for legislation to eliminate these burdens on physicians.

