

2023 FMA Legislative Report



FMA

Florida Medical Association

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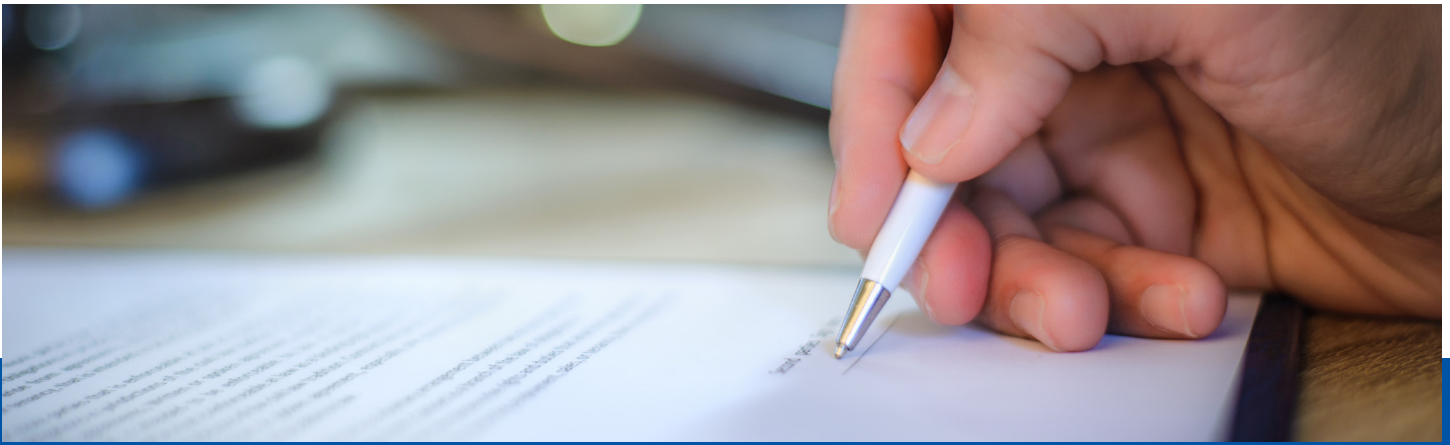
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The 2023 Legislative Session will go down in the state's history books as one of the most impactful. While there were many controversial issues addressed, the Florida Medical Association remained focused in its mission: helping physicians practice medicine.

Most notably, the FMA made tremendous strides in addressing the physician workforce shortage by increasing physician pay, creating a new graduate medical education program, and increasing the funding for medical student loan reimbursement. These initiatives aim to secure a brighter future for the practice of medicine in Florida, where quality of care is never compromised.

The Florida Legislative Session concluded on Friday, May 5th, at 11:00 a.m. Your FMA team of lobbyists tracked 312 bills and numerous amendments that either directly or indirectly concerned the practice of medicine in Florida. The following is a summary of key legislative issues that the FMA worked on during session to help our members practice medicine.

BUDGET WINS

Physician Medicaid to Medicare Rate Increase for Pediatric Services - \$76 Million

In the most significant payment increase for Florida physicians in over a decade, the FMA secured \$76 million to increase reimbursement rates to, at a minimum, the Medicare level for physicians who provide pediatric care to Medicaid patients under the age of 21. These services include both primary and specialty care. The rate increase is effective Oct. 1, 2023.

Slots for Doctors: Graduate Medical Education - \$30 Million

Florida currently faces an increasing physician workforce shortage in both primary and specialty care. These shortages are exacerbated by rapidly aging physician and patient populations. With this in mind, the FMA secured a recurring \$30 million appropriation to create the Slots for Doctors Program.

BUDGET WINS *(continued)*

This new graduate medical education program will incentivize the creation of 300 resident positions in the specialties with a statewide supply-and-demand deficit. The program will allocate \$100,000 annually for residency positions in an initial or established accredited residency program. All hospitals and Federally Qualified Health Centers are eligible for “Slots for Docs” funding. Further, these residency positions will also qualify for the one-time Graduate Medical Education Startup Bonus Program.

The specialties that qualify for the Slots for Docs program are as follows:

In both adult and pediatric - allergy or immunology; anesthesiology; cardiology; colon and rectal surgery; emergency medicine; endocrinology; family medicine; gastroenterology; general internal medicine; geriatric medicine; hematology; oncology; infectious diseases; neonatology; nephrology; neurological surgery; obstetrics/gynecology; ophthalmology; orthopedic surgery; pediatrics; physical medicine and rehabilitation; plastic surgery/reconstructive surgery; psychiatry; pulmonary/critical care; radiation oncology; rheumatology; thoracic surgery; urology; and vascular surgery.

Medical Student Loan Forgiveness: FRAME Program \$16 Million for Fiscal Year 2023-2024

Due to the overwhelming success of the Florida Reimbursement Assistance for Medical Education (FRAME) Program, the FMA was able to increase the program’s recurring funding from \$6 million to \$16 million. The FRAME Program assists eligible healthcare practitioners, including physicians, with the repayment of medical education loans. Physicians and residents practicing primary care in rural areas are eligible for up to \$20,000 per year in medical education reimbursement.

FRAME Program \$10 Million Additional Funds for Fiscal Year 2022-2023

But wait, there’s more! During the 2022 Legislative Session, the FMA secured an annual appropriation of nearly \$6 million for the FRAME program. As the funds requested by eligible applicants far exceeded the initial allocation, the FMA was able to add \$10 million, bringing total funding for the 2022-2023 fiscal year to \$16 million. The additional funds will allow the Department of Health to increase the number of awards to eligible applicants.

For Florida to lead the nation in quality healthcare and to care for our aging and growing population, it is critical to invest in the next generation of physician leaders. Nearly 60% of students who complete residency in Florida remain in Florida to practice medicine. Thus, increasing the number of high-quality residency slots and providing opportunities for student loan forgiveness will enable Florida to retain more high-quality physicians.

Stop the Bleed - \$1.25 Million

The FMA was successful in obtaining \$1.25 million in state funding for the purchase, placement, and maintenance of approximately 10 bleeding control kits in each Florida public school. “Stop the Bleed” is a national hands-on educational program that teaches bleeding control technique to laypeople in less than an hour without cost. Hemorrhage is the top cause of preventable death from injury, and swift interventions to stop bleeding with pressure, packing, and tourniquets have saved the lives of countless victims.

LEGISLATION THAT WAS DEFEATED

Autonomous Practice by an Advanced Practice Registered Nurse

(HB 1067 by Rep. Giallombardo and SB 1058 by Rep. Rodriguez)

Unsurprisingly, an attempt to expand the scope of practice for nurse practitioners was filed again this year. This legislation would have allowed all advanced practice nurse practitioners, regardless of practice area, to practice independently with no physician oversight. This dangerous piece of legislation would have also removed the requirement that certified nurse midwives maintain a patient transfer agreement with a hospital and a written referral agreement with a physician. Thanks to the FMA's vigilance, this legislation only received one hearing in the House and died in committee.

Physician Assistants' Prescriptive Authority

(HB 481 by Rep. Melo)

In another attempt to remove the leader of the healthcare team, this legislation would have eliminated the requirement that physician assistants prescribe or dispense medications under the supervision of a physician. The bill died without receiving a hearing and there was no Senate companion.

The FMA's advocacy also prevented the filing of other scope initiatives that would have allowed unqualified optometrists to perform laser surgery and psychologists to prescribe dangerous controlled substances. We anticipate all scope-of-practice expansion legislation to return in future sessions.

Foreign-licensed Physicians

(SB 956 by Sen. Rodriguez and HB 1145 by Rep. Snyder)

An alarming trend that is becoming more common is a movement to allow physicians to practice in Florida without requiring the same education and training as traditionally licensed physicians. SB 956 and HB 1145 would have created a provisional license by endorsement for foreign-trained physicians. This confusing piece of legislation would have awarded an individual with no postgraduate medical education a license to practice in

Florida so long as the individual practiced as a "medical professional" performing the duties of a physician for at least five years. Further, the proposed legislation would have allowed an applicant to bypass any form of background screening and did not require a supervisory requirement. While the House bill passed through its two committees of reference, the Senate bill did not receive a hearing. During the final days of session there was an attempt to amend this legislation onto another bill that was poised to pass. However, the FMA was successful in getting the amendment withdrawn.

Interstate-Mobility and Universal-Recognition Occupational Licensing Act

(SB 1364 by Sen. Collins and HB 1333 by Rep. Koster)

Similar to the foreign-licensed physicians bill, although lengthier in name, SB 1364 and HB 1333 would have granted a Florida medical license to any individual with a medical license in any other jurisdiction – bad actors included. This legislation was riddled with problems and attempted to lump all chapter 455 and chapter 456 professions together under one umbrella. The FMA worked with the bill sponsors and was able to make considerable changes that would have at least exempted physicians from this licensing act. As session drew to a close, the two bills grew further apart and ultimately died on second reading in both the House and the Senate.

LEGISLATION THAT PASSED

Health Care Practitioner Titles and Designations

(SB 230 by Sen. Harrell and HB 583 by Rep. Massullo)

The third time was the charm for what is commonly referred to as the “-ology” bill. This bill was filed at the request of the Florida Society of Anesthesiologists in response to a declaratory statement issued by the Board of Nursing allowing a nurse anesthetist to identify as a “nurse anesthesiologist.” This legislation hopes to cure that misguided declaratory statement by prohibiting certain licensed healthcare practitioners from using specified names or titles unless that practitioner has the requisite training and certifications.

Effective July 1, healthcare practitioners will be prohibited from making misleading, deceptive, or fraudulent representations regarding the licensee’s profession or specialty designation. All healthcare practitioners will be required to wear a nametag with the practitioner’s name and profession when seeing patients unless the practitioner is providing services in his or her own office. In such a case, in lieu of a nametag, the practitioner must prominently display a copy of his or her license in a conspicuous area of the practice. The practitioner must also verbally identify himself or herself to a new patient by name and identify the profession that the practitioner is practicing.

Telehealth – Audio-only

(HB 267 by Rep. Fabricio and SB 298 by Sen. Boyd)

This legislation revises the statutory definition of telehealth to include audio-only telephone calls. However, there is not a requirement for health insurers to pay for audio-only visits. As a reminder, the standard of care is the same for telehealth services as in-person. While telehealth legislation has expanded greatly since 2019, the FMA will continue to work toward payment parity for telehealth services.

Health Care Provider Accountability – Office Surgery and Brazilian Butt Lifts

(HB 1471 by Rep. Busatta-Cabrera and SB 1596 by Sen. Garcia)

As Florida remains a hotspot in the country for gluteal fat transfers, more commonly known as Brazilian Butt Lifts (BBLs), the prevalence of adverse incidents, including patient deaths, has continued. Since 2020, the state Board of Medicine and Board of Osteopathic Medicine have issued two emergency rules in response to unacceptable patient deaths and have spent considerable effort developing and implementing the standard of care. To thwart a potential rule challenge, HB 1471 codifies much of the BBL standard of care as developed by the medical boards along with other general provisions of the office surgery rule.

This legislation sets forth the following requirements for physicians performing BBLs in an office surgery setting:

- The surgeon must perform in-person examination of the patient no later than the day before the procedure.
- The surgeon may not delegate the fat extraction or gluteal fat injection portion of the procedure. The patient must provide written informed consent for any other duties that may be delegated.
- The surgeon must use ultrasound guidance when placing and navigating the canula and injecting fat into the subcutaneous space. This is to ensure that the fat is placed above the fascia overlying the gluteal muscle.
- An office in which a physician performs BBLs must at all times maintain a ratio of one physician to one patient during all phases of the procedure. After a physician has commenced, and while he or she is engaged in, a BBL procedure, the physician may not commence or engage in another BBL procedure or any other procedure with another patient at the same time.

This legislation also strengthens the Department of Health’s ability to inspect office surgery facilities. Under current law, an office surgery facility may commence operations without an initial inspection. Due to the high volume of ambulatory surgery centers operating under the guise of an office surgery facility, an inspection must now be completed

LEGISLATION THAT PASSED *(continued)*

before the Department will issue a registration. If a registered office refuses an inspection, the Department must immediately suspend the registration for at least 14 days and the office may not reopen until the Department completes an inspection of the office. This legislation goes into effect on July 1. The FMA will provide a comprehensive office surgery and BBL update in the coming weeks.

Referral of Patients of Health Care Providers

(SB 768 by Sen. Martin and HB 601 by Rep. Steele)

SB 768 makes a targeted change to the definition of the term “referral” as used in Florida’s statute governing physician self-referrals. Florida statute section 456.053, the “Patient Self-Referral Act of 1992”, prohibits a health care provider from referring a patient for the provision of designated health services or any other health care items or service to an entity in which the health care provider is an investor or has an investment interest.

SB 768 focuses on the exception to this general prohibition that allows a sole provider or member of a group practice to prescribe or order certain health care services for his or her own patients to be provided by the sole provider’s practice or group practice. This exception requires the services to be performed under the direct supervision of the referring health care provider or group practice. The bill removes the direct supervision requirement and instead requires the supervision to comply with all applicable Medicare payment and coverage rules for services.

Protections of Medical Conscience and Free Speech

(SB 1580 by Sen. Trumbull and HB 1403 by Rep. Rudman)

SB 1580 codifies a healthcare provider, student, and payor’s right of medical conscience to opt out of participation in or payment for any healthcare service on the basis of a conscience-based objection. The bill defines “conscience-based objection” as an objection based on a sincerely held religious, moral, or ethical belief. While

there is no requirement to refer the patient to a provider that will perform an objected service, the healthcare provider must inform a patient that the provider has a conscience-based objection if the patient calls to schedule an appointment for an objected to service. This legislation grants immunity from liability for declining to participate in or pay for a healthcare service on the basis of a conscience-based objection and protects a healthcare provider from being discriminated against or suffering adverse action because the healthcare provider declined to participate in a health care service on the basis of a conscience-based objection. This legislation does not apply in situations where there is a requirement to provide emergency medical treatment under state or federal law.

Coupled with protections for medical conscience, SB 1580 also aims to protect a healthcare practitioner’s freedom of speech. This legislation prohibits a licensing board from taking disciplinary action against a practitioner for speaking about a healthcare service or public policy, including on social media. This provision only applies if the healthcare practitioner is not using the communication to provide medical advice to a specific patient or otherwise violating another applicable law or rule. Going a step further, the bill also authorizes the Board of Medicine and Board of Osteopathic Medicine to revoke their approval of a recognizing agency if a specialty board revokes the certification of a physician solely based on speech in a manner consistent with this law.

The FMA will provide more detailed information on SB 1580 before its effective date of July 1.

Assault or Battery on Hospital Personnel

(HB 825 by Rep. Berfield and SB 568 by Sen. Rodriguez)

In an effort to protect Florida’s valuable healthcare workforce, HB 825 reclassifies charges for assault and battery against hospital personnel. Effective Oct. 1, if a person is charged with assault or battery against a healthcare practitioner in a hospital, the offense for which the person is charged is reclassified as follows: In the case of assault, from a second degree misdemeanor to a first degree

LEGISLATION THAT PASSED *(continued)*

misdemeanor; in the case of battery, from a first degree misdemeanor to a third degree felony; in the case of aggravated assault, from a third degree felony to a second degree felony; and in the case of aggravated battery, from a second degree felony to a first degree felony.

Abortion

(SB 300 by Sen. Persons-Mulicka and HB 7 by Rep. Grall)

On the heels of the U.S. Supreme Court's decision overturning *Roe v. Wade*, SB 300 prohibits a physician from knowingly performing an abortion after six weeks of pregnancy. If the pregnancy is the result of rape, incest, or human trafficking, an abortion may be performed up to 15 weeks of pregnancy, so long as the woman is able to provide proof that she is a victim of one of the enumerated crimes. This legislation also prohibits the use of telehealth to provide medical abortions. Any medications prescribed to induce an abortion must be dispensed in person by the physician and cannot be dispensed through the postal service.

Florida's current abortion law, which allows for the termination of a pregnancy up to 15 weeks with no exceptions, is currently being challenged before the Florida Supreme Court. Signed by the Governor on the day it passed, SB 300 will only go into effect if the 15-week ban is upheld. The FMA will provide more detailed information on SB 300 and the evolving state of abortion care in the coming days.

Pharmacy Benefit Manager Reform Bill

(SB 1550 by Sen. Brodeur and HB 1509 by Rep. Chaney)

Before the start of session, Governor Ron DeSantis unveiled a legislative proposal to reign in unchecked Pharmacy Benefit Managers (PBMs) and drive transparency among prescription drug prices influenced by the pharmaceutical industry. In support of this initiative, the legislature passed the Prescription Drug Reform Act. SB 1550 attacks PBMs from all sides by requiring prescription drug manufacturers to disclose, and publish on the Florida Health Finder website,

prescription drug price increases. The legislation requires PBMs to obtain a certificate of authority for an administrator under the Florida Insurance Code and makes them subject to existing and enhanced requirements. This Act better regulates contractual relationships between PBMs and pharmacy benefits plans and programs, and between PBMs and pharmacy providers by prohibiting PBMs from forcing patients to use mail-in or PBM-owned pharmacies, amongst other significant reforms. In another win for patients, SB 1550 amends Florida's statute relating to step-therapy protocols to prohibit a PBM from forcing a patient to undergo "step therapy" when the patient switches insurance companies.

For far too long, these organizations have operated in an opaque manner with insufficient accountability. The FMA supports this effort to regulate and shed light on the business practices of these entities, which will strengthen access to care and help patients more easily attain the medications they need. The Governor signed SB 1550 on May 3. The FMA will provide more in-depth information on the Prescription Drug Reform Act as the policies develop.

Civil Remedies - Tort Package

(HB 837 by Rep. Fabricio and SB 236 by Sen. Hutson)

HB 837 is a collection of changes to the tort system mainly benefiting the insurance industry. While the bill was especially problematic for physicians as filed, the FMA was able to make several changes to improve the final product. Of main concern was the section that would have established an artificial limit on physician reimbursement for care provided to individuals injured due to the negligence of another.

The bill as filed would have limited physician reimbursement to a percentage of the Medicare fee schedule (or even worse, a percentage of the Medicaid fee schedule if not reimbursable under Medicare). The FMA was able to insert language that would enable evidence to be introduced of the physician's full charge – not just the artificial amount tied to a percentage of Medicare.

LEGISLATION THAT PASSED *(continued)*

This change will allow a physician to continue to employ “letters of protection,” which the bill would have initially effectively eliminated.

Unfortunately, HB 837 also eliminated the “one-way attorney fee” statute that allowed physicians who sue automobile insurance companies on behalf of their patients for improper payment of PIP benefits to receive their attorney fees if successful. The Governor signed HB 837 on March 24. While the FMA’s effort to change this provision to at least a prevailing party attorney fee was unsuccessful, we have already begun efforts to fix this in the next legislative session.

Telehealth Physician Certifications for the Medical Use of Marijuana

(HB 387 by Rep. Roach and SB 344 by Sen. Brodeur)

Under current law, telehealth may not be used to certify a patient for medical marijuana use. However, during the COVID-19 state public emergency, Emergency Order 20-002 allowed qualified physicians to use telehealth when issuing a renewal certification for an existing patient. This leniency was received well by qualified patients and physicians, which prompted the passage of HB 387. Starting July 1, qualified physicians will be authorized to use telehealth for the physical examination component when issuing certification renewals for patients that the physician has previously seen in person.

Protection from Discrimination Based on Health Care Choices

(SB 252 by Sen. Burton and HB 1013 by Rep. Griffiths)

A priority of the Governor, this legislation expands protections against various COVID-19 mandates and discrimination. Briefly, there are four major portions of this bill that will directly affect physicians:

Discrimination by governmental and business entities based on healthcare choices -

- Businesses, including physician offices, will be prohibited from requiring any person to provide proof of vaccination or post-infection recovery from

COVID-19, or require a COVID-19 test. Businesses may not terminate or refuse to hire a person or otherwise discriminate against a person based the person’s COVID-19 vaccination status, post-infection recovery, or a person’s failure to take a COVID-19 test.

Patients’ right to choose COVID-19 treatment alternatives -

- Prohibits a hospital from interfering with a patient’s right to choose COVID-19 treatment alternatives as recommended by the patient’s healthcare practitioner.

Facial covering requirements for healthcare practitioners -

- Healthcare practitioners may not require any person, including patients and employees, to wear a facial covering unless the requirement conforms with standards developed by the Agency for Health Care Administration and Department of Health. These standards must be jointly developed by July 1.
- If a healthcare practitioner requires any person to wear a mask for any reason, the practitioner must also establish a written masking policy that is posted on their website or prominently in the lobby.
- Effective Aug. 1, healthcare practitioners may not require any person to wear a mask for any reason unless the requirement is in accordance with the requirements set forth above.

Communication of COVID-19 treatment alternatives -

- A healthcare practitioner treating a COVID-19 patient shall obtain the informed consent of the patient before prescribing any medication for the treatment of COVID-19. The healthcare practitioner must provide an explanation of COVID-19 alternative medications and the advantages, disadvantages, and risks associated with such alternatives. The legislation provides that in determining which alternative medications to present for purposes of obtaining informed consent, the healthcare practitioner must include any medications currently authorized or approved by the FDA for the treatment of COVID-19 and any other medication that the healthcare practitioner believes may be a benefit to the patient.

Due to the complex nature of SB 252, the FMA will provide more detailed information in the coming days.

LEGISLATION THAT PASSED *(continued)*

Controlled Substance Testing - Fentanyl Test Strips

(SB 164 by Sen. Polsky and HB 165 by Rep. Hunschofsky)

The fight against the opioid epidemic continues with this good legislation looking to reduce harm by decriminalizing fentanyl test strips. SB 164 amends the state's drug paraphernalia statute to exclude narcotic drug testing products that are used to determine whether a controlled substance contains fentanyl, fentanyl-related compounds, fentanyl derivatives, etc. Thus, a person who possesses or uses a fentanyl test strip kit would not be subject to arrest and prosecution solely for possessing the test strips.

Treatments for Sex Reassignment

(SB 254 by Sen. Yarborough and HB 1421 by Rep. Fine)

This legislation prohibits physicians from providing gender clinical interventions to a minor. This includes procedures or therapies that alter internal or external physical traits for the purpose of affirming a person's perception of his or her sex if that perception is inconsistent with the person's sex at birth, specifically, sex reassignment surgeries or any other surgical procedures that alter primary or secondary sexual characteristics and puberty blocking, hormone, and hormone antagonistic therapies. If a physician violates this provision, the physician will be charged with a third-degree felony and will be subject to severe civil liability.

This legislation also requires physicians providing general clinical interventions to adult patients to maintain professional liability coverage and prohibits a health insurer from paying for any gender clinical interventions. Physicians treating adult patients will have to be physically present in the room with the patient in order to obtain written informed consent from the patient each time the physician provides gender clinical interventions. The Boards of Medicine and Osteopathic Medicine are charged with creating the informed consent form. Failure to obtain this informed consent will result in the physician being charged with a first-degree misdemeanor. Any violation of this law, whether in the treatment of minors or adults, will result in revocation of a medical license.

The FMA will provide more detailed information on SB 254 in the coming days.

Now that session has ended, the focus will pivot from policy-making to fundraising for our friends in the House and Senate. As they begin building their war chests for their 2024 campaigns, they will rely heavily on the FMA PAC to help them. Your FMA PAC is here to do important election and campaign work for you, but we need your support.

Please join the FMA PAC today to ensure our friends continue fighting for us on critical healthcare issues so we can make Florida the best state to practice medicine. We have ambitious legislative goals for the future, and with every physician's help, this advocacy agenda will continue advancing.