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MEMORANDUM

TO: Thomas L. Bowers, IV, DMD, MD, President
Hank Holderfield, Executive Director
Florida Society of Oral and Maxillofacial Surgeons

FROM: Mike Huey, Todd Steibly and Jessica Love

DATE: March 20, 2018

SUBJECT: 2018 Legislative Session Review

The 2018 Session concluded at 4:16 p.m., Sunday, March 11 – two days past the scheduled March 9 “Sine Die,” ending a dramatic Session that began with legislators tackling the aftermath of Hurricane Irma and ending with their response to the horrific school shooting at Parkland’s Marjory Stoneman Douglas High School. At issue were budget items relating to \$300 million in hospital compensation formulas and \$400 million for enhanced school security and mental health funding in response to the Parkland shooting. The two major incidents had a noticeable impact on other legislation introduced for consideration this year. Of the 3,250 bills filed, only 200 passed both chambers to be sent to the Governor for approval.

This year’s budget allocates \$32.4 billion from the General Revenue fund, which is primarily made up of sales tax dollars. Shortly before Session began, state revenue estimators had reduced their original forecast by more than \$167 million due to late-filed commercial tax filings in the wake of Hurricane Irma. This, coupled with the \$400 million in funding required to implement the Marjory Stoneman Douglas High School Public Safety Act, left legislators with significantly fewer resources with which to craft their budget than originally anticipated. Florida’s total budget for 2018-2019 is \$88.7 billion dollars, an increase of \$5.7 billion over the prior fiscal year, and sets aside \$3.3 billion towards state reserves. Florida will spend nearly 30 percent on health care, 53 percent on education, 13 percent on criminal justice, and the remainder on transportation and economic development, natural resources and necessary government functions.

The budget was presented to the Governor on Wednesday, March 14 – three days after passing the Legislature. Two days later Governor Scott approved the budget, with appropriation vetoes totaling \$64 million – the lowest amount vetoed in a fiscal year since he took office eight years ago. The budget will take effect July 1, 2018.

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Both chambers also agreed to a \$169 million tax cut package, comprised of \$97 million in one-time tax cuts, with \$71 million in permanent reductions. The largest cut is \$45 million for temporary relief related to needed repairs as a result of Hurricane Irma. Sales tax holidays for hurricane preparedness and back-to-school supplies total \$38 million. The bill also reduced the tax paid on commercial leases from 5.8 percent to 5.7.

LEGISLATION WHICH PASSED:

Opioid Prescribing - *PASSED*

SB 8 by Senator Lizbeth Benacquisto

HB 21 by Representative Jim Boyd

The legislature approved Governor Scott's signature \$53.3 million proposal to fight opioid addiction, which many view has become an epidemic in the state. The bill limits the prescription for a Schedule II opioid to alleviate acute pain to a three-day supply, or a seven-day supply if deemed medically necessary by the prescriber. The bill excludes pain related to cancer, terminal illness, palliative care and serious traumatic injury from these prescribing limits. However, for treatment of pain related to a traumatic injury with an Injury Severity Score of 9 or greater, if a Schedule II substance is prescribed, the practitioner must also prescribe an emergency opioid antagonist.

Also under the legislation, a practitioner must review the patient's PDMP history prior to prescribing a controlled substance. The goal is for the PDMP to interface with physicians' offices and electronic health records used by doctors. The bill also requires a health care practitioner to complete a two hours continuing education course on controlled substance prescribing by January 31, 2019, and at each subsequent licensure renewal.

Despite being a top priority for the 2018 Session, the final vote almost didn't occur, as the House and Senate were at odds over a provision which provided dedicated funding for naltrexone (sold under the brand name Vivitrol), a monthly shot that has been successful in helping people with opioid addictions, but is produced by only one vendor who would have received a financial windfall under the legislation as written. Ultimately, the chambers agreed to a compromise that sets aside money but makes clear that it shouldn't be used only for naltrexone. With the compromise in place, the bill passed unanimously out of both chambers.

Governor Scott received the bill on March 14th, and approved the measure five days later. The legislation takes effect July 1, 2018.

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Trauma Centers - PASSED

SB 1876 by Senator Dana Young

HB 1165 by Representative Jay Trumbull

A bill overhauling Florida's trauma system, legislation which has been hotly debated for nearly a decade, has been approved by the Legislature. The legislation designates the number of trauma centers assigned to each trauma service area (TSA) for a total of 35 trauma centers statewide and specifies that each TSA may have no more than five total Level I, Level II, Level II/pediatric, and stand-alone pediatric trauma centers, and no more than one standalone pediatric trauma center. The bill also requires DOH to establish the Florida Trauma System Advisory Council (FTSAC), consisting of 12 members with a trauma background, appointed by the Governor, by May 1, 2018. DOH must also prepare an analysis of the Florida trauma system every three years, beginning August 31, 2020, to include information on the population growth in each TSA, the caseload levels of high-risk patients for each trauma center and acute care hospital in the TSA, and the percentage of minimum caseload levels established under the bill for each trauma center. It also revises the procedure for DOH to select and approve new trauma centers if there is statutory capacity within a TSA, and allows DOH to approve new trauma centers that exceed the statutory limit in a TSA if there is a sufficient volume of high-risk patients. The bill eliminates the trauma registry under DOH in favor of requiring trauma centers to participate in the National Trauma Data Bank. Trauma centers and acute care hospitals are still required to report all transfers and outcomes of trauma patients to DOH.

This bill was presented to the Governor on March 14th. He has until March 29th to sign or veto the bill, or allow it to become law without his signature.

Direct Primary Care Agreements - PASSED

SB 80 by Senator Tom Lee

HB 37 by Representative Danny Burgess

Direct primary care (DPC) is a primary care medical practice model that eliminates third party payers from the primary care provider-patient relationship. Through a contractual agreement and a monthly fee, usually between \$50 and \$100 per person, a patient pays a monthly fee to the primary care provider to utilize defined primary care services. These bills provide that DPC agreements are not insurance and not subject to regulation under the Florida Insurance Code.

If approved by the Governor, the bill will take effect July 1, 2018.

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Public Records / Health Care Facilities – PASSED

SB 906 Senator Dana Young

HB 551 Representative Colleen Burton

The bill expands Florida's public record exemption for building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final forms, which depict the internal layout and structural elements to include health care facilities. Specifically, the bill provides that such plans for a hospital, ambulatory surgical center, nursing home, hospice, or intermediate care facility for the developmentally disabled are exempt from public disclosure. The bill provides for repeal of the exemption on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

This bill was presented to the Governor on March 14th. He has until March 29th to sign or veto the bill, or allow it to become law without his signature.

LEGISLATION WHICH FAILED:

Dental Therapists - FAILED

SB 1498 by Senator Jeff Brandes

HB 683 by Representative Danny Perez

As originally filed, these bills would have created dental therapist licenses in Florida. Dental therapists are mid-level providers who receive two years or less of education. However, the bills authorize dental therapists to perform irreversible, permanent procedures such as extractions. Although dental therapists are promoted as a way to increase access to dental care, Florida does not have a shortage of dentists, but rather a maldistribution of dentists around the state.

After receiving pushback from stakeholders, the bills were amended to require DOH to conduct a comprehensive study on the affordability, access, and delivery of dental care in Florida and submit a report of its findings to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2018. The report would have been required to include policy proposals for improving affordability, access, and delivery of dental services in this state, and address implementation burdens and the sustainability of such proposals.

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Dental Student Loan Repayment Program - FAILED

SB 764 by Senator Aaron Bean

HB 369 by Representative Colleen Burton

This legislation would have reinstated the dental student loan repayment program. The program, which began back in the early 1990s, encouraged dentists to work as a full-time Medicaid provider in underserved or dental shortage areas. In return, a dentist would be eligible to receive financial assistance from the state for repayment of their dental student loan in an amount up to \$50,000 per year for a maximum of five years. Due to budget shortfalls in the late 1990s, the program went underfunded for many years and eventually was removed from statute in 2012.

Personal Injury Protection (PIP) - FAILED

SB 150 by Senator Tom Lee

HB 19 by Representative Erin Grall

The Senate bill would have repealed the Florida Motor Vehicle No-Fault Law (No-Fault Law), which requires every owner and registrant of a motor vehicle in this state to maintain \$10,000 Personal Injury Protection (PIP) coverage. The bill replaced the PIP coverage mandate with a medical payments (MedPay) coverage mandate of \$5,000. Medical payments coverage under the bill provided reimbursement for 100 percent of covered medical losses, whereas PIP reimburses only 80 percent of covered medical losses. Medical payments coverage would provide reimbursement for all of the following medically necessary treatments if the injured individual initially receives treatment within 14 days after the motor vehicle accident:

- Emergency transport and treatment
- Emergency services and care provided by a hospital
- Emergency services and care and related hospital inpatient services rendered by a physician or dentist that are provided in a facility
- Hospital inpatient services other than emergency services and care
- Hospital outpatient services other than emergency services and care
- Physician services and care provided by a physician licensed under ch. 458, F.S., or ch. 459, F.S., or a chiropractic physician licensed under ch. 460, F.S., or dental services and care provided by a dentist licensed under ch. 466, F.S.

The House version did not require no-fault medical coverage.

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Licensure of Members of the Armed Forces & Adverse Incident Reporting - *FAILED*
SB 1486 by Senator Denise Grimsley
HB 1047 by Representative Jose Gonzalez

Current law declares a person eligible for licensure as a health care practitioner in Florida if they are a health care practitioner in the armed forces or the spouse of an active duty member and licensed as a health care practitioner in another state. At present, the spouse provision contains an exception for dentists. This legislation would have removed that exception. It also removed the requirement that a spouse who is issued a temporary professional license to practice dentistry must practice under a licensed dentists' indirect supervision.

The bill also would have added language mandating adverse incident reporting to the Department within 48 hours of occurrence, followed by a written report to the Board within 30 days. An adverse incident was defined by the bill as "any mortality that occurs during or as the result of a dental procedure, or an incident that results in the temporary or permanent physical or mental injury that requires hospitalization or emergency room treatment of a dental patient that occurred during or as a direct result of the use of general anesthesia, deep sedation, conscious sedation, pediatric conscious sedation, oral sedation, minimal sedation (anxiolysis), nitrous oxide, or local anesthesia."

The bills were also amended at their last committee stop to include the maintenance of certification language (see below).

Maintenance of Certification or Recertification - *FAILED*
SB 628 by Senator Denise Grimsley
HB 81 by Representative Jose Gonzalez

These bills would have prohibited the health care boards, DOH, health care facilities and insurers from requiring physicians to maintain board certification in a subspecialty as conditions of licensure, reimbursement or admitting privileges. The bills would not have impacted the boards' ability to require continuing medical education.

Certificate of Need - *FAILED*
SB 1492 by Senator Jeff Brandes
HB 27 by Representative Heather Fitzenhagen

These bills would have eliminated the Certificate of Need program at the Agency for Health Care Administration (AHCA). The bills would have repealed the law that determines how many hospitals, nursing homes and hospices can be in one area at a time based on demand for their services. Under existing law, health care providers must obtain a certificate of need

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prior to constructing new hospitals, nursing homes, hospices, or intermediate care facilities in the state or to convert from one type of health care facility to another.

Recovery Care Centers - FAILED

SB 250 by Senator Greg Steube

HB 23 by Representative Heather Fitzenhagen

The House bill would have allowed patients to stay in an ambulatory surgical center overnight, as long as the stay did not exceed 24 hours. The bill also created a new license for a Recovery Care Center (RCC), defined as a facility that is not part of a hospital. The primary purpose of an RCC is to provide recovery care services, to which a patient is admitted and discharged within 72 hours. Recovery care services are defined as postsurgical and post-diagnostic medical and general nursing care where acute hospitalization is not required and an uncomplicated recovery is reasonably expected, as well as postsurgical rehabilitation services. RCCs must have emergency care and transfer protocols with at least one hospital.

The Senate version did not contain the RCC provision, and also required AHCA, along with the Board of Medicine and Board of Osteopathic Medicine, to adopt rules to establish requirements to ensure safe surgical care for children.

The House had temporarily amended this language onto the AHCA package (SB 622), but it was stripped from the bill by the Senate.

Retroactive Denial of Claims by Health Insurers - FAILED

SB 162 by Senator Greg Steube

HB 217 by Representative Bill Hager

Current law prohibits a health insurer and a health maintenance organization (HMO) from retroactively denying claims because of insured ineligibility more than one year after the date the claim is paid. There is, however, no redress for erroneous authorization and an insured's reliance on that authorization. These bills would have precluded an insurer or HMO from retroactively denying claims if the insurer or HMO had previously verified eligibility at the time of treatment and provided an authorization number.

NEXT SESSION

The 2019 Legislative Session will begin March 5, 2019, and we expect that committee hearings will begin January 2019. We sincerely appreciate the opportunity of representing FSOMS and commend you for your tireless commitment to the legislative process each and

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every Session. Should you have any questions concerning the information provided in this report, please do not hesitate to contact us.