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## Florida Academy of Family Physicians Capitol Update 2009 Session May 22, 2009

The 2009 Session of the Florida Legislature concluded on Friday, May 8th, one week late. The Legislature adopted a \$66.5 billion dollar budget and passed just 238 of the 2369 pieces of legislation filed. In late January, Speaker of the House Ray Sansom (R-Ft. Walton Beach) resigned his post as Speaker amidst allegations that he illegally obtained state funding for a local college in his district and then benefited from that action by accepting a full-time job at the college. Sansom was indicted in April. Sansom was replaced as Speaker by Rep. Larry Cretul (R-Ocala). Cretul was thrust into the job and had to lead a legislature that was delayed and distracted by the ethics scandal.

The nation's fiscal meltdown was another dominant element of the Session. Conservative Republican legislative leaders confronted the largest revenue decrease since the early 1970s and are constitutionally mandated to pass a balanced state budget. In the last two years the legislature already trimmed more than \$6 billion from Florida's budget. Pledges of "no new taxes" and "living within our means" became harder and harder to maintain. State revenues are shrinking as the need for government services to the economically distressed, and newly distressed citizens increases. Even the infusion of Federal Economic Stimulus dollars this year, totaling more than \$4 billion to state government still left a projected shortfall of \$3.5 billion. Moreover, the timing of the Federal Stimulus dollars flowing to Florida did not neatly coincide with the timing of the state's appropriations process. Corporate taxes, elimination of business-friendly sales tax exemptions and increased "user" fees were all suggested as means to close Florida's revenue front. Inserting these factors into the normal challenges facing a state of 18 million citizens and one of the largest economies in the world means that there was no "politics as usual" in the 2009 Session.

Following is a summary of the key issues impacting FAFP from this session:

### Tobacco Surcharge

#### **PASSED**

Against all odds and powerful lobbying efforts by the tobacco industry, retailers and wholesalers, the Legislature increased the current cigarette excise tax by \$1.00 per pack and imposed a \$1.00 per ounce surcharge on other tobacco products. During the final week as budget negotiations between the House and the Senate grew intense, cigars were exempted

from the surcharge. This exemption is the result of successful lobbying tactics by the cigar industry who proclaimed the industry, historic to Florida, would crumble if the surcharge were enacted.

The surcharge is projected to generate more than \$900 million in revenue for the state. Generated funds will increase funding for biomedical research and help fund the Medicaid program as well as other health care programs and services. The revenues from this surcharge proved to be the linchpin in budget negotiations as the House reluctantly agreed to the Senate's strong position on this issue. The tobacco surcharge awaits approval by the Governor.

### **Direct Payment of Benefits (SB 1122/HB 897)**

#### ***PASSED***

Physicians and other providers of medical services won a hard fought battle this year against insurers. Legislation by Senator Don Gaetz (R-Ft. Walton Beach) and Representative Marcelo Llorente (R-Miami) requires insurers to pay a designated provider of services directly whenever an insured specifically authorizes that the payment be paid directly to a recognized hospital, licensed ambulance provider, a physician, a dentist or other person who provided the services in accordance with the provisions of the insurance policy. Under current law, direct payment by an insurer is only required for emergency services and care.

The legislation provides that the Office of Program Policy Analysis and Government Accountability (OPPAGA), the research arm of the Legislature, must complete a report to the President of the Senate and the Speaker of the House by March 1, 2012 regarding the impact of the legislation. If OPPAGA finds that the legislation has caused a net loss in physicians in the preferred provider plan network of the state group health plan, the provisions of the legislation will be repealed. SB 1122 awaits approval by the Governor.

### **Medicaid Anti- Fraud Reforms/Medical Home Pilot Project (SB 1986)**

#### ***PASSED***

Legislation filed by Senator Don Gaetz (R-Ft. Walton Beach) addresses Medicaid fraud and abuse and streamlines health facility regulation through AHCA.

The bill designates Miami-Dade County as a health care fraud crisis area and directs AHCA to implement two pilot projects in Miami-Dade County to prevent the over-utilization of home health services. Also, health care facility and health care practitioner licensing standards are increased to keep fraudulent actors from obtaining health care licenses in Florida.

The bill decreases the financial surplus requirements for entities that contract with AHCA on a prepaid basis, including Medicaid HMOs, provider services networks and prepaid mental health plans. The surplus requirements will be the same as for commercial HMOs.

Finally, the bill directs AHCA to appoint a task force and develop a plan to implement a medical home pilot project. The pilot project will utilize primary care case management enhanced by medical home networks to provide coordinated and cost-effective care that is reimbursed on a fee-for-service basis, and to compare the performance of medical home networks with other existing Medicaid managed care models. SB 1986

awaits approval by the Governor.

### **Controlled Substances (SB 462/HB 897)**

#### ***PASSED***

Legislation by Senator Mike Fasano (R-New Port Richey) and Representative Marcelo Llorente (R-Miami) requires the Department of Health (DOH) to design and establish a comprehensive electronic system to monitor the prescribing and dispensing of certain controlled substances. This program is a comprehensive electronic system of which will monitor the prescribing and dispensing of certain controlled substances. Florida now joins 38 other states across the country that have enacted similar legislation in an effort to curtail prescription drug fraud.

Prescribers and dispensers are required to submit information regarding the dispensing of each controlled substance to DOH no more than 15 days after the date the drug was dispensed. Any person who knowingly fails to report the dispensing of a controlled substance commits a first-degree misdemeanor.

DOH, in coordination with the Office of Drug Control, is authorized to establish a direct-support organization to provide assistance, funding and promotional support for activities authorized for the prescription drug monitoring program. The program grants immunity from any civil, criminal, or administrative liability to a prescriber or dispenser acting in good faith for liability that might otherwise be incurred or imposed for receiving or using information from the electronic system.

Finally, the program requires physicians to register privately owned pain-management facilities with DOH. SB 462 awaits approval by the Governor.

### **Safety Belt Law Primary Enforcement (SB 344/HB 1)**

#### ***PASSED***

Legislation filed by Senator Nan Rich (D-Sunrise) and Representative Rich Glorioso (R-Plant City) amends the Florida Safety Belt Law to provide for primary enforcement of seatbelt violations for drivers and front seat passengers. The legislation allows law enforcement officers to stop motorists solely for not wearing their safety belts. Violators will receive a non-moving violation and are subject to a \$30 fine. The Governor signed SB 344 into law.

### **Physician Assistants (PA) (SB 720/HB 249)**

#### ***PASSED***

Legislation filed by Senator Durell Peaden (R-Crestview) and Representative Jimmy Patronis (R-Panama City) removes the requirement that a supervising medical or osteopathic physician review and sign charts or medical records of a physician assistant under the physician's supervision. The legislation also deletes the requirement for a supervising medical or osteopathic physician to review and sign prescription and dispensing records created by a physician assistant that

the physician supervises. Physicians are not prohibited from monitoring charts of the PA's they supervise. SB 720 awaits approval by the Governor.

## **Electronic Health Records (SB 162/HB 1097)**

### ***PASSED***

Legislation filed by Senator Jeremy Ring (D-Margate) and Representative Denise Grimsley (R-Sebring) requires AHCA to develop a universal patient authorization form to seek authorization from the patient for the use or release of the patient's health record. A health care provider must accept this authorization form, but is not required to use this authorization form.

The legislation provides health care providers with immunity from civil liability for accessing or releasing a health record in response to the universal patient authorization form. The legislation establishes liability for compensatory damages for the unauthorized release of a patient's health record. The legislation provides for the emergency release of a patient's health record without the consent for an emergency medical condition when the health care provider is unable to obtain the patient's consent or the consent of the patient's representative. A health care provider is immune from civil liability in these emergency situations.

Finally, the legislation authorizes AHCA to establish a certified electronic health record technology adoption loan program from any donations from public or private entities and federal funding from the American Recovery and Reinvestment Act of 2009 to facilitate the electronic health record program. SB 162 awaits approval by the Governor.

## **Vaccinations (SB 242/HB 33)**

### ***DIED***

Several vaccine-related bills were filed this past session to revise immunization schedules, allow parents to select an alternative vaccine schedule and ban the use of thimerosal in certain vaccines. SB 242 by Senator Jeremy Ring (D-Margate) received the most attention.

SB 242 provided that a parent, legal guardian or other authorized person, in consultation with a licensed health care provider, has the right to choose an alternative immunization schedule recommended by the Centers for Disease Control and Prevention (CDC), as long as the child is immunized prior to admittance into school. The bill prohibited the sale, purchase, manufacture, delivery, importation, administration and distribution of any human vaccine used for either children under six years of age or pregnant women which contains any organic or inorganic mercury compound in excess of a certain amount. Representative Kevin Ambler (R-Tampa) filed similar legislation, however Ambler's bill never gained traction in the House. The legislation failed to pass.

## **Autism Spectrum Disorder (SB 308/HB 89)**

### ***DIED***

Legislation by Senator Jeremy Ring (D-Margate) and Representative Steve Precourt (R-Winter Garden) required a physician to refer a minor to an "appropriate specialist" for screening if the physician believes that

the minor exhibits symptoms of autism.

The Senate bill was amended to require a primary care physician to a child to a specialist for screening only if a referral is "clinically indicated." Under the bill, physicians were required to notify the child's parents or legal guardian that insurers are required to provide direct access to specialists for screening if the parent agrees that the screening is necessary. The legislation failed to pass.

### **Continuity of Care (SB 558/HB 263)**

#### ***DIED***

Legislation by Senator Mike Fasano (R-New Port Richey) and Representative Alan Hays (R-Umatilla) provided that a health insurance policy could not limit or deny coverage for a prescription drug to an insured individual prior to the limitation, reduction or denial of coverage if the insured was previously using the drug, if the insured was covered under the policy or if the drug was covered under the policy. The legislation failed to pass.

### **Tobacco Education and Use Prevention Program (SB 2614/HB 1471)**

#### ***DIED***

DOH-backed legislation filed by Senator Don Gaetz (R-Ft. Walton Beach) and Representative Sandy Adams (R-Oviedo), provided technical changes to Florida's Tobacco Education and Use Prevention Program. The legislation included efforts to further educate youth and their parents about the dangers of tobacco usage. The legislation also contained a provision that a member of the FAFP serve on the Florida Diabetes Advisory Council. This legislation died as time ran out on last minute negotiations between the House and Senate sponsors.

### **Health Care Funding**

Overall health and human services funding grew by nearly \$2.7 billion. The growth was mostly due to federal stimulus money that increased the federal Medicaid matching rate from 55% to nearly 68% and the \$1 per cigarette pack and \$1 per ounce tobacco surcharge. The federal government now accounts for almost \$7 for every \$3 that the state spends on Medicaid until 2011.

Florida's Medicaid program will grow from roughly \$16 billion overall to just under \$18 billion, additional dollars of which fund increasing Medicaid caseload. Florida will serve an estimated 2.5 million people in the Medicaid program during the next year.

The Legislature restored a key element for seniors who depend on the Meds-AD program, a prescription drug program, and the Medically Needy program, which provides help to citizens who do not qualify for Medicaid but still require assistance for health care. The two programs were set to end on July 1, but the Legislature funded them at a continuation level through 2010.

The Agency for Health Care Administration (AHCA) saw a 12.5% increase in its budget, something few agencies expected at the outset of

the year. The Department of Health (DOH) budget was increased by nearly 4%. While there was some discussion about merging the two agencies, they remained separate at the end of Session.

The Department of Children and Families and the Agency for Persons with Disabilities saw increased budgets as well, 5.1% and 2.7% respectfully. Specifically, although some funding for Guardian Ad Litem was cut, the Legislature did provide \$7.7 million to service 22,000 children currently in the foster care system. They also provided \$27.3 million to continue subsidies for the 3,674 children adopted in Fiscal Year 2007-2008 and an estimated 3,225 new adoptions in Fiscal Year 2009-2010.

However, the health care budget did receive some reductions. Nursing homes saw their reimbursement rates reduced by 3%, but the facilities can offset that cost through an assessment they levy on themselves. Minority health initiatives, a target of the House's budget writers, were also reduced by \$1 million in the DOH budget. Hospitals will see Medicaid cuts; though some public hospitals may buy back some of those cuts if local taxing districts have funds that become available.

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NOTE: The FAFP would like to commend and acknowledge the untiring efforts of our Legislative Consultant, Jim Daughton, and the members of his team at Metz, Husband, & Daughton, PA.

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