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Florida Legislative Update: A Review of Important Health Law Changes in 2016

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Overview of Today's Presentation

- What Passed:
  1. ARNP and PA Controlled Substance Prescribing (HB 423/HB 977)
  2. Ordering Medication (HB 1241)
  3. Prescription Drug Monitoring Program ("PDMP") (SB 964)
  4. Transparency in Health Care, Balance Billing, and Prior Authorization (HB 1175/HB 221)
  5. Changes to Florida's Drug and Cosmetic Act (SB 1604)
  6. Telehealth, But Not (HB 7087)
  7. Medical Marijuana (HB 307/HB 1313)
  8. Other Notable Changes

- What Failed:
  1. Incentives for Dentists to Practice in Underserved Areas (HB 139-Vetoed)
  2. Direct Primary Care (HB 37/SB 132-Sucessfully passed through committees and House, but never taken up by Senate)
  3. Ambulatory Surgery Centers and Recovery Care Centers (HB 85/SB 212-repeatedly amended and died in returning messages)

ARNP and PA Controlled Substance Prescribing (HB 423/HB 977)

- While HB 423 affects several components within the medical and nursing professions touched upon in this presentation, the most notable is the change allowing the prescribing, ordering, and administering of controlled substances by ARNPs and PAs. Florida was the last state to expand controlled substance prescribing to ARNPs.
- While the effective date of the bill is July 1, 2016, ARNPs and PAs cannot prescribe controlled substances listed in Schedules II-IV (as defined in Section 893.03), beginning **January 1, 2017**.
- ARNPs' and PAs' prescribing privileges for Schedule II controlled substances are limited to a 7-day supply and do not include prescribing psychotropic medications for children under the age of 18, unless prescribed by an ARNP that is a psychiatric nurse.
- An ARNP who is certified as a psychiatric nurse can begin prescribing certain controlled substances now pursuant to HB 977.
- An ARNP may only prescribe or dispense controlled substances if the ARNP is a graduate from a program with a master's or doctoral degree in a clinical nursing specialty area with training in specialized practitioner skills.
- PAs will only be permitted to prescribe controlled substances as delegated by a supervising physician.

ARNP and PA Controlled Substance Prescribing (HB 423/HB 977)

- All ARNPs and PAs are required to complete at least 3 hours of continuing education in the safe and effective prescribing of controlled substances.
- ARNPs and PAs must designate themselves as controlled substance prescribers on their practitioner profile if they plan to prescribe for treatment of chronic non-malignant pain. If treating chronic non-malignant pain, ARNPs and PAs must meet the same standards of practice as physicians.
- MDs and DOs continue to be the only professionals who can dispense medications or prescribe controlled substances in a registered pain management clinic.
- The Florida Board of Nursing will establish a committee to recommend a negative formulary of controlled substances that ARNPs may not prescribe for specific uses, or in specific quantities. The Board must adopt by rule, the committee's initial recommendations no later than October 31, 2016.

Ordering Medication (HB 1241)

- Effective July 1, 2016.
- Adds specific authority for ARNPs that did not previously exist and adds nursing homes to the list of facilities for both PAs and ARNPs.
- Amends Section 458.347, Florida Statutes, to say that a physician may delegate to a licensed PA, the authority to, and the licensed PA acting under the direction of the supervising physician may, order any medication for administration to the supervisory physician's patients in a facility licensed under Chapter 395 or a nursing home.
- Amends Section 464.012, Florida Statutes, to say that the same can be done by an ARNP within an established framework.
- Amends Section 893.05, Florida Statutes, to add that a practitioner who supervises a PA or ARNP may authorize such PA or ARNP to order controlled substances for administration to a patient in a facility licensed under Chapter 395 or a nursing home.

PDMP (SB 964)

- Effective July 1, 2016.
- Amends Section 893.055, Florida Statutes, to specifically permit a **designee** of a pharmacy, prescriber, or dispenser to have access to information in the PDMP database that relates to a patient of the pharmacy, prescriber, or dispenser. Also allows a designee of the prescriber or dispenser to have access to information that relates to a patient of the prescriber or dispenser for the purpose of reviewing the patient's controlled substance prescription history.
- Exempts a rehabilitative hospital, assisted living facility, or nursing home that dispenses a dosage of controlled substance to a patient as ordered by the patient's treating physician, from reporting that act of dispensing to the PDMP.

Transparency in Health Care (HB 1175/HB 221)

- This year Governor Scott signed two bills into law that will better equip Floridians with the tools to make health care decisions based on the cost of procedures and protect them from unfair price gouging.
- The price transparency bill puts Florida at the head of the pack in a nationwide push for price transparency. While over 25 states have some form of similar legislation, Florida stands out because its database will reflect an estimated average price received as opposed to sticker price.
- HB 1175 requires AHCA to construct a user-friendly online platform where hospitals must post their procedures costs, which will allow consumers to compare costs and make more informed decisions.
- HB 1175 requires hospitals to post costs of health care services in a database that will allow consumers to compare prices and also learn about financial assistance policies and collection procedures.
- HB 1175 takes effect on July 1, 2016, but AHCA has until October 1, 2016 to select a vendor to set up the portal.
- As explained in more detail on the next slide, HB 221 prohibits so called balance billing, in which out-of-network providers charge patients the difference between what the provider charges and what is covered by insurance.

Balance Billing and Prior Authorization Legislation (HB 221/HB 423)

- Balance Billing:
  - Effective July 1, 2016.
  - Prohibits health care providers from directly billing PPO members for the remaining balance not reimbursed by the member's insurance company for out-of-network services. No longer limited to Florida HMOs.
  - Applies to emergency services by an out-of-network provider, and non-emergency services by an out-of-network provider at an in-network facility when the insured did not have an opportunity to select a participating provider.
  - For covered services rendered under an individual or group health insurance policy delivered or issued for delivery in this state, non-participating providers will be able to seek reimbursement solely from the insurer, other than copayments, coinsurance, and deductibles.
  - Implements reimbursement structure for health care services provided to out-of-network PPO members in the newly created Section 627.64194. 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; or (3) the mutually agreed upon charge between the physician and the insurance company.
  - If the physician disagrees with the payment rate, the bill provides for a dispute resolution process.
- Use of uniform prior authorization form required beginning January 1, 2017, or 6 months after rule adopting the prior authorization form takes effect (HB 423 and HB 221). Requires uniformity in form of prior authorization for medical procedures, courses of treatment, or prescription drug benefits. Requires specific elements in the form. Meant to add uniformity for physicians and simplify the current lengthy, complicated process.
- Also improves access to Down syndrome care.

Florida's Drug and Cosmetic Act (SB 1604)

- SB 1604 is a substantial piece of legislation that brings Florida's Drug and Cosmetic Act in line with the federal Drug Supply Chain and Security Act ("DSCSA").
- Effective July 1, 2016.
- The DSCSA preempts state law. Thus, these changes were necessary to clear up confusion between the state and federal exemptions to the term "wholesale distributor."
- The changes clarify that there are several categories of drug distribution allowed in Florida even though Florida had not previously enumerated them. The newly enumerated exempt categories include the following:
  - Intracompany distribution of any drug between members of an affiliate or within a manufacturer.
  - Distribution to practitioners for office use. Permits pharmacies to sell limited amounts of drugs to practitioners for office use.
  - Distributions between pharmacies for emergency medical reasons.
  - Exemptions for repackagers, common carriers, medical convenience kits, and certain IV solutions (certain IV solutions can be distributed without a permit).
- Repeals Florida's drug pedigree program in favor of the federal drug track and trace program in the DSCSA.

Telehealth, But Not (HB 7087)

- While the legislature once again took up the task of creating telehealth legislation in 2016, a conflict arose between the House and Senate (SB 1686) bills regarding whether telehealth practitioners must be licensed in Florida.
- HB 7087 bounced between the House and Senate several times, but, ultimately, the passing bill only contained an AHCA authorization to conduct a study on telehealth utilization and insurance coverage and created the Telehealth Advisory Council, which will provide recommendations based on information collected in the study no later than June 30, 2017.
- Despite the comparative lack of comprehensive telehealth legislation in Florida versus other states, providers in Florida have been moving ahead with integrating various telehealth platforms that allow them to have virtual online connections with patients.
- Although not part of the legislative session, another important telehealth development in Florida this year was that the Board of Medicine voted to uphold the rule allowing controlled substances to be prescribed via telehealth for the treatment of psychiatric disorders. See 64B8-9.0141, F.A.C.

Medical Marijuana (HB 307/HB 1313)

- While Floridians are poised to vote this fall on broad legalization for medical marijuana, two new medical marijuana bills were passed by the legislature and signed into law in 2016.
- HB 307/HB 1313 expands the 2015 law known as the Right to Try Act to allow terminally ill patients to have access to marijuana.
- HB 307/1313 also expands the framework and strengthens the regulatory structure of the 2014 Charlotte's Web Law by adding regulatory standards about safety and security, labeling, physician ordering qualification criteria, use of independent testing laboratories, and Department of Health oversight, among other things.
- Provides that the 5 dispensing organizations authorized to cultivate, process, transport, and dispense low-THC cannabis under the 2014 law may also dispense higher-THC cannabis to eligible patients under the Right to Try Act.
- Expands the number of licensed growers after customer base reaches 250,000 from 5 to 8.

Other Notable Changes

- Physician Licensure
- Physician Assistant Licensure
- Medical Assistants
- Free and Charitable Clinics
- Behavioral Health

Failed Legislation

- Dental Bill (HB 139): Would have created a program to provide awards of $10,000 to $100,000 to dentists who work in underserved areas, such as rural or low income areas. In a veto letter, the governor explained that he thought the bill was duplicative of other programs and did not contain sufficient safeguards on taxpayer investments.
- Direct Primary Care (HB 37/SB 132): Would have allowed individuals to contract with primary care providers for primary care services, cutting out the middle man of the insurance company, and exempting the practice from insurance regulation. Successfully passed through all committees and the House but was never taken up by the Senate.
- Ambulatory Surgery Centers and Recovery Care Centers (HB 85 and SB 212): Would have allowed ASC to keep patients for up to 24 hours (the Medicare standard) rather than less than 1 working day and would have created a new licensure category for so called recovery care centers where patients could remain for 72 hours after surgery for recovery care services. The Senate was not comfortable with the RCC component and after other legislation was added to the bill by the Senate (e.g., DPC) and then stripped away by the House, the bills died.

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Any Questions?

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