

JUNE 24, 2021 | PUBLICATION

## MEDIA CONTACT

Wendy M. Byrne  
wbyrne@shumaker.com

# Client Alert: 2021 Florida Legislative Session Health Care Summary

## Download Client Alert: 2021 Florida Legislative Session Health Care Summary

The 2021 Florida Legislative Session completed its 60-day regular session on April 30<sup>th</sup>. Both Chambers passed 275 bills and many have been signed by the Governor. For a complete post-session overview, click [visit shumaker.com](https://www.shumaker.com). Workforce, education, and health care were all heavily debated bills. Health care continues to be a critical topic for Florida and its legislative leaders. Following, please find a summary of some health care bills that passed. As noted, some are still awaiting action by Governor DeSantis. Please follow us on July 1<sup>st</sup>, as more details will be available.

### HB 0183 Office of Minority Health and Health Equity

HB 183 requires the Office of Minority Health and Health Equity to identify and present solutions to health disparities faced by racial and ethnic minority populations in Florida. Historically, these minority groups experience higher rates of illness and death from health conditions such as heart disease, stroke, specific cancers, diabetes, HIV/AIDS, mental health, asthma, and obesity. Under the bill, the Office will be tasked with developing and implementing policies, programs, and practices alongside other agencies, organizations, and providers in order to improve the health of racial and ethnic minority populations across the state. They must analyze and gather data regarding the status, outcomes, quality, and accessibility of health care for minority populations and determine suitable approaches to provide support for better information dissemination and education about health disparities. The Office must also continually evaluate health care practices across the state to encourage success, sustainability, and cultural awareness, allowing communities to eventually become self-sufficient. In order to achieve this, the bill requires that the Office will work with a minority health liaison from each county health department in implementing the bill provisions. Additionally, the Office of Minority Health and Health Equity is authorized under the bill to serve as a liaison to and assist the federal Office of Minority Health and Regional Health Organizations, as necessary. The Department of Health must maintain up-to-date data about health disparities and issues, information about and resources for minority populations in Florida, and resources for providers seeking to become more culturally competent and increase access to health care for minority populations. The bill takes effect on July 1, 2021.

### SB 0262 Dispensing Medicinal Drugs

SB 262 will allow hospitals operating class II or III institutional pharmacies to dispense medicinal drugs to

patients under certain conditions. Class II and III pharmacies are distinguished from class I pharmacies because they administer drugs on premises, and previously have only been able to dispense drugs to outpatients with a community pharmacy permit from the department and could not prescribe more than a 24-hour supply. Under the bill, these pharmacies will be able to dispense drugs to outpatients given that the prescriber treating the patient determines it is warranted and that the patient does not have sufficient access to community pharmacy services, geographically or otherwise. The drugs may also be prescribed in a quantity that will last 48 hours or until the end of the next business day, whichever is greater, or up to 72 hours in a state of emergency. The prescriber may provide a prescription for use beyond the designated period if it is deemed necessary. Additionally, the prescriptions are subject to all existing regulations on controlled substances under ss. 456.44 and 465.0276, F.S. The bill takes effect on July 1, 2021.

#### **HB 0431 Physician Assistants**

HB 431 revises the practice acts for Physician Assistants (PAs) in Florida statutes 458 and 459 and creates new regulations and responsibilities for PAs. The bill specifies which PA education and training programs are approved for PA licensure and amends PA licensure and licensure renewal requirements, authorizes a PA to authenticate any document by signature, certification, stamp, verification, affidavit, or endorsement if the document may also be so authenticated by a physician, prohibits a PA from issuing a physician certification for medical marijuana, authorizes a PA under the supervision of certain practitioners to prescribe up to a 14-day supply of Schedule II psychotropic drugs to a minor, increases the number of PAs a physician may supervise at any one time from four to 10, removes the requirement that a PA notify a patient of the right to see a physician prior to the PA prescribing or dispensing a prescription, authorizes a PA to procure medications and medical devices, with exceptions, authorizes a PA to supervise medical assistants, authorizes a PA to directly bill and receive payment from third-party payors for the services they deliver, authorizes the Board of Medicine and the Board of Osteopathic Medicine to license a PA who holds a certification from an entity that is the equivalent of the National Commission on Certification of Physician Assistants, repeals authorization for the Department of Health (DOH) to issue prescriber numbers, requires prescriptions for medicinal drugs by a PA to include specified information, removes the requirement for a licensed PA to notify the DOH in writing within 30 days of employment or after any change in supervising physician, authorizes a PA to satisfy continuing education requirement on controlled substance prescribing through a course designated by the American Osteopathic Association as a Category 1-A credit, and removes the requirement that PA licensure applicants seeking prescribing authority provide course transcripts. Contingent on whether the Governor signs the bill, it is intended to take effect July 1, 2021.

#### **HB 701 Behavioral Health Care Services Coverage and Access**

HB 701 aims to clarify coverages and complaints regarding behavioral and mental health care access. The bill will require health insurers and health management organizations to outline federal and state requirements to qualify for behavioral health services and provide it to insureds directly on an annual basis. This notice must also include the toll-free phone number established by the Division of Consumer Services within the Department of Children and Families (DCF) for individuals to file complaints regarding availability, affordability, and adequacy of behavioral health services. Coverage and contact information must also be made available on their websites. Information about the nature of received complaints, the quantity of complaints, and any recommendations for improving behavioral health care coverage and access must also be compiled in a report to the Governor and legislature, and shall be delivered by January 31, 2022. The bill will take effect October 1, 2021.

#### **SB 716 Consent for Pelvic Examinations**

SB 716 amends, narrows, and simplifies the definition of "pelvic examination," streamlining the scope and

application of s. 456.51, F.S. The bill amends current statute that requires written consent for any examination performed by health care practitioners, medical students, and trainees to require written consent only in the event that a patient will be anesthetized or unconscious during the examination. From a conscious patient, informed verbal consent must be obtained regardless of whether there was written authorization. A singular written consent will allow multiple practitioners or students to perform examinations on a pregnant woman experiencing contractions under the updated statutes. The bill also amends current statutes regarding exceptions to consent laws, adding exceptions for emergency medical conditions, child protection investigations, and criminal investigations related to child abuse or neglect under statutes that address human trafficking, sexual battery, prostitution, lewdness, indecent exposure, child abuse, or obscenity. The bill takes effect July 1, 2021.

### **SB 768 Administration of Vaccines**

SB 768 expands the scope of authority for Board of Pharmacy certified pharmacists and pharmacy interns to administer vaccines to adults under the supervision of a licensed physician. The bill allows these individuals to administer vaccines and immunizations that are listed on the CDC Adult Immunization Schedule as of April 30, 2021, recommended by the CDC for international travel, or licensed for use in the United States or approved for emergency use as of April 30, 2021. The bill also authorizes these pharmacists and pharmacy interns to administer influenza vaccines to children seven or older. The bill takes effect July 1, 2021.

### **HB 905 Program of All-Inclusive Care for the Elderly**

HB 905 codifies practices already in place within the Program of All-Inclusive Care for the Elderly. The Program allows individuals 55 or older to receive all necessary care covered by Medicare and Medicaid and any necessary additional care not covered, and it does not subject patients to copays, coinsurance, or any other cost-sharing mechanisms typically used under Medicare and Medicaid. Additionally, the Program does not place any limitations on amount, duration, or scope of care or coverage. The bill has little to no effect on current practices, as its goal is simply to codify in statute practices that had already been in place. It will take effect on July 1, 2021.

### **HB 1157 Freestanding Emergency Departments**

In order to address confusion between freestanding emergency departments (FED) and urgent care centers by patients seeking care, HB 1157 will require FEDs to post certain notices on their premises distinguishing their services from those of an urgent care center. It also requires the Agency for Health Care Administration (AHCA) to keep references on the differences between FEDs and urgent care centers, two examples of the extensive cost differences between FEDs and urgent care centers, an interactive tool to locate urgent care centers, and instructions on what to do in the event of a true emergency up to date on their website. Hospitals must keep a link to this information accessible on their websites. Health insurers must post on their websites examples for insurers and insureds of the costs incurred by inappropriate use of emergency services and an interactive tool to locate in-network and out-of-network urgent care centers. The bill takes effect July 1, 2021.

### **HB 1189 Victims of Sexual Offenses**

HB 1189 establishes duties and regulations for Sexual Assault Response Teams (SARTs). SARTs evaluate and provide support throughout local sexual assault cases, work to develop a stronger understanding of victimization and the positive effects of trauma-informed training, and are comprised of sexual assault nurse examiners, sexual assault victim advocates, law enforcement officials, and prosecutors. Under the

bill, SARTs are required to meet at least quarterly to ensure a coordinated multidisciplinary response to sexual assault; develop written protocols to govern the team's response to sexual assault, including, but not limited to, procedures for law enforcement response, evidence retention, and victim services; and promote and support the use of sexual assault forensic examiners who have received a minimum of 40 hours of specialized training in the provision of trauma-informed medical care and in the collection of evidence in sexual assault cases. The bill requires that county health departments, or a designee, either participate in the certified rape crisis center's existing SART or coordinate the creation of a SART with community leaders if one does not exist. It also requires the Criminal Justice Standards and Training Commission, in consultation with the Florida Council Against Sexual Violence (FCASV), to establish minimum standards for basic skills and continued education training for law enforcement officers that includes a culturally responsive trauma-informed response to sexual assault by July 1, 2022. Subject to the Governor's veto powers, the bill takes effect July 1, 2021.

### **HB 1381 Maternal Health Outcomes**

Within the DOH, the Office of Minority Health and Health Equity employs multiple health promotion programs including the Closing the Gap (CTG) grant program. The grant program aims to address health disparities and inequities for minority populations across the state by providing grants to increase community-based health and disease prevention activities. Under HB 1381, CTGs are authorized to fund projects to decrease racial and ethnic disparities in severe maternal morbidity and other maternal outcomes. The bill also adds maternal health programs to existing community-based programs the DOH must coordinate. The bill also creates telehealth minority maternity care pilot programs in Duval and Orange counties to expand access to care related to maternal morbidity and other maternal outcomes. The pilot programs must use telehealth or coordinate with prenatal home visiting programs to provide services and education to eligible pregnant women and provide training to participating health care practitioners and other perinatal professionals. Subject to Governor's action, the bill takes effect July 1, 2021.

### **SB 1786 Florida Birth-Related Neurological Injury Compensation Plan**

SB 1786 updates the Florida Birth-Related Neurological Injury Compensation Plan, increasing the maximum amount that may be awarded to parents or legal guardians of an infant who has sustained a birth-related neurological injury from \$100,000 to \$250,000. Additionally, the bill increases the death benefit for an infant who sustained a neurological injury from \$10,000 to \$50,000, increases the number of directors on the Florida Birth-Related Neurological Injury Compensation Association's (NICA) board from five to seven by adding a parent or legal guardian of a Plan participant and a representative of an advocacy organization for children with disabilities, and specifies that at least one director on the NICA's board is a woman, among many other administrative changes to the plan and its provisions. The bill requires NICA to submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, the first of which must include an actuarial analysis of the fiscal impacts of revising certain eligibility standards and benefits. NICA will also be subject to an audit by the Auditor General under the bill. Unless the legislature reevaluates and re-implements NICA and the Plan, both will reach a sunset on December 31, 2026. The bill will take effect July 1, 2021.

### **SB 1934 Health Care Practitioner Discipline**

SB 1934 amends s. 456.072, F.S., to lengthen the list of offenses that are grounds for disciplinary action against the license of a health care practitioner regulated by the DOH. Added to the list are the offenses of being convicted or found guilty of, entering a plea of guilty or nolo contendere to, regardless of adjudication, or committing or attempting, soliciting, or conspiring to commit an act that would constitute a violation of any of the offenses listed in s. 456.074(5), F.S., or a similar offense in another jurisdiction.

The bill also specifies criminal offenses involving a child that would result in requiring the DOH to issue an ESO against the practitioner's license. Additionally, the bill directs the Office of Program Policy Analysis and Government (OPPAGA) to analyze Florida's laws and rules relating to grounds for health care practitioner discipline and immediate suspension of licenses, specifically with respect to criminal offenses, and report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2022. Within this report, the OPPAGA must analyze and identify all health care professions regulated by the DOH. Upon approval from the Governor, the bill will take effect July 1, 2021.

#### **HB 6095 Scheduling of Drug Products Containing Cannabidiol**

HB 6095 aligns Florida statute with federal law, removing Epidiolex from the schedule of addictive drugs. Epidiolex is a prescription cannabidiol, a non-psychoactive compound derived from the cannabis plant, which is used to treat seizures. The legislature previously moved Epidiolex from Schedule I to Schedule V, and this bill seeks to mirror the adjustment by the Drug Enforcement Administration (DEA.) Since Epidiolex is derived from the cannabis plant and contains no THC, it meets the definition of hemp under Florida law and will not revert to classification as a Schedule I controlled substance. Additionally, the drug is no longer subject to Schedule V reporting requirements upon prescription. The bill takes effect upon becoming a law.

#### **SB 804 Substance Abuse Services**

SB 804 makes several changes to provisions governing the licensure and regulation of substance abuse treatment programs, including recovery residences. Under the bill, it will be a third-degree felony to misrepresent or withhold information when applying for a license to be a substance abuse service provider. The bill also updates regulations regarding fines and suspension of the provider's license. The bill also broadens the eligibility for exemption from employment disqualification for certain prior criminal offenses to specified employees of an applicant recovery residence and to applicant recovery residence administrators, and it prohibits certain classes of dwellings that are used as recovery residences from having their occupancy category changed or being reclassified for the purpose of enforcement of the Florida Building Code and for the Florida Fire Prevention Code's requirement for installation of fire sprinklers. The bill will take effect July 1, 2021.

#### **HB 17 Podiatric Medicine**

HB 17 requires podiatric physicians to complete a two-hour continuing education course on safe and effective prescribing of controlled substances as a part of the 40 hours of continuing professional education required for biennial licensure renewal. Podiatric physicians will no longer be subject to the requirements of s. 456.0301, F.S. The bill also allows patients to enter into health care agreements with podiatric physicians, who previously were excluded from making such agreements. The bill takes effect July 1, 2021.

#### **HB 833 Protecting DNA Privacy**

HB 833 creates the "Protecting DNA Privacy Act." The Act creates new crimes for a person who willfully, and without express consent: collects or retains another person's DNA sample with intent to analyze such sample, as a first-degree misdemeanor, submits another person's DNA sample for analysis or conducts or procures the conducting of such analysis, as a third-degree felony, discloses another person's DNA analysis results to a third party, unless such results were previously voluntarily disclosed by the person whose DNA was analyzed, as a third-degree felony, or sells or otherwise transfers another person's DNA sample or analysis results to a third party, as a second-degree felony.

The bill applies only to the use, retention, maintenance, and disclosure of a DNA sample collected from a person in Florida after the bill is effective and does not apply to a DNA sample, analysis, or analysis results when used for specified purposes, such as criminal investigation, determining paternity, complying with a court order, conducting specified research, or other health care purposes. Subject to approval by the Governor, the bill takes effect October 1, 2021.

### **SB 72 Civil Liability for Damages Relating to COVID-19**

SB 72, a combination of SB 72 and SB 74, provides heightened liability protections against COVID-19-related claims due to the threat of unknown and potentially unbounded liability claims that may arise from the pandemic. The bill includes protections for any civil liability claim against a person, a natural person, business entity, including certain charitable organizations and nonprofits, a public or non-public educational institution, a governmental entity, or a religious institution. The bill also creates protections for health care entities, but is very specific in its definition of what a health care provider is and which ones are protected against liabilities. The liability protections for health care providers in the bill are significant, but the protections are not as strong as those for other persons, businesses, and individuals. The bill took effect upon becoming a law March 29, 2021.