

Florida Legislature Pre-Session Report on Healthcare and Casino Gambling

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Budget Impact on Healthcare

Though there was hope that Florida would be facing a better year in regards to the state budget, it is now apparent that there will be a \$1.7 billion dollar shortfall that the upcoming legislative session will have to address. With healthcare being one of the largest parts of the budget, there will once again be deep cuts. We expect the Senate to propose cutting all mental health, Medically Needy, and Meds AD funding. We may once again see deep cuts in Medicaid.

Governor Scott unveiled his proposed budget during the final committee week before session. It totaled \$66.4 billion dollars, a 4.6% decrease from last year. It included a \$1 billion dollar increase to education and \$35 million dollars in tax cuts. To fund these items, Governor Scott proposed deep cuts including \$1.9 billion dollars in Medicaid funding. He proposes a "rate banding" system where hospitals are put into categories and each hospital would receive the same reimbursement rate. Jackson Memorial would lose \$133.5 million, Shands would lose \$60 million and Miami Children's would lose \$34.4 million. Both the Senate and House will form their own budgets but this will serve as a political message for what the Governor expects and will sign. The Governor's budget recommendations, if adopted by the Legislature, pose a wholesale threat to the economic viability of hospitals that provide a high level of indigent and Medicaid care.

Hospital Issues

Medicaid Reform

In the 2011 Legislative Session, Florida passed a sweeping Medicaid Reform Act that would move almost all Medicaid recipients into managed care plans in 2014. Under the revised Medicaid program, the state would be divided into 11 regions and each region would go up for competitive bids among interested managed care plans. The bill dictates a minimum and maximum number of plans for each region, and requires at least one provider service network in each.

The revised Medicaid program would allow the state to assess premiums for participation, and also would allow for co-payments for inappropriate use of emergency rooms. The changes require Florida to submit a new waiver to the federal government for approval before any changes can be made. Before submitting the waiver, the state must hold a handful of meetings across the state to get input from Floridians.

One of the overhaul measures, HB 7109, includes limits on lawsuits against Medicaid providers. The measure limits non-economic damages for personal injury or wrongful death to \$300,000 per claimant. The cap can be pierced if the plaintiff can prove by clear and convincing evidence that the provider acted wrongfully. Hospitals include ambulatory surgical centers and mobile surgical facilities licensed under a hospital. No practitioner is liable for more than \$200,000 in non-economic damages unless the injured patient can prove by clear and convincing evidence that the practitioner acted wrongfully. The State is currently negotiating with the federal Centers for Medicare and Medicaid Services (CMS) to grant a waiver for these changes.

Lower Income Pool

The federal Centers for Medicare and Medicaid Services (CMS) intends to expire the Low Income Pool (LIP) fund in 2013 while the state of Florida has continuously asked that the fund remain intact until 2014 when the state's Medicaid expansion would go into effect. This has remained a major point of contention in the negotiations with CMS over Medicaid. The LIP council is wrapping up its work on making recommendations for the next fiscal year. There is an effort for Federally Qualified Health Centers (FQHCs) to get more money. The for-profit hospitals also continue to make "the dollar follows the patient" argument. Additionally with a limited budget, all stakeholders will be fighting to obtain more of these funds. We also expect some hospitals to divest from the LIP pool entirely.

Trauma

The courts recently ruled that the method by which the Florida Department of Health determines need for additional trauma centers is flawed. We believe this decision will be appealed. In the meantime, the for-profit hospitals that are working hard to open new trauma centers are lobbying the state legislature to clarify the laws allowing more trauma centers. The safety net hospitals argue that they are currently meeting the needs and there are not enough specialists to staff the new trauma centers. This should be a battle in the upcoming session.

Sale and Lease of Public Hospitals

SB 464 by Senator Garcia- This bill provides several requirements on the sale/lease of a County Hospital, including but not limited to requiring the registered voters or by circuit court to approve of the sale/lease. We expect this bill to be amended significantly over the next several months and we are watching it carefully. There will be a House sponsor as well and we believe a similar bill will be filed by the incoming Senate president that will have traction.

Personal Injury Protection (PIP)

Florida's no-fault auto insurance law requires motorists to have up to \$10,000 worth of coverage for personal injury protection. Critics have complained that the system is wracked with fraud and that accidents are staged in order to cash in on benefits. Senator Negron will be in charge of the effort in the

Senate this year to eliminate or drastically reform PIP to fight fraud.

HB 119 by the Insurance and Banking Committee will soon workshop a proposed committee substitute which would make substantial changes to the mandatory no-fault insurance program, including eliminating a contingency fee multiplier that allows attorney's fees in complicated cases to be inflated. The amendment would also crack down on fraud by requiring clinics to register with the state and by placing utilization controls and fee limits on certain services.

HB 523 and SB 254 have also been filed by Representative Workman and Senator Bennett, respectively.

Physicians

HB 277/SB 290 - Relating to Abortions (Burgin & Flores)- These bills limit third trimester abortions and include disciplinary actions for the Florida Department of Health against violators.

Federally Qualified Health Centers (FQHCs)

The Senate Health and Human Services Budget Subcommittee is currently examining how FQHCs can bill for multiple services on the same day while avoiding fraud issues. Currently, FQHCs are capable of delivering medical, dental and behavioral health services in one day but can only charge for one of these. They must send the patient home or go without pay for the second and third services performed.

Pill Mills –Drug Abuse- Pharmaceutical

SB 402 General Prescription Drug Abuse (Negron) Creating the Statewide Task Force on Prescription Drug Abuse and Newborns; providing a purpose.

SB 668 General Workers' Compensation Medical Services (Hayes) Revising requirements for determining the amount of a reimbursement for repackaged or relabeled prescription medication; providing limitations, etc.

Blood Banks

SB 364 and HB 475 General Blood Establishments (Gaetz and Eisnaugle) Prohibiting local governments from restricting access to public facilities or infrastructure for certain activities based on whether a blood establishment is operating as a for-profit organization or not-for-profit organization.

Scope of Practice Issues

Every session there are numerous scope of practices bills filed. They typically become heated battles. However, because of redistricting and the budget deficit this year, we do not expect many of these bills to pass. Listed below are several examples of scope of practice bills introduced this year.

Osteopathic Physicians

SB 414 General Osteopathic Physicians (Negron) Revising the requirements for licensure or certification as an osteopathic physician in this state; revising provisions relating to registration of physicians, interns, and fellows, etc.

HB 425 General Surgical Technology (Renuart) Prohibits person from practicing surgical technology in healthcare facility unless he or she meets certain criteria.

Physician Assistants

HB 363 General Physician Assistants (Kreegel) Revises composition of membership on Board of Medicine & Board of Osteopathic Medicine, provides for appointment of new members as vacancies occur & allow, deletes requirement that DOH issue license to physician assistant to prescribe medicinal drugs & requires only prescription number. SB 774 General Physician Assistants (Hayes) Revising the membership of the Board of Medicine within the Department of Health to include a member who is a certified physician assistant.

Radiological Personnel

SB 376 General Radiological Personnel (Flores) This bill clarifies legislative policy, redefines the term "radiation" and defines the term "specialty technologist" as those terms relate to the certification of radiological personnel.

HB 0309 - Relating to Radiological Personnel (Oliva) This bill clarifies legislative policy, redefines the term "radiation" and defines the term "specialty technologist" as those terms relate to the certification of radiological personnel.

Pharmacy

HB 509 General Pharmacy (Logan) Revises types of vaccines that pharmacists may administer and authorizes pharmacy interns to administer certain vaccines.

Assisted Living Facilities Reform

After a series of editorial investigations in 2010 and 2011 that showed wide spread abuse and neglect by Assisted Living Facilities (ALF), Florida legislators are working to reform the quality of care this session and crack down on offenders. An interim panel was formed which voted to go to the Legislature to ensure that rogue homes are hit with the harshest penalties, including banning new residents at homes that commit serious offenses, and punishment for ALFs that retaliate against residents for complaining to elder advocates.

HB 397 SB 658 General Assisted Living Facilities Fresen Wise Creates Florida Assisted Living Quality

Improvement Initiative Pilot Project in specified area offices of AHCA and creates rules for enrolling and administering the project.

SB 400 General Patient Brokering (Jones) Revising the definition of the term "racketeering activity" to include the offense of patient brokering and requires that a prosecution for a felony violation of the offense of patient brokering be commenced within 5 years after the patient brokering violation is committed, etc.

SB 434 General Independent Living (Rich) Requiring the court to retain jurisdiction over a child until the child is 21 years of age if the child elects to receive Foundations First Program services.

SB 529 General Adult Day Care Centers (Corcoran) Cites act as "Alzheimer's Adult Day Care Act"; provides for licensure of adult day care centers that provide specialized Alzheimer's services; provides educational & experience requirements for operator of adult day care center seeking licensure to provide specialized Alzheimer's services.

Tort Reform

HB 385 General Sovereign Immunity (Gaetz) Provides legislative findings & intent; provides sovereign immunity to emergency healthcare providers acting pursuant to obligations imposed by specified statutes, provides proper exceptions, provides that emergency healthcare providers are agents of state & requires them to indemnify state up to specified liability limits, provides for sanctions against emergency healthcare providers who fail to comply with indemnification obligations.

HB 485 General Legal and Medical Referral Service Advertising (Kriseman) Requires advertising from medical or lawyer referral service related to accidents or injuries to comply with certain requirements regarding content and requires advertisements or unsolicited written communications from certain legal referral services related to accidents or injuries to comply with the Supreme Court of Florida's Rules Regulating The Florida Bar; requires that published advertisements from lawyer referral service be filed with The Florida Bar along with affidavit meeting certain criteria.

HB 427 General Civil Remedies Against Insurers (Passidomo) Requires that before bringing common-law bad faith action against insurer, party bringing action must first provide to DOI & insurer prior written notification of specified number of days.

Health Maintenance Organization Issues

SB 526 General Health Care (Jones) Removing a provision limiting the number of breast and cervical cancer screenings based on projected Medicaid expenditures; renaming ch. 385, F.S., as the "Healthy and Fit Florida Act"; requiring the Department of Health to support the creation of public health programs

at the state and community levels to reduce the incidence of mortality and morbidity from chronic diseases; requiring the department to create a state-level program to address the preventable risk factors associated with chronic diseases; requiring the program to perform certain activities; requiring the department to develop and implement a community-level program for the prevention of chronic diseases and the promotion of health; providing the purpose of the program; requiring the department to coordinate efforts with the Department of Management Services and other state agencies; requiring licensed laboratories and practitioners to report certain information to the department, etc.

SB 598 General Contraception (Detert) Requiring that health insurers and health maintenance organizations provide health insurance coverage for prescription contraceptive drugs and devices approved by the Food and Drug Administration and other related outpatient contraceptive services.

SB 730 General Medicaid Managed Care Plans (Flores) Requiring the Agency for Health Care Administration to establish per-member, per-month payments; substituting the Medicare Advantage Coordinated Care Plan for the Medicare Advantage Special Needs Plan.

SB 324 - Relating to Congenital Craniofacial Anomalies (L. Bullard) Congenital Craniofacial Anomalies; Requiring the Agency for Health Care Administration, in consultation with the Office of Insurance Regulation, to conduct a study concerning the medical necessity, costs, and efficacy of mandating coverage for certain treatments and therapies.

Mental Health

SB 460 General Intellectual Disabilities (Altman) Substituting the Arc of Florida for the Association for Retarded Citizens for purposes of certain proceedings relating to children; substituting the term "intellectual disability" for the term "mental retardation"; clarifying in s. 13 393.063, that the meaning of the terms "intellectual disability" or "intellectually disabled" is the same as the meaning of the terms "mental retardation," "retarded," and "mentally retarded" for purposes of matters relating to the criminal laws and court rules; revising definitions relating to intermediate care facilities.

Casino Gambling Legislation

In the upcoming 2012 Legislative Session, the Florida Legislature will consider landmark gaming legislation that could open up South Florida to large destination resort casinos. What effect this legislation could have on the current Seminole Tribe of Florida Gaming Compact with the state, the existing pari-mutuel "racinos" in South Florida, the Florida Lottery or gaming in general in the state are all major questions facing the Legislature and this bill as it moves forward.

The proponents of the bill are various national and international resort gaming interest companies, including Genting, Las Vegas Sands, Wynn Corporation, etc. Various business groups including

Associated Industries of Florida, and building trade and construction groups, are also supporting this proposal as a way to generate jobs and economic development in Florida.

Opposition to the legislation is already lining-up from religious groups, restaurant, lodging, and business groups, with the Florida Chamber of Commerce and The Walt Disney Company leading the charge. Those opposed are concerned with the negative impact even a couple of these destination resorts with full-fledged, Las Vegas-style casino gaming could have on the perception of the Florida being "the" family-friendly tourism destination in North America.

At the same time, the pari-mutuel "racinos" in Broward and Miami-Dade Counties are advocating for full parity in the destination resort casino bills that will give them the same casino games, tax rate, hours of operation, etc., as proposed for these destination resort casinos. The state's greyhound tracks will also be advocating for legislation that will permit them to operate their cardrooms or slot machines (in South Florida) without the requirement of live greyhound racing.

The Legislature will also likely consider legislation to answer the other recent "expansion" of gaming in the state, the proliferation of the legally-questionable "internet cafes" across the state. Bills have been introduced that could outlaw these "internet cafes" or require some form of state regulation over them.

Casino Bills

SB 710 by Senator Ellyn Bogdanoff and HB 487 by Representative Erik Fresen would authorize three (3) large "destination resorts" in Florida (most likely in Broward and Miami-Dade Counties) that would permit full-fledge casino gaming at a 10% tax rate on net gaming revenues.

Bidding for one of these three resorts requires a \$50 million fee (refundable only if the state rejects a company's bid) and a commitment to invest at least \$2 billion each in the "destination resort" complexes. The casino gaming space would be limited to no more than 10% of the total square footage of the resort facility.

The bill will also create a new regulatory body called "The Department of Gaming Control" which will regulate, administer, and license the "destination casino resorts." A 7-member State Gaming Commission will be established to head the new Department which will be headquartered in South Florida. In addition to regulating the "destination casinos," the new Department will replace the current Division of Pari-Mutuel Wagering and will regulate the pari-mutuel industry, cardrooms and "racinos" at the pari-mutuel facilities in Broward and Miami-Dade Counties.

The proposed legislation does not provide a lower slot machine tax rate and does not provide any gaming parity for the existing pari-mutuel "racinos" in South Florida that would allow them to offer full casino-style

games, like roulette, craps, blackjack, etc. These pari-mutuels will likely oppose any proposal that does not address "full parity" by lowering their tax rate and give them the ability to offer similar casino games. However, it does require \$250,000 fee per resort to fund the prevention of compulsive or addictive gambling problems.

So far, two workshops on SB 710 have been held by the Senate Regulated Industries Committee and based on comments and feedback from committee members Senator Bogdanoff has pledged to make changes to the bill as it goes forward. Among those are increasing the tax rate on the destination casinos, and some form of parity to the pari-mutuel "racinos." The bill has also been discussed in two Revenue Estimating Committees where they struggled to determine the financial impact on the State. HB 487 has not been placed on an agenda or heard in a committee and the Speaker of the House has expressed skepticism it can pass with a majority vote.

Pari-Mutuel – Greyhound "De-coupling" Legislation

Many Greyhound tracks in Florida conduct intertrack wagering, operate card rooms, or even slot machines (in Broward & Miami-Dade Counties). Currently, each must conduct a certain amount of live races on premises each year in order to be eligible to participate in or offer these other activities. Senator Maria Lorts Sachs and Representative Dana Young have proposed legislation (SB 382 & HB 641) that would remove (or "de-couple") this live racing requirement and allow Greyhound tracks to operate these other activities regardless of whether the track has run any live races.

Sweepstakes or "Internet Cafes"

These venues offer patrons the ability to play computerized sweepstakes games when they purchase a phone card or Internet time. Each of those purchases includes a code they enter at a computer station and they are informed if they have won cash or prizes, most of the time through the playing of a simulated slot machine on one of the cafes' many computers. These "internet cafes" have spread rapidly through the state, often in economically depressed areas, and the opponents of these "internet cafes" call them unregulated storefront casinos because they prey on low-income patrons and use computerized games with the same imagery as a casino game, most often a slot machine. Their defenders claim they are not gambling but a legitimate entertainment or sweepstakes game, much like the "Monopoly" games offered at McDonald's, for example, and are operating under the statutory definition of sweepstakes.

There are several proposed bills being considered. Senator Steve Oelrich respectively) Representative Scott Plakon have filed identical bills (SB 428 & HB 3, respectively) which would ban "simulated gaming devices" and essentially ban these cafes. Senator Mike Fasano, Senator Miguel Diaz de la Portilla and Representative Eddy Gonzalez have each filed separate legislation (SB 468, SB 380 & HB 467, respectively) that would regulate the cafes under the Department of Agriculture & Consumer Services. A variation of some of these proposals could be amended onto the destination casino bills in committee or

on the Floor.

Lottery

Currently, under Chapter 24, Florida Statutes, the Florida Lottery is allowed to sell scratch-off tickets through an Instant Ticket Vending Machine (ITVM) which is a self-service vending machine. Through these machines a lottery patron can purchase a scratch-off ticket but they cannot purchase any online tickets such as: Powerball, Lotto, Fantasy 5, Play 4 and Cash 3 tickets.

SB 902 by Senator Dennis Jones, will amend Chapter 24 to allow the use of full service vending machines in the state of Florida. If the legislation is successful a lottery patron can, for the first time, be able to buy both a scratch ticket and an online ticket from full-service vending machines. These new self-service machines will purportedly allow the Florida Lottery to lure new large chain retailers including Wal-Mart, CVS, Walgreens, Home Depot, and Lowes who have expressed concern over the labor-intensive nature of full-service staffed terminals in their stores. The Florida Lottery currently has 2,000 ITVMs in operation.

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