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MEMORANDUM

TO: FCAAP Legislative Committee

FROM: Douglas S. Bell

DATE: May 13, 2019

SUBJECT: Final Legislative Update – 2019 Legislative Session

It has been just over a week since the 2019 Legislative Session came to a close. In total, the 2019 Session included:

- 3,571 Bills and PCBs filed;
- 2,997 Amendments filed;
- 3,765 Votes Taken;
- 40 Floor Sessions; and
- 196 Bills passed both chambers.

We have read through the bills which were passed by both chambers, and below is a committee staff summary of the relevant portion of those bills which may be of interest to you. Links to the enrolled (final) versions of the bills are provided in this report.

Prescription Drug Importation Programs – *HB 19 PASSES LEGISLATURE*

HB 19 by Rep. Leek establishes two programs to import prescription drugs approved by the federal Food and Drug Administration (FDA) into the state, contingent on federal approval:

- The Canadian Prescription Drug Importation Program (CPDI Program) established by the Agency for Health Care Administration (AHCA) and the International Prescription Drug Importation Program (IPDI Program) established by the Department of Business and Professional Regulation (DBPR) in collaboration with the Department of Health (DOH).

- The CPDI Program focuses on providing savings and options for specific public programs identified in the bill:
    - Recipients in the Medicaid program;
    - Clients of free clinics and county health departments;
    - Inmates in the custody of the Department of Corrections;
    - Clients treated in developmental disability centers; and
    - Patients treated in certain state mental health facilities.
- The bill establishes eligibility criteria for the types of prescription drugs which may be imported and the requirements for entities that may export or import prescription drugs. The eligibility criteria cover:
    - Importation process;
    - Safety standards;
    - Testing requirements;
    - Drug distribution requirements; and
    - Penalties for violations of program requirements.
- Both programs must also adhere to federal product tracing requirements known as *track and trace* as described in Title II of the Drug Quality and Security Act, Drug Supply Chain Security Act, 21 U.S.C. 351 et seq. The bill includes a testing process with random sampling and batch testing of drugs as they enter the state under either program.
- Bond requirements and other financial responsibility requirements provisions were added for the following program contractors with their program noted:
    - Vendors (CPDI Program);
    - Pharmacy permittees (IPDI Program);
    - Wholesale distributor permittees (IPDI);
    - Nonresident prescription drug manufacturer licensees or permittees (IPDI), and
    - International prescription drug wholesale distribution permittees. (IPDI)

The fees for the new licenses and permits that are created under this bill are handled in a separate fee bill as required by the Florida Constitution. The specific financial requirements for each of these licenses or permits will be set by rule by the AHCA and DBPR.

Both programs have an immediate suspension provision allowing either the AHCA or the DBPR to immediately suspend the importation of a specific drug or the importation of drugs by a specific importer if either a specific drug or a specific importer is in violation of any provision of the bill or any federal or state law or regulation. The suspension may be lifted if, after conducting an investigation, the AHCA or DBPR determines that the public is adequately protected from counterfeit or unsafe drugs being imported into the state.

The bill requires federal approval, followed by state legislative review of an implementation and funding plan, before either program can begin. The IPDI Program requires specific federal approval as there is not any current federal legislation authorizing such a program.

HB 19 is linked to **HB 7073**, which authorizes DBPR and DOH to charge fees relating to new permits created in this bill for the IPDI Program.

If approved by Governor DeSantis, these bills take effect July 1, 2019.

Certificate of Need – *HB 21 PASSES LEGISLATURE*

HB 21 by Rep. Fitzenhagen eliminates the entire CON review program in Florida. As a result, any person wishing to build or replace a hospital, skilled nursing facility, hospice, or ICF/DD; establish new nursing home or ICF/DD beds; increase the number of complex medical rehabilitation beds; or establish tertiary services in a hospital, including inpatient complex medical rehabilitation beds need only go through the AHCA licensure process. If an applicant can meet the licensure statutes and regulations, the applicant will be permitted to offer new or additional health care facilities or services to patients in the state without first obtaining a CON from AHCA.

If approved by Governor DeSantis, these provisions take effect July 1, 2019.

Telehealth – *HB 23 PASSES LEGISLATURE*

HB 23 by Rep. Yarborough establishes a regulatory framework for telehealth under a new section of law, s. 456.47, F.S., including the following components:

- Establishing standards of practice for telehealth providers;
- Creating a registration process and requirements for out-of-state telehealth providers;
- Authorizing the prescribing of controlled substances in certain situations by telehealth;
- Providing record-keeping requirements for providers;
- Requiring the Department of Health (DOH) to create and maintain an informational website of out-of-state registered telehealth providers;
- Authorizing a disciplinary process for registered out-of-state telehealth providers;
- Establishing venue requirements for a civil or administrative action initiated by DOH, the appropriate health practitioner regulatory board, or a patient who receives telehealth services from an out-of-state telehealth provider;
- Providing rulemaking authority to administer these new requirements; and
- Creating insurance and health maintenance organization (HMO) contracting requirements relating to the voluntary acceptance of payment rates for telehealth services to ensure that telehealth providers are aware of the reimbursement provisions through initialing any specific telehealth payment terms, if different from in-person services, effective January 1, 2020.

The bill defines telehealth as the use of synchronous or asynchronous telecommunication technology to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of a medical data; patient and professional health-related education; public health services; and health administration. The definition does not include audio-only telephone call, e-mail messages, or facsimile transmissions.

The DOH is required to publish specific information about all out-of-state registrants via a public website. The required information includes the following information for each registrant:

- Name;
- Health care occupation;
- Completed health care training and education, including completion dates and any dates and certificates or degrees obtained;
- Out of state health care license with the license number;
- Florida telehealth provider registration number;
- Specialty;
- Board certification;
- Five-year disciplinary history, including sanctions and board actions;
- Medical malpractice insurance provider and policy limits, including whether the policy covers claims that arise in this state; and
- Name and address of the provider's registered agent designated for service of process in this state.

The definition of a telehealth provider includes any individual who provides health care and related services using telehealth and who is licensed or certified under one of 27 professions or occupations or is a member of a multi-state health care licensure compact of which Florida is a member state. Disciplinary action against an out of state telehealth registrant will be taken by the appropriate board, or the DOH if there is no board. Action may be taken if the registrant:

- Fails to notify the appropriate entity of any adverse actions taken against his or her license;
- Has restrictions placed on or disciplinary action taken against his or her license in any state or jurisdiction;
- Violates any of the requirements of the telehealth provider statutory provisions; or
- Commits any act that constitutes grounds for disciplinary action under s. 456.072(1), F.S., the general provisions for discipline with penalties and enforcement.
- The bill creates mechanisms for discipline of a telehealth provider registrant which may include a suspension or revocation of his or her registration or issuance of a reprimand or letter of concern. A corrective action plan could also be issued with a suspension which could require successful completion before reinstatement based on the rules that may be adopted by the respective board or the DOH. Florida-licensed providers who deliver medical services through telehealth are still subject to the review and discipline of their respective professional or occupational boards or the DOH through their Florida license.

The bill also directs the DOH to conduct an annual review of registration fees collected under the bill and determine the sufficiency of the fees for DOH and the boards to implement s. 456.47, F.S. A separate fee bill, **HB 7067**, imposes an initial out-of-sate telehealth provider registration fee of $150 and a biennial renewal fee of $150. *If approved by Governor DeSantis, these provisions take effect July 1, 2019, except as otherwise provided.*

Wireless Communications While Driving – HB 107 PASSES LEGISLATURE

SB 76 by Reps. Toledo & Slosberg changes current enforcement of the ban on texting while driving from a secondary offense to a primary offense, which will allow a law enforcement officer to stop a vehicle solely for texting while driving.

The bill creates a new section of statute titled "school and work zones; prohibition on the use of a wireless communications device in a handheld manner." It authorizes enforcement of a ban on the use of a wireless communications device in a handheld manner while operating a motor vehicle in a designated school crossing, school zone, or active work zone area as a primary offense punishable as a moving violation. The bill provides for enforcement only by a warning from October 1, 2019, through December 31, 2019, after which a person may be issued a citation.

For both texting while driving and use of a wireless communications device in a handheld manner while operating a motor vehicle in a designated school crossing, school zone, or work zone the bill:

- Allows for a statewide public education and awareness campaign;
- Requires a law enforcement officer to inform the motor vehicle operator that he or she has a right to decline a search of his or her wireless communications device;
- Prohibits a law enforcement officer from accessing the wireless communications device without a warrant, confiscating the device while waiting for the issuance of a warrant, or using coercion or other improper method to convince the operator to provide access to such device without a warrant; and
- Requires a law enforcement officer to record the race and ethnicity of a person issued a citation for texting while driving or for the use of a wireless communications device in a handheld manner while operating a motor vehicle in a designated school crossing, school zone, or active work zone area.

If approved by the Governor, these provisions take effect July 1, 2019, with a later effective date of October 1, 2019, for the implementation of the prohibition on the use of a wireless communications device in a handheld manner in school and work zones.

Prohibited Acts in Connection with Obscene or Lewd Materials – *SB 160 PASSES LEGISLATURE*

SB 160 by Sen. Book prohibits a person from knowingly selling, lending, giving away, distributing, transmitting, showing, or transmuting; offering to sell, lend, give away, distribute, transmit, show, or transmute; having in his or her possession, custody, or control with the intent to sell, lend, give away, distribute, transmit, show, or transmute; or advertising in any manner an obscene child-like sex doll. A first violation is punishable as a felony of the third degree and a second or subsequent violation is punishable as a felony of the second degree.

The bill also prohibits a person from knowingly having in his or her possession, custody, or control an obscene, child-like sex doll. A first violation is punishable as a misdemeanor of the first degree and a second or subsequent violation is punishable as a felony of the third degree.

If approved by Governor DeSantis, these provisions take effect October 1, 2019.

Medical Use of Marijuana – SB 182 PASSES LEGISLATURE

SB 182 by Brandes was passed at the beginning of Session in response to a recent court ruling and provides the following:

- Eliminates the prohibition against the smoking of marijuana (cannabis) from the definition of the "medical use" of marijuana
- Specifies that low-THC cannabis may not be smoked in public and prohibits the medical use of marijuana by smoking in an "enclosed indoor workplace," as defined in the Florida Clean Indoor Air Act.
- Permits a qualified patient and his or her caregiver to purchase and possess delivery devices for the medical use of marijuana by smoking from a vendor that is not a Medical Marijuana Treatment Center (MMTC).
- Prohibits the certification of marijuana for medical use by smoking to patients under the age of 18 unless such patient is diagnosed with a terminal condition.
    - For terminal patients under the age of 18 the bill requires a qualified physician to certify that smoking is the most effective means of administering medical marijuana to the patient; and
    - A second physician, who is a pediatrician, must concur with this determination.
- Requires that the risks specifically associated with smoking marijuana must be included in the informed consent each patient must sign prior to being certified to receive medical marijuana.
- Requires the Board of Medicine (BOM) and the Board of Osteopathic Medicine (BOOM) to adopt practice standards in rule for the certification of the medical use of marijuana by smoking.
- Specifies that a physician may not certify more than six 35-day supplies of marijuana in a form for smoking and that a 35-day supply may not exceed four ounces.
- Requires each MMTC to produce and sell at least one type of pre-rolled marijuana cigarette.
- Specifies packaging and warning label requirements for medical marijuana intended for smoking and also specifies labeling and production requirements for marijuana delivery devices sold from an MMTC.
- Provides that s. 381.986, F.S., does not impair the ability of a private party to restrict or limit smoking on his or her private property, and does not prohibit the medical use of marijuana in a nursing home, hospice, or assisted living facility if the facility's policies do not prohibit the medical use of marijuana.

- Rename the "Coalition for Medical Marijuana Research and Education" as the "Consortium for Medical Marijuana Clinical Outcomes Research" The Consortium is housed under the bill in the H. Lee Moffitt Cancer Center and Research Institute, Inc. (Moffitt) and must organize a program of research that contributes to the body of scientific knowledge on the effects of the medical use of marijuana and informs both policy and medical practice related to the treatment of debilitating medical conditions with marijuana.
- Repeals proviso language in the 2018 General Appropriations Act requiring that the DOH adopt all rules required as a condition for the release of specified reserved funds to the DOH.

This bill was approved by the Governor and became effective on March 18, 2019.

SHOTS Registry – *HB 213 PASSES LEGISLATURE*

HB 213 by Rep. Massullo amends s. 381.003, F.S., relating to programs for the prevention and control of vaccine-preventable diseases within the Department of Health (DOH), including programs to immunize school children and the development of an automated, electronic, and centralized database and registry of immunizations.

Regarding statutory provisions allowing a child's parent or guardian to refuse to have his or her child included in the immunization registry, the bill provides that:

- For a child from birth through 17 years of age, a consent-to-treatment form must contain a notice that the parent or guardian may refuse to have the child included in the immunization registry;
- A parent or guardian wishing to opt-out of the registry must provide an opt-out form to the health care practitioner or the entity administering the vaccination upon administration of the vaccination, and such health care practitioner or entity must submit the form to the DOH;
- Such a parent or guardian may also submit the opt-out form directly to the DOH; and
- Any records or identifying information pertaining to the child must be removed from the registry if the child's parent or guardian has refused to have his or her child included in the immunization registry.

Regarding a college or university student aged 18 years of age to 23 years of age who obtains a vaccination from a college or university student health center or clinic, the bill provides that:

- A student may refuse to be included in the DOH immunization registry by signing a form obtained from the DOH, health center, or clinic indicating that the student does not wish to be included in the registry;
- A student wising to opt-out must provide an opt-out form to the health center or clinic upon administration of the vaccination, and the health center or clinic must submit the form to the DOH;
- A student wising to opt-out may also submit the opt-out form directly to the DOH; and

- Any records or identifying information pertaining to the student must be removed from the registry if the student has refused to be included in the registry.

The bill provides that a health care practitioner licensed under chs. 458 or 459, F.S. (a physician or physician assistant) or under ch. 464, F.S. (a nurse or related practitioner) who administers vaccinations or causes vaccinations to be administered to children from birth through 17 years of age, is required to report vaccination data to the DOH immunization registry, unless a parent or guardian of a child has refused to have the child included in the registry. Such a health care practitioner who administers vaccinations or causes vaccinations to be administered to college or university students from 18 years of age to 23 years of age at a college or university student health center or clinic, is required to report vaccination data to the immunization registry, unless the student has refused to be included in the registry.

The bill provides that the DOH must make immunization records "electronically available" to entities that are required by law to have such records, as opposed to current law that requires DOH to "electronically transfer" the records. The bill provides that such entities include, but are not limited to, schools and licensed child care facilities, as opposed to current law specifying that such entities also include any other entity that is required by law to obtain proof of a child's immunizations.

The bill deletes language from current law providing authorization for such a practitioner who complies with rules adopted by the DOH to access the immunization registry and, through the immunization registry, to directly access immunization records and update a child's immunization history or exchange immunization information with another authorized practitioner, entity, or agency involved in a child's care.

The bill amends the DOH's rulemaking authority to adopt rules to implement s. 381.003, F.S., by specifying that such rules must be adopted pursuant to ss. 120.536(1) and 120.54, F.S. The bill deletes from s. 381.003(2), F.S., specific authority for such rules to include the following:

- Procedures for investigating disease, timeframes for reporting disease, definitions, procedures for managing specific diseases, requirements for follow-up reports of known or suspected exposure to disease, and procedures for providing access to confidential information necessary for disease investigations; and
- For purposes of the immunization registry, procedures for a health care practitioner to obtain authorization to use the immunization registry, methods for a parent or guardian to elect not to participate in the immunization registry, and procedures for a health care practitioner described above to access and share electronic immunization records with other entities allowed by law to have access to the records.

The bill also amends s. 1003.22, F.S., relating to school-entry health examinations, immunization against communicable diseases, exemptions, and duties of the DOH. The bill requires each district school board and the governing authority of each private school to

establish and enforce a policy requiring that, prior to admittance to or attendance in a public or private school, grades kindergarten through 12, or any other initial entrance into a Florida public or private school, each child is required to have on file with the DOH immunization registry a certification of immunization for the prevention of those communicable diseases for which immunization is required by the DOH. The bill deletes the current-law allowance for such a child to "present to" or have such certification on file with his or her school.

However, the bill provides that any child who is excluded from participation in the immunization registry pursuant to s. 381.003, F.S., must present or have on file with his or her school such certification of immunization.

The bill also requires each district school board and the governing authority of each private school to establish and enforce a policy to require the screening of students for scoliosis at the appropriate age, as opposed to at "the proper age" as under current law.

If approved by Governor DeSantis, these provisions take effect January 1, 2021.

Motor Vehicle Registration Applications – SB 252 PASSES LEGISLATURE

SB 252 by Senator Flores requires the Department of Highway Safety and Motor Vehicles (DHSMV) to include an option on the motor vehicle registration application to make a voluntary contribution of $1 or more to the Live Like Bella Childhood Cancer Foundation. Such contributions will be distributed by the DHSMV to the foundation.

The bill repeals the requirement that the DHSMV include an option on the motor vehicle registration application and on the driver license and identification card application to make a voluntary contribution of $1 or more to the Auto Club Group Traffic Safety Foundation, Inc.

If approved by the Governor, these provisions take effect July 1, 2019.

Health Plans – *SB 322 PASSES LEGISLATURE*

SB 322 by Sen. Simpson allows insurers and health maintenance organizations (HMOs) greater flexibility in their plan design and product offerings providing options of affordable health coverage for employers, employees, and individuals. The bill also requires insurers and HMOs offering comprehensive major medical coverage to offer at least one policy or contract that does not exclude preexisting medical conditions if certain conditions are met.

Alternative Coverage Arrangements

The bill revises regulatory provisions relating to alternative coverage arrangements such as short-term limited duration insurance policies and association health plans. The bill codifies 2018 federal regulations to provide consumers and employers with more affordable coverage options and choices for health insurance coverage.

An association health plan (AHP), which is a type of multiple employer welfare association, is a legal arrangement that allows business associations or unrelated employer groups to jointly offer health insurance and other fringe benefits to their members or employers. Changes in federal rules allow small employers, through associations, to gain regulatory and economic advantages that were previously only available to large employers. As a result of the federal regulatory changes, small employers, including working owners without employees, can form an association health plan that would be treated as a large group rather than a small group for insurance purposes, which would lower insurance costs and regulatory burdens. In addition, the federal rule allows an AHP to form, based on a geographic test, such as a common state, city, county, or a metropolitan area across state lines. Working owners without employees, including sole proprietors, can join.

SB 322 also provides that short-term limited duration insurance is an individual or group health insurance coverage provided pursuant to a contract with an issuer that has an expiration date specified in the contract that is less than 12 months after the original effective date of the contract and has a duration of no longer than 36 months in total. Short-term limited duration insurance was designed primarily to fill temporary gaps in coverage that may occur when an individual is transitioning from one plan or coverage to another plan or coverage. Currently, a short-term limited duration insurance policy must expire within 12 months of the date of the contract, taking into account any extensions. The bill requires disclosure in the short-term limited duration insurance contract regarding the scope of the coverage.

<u>Essential Health Benefits</u>
SB 322 requires the Office of Insurance Regulation (OIR) to conduct a study to evaluate Florida's essential health benefits (EHB) benchmark plan and submit a report by October 30, 2019 to the Governor, the President of the Senate, and the Speaker of the House. The study must include recommendations for changing the current EHB-benchmark plan to provide comprehensive care at a lower cost.

The Patient Protection and Affordable Care Act (PPACA) requires comprehensive major medical policies or contracts to include coverage for the 10 essential health benefits delineated in the act. Starting in plan year 2020, the federal government is providing states with greater flexibility in the selection of its EHB-benchmark plan. These options include:

- Selecting an EHB-benchmark plan that another state used for the 2017 plan year;
- Replacing one or more categories of EHBs under its EHB-benchmark plan used for the 2017 plan year with the same category or categories of EHB from the EHB-benchmark plan that another state used for the 2017 plan year; or
- Selecting a set of benefits that would become the state's EHB-benchmark plan.

The bill also provides insurers and HMOs issuing or delivering individual or group policies or contracts in Florida that provide EHBs additional flexibility in developing affordable coverage options, which are substantially equivalent to the state EHB-benchmark plan, that could be submitted to the OIR for review and approval.

Coverage for Preexisting Conditions
SB 322 requires each insurer or HMO issuing comprehensive major medical policies or contracts in Florida to offer at least one comprehensive major medical policy or contract that does not exclude, limit, deny, or delay coverage due to one or more preexisting medical conditions. The operative date for such mandated offer is the enactment of a federal law that expressly repeals PPACA or the invalidation of the PPACA by the United States Supreme Court.

If approved by Governor DeSantis, these provisions take effect upon becoming law.

Infectious Disease Elimination Act – *SB 366 PASSES LEGISLATURE*
SB 366 by Sen. Braynon creates the Infectious Disease Elimination Act (IDEA). The bill defines an "exchange program" as a sterile needle and syringe exchange program established under the IDEA. An exchange program must offer the free exchange of clean, unused needles and hypodermic syringes for used needles and hypodermic syringes as a means to prevent the transmission of HIV, AIDS, viral hepatitis, or other blood-borne diseases among intravenous drug users and their sexual partners and offspring.

The IDEA uses the current University of Miami pilot program as a model to authorize voluntary exchange programs statewide, provided such programs operate under the approval and authority of a county commission at one or more fixed locations or through a mobile unit in the applicable county. The bill provides that the overall goal of any exchange program established under the IDEA is the prevention of disease transmission.

Before a county commission can establish an exchange program, the county commission must:

- Authorize the program under a county ordinance;
- Execute a letter of agreement with the Department of Health (DOH) in which the county commission agrees to operate the program in accordance with the IDEA's statutory requirements;
- Enlist the local county health department (CHD) to provide ongoing advice, consultation, and recommendations for program operations; and
- Contract with one of the following entities to operate the county program:
- A hospital licensed under chapter 395;
- A health care clinic licensed under part X of chapter 400;
- A medical school in Florida accredited by the Liaison Committee on Medical Education or the Commission on Osteopathic College Accreditation;
- A licensed addictions receiving facility as defined in s. 397.311(26)(1), F.S., or
- A 501(c)(3) HIV/AIDS service organization.

The bill includes other programmatic requirements for a county's exchange program:

- Development of an oversight and accountability system which meets the approval of the county commission, ensures compliance with statutory and contractual requirements, including measurable objectives and a tracking mechanism, application of consequences for noncompliance, and a requirement for routine reporting;
- Provision for maximum security at sites where needles and syringes are exchanged or equipment is used;
- A requirement that educational materials must be offered wherever needles and syringes are exchanged;
- Provision of on-site counseling and referrals for drug abuse prevention, education, and treatment;
- Provision of on-site HIV and viral hepatitis screening and referrals for such screening, or if not able to test and screen on-site, provide a referral where a test can occur within 72 hours in rural areas;
- Provision of emergency opioid antagonist kits or referral to a program that can provide such kits; and
- Collection of data as statutorily required for reporting to the CHD, county commission, and the state.

The bill also provides for immunity from civil liability for any law enforcement officer who arrests or charges a person in good faith who is thereafter determined to be immune from prosecution as provided under the IDEA. The bill prohibits state, county, or municipal funds to be used to operate an exchange program. An exchange program may only be funded through grants and donations from private resources.

The original Miami-Dade needle and syringe pilot program established under chapter 2016-68, Laws of Florida, is authorized to continue to operate under that chapter until the Miami-Dade Board of County Commissioners establishes an IDEA-compliant exchange program, or until July 1, 2021, whichever occurs first.

If approved by Governor DeSantis, these provisions take effect July 1, 2019.

Prescription Drug Monitoring Program (PDMP) – *HB 375 PASSES LEGISLATURE*

HB 375 by Rep. Pigman relating to the PDMP:

- Exempts prescribers and dispensers from the requirement to check the prescription drug monitoring program (PDMP) database if the patient to whom the drug is being prescribed or dispensed has been admitted to hospice;
- Defines the term "electronic health recordkeeping system"; and
- Allows the Department of Health to enter into reciprocal contracts or agreements to share PDMP information with the United States Department of Veteran Affairs, the United States Department of Defense, or the Indian Health Service.

If approved by Governor DeSantis, these provisions take effect July 1, 2019.

Carrying of Firearms by Tactical Medical Professionals – *HB 487 PASSES LEGISLATURE*

HB 487 by Reps. Smith (David) and Gottlieb expressly authorizes a "tactical medical professional" (TMP) who has a concealed weapons and firearms license to carry firearms, weapons, and ammunition when he or she is actively operating in direct support of a tactical law enforcement operation. However, for the authorization to apply, the bill also requires the law enforcement agency head to have appointed the TMP, the agency to have an established policy for these appointments, and the TMP to have completed two types of firearms training, one of which must be provided by the agency.

A TMP may carry a firearm in the same manner as a law enforcement officer and anywhere that a tactical law enforcement operation occurs. Additionally, a TMP has "the same immunities and privileges as a law enforcement officer . . . in a civil or criminal action arising out of a tactical law enforcement operation when acting within the scope of his or her official duties." The bill defines a TMP as a paramedic, physician, or osteopathic physician who is appointed to provide medical support to a tactical law enforcement unit engaged in high-risk incidents, such as drugs raids and hostage situations.

If approved by Governor DeSantis, these provisions take effect July 1, 2019.

Electronic Prescribing – SB 831 PASSED LEGISLATURE

SB 831 by Rep. Mariano amends s. 456.42, F.S., to require health care practitioners who maintain an electronic health records (EHR) system or who own, are employed by, or under contract with, a health care facility or practice that maintains such a system, to electronically transmit prescriptions for medicinal drugs upon renewal of the health care practitioner's license or by July 1, 2021, whichever is earlier.

The bill provides the following exceptions. The requirement does not apply if:

- The practitioner and the dispenser are the same entity;
- The prescription cannot be transmitted electronically under the most recently implemented version of the National Council for Prescription Drug Programs SCRIPT Standard;
- The practitioner has been issued a waiver by the DOH, not to exceed one year, due to a demonstrated economic hardship, technological limitations not reasonably within the practitioner's control, or other exceptional circumstances;
- The practitioner determines that it is impractical for a patient to obtain in a timely manner a drug electronically prescribed and the delay would adversely impact the patient's medical condition;
- The practitioner is prescribing a drug under a research protocol;
- The prescription is for a drug for which the federal Food and Drug Administration requires the prescription to contain elements that may not be included in electronic prescribing;
- The prescription is issued to an individual receiving hospice care or who is a resident of a nursing home facility; or

- The practitioner or patient determines that it is in the best interest of the patient to compare prescription drug prices among area pharmacies. In such instance, the determination must be documented in the patient's medical record.

Practitioners who do not have access, in their practice or employment, to an EHR system may continue to provide written prescriptions to their patients for medicinal drugs.

If approved by the Governor, these provisions take effect January 1, 2020.

Public Records – SB 838 PASSES LEGISLATURE
SB 838 by Senator Powell makes confidential and exempt pleadings, orders, and personal identifying information on Baker Act proceedings. The information may be disclosed upon request to certain persons involved in the proceedings, certain agencies, or when directed by the court. The Florida Mental Health Act, also known as the Baker Act, allows for voluntary and, under certain circumstances, involuntary, examinations of individuals suspected of having a mental illness and presenting a threat of harm to themselves or others, and establishes procedures for courts, law enforcement, and certain health care practitioners to initiate such examinations and then act in response to the findings.

The bill provides that the exemptions are subject to the Open Government Sunset Review Act,
and stand repealed on October 2, 2024, unless reviewed and saved from repeal by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution.

If approved by the Governor, these provisions take effect July 1, 2019.

Health Care & Health Insurance Modifications – *HB 843 PASSES LEGISLATURE*
HB 843 by Rodriguez (Ana Maria) provides the following revisions to health care and health insurance law:

Dental Services
The bill provides legislative intent regarding oral health and dental services. Specifically, the bill:

- Recreates the Dental Student Loan Repayment Program under s. 381.4019, F.S., for Florida-licensed dentists who practice in specific public health programs located in federally-designated dental health professional shortage areas or medically underserved areas.
- Creates the Donated Dental Services Program under s. 381.40195, F.S., to establish a network of voluntary dentists and other dental providers for the purpose of providing comprehensive dental services at no cost to eligible individuals.
- Implementation of each of these programs by the Department of Health is subject to legislative appropriation.

Hospital Quality Report Cards

The bill amends s. 395.1012, F.S., to require hospitals to provide patients, or a patient's proxy, with written information and quality measures pertaining to quality of care for that hospital and the statewide average for those quality measures. Such information must be easily understandable and include an explanation of the relationship between patient safety and the hospital's data for quality measures.

Physician Access in a Hospital Setting

The bill creates s. 395.1052, F.S., to facilitate the involvement of a patient's primary care physician and specialists in a hospital setting:

- Hospitals must notify each patient's primary care provider within 24 hours after the patient is admitted and after discharge.

- Hospitals must also inform a patient that he or she may request the hospital's treating physician to consult with the patient's primary care doctor and/or specialist when developing the patient's plan of care. If such request is made, the treating physician is required to make reasonable efforts to do so.
- Hospitals must also provide the patient's discharge summary to the patient's primary care doctor within 14 days after the discharge summary is completed.

Ambulatory Surgical Centers

The bill allows a patient to stay in an ambulatory surgical center for up to 24 hours and deletes the current-law requirement that a patient be admitted and discharged on the same working day without staying overnight. The bill also requires the Agency for Health Care Administration (AHCA) to adopt rules to ensure the safe and effective delivery of care to children in ambulatory surgical centers.

Pediatric Cardiac Technical Advisory Panel

The bill amends s. 395.1055, F.S., to add three alternate at-large members to the existing Pediatric Cardiac Technical Advisory Panel established under AHCA. The bill also:

- Authorizes the AHCA Secretary to request announced or unannounced site visits to pediatric cardiac surgical centers for inspections by the panel and provides parameters for those inspections;
- Authorizes the AHCA Secretary to request recommendations from the panel for in-state physician experts to conduct on-site visits, and permits the Secretary to appoint up to two out-of-state physician experts for such visits;
- Authorizes the panel to present an advisory opinion and suggested actions for correction to the AHCA Secretary, as warranted;
- Authorizes AHCA to reimburse panel members for travel expenses; and
- Provides that panel members are agents of the state and are subject to sovereign immunity laws while conducting their duties in good faith.

Hospital Observation Status

The bill requires that when a hospital places a patient on observation status instead of inpatient status, the hospital must immediately provide written notification to the patient. The bill requires the notice be given to Medicare patients through a Medicare form and to non-Medicare patients through a form adopted by AHCA rule.

Definition of Clinics

The bill amends s. 400.9905, F.S., to provide that the definition of "clinic" does not include providers certified by the federal Centers for Medicare & Medicaid services under the federal Clinical Laboratory Improvement Amendments and federal rules adopted thereunder.

Health Care Restrictive Covenants

Effective upon becoming law, the bill creates s. 542.336, F.S., to provide that certain restrictive covenants relating to health care practitioners are void and unenforceable until certain conditions are met.

Direct Health Care Agreements

Relating to direct primary care agreements, the bill expands the existing statute to include any medical services provided by physicians, chiropractors, nurses, and dentists, instead of solely primary care services.

Step-Therapy Protocols

Effective January 1, 2020, the bill creates s. 627.42393, F.S., to prohibit certain health insurance policies from requiring an insured to undergo a step-therapy protocol before approving a covered prescription drug if the patient has already been approved to receive the drug through the completion of a step-therapy protocol under previous health coverage in the past 90 days. The bill also creates an identical prohibition for certain health maintenance organization contracts by amending s. 641.31, F.S.

Office of Program Policy Analysis & Governmental Accountability (OPPAGA) Review

The bill directs OPPAGA to research and analyze the Interstate Medical Licensure Compact and the relevant provisions of Florida's general laws and Constitution and submit a report and recommendations to the Governor and the Legislature addressing Florida's prospective entrance into the Compact in a way that remains consistent with Florida's laws and Constitution. The report is due October 1, 2019.

If approved by Governor DeSantis, these provisions take effect July 1, 2019, except as otherwise provided.

Human Trafficking – *HB 851 PASSES LEGISLATURE*

Among several other policy changes, **HB 851** by Rep. Fitzenhagen responds to the current human trafficking problem by requiring healthcare professionals including physical therapists to take a one hour educational course on human trafficking by January 2021. The course must address both sex trafficking and labor trafficking, how to identify individuals who may be victims of human trafficking, how to report cases of human trafficking, and resources available to victims. In addition health care providers are required to conspicuously post a sign about the National Human Trafficking Hotline.

If approved by Governor DeSantis, these provisions take effect July 1, 2019, except as otherwise provided.

Patient Savings Act – *HB 1113 PASSES LEGISLATURE*

HB 1113 by Rep. Renner creates the Patient Savings Act which authorizes health insurers and health maintenance organizations to provide voluntary, shared savings incentive programs in which insureds receive cash payment as an incentive to save on certain nonemergency health care services. The proposal was one of Governor DeSantis' health-care priorities this session. In these programs, insurers and HMOs could provide financial incentives to customers who shop for lower-priced services. The services could include types of non-emergency care, such as clinical laboratory services, surgical procedures, obstetrical and gynecological services, prescription drugs and services provided through telehealth. Two years ago, Florida established and authorized a similar program for the state-employee health-insurance program. The bill provides a range of methods by which a program may financially reward insureds who use shoppable health care services. Insureds may receive financial incentives in the form of premium reductions, or deposits into a flexible spending account, health savings account, or health reimbursement account.

The Senate amended HB 1113 to broaden the scope of the bill to include changes to the state employees' health insurance program, including removing the long-term prohibition on the state establishing a prior-authorization or formulary program for state employees. Under the amended bill, the state must establish a prescription drug formulary that would allow the state to stop paying for certain drugs; however, the plan would allow physicians to prescribe drugs if medically necessary. State employees must use the drug formulary starting in January and also lays the groundwork for changing the rules regarding how HMOs contract with the state's health insurance program beginning in 2023. The legislation also directs the state Division of State Group Insurance to analyze the efficiency and effectiveness of HMO coverage for state employees on a county, regional and statewide basis. Based on the analysis, the division would make recommendations to the Governor, Senate President and House Speaker about areas that are deemed the "most efficient and effective to provide health insurance coverage for the 2023 plan year." Further, the bill also stipulates that state employees could voluntarily take advantage of any drug importation program that Florida established as part of **HB 19** by Rep. Tom Leek (R-Ormond Beach). HB 19 authorizes the establishment of two drug importation programs which require federal approval. *If approved by Governor DeSantis, , these provisions take effect July 1, 2019, except as otherwise provided.*

Prescription Drug Monitoring Program – *HB 1253 PASSES LEGISLATURE*
HB 1253 by Rep. Mariano expands the Attorney General's indirect access to PDMP data to all cases involving prescribed controlled substances, rather than just Medicaid fraud cases. The bill authorizes the Attorney General to use PDMP records to pursue an investigation and litigation regardless of when they were compiled. The bill also eliminates a prohibition against information in the PDMP database being subject to discovery and entered as evidence in a civil or administrative action against a dispenser or pharmacy and also authorize program staff to testify in a proceeding to authenticate PDMP records. The bill also requires that DOH develop a unique identifier for each patient in the PDMP system, clarifies that the Attorney General may only obtain de-identified patient information from the PDMP for active investigations or pending civil or criminal litigation involving controlled substances, for cases other than Medicaid fraud cases.

If approved by Governor DeSantis, these provisions take effect July 1, 2019.

Mental Health – *SB 1418 PASSES LEGISLATURE*
SB 1418 by Sen. Powell implements two recommendations of a Department of Children and Families (DCF) task force on Baker Act cases involving minors. The Florida Mental Health Act, also known as the Baker Act, allows for voluntary and, under certain circumstances, involuntary, examinations of individuals suspected of having a mental illness and presenting a threat of harm to themselves or others, and establishes procedures for courts, law enforcement, and certain health care practitioners to initiate such examinations and then act in response to the findings. The task force found that Florida has seen an increasing trend statewide and in certain counties to initiate involuntary examinations of minors in recent years.

The first recommendation contained in the bill encourages school districts to adopt a standardized suicide assessment tool that school-based mental health professionals would implement prior to initiation of an involuntary examination. The second recommendation increases the number of days, from the next working day to five working days that the receiving facility has to submit forms to DCF. This will allow DCF to capture data on whether the minor was admitted, released, or a petition filed with the court. The bill also increases data gathered on involuntary examinations and requires DCF to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, every two years on its findings and recommendations related to involuntary examinations initiated on minors.

The bill also requires that when a patient communicates a specific threat against an identifiable individual to a mental health service provider, the provider must notify law enforcement of the potential threat. The bill further requires that law enforcement notify the target of the threat presented. The bill provides immunity from civil and criminal liability to service providers acting in good faith when releasing such information.

If approved by Governor DeSantis, these provisions take effect July 1, 2019.

Spinal Muscular Atrophy – SB 2502 PASSED LEGISLATURE
The Implementing Bill (SB 2502) contains language which requires newborns to be screened for Spinal Muscular Atrophy following integration of such a test into the newborn screening testing panel. The Department of Health shall implement such screening using a test offered by the United States Food and Drug Administration or by an alternative vendor as soon as practicable after July 1, 2019, but no later than May 3, 2020. The budget (SB 2500) contains $300,000 for this purpose.

Vaping Amendment Implementation – SB 7012 PASSES LEGISLATURE
SB 7012 by the House Innovation, Industry, and Technology Committee implements Amendment 9 to the Florida Constitution, which was approved by the voters of Florida on November 6, 2018, to ban the use of vapor-generating electronic devices, such as electronic cigarettes (e-cigarettes), in enclosed indoor workplaces. The use of e-cigarettes is commonly referred to as vaping. The bill permits the use of vapor-generating electronic devices in the enclosed indoor workplace of a "vapor-generating device retailer" or "retail vape shop", which is defined as "any enclosed indoor workplace dedicated to or predominantly for the retail sale of vapor-generating electronic devices and components, parts, and accessories for such products, in which the sale of other products or services is merely incidental." The bill also permits vaping at the same locations currently authorized to permit tobacco smoking, i.e., private residences whenever not being used for certain commercial purposes, stand-alone bars, designated rooms in hotels and other public lodging establishments, retail tobacco shops, facilities owned or leased by a membership association, smoking cessation programs, medical or scientific research, and customs smoking rooms in airport in-transit lounges.

The bill amends the state's preemption of tobacco smoking regulation in s. 386.209, F.S., to adopt and implement the grant of authority to local governments by Amendment 9 to adopt more restrictive local ordinances on the use of vapor-generating electronic devices.

These provisions were approved by Governor DeSantis and take effect July 1, 2019. (Chapter 2019-14, L.O.F.)

Implementation of Legislative Recommendations of the Marjory Stoneman Douglas High School Public Safety Commission – *SB 7030 PASSES LEGISLATURE*
SB 7030 by the Senate Education Committee addresses the school safety and security recommendations of the Marjory Stoneman Douglas High School Public Safety Commission, and strengthens accountability and compliance oversight authority.

School Security
The bill enhances school security measures. Specifically, the bill:

- Requires sheriffs to assist district school boards and charter school governing boards in complying with safe-school officer requirements, including providing guardian training either directly or through a contract with another sheriff's office under specified circumstances.

- Requires district school boards to collaborate with charter school governing boards to facilitate charter school access to all safe-school officer options. If a district school board denies a charter school access to any of the safe-school officer options, the school district must assign a school resource officer or school safety officer to the charter school and retain the charter school's share of the costs from the safe schools allocation.
- Delineates that the four safe-school officer options include a school resource officer, a school safety officer, school guardian, and a school security guard. The bill specifies that:
  - A school guardian may be a school district employee or a charter school employee who volunteers to serve as a school guardian in addition to his or her official job duties or an employee of a school district or a charter school who is hired for the specific purpose of serving as a school guardian. The bill removes the prohibition on an individual who exclusively performs duties as a classroom teacher from participating in the guardian program.
  - A school security guard must hold a Class "D" and Class "G" license in accordance with the law and meet the training requirements equivalent to that of a school guardian as a safe-school officer.
- Continues to require a district school board to opt-in to the guardian program through a majority vote and require employees who volunteer to pass a psychological evaluation and complete 144 hours of required training. The bill also requires the employee to complete the required training to the Sheriff's satisfaction and then be appointed by the superintendent or charter school principal, as applicable.
- Applies the penalties specified in law relating to the false personation of a law enforcement officer to the false personation of a school guardian and a licensed security officer.

<u>Student Safety</u>
The bill improves student safety by establishing information sharing and reporting requirements for district school boards and charter school governing boards, including responses to emergency situations, safety incident reporting, data collection, and data sharing. Specifically, the bill:

- Requires each district school board and charter school governing board to adopt an active assailant response plan; and annually by October 1, requires each district school superintendent and charter school principal to certify that all school personnel have received annual training on the procedures contained in the plan.
- Requires drills for active shooter and hostage situations to be conducted in accordance with developmentally appropriate and age-appropriate procedures.
- Requires each district school board to define criteria for reporting to a law enforcement agency any act that poses a threat to school safety as well as acts of misconduct which are not a threat to school safety and do not require consultation with law enforcement.

- Requires that the Florida Safe Schools Assessment Tool (FSSAT) be the primary physical site security assessment tool used by school officials at each school district and public school site in conducting security assessments; and requires each school district to report to the Department of Education (DOE) by October 15 that all schools within the district have completed the school security risk assessment using the FSSAT.
- Enhances oversight and enforcement as it relates to School Environmental and Safety Incident Reporting (SESIR) by requiring school districts and charter schools to report specified incidents; and requires the OSS to collect, review, and evaluate data regarding the reports to ensure compliance with the reporting requirements.
- Requires district school boards and charter schools to promote the use of the mobile suspicious activity reporting tool by advertising the tool on its website, school campuses, newsletters, and install the application on all mobile devices and bookmark the website on all computer devices issued to students.
- Modifies requirements relating to new student registration and transfer of student records by clarifying the mental health services-related reporting requirements at the time of initial registration and specifying the information that must be transferred from one public school to another upon a student's transfer.

The bill modifies requirements relating to school district threat assessment teams by:

- Requiring the threat assessment team to use the behavioral threat assessment instrument that is developed by the OSS in accordance with the law.
- Requiring, upon a student's transfer to a different school, a threat assessment team to verify that any intervention services provided to the student remain in place until the threat assessment team of the receiving school independently determines the need for intervention services.

The bill adds authority and responsibilities for the OSS. Specifically, the bill requires the OSS to:

- Annually publish a list including information about the number of safe-school officers in the state and information related to disciplinary incidents involving such officers.
- Make the FSSAT available annually by May 1, and provide annual training to each district's school safety specialist and other appropriate personnel on the assessment of physical site school security and completing the FSSAT.
- Specifies additional data that must be included in the centralized integrated data repository in coordination with the Florida Department of Law Enforcement (FDLE).
- Develop, no later than August 1, 2019, a standardized, statewide behavioral threat assessment instrument for use by all K-12 public schools and evaluate, by August 1, 2020, each school district's and charter school governing board's behavioral threat assessment procedures for compliance with the law.

- Establish a Statewide Threat Assessment Database Workgroup to complement the work of the DOE and the FDLE associated with the centralized integrated data repository and data analytics resources initiative. The workgroup must make recommendations regarding the development of a statewide threat assessment database to provide access to information about any school threat assessment to authorized personnel in each school district. The workgroup must provide a report to the OSS with recommendations that include specified components, no later than December 31, 2019.
- Convene a School Hardening and Harm Mitigation Workgroup comprised of individuals with subject matter expertise on school campus hardening best practices to review school hardening and harm mitigation policies, and submit a report to the executive director of the OSS by August 1, 2020, including a prioritized list for the implementation of school campus hardening and harm mitigation strategies, and related estimated costs and timeframes. The bill also specifies reporting requirements and related deadlines for the OSS and the Commissioner of Education regarding recommendations for policy and funding enhancements and strategies for implementing school campus hardening.
- Monitor school district and charter school compliance with school safety requirements.

<u>School District Funding</u>
The bill provides funding opportunities to enhance school safety and security, and to provide additional mental health services to students. Specifically, the bill:

- Retroactively provides school districts with flexibility for expending 2018-2019 fiscal year safe schools allocation funds for employing or contracting for safe-school officers.
- Provides school districts with greater flexibility to improve school safety by authorizing the transfer of categorical funds within the Florida Education Finance Program towards school safety expenditures, and expands authorized uses of the safe schools allocation.
- Expands the authorized uses of the mental health assistance allocation, provides school district flexibility for expenditures, and requires a program and expenditure plan for school districts and charter schools.

These provisions were approved by Governor DeSantis on May 8, and took effect on this date, except for the provisions related to the safe schools allocation and mental health allocation which are effective July 1, 2019, and the retroactive funding provisions related to the 2018-2109 safe schools allocation. (Chapter 2019-22, L.O.F.)

Child Welfare – *HB 7099 PASSES LEGISLATURE*

HB 7099 by Rep. Stevenson makes a number of changes to Florida child welfare laws under ch. 39, F.S., and related statutes, primarily to ensure compliance with federal regulations for implementation of the federal Family First Prevention Services Act and to align with the federal Title IV-E and the Guardianship Assistance Program (GAP) requirements. Specifically, the bill:

- Provides that guardianship assistance benefits under the GAP will be terminated if the guardian is no longer providing support for the child.
- Clarifies provisions relating to the extended foster care program, including requiring a young adult participating in the program to provide specified documentation of eligibility.
- Amends provisions relating to judicial reviews for young adults who are leaving and re-entering extended foster care.
- Clarifies provisions relating to financial assistance and other benefits available to children and young adults.
- Amends requirements relating to the licensure of family foster homes, residential child-caring agencies, and child-placing agencies, to either meet federal requirements or to streamline requirements for Level I licensing for foster homes under s. 409.175, F.S.
- Reduces from three months to 60 days the period of time for a court review following a child's placement in a residential treatment program.
- Provides the Department of Children and Families (DCF) with rulemaking authority to administer the extended foster care and GAP programs.

The bill amends s. 39.402, F.S., to provide that, in the provision of psychotropic medications to a child in the custody of the DCF, a psychiatric nurse as defined under s. 394.455, F.S., may perform certain medical, psychiatric, and psychological examinations of and provide treatment to children in care, and may perform physical, mental, and substance abuse examinations of a person with or requesting child custody services.

The bill also requires the DCF to establish a direct-support organization to support the Florida Children and Youth Cabinet. The bill provides new requirements for reports of child abuse and neglect related to children who are being treated in medical facilities in the state.

If approved by Governor DeSantis, these provisions take effect July 1, 2019.