FMA
FLORIDA MEDICAL ASSOCIATION

FMA 2019 Legislative Report

The 2019 Florida Legislative Session concluded on Saturday, May 4 at 2:04 p.m. Your FMA team of lobbyists tracked 260 bills and numerous amendments that either directly or indirectly concerned the practice of medicine in Florida. We faced many significant hurdles throughout session. For example, we devoted a great deal of time to fighting — and ultimately defeating — House Speaker José Oliva's priority healthcare legislation, which would have allowed Advanced Practice Registered Nurses (APRNs) to practice independently.

Following is a summary of key legislative issues that the FMA worked on during session to help our members practice medicine.

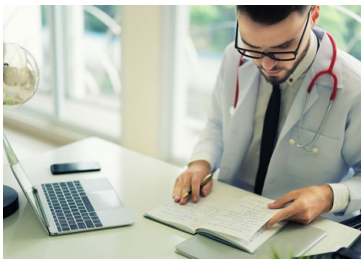
Legislation The FMA Defeated

Scope of Practice

Major scope-of-practice expansion for all mid-level healthcare practitioners is the cornerstone of Speaker Olivia's healthcare reform ambitions. Your FMA worked tirelessly and **defeated all scope-of-practice expansion attempts**. With the support of Florida Senate President Bill Galvano and Senator Gayle Harrell, the FMA was able to block the following bills from receiving a single Senate hearing.

APRN and PA Independent Practice *(HB 821 Rep. Pigman/SB 972 Sen. Brandes)*

Rep. Pigman's sixth attempt at achieving independent practice for mid-level practitioners failed. HB 821 would have allowed Advanced Practice Registered Nurses (APRNs) to practice independently, without a supervising physician protocol. This bill also sought to create a new type of Physician Assistant (PA), an "autonomous physician assistant," also with the authorization to practice independently. While HB 821 passed through the House, SB 972 was never heard in the Senate.



Psychologists Prescribing *(HB 373 Rep. Pigman/SB 304 Sen. Brandes)*

HB 373, perhaps the most concerning scope-of-practice expansion bill filed this year, would have granted psychologists authority to prescribe medication, including controlled substances. While psychologists are important members of the mental healthcare team, they receive no medical or psychopharmacology training. In anticipation of this legislation, the FMA worked closely with the Florida Psychiatric Society over the past year to educate legislators on this dangerous proposal. HB 373 died in committee and SB 304 was never heard in the Senate.

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Pharmacists Testing for Influenza and Strep

(HB 111 Rep. Plasencia/SB 300 Sen. Brandes)

HB 111 would have allowed pharmacists to test, diagnose, and treat influenza and streptococcal pharyngitis. This legislation was heavily supported by retail pharmacies and flu-diagnostic machine manufacturers. Further, HB 111 would have significantly increased the scope of practice for retail and consultant pharmacists by allowing them to initiate, modify or discontinue drug therapy for chronic health conditions including but not limited to arthritis, asthma, congestive heart failure, COPD, diabetes, emphysema, HIV, hypertension, obesity, and renal disease under a protocol with a physician. The FMA continues to oppose pharmacists' efforts to practice medicine. While HB 111 passed through the House, SB 300 was never heard in the Senate.

Consultant Pharmacists

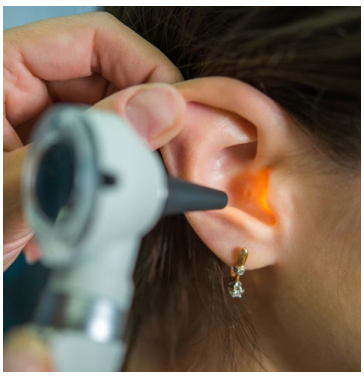
(HB 833 Rep. Byrd/ SB 1050 Sen. Diaz)

While much more limited than the pharmacy bill mentioned above, HB 833 was an overly broad proposal that would have allowed pharmacists to order and evaluate laboratory tests, conduct patient assessments to evaluate and monitor drug therapy, and initiate, modify, discontinue and administer medications. While the bill did require an established protocol with a physician and was limited to certain institutional settings, the ability to initiate, modify or discontinue medications under any circumstances represents an unwarranted scope-of-practice expansion for pharmacists. Though HB 833 passed through the House, SB 1050 was never heard in the Senate.

Health Innovation Commission

(HB 961 Rep. Fine/SB 1348 Sen. Gruters)

HB 961 was a clever attempt to bypass the legislative process in order to allow APRN/PA independent practice. This bill would have established an 11-person commission to research healthcare issues such as scope of practice. Then, these unelected commission members would have been able to issue waivers to statutory requirements. For example, if the commission determined that independent practice was beneficial, it could have exempted nurses from current state law that requires a physician protocol. The FMA was adamant that this bill was an unconstitutional delegation of legislative authority and vehemently opposed it. HB 961 passed through the House, but SB 1348 was never heard in the Senate. This legislation starkly illustrates the House's enthusiasm for expanding scope of practice in Florida.



Reimbursement for Audiologists *(SB 572, Sen. Baxley/HB 531 Rep. Brannan III)*

SB 572 would have mandated that health insurance companies provide coverage for hearing aids for children – but only if those hearing aids were prescribed, fitted, and dispensed by an audiologist. The FMA worked to include otolaryngologists as approved providers. Ultimately, this bill died in committee.

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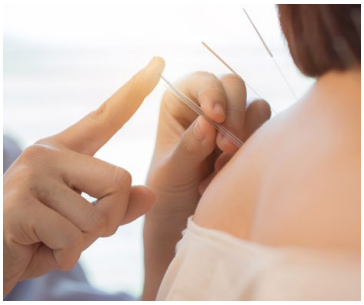


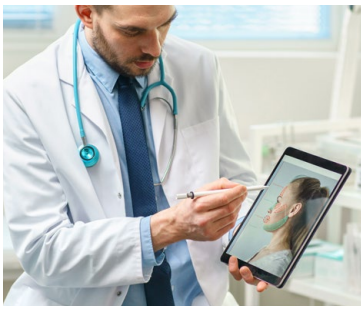
Alternative Treatments to Controlled Substances *(SB 1360, Sen. Gruters/ HB 1073 Rep. Plasencia)*

SB 1360 was an absurd bill that sought to further legislate the practice of medicine and restrict patients' access to controlled substances. Before prescribing a controlled substance, physicians would have been required to refer a patient to an acupuncturist, chiropractor, occupational therapist, massage therapist, and/or physical therapist as an alternative to a controlled substance. The FMA worked quickly to ensure this legislation was never heard in committee in both chambers.

Uniform Fee Schedule *(HB 1317 Rep. Burton/SB 1790 Sen. Perry)*

While the purported intention of HB 1317 was to apply only to personal injury protection (PIP), it would have capped reimbursement at 200 percent of the Medicare fee schedule for all physician care provided in almost all medical settings in Florida. The FMA immediately voiced its opposition to this government-mandated payment limitation. This bill was never heard in the Senate and died in committee in the House.

Legislation That Passed



Office Surgery *(SB 732, Sen. Flores/HB 933 Rep. Rodriguez)*

After several cosmetic surgery-related deaths in South Florida, Sen. Anitere Flores focused on addressing office surgery centers. Previously, the Florida Department of Health did not have the authority to revoke office surgery registrations. This created a breeding ground for bad actors to open cosmetic surgery centers that operated well below the standard of care. SB 732 closes that loophole.

The Department now has the authority to suspend or revoke an office surgery registration for failure of any of a surgery center's physicians, owners, or operators to comply with the applicable laws or rules. It can also issue an emergency suspension if the clinic is an imminent danger to the public. If an office registration is revoked, the Department can deny any owner or operator the ability to register another office for 5 years. Further, registered offices must now separately establish and maintain the same level of financial responsibility required of physicians. The FMA worked closely with the bill sponsor to ensure that SB 732 would not adversely affect offices that operate within the standard of care. We will provide a more in-depth analysis in the coming days.

Needle Exchange *(SB 366, Sen. Braynon/HB 171 Rep. Jones)*

The FMA congratulates Board of Governors member Hansel Tookes, III, MD, and all of the medical students and residents who worked to expand the 2016 Infectious Disease Elimination Act (IDEA). Originally, IDEA allowed a pilot needle and syringe exchange program to be created in Miami-Dade but

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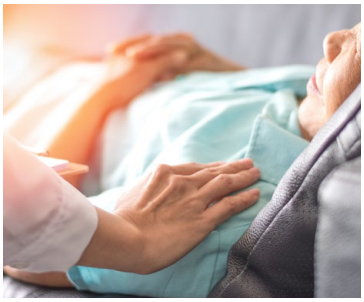
limited it to that county. Because of the program's success in Miami-Dade, SB 366 will expand the exchange program statewide. County commissions must authorize the operation of exchange programs, and no state, county, or municipal funding can be spent on the exchange of needles and syringes. These programs are not limited to providing clean needles, but can also offer HIV and hepatitis testing, counseling or referrals for drug abuse prevention, education, and treatment, and provide naloxone. This legislation is yet another example of organized medicine's ability to turn powerful ideas into real policy that benefits all Floridians.



PDMP Hospice Exemption *(HB 375 Rep. Pigman/ SB 592 Sen. Albritton)*

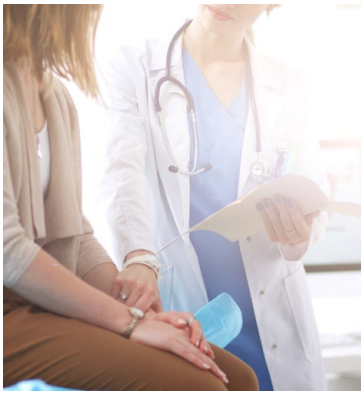
As expected, there was very little legislation addressing the 2018 opioid bill, HB 21. However, the FMA supported HB 375, which corrected the problem facing hospice providers. This bill adds an exemption from checking the Prescription Drug Monitoring Program when prescribing a controlled substance to a patient who has been admitted to hospice care. The FMA met with both bill sponsors and asked for additional changes to the PDMP checking requirement, but due to fears of multiple requests to change last year's bill, the sponsors decided to keep their legislation limited to this one change. The FMA will continue looking for ways to make necessary improvements to changes resulting from HB 21 (2018).

Ambulatory Surgical Centers *(HB, 843 Rep. A.M. Rodriguez/ SB 7078 Sen. Harrell)*

As part of the 2019 "healthcare train," the Florida House and Senate agreed to expand patients' stay at ambulatory surgical centers (ASCs) to 24 hours. Previously, patients admitted to ASCs had to be discharged that same day. Now, patients who have later-scheduled surgeries or require more recovery time will be able to stay overnight, as long as the total time does not exceed 24 hours. HB 843 also directs the Agency for Health Care Administration to adopt rules establishing minimum standards for pediatric patient care in ASCs.

Step Therapy/Fail First *(HB 843 Rep. A.M. Rodriguez/SB 7078 Sen. Harrell)*

While the FMA has been successful for years in getting step therapy legislation through the Senate, this is the first year that there was agreement in the House. HB 843 prohibits insurance companies from requiring a step-therapy protocol for a covered prescription drug requested by a patient if a) the patient was approved previously to receive the drug through the completion of a step-therapy protocol required by a separate health plan, and b) the patient provides documentation indicating that the health plan paid for the drug on the patient's behalf during the 90 days immediately before the request. While there is still a long way to go in accomplishing the FMA's health insurance reform goals, this is an important success in advocating for patient-centered care.



Direct Care Agreements *(HB 843 Rep. A.M. Rodriguez/SB 7078 Sen. Harrell)*

During last year's session, after several years of advocacy by the FMA and other medical specialty

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groups, the Legislature passed Direct Primary Care (DPC) legislation. DPC is a primary care medical practice model that eliminates third-party payers from the primary care physician-patient relationship. HB 843 expands this legislation by allowing direct health agreements to be utilized by physicians of **all specialties** – not just primary care. This practice model is anticipated to lower healthcare costs, increase access to primary care and specialty services, enhance the physician-patient relationship, and reduce physician burnout associated with the burden of negotiating with insurance companies.

Restrictive Covenants

(HB 843 Rep. A.M. Rodriguez/SB 7078 Sen. Harrell)

Restrictive covenants are clauses that are commonly found in employment contracts that restrict an employee's ability to practice within a certain geographical area for a certain amount of time upon termination of employment. HB 843 invalidates all restrictive covenants that are entered into between a physician and any entity that employs or contracts with all of the physicians in a county who specialize in the same specialty as the physician entering into the restrictive covenant.

Smokable Marijuana

(SB 182, Sen. Brandes/HB 7015 Rep. Rodrigues)

Recognizing the will of the voters and recent unfavorable legal outcomes, the Legislature removed the prohibition on smokable medical marijuana. The FMA will update its current Florida Physician Medical Marijuana CME course and its Florida Medical Marijuana CME course for MMTC Medical Directors to reflect the changes to this law.

Certificate of Need

(HB 21 Rep. Fitzenhagen/SB 1712 Sen. Harrell)

Attempts to deregulate hospital licensure has been a constant theme over the last several years. As part of House Speaker Oliva's top healthcare priorities, the Legislature passed HB 21, which eliminates the certificate-of-need requirement for new general hospitals effective July 2019 and for specialty hospitals effective July 2021.

Electronic Prescribing

(HB 831 Rep. Mariano/SB 1192 Sen. Bean)

Motivated by recent federal legislation mandating electronic prescribing (e-prescribing) for controlled substances under Medicare Part D by the year 2021, HB 831, as filed, sought to require mandatory e-prescribing for all prescriptions and effectively prohibit any written prescriptions. The FMA was adamant that mandatory e-prescribing would be financially detrimental to small practices and physicians who were close to retirement.

HB 831 ultimately passed, but with crucial exceptions thanks to diligent lobbying efforts. Effective July 1, 2021, or upon licensure renewal, whichever is earlier, physicians who maintain electronic health records must e-prescribe drugs unless: (1) the physician determines that it is in the best interest of the patient, or the patient determines it's in his or her own best interest, to compare

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prescription drug prices among area pharmacies and documents such in the medical record; (2) the physician reasonably determines that it would be impractical for the patient to obtain an electronic prescription in a timely manner and such delay would adversely affect the patient's medical condition; (3) the physician receives an economic hardship waiver from the Department of Health; (4) the physician and dispenser are the same entity; (5) the drug is being prescribed under a research protocol; (6) the prescription is issued to a hospice care or nursing home patient; (7) the prescription is for a drug for which the FDA requires a written prescription; or (8) the prescription cannot be transmitted electronically under the National Council for Prescription Drug Programs SCRIPT standard.

While the FMA does not support mandatory e-prescribing, we were able to make key improvements to this bill on behalf of physicians.

Telehealth

(HB 23 Rep. Yarborough/SB 1526 Sen. Harrell)

The FMA has had longstanding policy supporting the expansion of telehealth as a way to increase access to care for patients in rural areas and to embrace technological advances in medicine. Unfortunately, we were disappointed by the Legislature's approach on this issue. FMA policy supports telehealth when it is provided by Florida-licensed practitioners. Further, the FMA believes that telehealth will succeed only if health insurance companies are required to reimburse practitioners at the same rate for telehealth services as for in-person visits.

Unfortunately, the House telehealth bill was not nearly as comprehensive as FMA policy. HB 23 by Rep. Yarborough created a registration system in which physicians with out-of-state licenses could register to perform telehealth services in Florida without being subject to the same obligations and requirements as Florida-licensed physicians. Instead of payment parity, HB 23 provided millions of dollars' worth of tax incentives for health insurance companies to reimburse for telehealth services. The FMA strongly believes that all physicians who practice medicine on Florida patients should be held accountable for the care they provide, and this bill as originally filed did not meet that standard.

The FMA worked diligently to provide more safeguards to HB 23 and secured the following major improvements:

- A healthcare professional can register with the appropriate board or department to provide telehealth services to a patient in Florida as long as he or she (1) holds an active, unencumbered license that is substantially similar to a license issued in Florida; (2) has not been subject to disciplinary action relating to his or her license during the 5 years prior to the submission of the registration application; (3) designates a registered agent for service of process in this state; (4) demonstrate to the board or department that he or she is in compliance with the applicable Florida financial responsibility requirements; (5) and pay a registration fee.
- Registered providers **may not** open an office in Florida and may not provide in-person care to patients located in this state.
- Florida licensed healthcare professionals do not need to register to practice telehealth.

- ALL providers of telehealth must practice within their scope of practice and the prevailing professional standard of practice as established by Florida law.
- The appropriate boards or the Department may take disciplinary action against out-of-state telehealth providers.
- A contract between a health insurer and a telehealth provider

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must be voluntary and establish mutually acceptable payment rates for services provided through telehealth. Any contract provision that distinguishes between payment rates for telehealth services and the same in-person services must be initialed by the telehealth provider.

- The FMA felt strongly that the registration fee was not sufficient to cover the cost of regulating telehealth registrants. HB 23 tasks the Department of Health with determining the cost of regulation and providing that information for the 2020 Legislative Session.

The FMA still strongly believes that telehealth should be provided by Florida-licensed practitioners. We will work with health plans to encourage payment parity and will be closely tracking telehealth registrants and any telehealth-related complaints. Sen. Harrell has expressed her commitment to addressing telehealth problems in upcoming legislative sessions. The FMA remains committed to working with lawmakers to make Florida the safest state to practice telehealth.

Human Trafficking

(HB 851 Rep. Fitzenhagen/SB 540 Sen. Book)

Human trafficking is modern-day slavery involving the exploitation of an adult or child by means of fraud, force, or coercion for commercial sexual or labor purposes. Florida consistently ranks among the nation's top states with the most reports of human trafficking. Often, healthcare practitioners are the only points of care for these victims. HB 851 was the last bill to pass during the regular 60-day session and provides training requirements for a wide range of professionals, including a one-time, 1-hour CME course for physicians as part of the required hours. The FMA understands that mandatory CME places additional burdens on physicians; however, addressing this vicious epidemic is one of Florida Attorney General Ashley Moody's top priorities, and healthcare providers are on the front lines. The FMA will provide this 1-hour course free of charge for members in an online format and provide opportunities for live participation.

Non-opioid Directives

(HB 451 Rep. Plakon/ SB 630 Perry)

This bill, as filed, would have required physicians to provide patients a non-opioid directive form prior to prescribing, ordering or administering an opioid drug for the treatment of pain. The FMA met with the bill sponsor and expressed our concerns that this would be overly burdensome on physicians. In response, a new version of the bill was adopted during the committee process. HB 451 now requires the Department of Health to publish a pamphlet on its website that contains information on non-opioid alternatives for the treatment of pain, as well as their advantages and disadvantages. Before providing medical treatment, administering anesthesia, or prescribing a Schedule II opioid for the treatment of pain, a provider must inform the patient of non-opioid alternatives, discuss the advantages and disadvantages, and provide the patient with the DOH pamphlet as part of the informed consent process.

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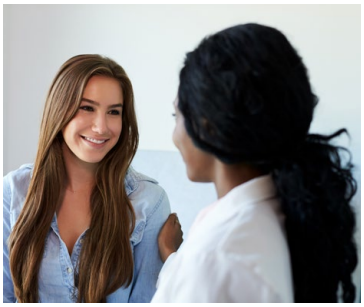
Legislation That Failed



Parental Consent
(HB 1171 Rep. Grall/SB 1726 Sen. Gruters)

This bill would have created the "Parents' Bill of Rights" enumerating the rights of a parent with respect to his or her minor child for education, healthcare and criminal justice procedures. The bill sought to establish parental consent requirements for healthcare purposes and provide for disciplinary action and criminal penalties against noncompliant healthcare practitioners. The FMA worked with the bill sponsor to remove the criminal penalties against physicians, and the legislation ultimately died in committee in both chambers.

Limitations in Medical Payments
(HB 17 Rep. Leek/SB 1320 Sen. Stargel)

Once again, legislation was filed to cap the amount that physicians could receive for treating patients who were injured or died due to the negligence of another party. HB 17 would have provided that physicians who treat patients who were entitled to Medicaid (or any other governmental insurance program) would be limited to the Medicaid rate for medical services delivered, regardless of whether the physician participated in the Medicaid program. If the patient did not have insurance, or elected not to use his or her insurance, the physician would have been limited to the Medicare rate for services provided. This would have created a major access-to-care issue for injured victims by eliminating their ability to receive the best medical care after being injured by others' wrongdoing. With fewer healthcare providers willing to treat people injured by the wrongdoing of others, the victims would have had no choice but to be treated in the hospital emergency rooms that (under federal law) cannot turn them away. Therefore, taxpayers would have ended up subsidizing medical care for injuries that the wrongdoers caused.

After much effort by the FMA, the House bill was amended to eliminate the cap on fees and provide instead that evidence of the usual and customary charge (as determined by the FAIR Health Database) must be presented to the jury. If the patient had coverage from a governmental program, the evidence presented **would have been required** to be the usual and customary rates at the 50th percentile rank of the imputed allowed amount. If the claimant had commercial coverage, the evidence presented **would have been required** to be the usual and customary rates at the 85th percentile rank of the imputed allowed amount. If the claimant did not have insurance coverage, the evidence presented **would have been required** to be the usual and customary rates at the 85th percentile rank of the charge benchmarks. The amended bill made it through all of its committees but was never heard on the House floor. The Senate bill was never heard in committee.

Personal Injury Protection
(HB 733 Rep. Grall/ SB 1052 Sen. Lee)

This bill would have repealed the motor vehicle no-fault system (of which PIP is a component) and replaced this coverage with a mandatory bodily injury system. The Senate bill would have required automobile insurers to offer medical payments coverage, but such coverage would have been an optional purchase. The House version would

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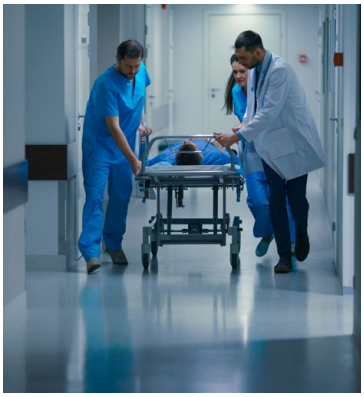
not have provided for any medical payments coverage at all. The FMA opposed both bills and worked to make sure that if no-fault were repealed, that physicians providing emergency care to auto-accident victims would be paid through mandatory medical payments coverage. The House bill was never heard in committee, and the Senate bill stalled in the Appropriations Committee.

Wrongful Death

(HB 17 Rep. Leek/SB 1320 Sen. Stargel)

This bill, a long-standing goal of the trial bar, would have increased the types of cases in which physicians would be liable for amorphous pain and suffering damages. If passed, this bill would have resulted in increased medical liability insurance premiums. Fortunately, neither bill was heard in committee.



Workers' Compensation

(HB 1399 Rep. Byrd/ SB 1636 Sen. Perry)

HB 1399 differed from the Senate version in that it would not have capped attorneys' fees but would have capped hospital and ambulatory surgical center fees in workers' compensation cases. While the bill did contain some favorable provisions related to prior authorization sought by the medical community, it ultimately died in committee.

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