



**RE: New Legislation to Make Debut on July 1**

**DATE: June 30, 2010**

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Numerous bills which passed during the 2010 Legislative Session and approved by the governor will be going into effect on July 1, 2010. A preview of the most prominent bills relating to health care administration, land-use and environmental issues are summarized and listed below. As always, if you have any questions relating to these or any other bills as they take effect, please feel free to contact any of the attorneys at Smith & Associates.

Health Care

**HJR 37 – Proposed Constitutional Amendment** - Legislators passed a joint resolution asking voters to decide on a constitutional amendment regarding the federal government’s national health care overhaul. Specifically, the constitutional amendment will make clear that no state or federal health care mandates, including one that requires you to buy insurance, apply in Florida. The proposal must pass with 60 percent of the voters to become a constitutional amendment.

**SB 2176 – Medicaid Supplement Policies** - Revises provisions related to unfair methods of competition and unfair or deceptive acts to provide that this section does not prohibit a Medicare supplement insurer from providing a premium credit to an insured for using an in-network inpatient facility. An insurer offering Medicare supplement policy is expressly not prohibited from entering into an agreement through a network with inpatient facilities that agree to waive the Medicare Part A deductible in whole or part. The insurer’s network agreement would not be subject to the approval of the Office of Insurance Regulation (OIR) and the insurer would not be required to file a copy of the agreement with the OIR. Further, the amendment requires an insurer to factor such a waiver of the Medicare Part A deductible and premium credit into the insurer’s loss-ratio calculation and policy premium.

**SB 1484 – Medicaid Reform Waiver**- Authorizes the Agency for Health Care Administration to seek a three-year extension of an existing federal Medicaid Reform waiver obtained under section 1115 of the Social Security Act and to preserve the Low Income Pool provisions of the waiver by no later than July 1, 2010. Requires that certain changes of terms and conditions relating to the Low Income Pool be approved by the Legislative Budget Commission. Requires that the agency develop a methodology for intergovernmental transfers in any expansion of prepaid managed care in the Medicaid program. Establishes the “Medicaid and Public Assistance Fraud Strike Force” within the Department of Financial Services and expands the responsibilities of the CFO to crack down on Medicaid fraud by transferring all public assistance fraud and abuse personnel from the Department of Law Enforcement to the CFO’s office.

**HB 5301- Medicaid** – This is a comprehensive bill that includes provisions relating to the following:

*Nursing homes*: Revises the method by which the Agency for Health Care Administration shall assess fees used for nursing home Medicaid underpayments and overpayments. Modifies the nursing home staffing requirements to allow for a combined direct care staffing requirement of 3.9 hours per resident per day.

*Meds-AD*: Extends the sunset date for the Medicaid Aged and Disabled (Meds-AD) and Medically Needy programs to June 30, 2011.

*Cross-over providers*: Authorizes the agency to enroll Medicare cross-over providers for payment and claims purposes only.

*Quality assessments*: Clarifies the use of the quality assessment on nursing home facilities and authorizes the use of quality assessments to restore rate reductions as specified in the General Appropriations Act. Clarifies the use of the quality assessment on privately operated intermediate care facilities for the developmentally disabled and authorizes the use of quality assessments to restore rate reductions as specified in the General Appropriations Act.

*Disproportionate Share Program*: Revises the years of audited data used in determining Medicaid and charity care days for each hospital in the Disproportionate Share program from 2003, 2004, and 2005 to 2004, 2005, and 2006; to change the fiscal year that the audited data is used to distribute funding through the Disproportionate Share program from Fiscal Year 2009-2010 to Fiscal Year 2010-2011; and provides the formula for the distribution of disproportionate share dollars to provider service network hospitals. Continues the prohibition of the distribution of funds through the Regional Prenatal Intensive Care Disproportionate Share program in Fiscal Year 2010-2011.

*PACE services*: Authorizes disproportionate share payments to statutorily defined teaching hospitals and family practice teaching hospitals in Fiscal Year 2010-2011; and allows the distribution of funds for statutorily defined teaching hospitals to be distributed as provided in the General Appropriations Act. Continues the prohibition of the distribution of funds through the Primary Care Disproportionate Share program in Fiscal Year 2010-2011. *PACE*

*services*: Authorizes the agency in consultation with the Department of Elder Affairs to accept and forward an application for the expansion of Program of All-inclusive Care for the Elderly (PACE) services to the Centers for Medicare and Medicaid Services for a site to provide comprehensive services including hospice and palliative care services to frail and elderly persons residing in Polk, Highlands, Hardee, and Hillsborough counties. Authorizes the agency in consultation with the Department of Elder Affairs to accept and forward an application for the expansion of Program of All-inclusive Care for the Elderly (PACE) services to the Centers for Medicare and Medicaid Services for a site to provide comprehensive services to frail and elderly persons residing in Southwest Miami-Dade.

*Hospital readmissions of non-Medicare population*: Authorizes the agency to develop and implement a program to reduce the number of hospital readmissions among the non-Medicare population eligible in agency areas 9, 10, and 11.

**HB 5303 - Agency for Persons with Disabilities** - Directs the agency to develop and implement a comprehensive redesign of the home and community-based services delivery system. The system created in section 393.0662, Florida Statutes, develops individual budgets (iBudgets), a system designed to improve the financial management of waiver services. Includes a new assessment instrument (the Department of Children and Family Services' "Individual Cost Guidelines") for use when assigning individuals to waiver tiers. Includes age as a characteristic for the purpose of tier assignment. In addition, the amendment specifies that individuals enrolled in tier four on July 1, 2007, are assigned to tier four without the need for further assessment. Establishes an expenditure cap on tier 1 at \$150,000 per client each year with some exceptions for individuals who need intensive behavioral services or special medical home care as identified in the Developmental Disabilities Waiver Services Coverage and Limitations Handbook. Reduces the expenditure caps on home and community based waiver tiers 2, 3, and 4 by 2.5 percent and reduces service provider rates by a corresponding 2.5 percent. Directs Medicaid administrative hearings requested by clients or their representatives, who have any substantial interest determined by the agency, to be conducted by the Department of Children and Family Services pursuant to s. 409.285, F.S. Establishes the Services for Children with Developmental Disabilities Task Force to make recommendations and develop a plan for the creation of, and enrollment in, the Developmental Disabilities Savings Program.

**HB 5307 - Mental Health and Substance Abuse** - Repeals provisions establishing Substance Abuse and Mental Health Corporation.

**HB 341** – Revises provisions establishing the *H. Lee Moffitt Cancer Center and Research Institute* and specifies primary responsibilities, use of facilities, sovereign immunity issues, use for teaching and research programs conducted by state universities and the control and sharing of certain income.

**HB 491 – Teaching Nursing Homes** - Revises the term "teaching nursing home" as it relates to the implementation of a teaching nursing home pilot project. It also revises the requirements to be designated as a teaching nursing home.

**HB 573 – Physician Assistants** - Deletes requirements that physician assistants file evidence of certain clinical experience before prescribing or dispensing medication. The bill also authorizes electronic submission of physician assistant license applications and other required documentation.

**HB 0945 – Automated External Defibrillators in ALFs** – Requires licensed ALFs with 17 beds or more to possess a functioning automated external defibrillator; encourages location registration; provides immunity from liability under Good Samaritan Act & Cardiac Arrest Survival Act; authorizes DEA to adopt rules relating to use of automated external defibrillators.

**HB 1253 - Continuing Care Facilities** - Continuing Care Retirement Communities (CCRCs) are retirement facilities that furnish residents with shelter and health care for an entrance fee and

monthly payments. In Florida, CCRCs are regulated by the Department of Financial Services, the Agency for Health Care Administration and the Office of Insurance Regulation (OIR). This bill clarifies and updates several provisions in chapter 651, F.S., many of which are reflective of current practices in CCRCs. Among its key provisions, the bill: Increases allowable provider cancellation processing fees; adds new content requirements for annual reports; clarifies that a provider may assess a non-refundable application processing fee; clarifies that the taxes and insurance that must be factored into the escrow account as a debt service reserve pertain to “property”; clarifies that if a prospective resident signs a contract but delays moving into the community, he or she is considered to have occupied a unit in the facility when he or she pays an entrance fee, or any portion thereof, and has begun paying a monthly fee. The bill also changes OIR inspections from “at least once every 3 years” to “at least once every 5 years” and requires the Continuing Care Advisory Council to report to the Governor and the Commissioner of OIR. Requires OIR to disclose to Council members specified information regarding complaints filed with DFS and to notify the Council regarding rule changes and scheduled rule workshops/hearings. Repeals current law regarding provisional certificates issued under prior law.

**HB 1337 – Nursing** - Authorizes disclosure of certain confidential information required of nursing license applicants to certain persons; provides and revises definitions; revises requirements for graduation from certain nursing education programs for nursing license applicants seeking to take licensing examination; revises restrictions on nursing graduates who may use certain titles and abbreviations, etc.

**HB 5311 - Department of Health** - Revises provisions for the administration and use of funds in the Administrative Trust Fund and the Emergency Medical Services Trust Fund. Provides that funds collected from the disposition of certain motor vehicle infractions shall be deposited into Emergency Medical Services Trust Fund and removes provisions for the deposit of such funds into the Administrative Trust Fund; provides for use of such funds; amends provisions relating to reimbursement of trauma centers, etc.

This bill also provides direction to the DOH related to organizational changes, requires a comprehensive DOH evaluation and justification review, and establishes the following program limitations:

1. Removes the authority for the DOH division directors to appoint ad hoc advisory committees.
2. Prohibits the DOH from creating new programs without the express consent of the Legislative Budget Commission or the Legislature.
3. Requires the DOH to notify the Governor and the Legislature before applying for any continuation or new federal or private grants for an amount of \$50,000 or greater.
4. Identifies the role of the DOH in an emergency by listing its specific responsibilities.

5. Decreases the DOH's environmental health food service responsibilities over facilities that are licensed and inspected by other agencies.

6. Specifies the types of entities having food service inspections administered by the DOH.

7. Repeals the Children's Early Investment Program which has not been operational for many years. (sections 411.23, 411.231, and 411.232, Florida Statutes).

8. Exempts medical device manufacturers that are registered by the Federal Drug Administration from regulation by the DOH to eliminate duplicative regulation.

9. Provides a definition for a "medical convenience kit" and exempts the wholesale distribution of medical convenience kits that contain prescription drugs from the pedigree paper requirements in certain circumstances.

10. Requires the DOH to develop a plan to treat contagious Tuberculosis in private and nonstate public hospitals. The DOH must submit the plan to the Governor and Legislature by November 1, 2010.

11. Requires the DOH to submit a report to the Legislature by January 1, 2011, that includes a rationale for each of its divisions, the return on investment for each division, and federal funding associated with each division.

12. Transfers the administration of chapter 499, Florida Statutes, relating to the regulation of drugs, devices, cosmetics, and household products, from the DOH to the Department of Business and Professional Regulation on October 1, 2011.

13. Modifies the section of law that establishes responsibility for physician workforce development; creates a Physician Workforce Advisory Council.

Additional provisions: Authorizes the Board of Medicine and Board of Osteopathic Medicine to issue a temporary certificate in areas of critical need under certain circumstances; Allows any city, county, or other entity designated in a state emergency management plan under section 252.35 (2) (a), Florida Statutes, during a public health emergency to deposit funds into the DOH Grants and Donations Trust Fund for the department to purchase necessary licensable products made available under the United States Department of Health and Human Services contract on behalf of any city, county or public entity in Florida; Allows the DOH to submit budget amendments requesting additional Grants and Donations Trust Fund budget authority for the *Florida Center for Nursing* to make expenditures supported by grants and donations.

**HB 7069 - Background screening requirements** - Revises exemption from screening requirements for volunteers who assist providers under contract with DCFS; revises background screening requirements for Guardian Ad Litem Program, mental health personnel, nursing home

personnel, home health agency personnel, nurse registry personnel, companions & homemakers, hospice personnel, personnel at homes for special services, & transitional living facility personnel, etc. (NOTE: the effective date is 8/01/2010.)

**SB 2272 – Pain-management clinics** - Provides that pain-management clinics that are required to be registered with the DOH are business establishments. Requires all privately owned pain-management clinics, or offices that primarily engage in the treatment of pain by prescribing or dispensing controlled substance medications or by employing a physician who is primarily engaged in the same, to register with the DOH, etc. (Note: the effective date is 10/01/2010.)

**Budget changes** – The state budget included a change in how the state’s Low Income pool for hospitals is evaluated, resulting in additional federal funds for the LIP program. The change allows additional hospitals getting added to the list.

#### Environmental and Land-Use

**SB 550 – Septic Tanks** – The legislature passed a water quality bill that, among other things, requires the Florida Department of Health to establish a statewide septic tank utilities by January 1, 2016, and mandates septic tank inspections every five years. Also, the bill reduces the frequency of compliance reports during the term of a consumptive use permit.

**HB 0569 – Solid Waste Disposal** – Authorizes yard waste to be dumped in certain landfills that collect landfill gas for electricity and other beneficial purposes.

**HB 0981 – Pesticides** - Clarifies that land classified as agricultural retains that classification when offered for sale. The bill also affects use of pesticides, including but not limited to: authorizes the FWCC to enter into agreement with the DEP for uniform regulation of pesticides applied to waters in Florida, revises exemptions from water pollution permits and provides permits for applying pesticides to waters.

**HB 7243 – Recycling** - Environmental Control: Requires Enterprise Florida, Inc., to provide technical assistance to DEP in creation of Recycling Business Assistance Center; provides that financial responsibility for mitigation for wetlands & other surface waters required by permit for activities associated with extraction of limestone are subject to approval by DEP as part of permit application review; provides for creation of voluntary recyclers certification program, etc. Benchmarks for meeting a 75-percent recycling goal by 2020. It requires state agencies and schools to report their recycling rates and directs DEP to establish a recycling business assistance center with Enterprise Florida.

**HB 1013 – Citrus Canker Eradication** – Repeals provisions relating to citrus canker eradication program and payment of compensation to eligible homeowners whose citrus trees have been removed under the program.

**SB 1118 – Docks** - Authorizes the placement of roofs on certain residential single-family docks. Authorizes the DEP to adopt rules that include special criteria for approving certain docking facilities in shellfish harvesting waters. Authorizes the department to maintain a list of projects or activities for applicants to consider when developing proposals in order to meet mitigation or public interest requirements, etc.

**SB 1640 - Florida Forever Program** - Re-creates said trust fund within the Department of Community Affairs. Reenacts and amends a specified provision relating to said trust fund. Provides for sources of funds and purposes. Provides for the annual carryforward of funds. Provides for future review and termination or re-creation of the trust fund.

**Budget changes** – Lawmakers included \$15 million in the budget to continue the *Florida Forever Program* after it received nothing last year. Also included in the budget: \$50 million for Everglades restoration, the bulk of which depends on federal matching money not yet approved by Congress.

#### Miscellaneous

**SB 2386 - State Financial Matters** - Provides that each agency is responsible for exercising due diligence in securing payment for all accounts receivable and other claims due the state. Authorizes the CFO to adopt rules requiring that payments made by the state for goods, services, or anything of value be made by electronic means. Revises contractual services and commodities that are not subject to competitive-solicitation requirements, etc.

**SB 1752 - Economic Development** - Requires an agency or entity that receives county funds for economic development purposes pursuant to a contract to submit a report on the use of the funds. Authorizes counties and municipalities to extend economic development ad valorem tax exemptions under certain circumstances. Provides an exemption from the use tax for an aircraft that temporarily enters the state or is temporarily in the state for certain purposes, etc.

**HB 451 - Space Florida** - Revises provisions for the governing board of Space Florida to terminate the existing board and replace it with a new board meeting the requirements of this section; provides for membership, organization, meetings and actions of the board; provides for reimbursement of expenses; requires members to file disclosure of financial interests, etc.

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