**2019 Legislative Updates: Week 5**

**Facility**

The House Health & Human Services Committee passed HB 25 relating to ambulatory care services - 10 Yeas, 4 Nays.

Pursuant to s. 395.002(3), F.S., an ambulatory surgical center (ASC) is a facility that is not part of a hospital, the primary purpose of which is to provide elective surgical care, in which the patient is admitted and discharged within the same working day and is not permitted to stay overnight. The bill changes the allowable length of stay in an ASC from less than one working day to no more than 48 hours. The bill also allows ASCs to provide advanced birth services such as planned low-risk cesarean deliveries, trial of labor after cesarean delivery for screened patients who qualify and vaginal deliveries for laboring patients from the beginning of the 37th week of gestation through the end of the 41st week of gestation if they meet certain quality standards.

The bill creates a new licensure category for a Recovery Care Center (RCC), defined as a facility the primary purpose of which is to provide recovery care services, to which a patient is admitted and discharged within 72 hours, and which is not part of a hospital. The bill defines recovery care services as:

* Postsurgical and post-diagnostic medical and general nursing care to patients for whom acute hospitalization is not required and an uncomplicated recovery is reasonably expected; and
* Postsurgical rehabilitation services. Recovery care services do not include intensive care services, coronary care services, or critical care services.

The bill requires all patients to be certified as medically stable and not in need of acute hospitalization by their attending or referring physician prior to admission to a RCC. A patient may receive recovery care services in a RCC upon:

* Discharge from an ASC after surgery;
* Discharge from a hospital after surgery or other treatment; or
* Receiving out-patient medical treatment such as chemotherapy.

The new RCC license is modeled after the current licensing procedures for hospitals and ASCs, subjecting RCCs to similar regulatory standards, inspections, and rules. RCCs must have emergency care and transfer protocols, including transportation arrangements, and a referral or admission agreement with at least one hospital.

The Senate Health Policy Committee amended and passed SB 1712, relating to hospital licensure - 9 Yeas, 1 Nays.

CS/SB 1712 amends and repeals various sections of the Florida Statutes to eliminate the requirement that a new freestanding general hospital must obtain a certificate of need (CON) from the Agency for Health Care Administration (AHCA) prior to being licensed.

As amended, the bill:

* Narrows the repeal of CON to the construction of new general hospitals, rather than for all hospitals.
* Establishes additional licensure requirements applicable to new general hospitals licensed after July 1, 2019, without a CON, including that each such hospital: 1) Must have at least 100 beds and have intensive care, progressive care, and medical surgical beds. This requirement does not apply to rural hospitals, long- term care hospitals, and hospitals established in a MUA 2) Must have an onsite, 24/7 emergency department. This requirement does not apply to long-term care hospitals; and 3) Must notify the AHCA before beginning construction.
* Requires each such new hospital to participate in Medicare, as well as Medicaid.
* Eliminates the definition of “charity care” established in the bill and instead refers to the definition of “charity care” as established for the disproportionate share program in s. 409.911(1), F.S.
* Grants the AHCA rulemaking authority to implement the new licensure requirements.
* Specifies that a currently licensed general hospital that was issued a CON with conditions related to providing charity care or providing care under the Florida Medicaid program must continue to meet those conditions as part of its licensure, regardless of the status of the hospital’s CON.
* Prohibits the AHCA from accepting any new applications for general hospital CONS;
* Requires the AHCA to issue a CON to all current general hospital applicants whose CON has been approved by the AHCA, regardless of litigation, if the applicant will have intensive care beds, progressive care beds, medical/surgical beds, and an onsite, 24/7 emergency department; and
* Allows current CON applicants whose applications have been denied or whose status is pending to continue through the current CON process until a final outcome is reached.

**Insurance and Billing**

The Senate Banking and Insurance Committee temporarily postponed SB 1636, relating to workers compensation.  This is the second time the bill was slated to be heard but no action was taken by the committee.

As drafted, SB 1636 amends several provisions in ch. 440, F.S., Florida’s workers’ compensation law. Unlike the House Bill, the Senate plan does not address the delivery of benefits and system cost drivers.  Instead, it codifies Westphal v. City of St. Petersburg, by increasing temporary total disability benefits and temporary partial disability benefits from 104 weeks to 260 weeks to address a potential benefit gap, if the injured worker has not reached maximum medical improvement. The bill also addresses provisions relating to attorney fees.

The Senate Banking and Insurance Committee temporarily postponed SB 1052, relating to motor vehicle insurance - 5 Yeas, 3 Nays.

CS/SB 1052 replaces the PIP coverage mandate with optional medical payments coverage which must provide coverage of at least $5,000 for medical expenses incurred due to bodily injury, sickness, or disease arising out of the ownership, maintenance, or use of a motor vehicle. The coverage also includes a death benefit of at least $5,000. Medical payments coverage protects the named insured, resident relatives, all passengers and operators of the insured vehicle, and all persons struck by the motor vehicle while not occupying a self-propelled motor vehicle.

The insurer must offer medical payments coverage at limits of $5,000 and $10,000, with an option for no deductible or a $500 deductible. Insurers may also offer other limits greater than $5,000, and other deductibles less than $500. Policies are presumed to include medical payments coverage with a limit of $10,000 with no deductible unless the insured declines medical payments coverage or selects coverage at a different limit or with a deductible.

The bill also requires the insurer to reserve $5,000 of benefits for payment to specified physicians or dentists who provide emergency services and care or who provide hospital inpatient care for 30 days after the date the insurer receives notice of the accident.

The repeal of the No-Fault Law eliminates the limitations on recovering pain and suffering damages from PIP insureds, which currently require bodily injury that causes death or significant and permanent injury.

Additionally, the bill authorizes the exclusion of a specifically named individual from specified insurance coverages under a private passenger motor vehicle policy, with the written consent of the policyholder.

The House Health & Human Services Committee passed HB 879, relating to genetic information used for insurance purposes- 5 Yeas, 7 Nays.

The bill amends s. 627.4301, F.S., existing prohibitions on the use of genetic information by insurers to include entities that issue policies for life insurance and long-term care insurance. Specifically, the bill prohibits issuers of life insurance and long-term care insurance from canceling, limiting, or denying coverage, and from setting different premium rates, based on personal genetic information without a specific diagnosis29 related to the genetic information. The bill also prohibits life insurers and long-term care insurers from requiring or soliciting genetic information, using genetic test results, or considering a person’s decisions or actions relating to genetic testing for any insurance purpose.

The House Health Care Appropriations Subcommittee passed HB 999, relating to medical billing – 9 Yeas, 0 Nay.

Current law requires facilities licensed under chapter 395, F.S., to provide patients with personalized pre- treatment estimates on the costs of care, upon patient request. HB 999 makes the estimate mandatory, regardless of whether a patient requests it. A facility that levies charges exceeding the provided estimate by more than 10% must clearly document a rationale for those increased charges in a written communication to the patient.

The bill requires facilities licensed under chapter 395, F.S., to establish a formal process for patients to appeal charges that appear on an itemized statement or bill. Additionally, the bill prohibits licensed facilities from taking extraordinary collection actions in an effort to collect medical debt before determining whether a patient is eligible for financial assistance or while an appeals process is ongoing.

Current law provides a court process for the collection of lawful debts and makes some limited exemptions for personal property. The bill creates s. 222.26, F.S., to add additional exemptions from attachment, garnishment, or other legal process to include a single motor vehicle and personal property of a debtor of a value up to $10,000 when debt is incurred as a result of medical services provided in a licensed hospital facility, provided that the debtor does not receive a homestead exemption.

**Group Practice**

The House Appropriations Committee passed HB 1243 relating to hospital or group practice mergers, acquisitions and other transactions - 29 Yeas, 0 Nays.

CS/CS/HB 1243 amends the Florida Antitrust Act relating to the acquisition of hospitals or group practices in the health care market. The bill imposes certain reporting requirements when a transaction between two entities in the health care market results in an affiliation or a material change to the health care market which could create a monopoly. An entity that fails to comply with these reporting requirements is subject to a civil penalty up to $500,000.

These new notice requirements will provide a mechanism for the OAG to review transactions before they occur and will allow the OAG time to determine whether a proposed transaction has antitrust implications and if warranted, pursue action to prevent coercive monopolies from forming in the health care market.

The bill also addresses invalid restrictive covenants, or non-compete clauses, as they relate to monopolies on physician specialties in the health care market. Specifically, when one entity has a monopoly on all of the physicians who practice a certain medical specialty in one county, the bill makes non-compete clauses with physicians of that specialty void and unenforceable until 3 years after another entity enters the market and begins offering that medical specialty to the patients of that county.

**Senate Health Care Train**

The Senate Appropriations Subcommittee on Health and Human Services passed SB 7078, relating to Health Care - 5 Yeas, 4 Nays.

SB 7078 addresses a variety of health care and health insurance issues, including:

* Access to medical records;
* Transparency of hospital quality information;
* Access to primary and specialist care in a hospital setting;
* Patient notification of hospital observation status;
* Expansion of direct health care agreements;
* Consumer-friendly protections to prescription drug step-therapy protocols;
* Price transparency for services covered by health insurance; and
* Authorization for Florida to participate in the Interstate Medical License Compact.

**In the News:**

**UF Dr. Scott Rivkees Named State Surgeon General**

**By CHRISTINE SEXTON/NEWS SERVICE OF FLORIDA • APR 2, 2019**

Gov. Ron DeSantis on Monday named a top University of Florida doctor and professor as the state’s next surgeon general.

DeSantis announced that he was appointing physician Scott Rivkees as surgeon general, a position that doubles as secretary of the Florida Department of Health. Rivkees has spent the last seven years as chairman of the University of Florida’s Department of Pediatrics, where he oversees more than 120 faculty members. The department’s clinical programs are based at UF Health Shands Children’s Hospital.

The Republican governor called Rivkees, who is a graduate of the New Jersey Medical School and did postdoctoral and resident work at Harvard Medical School, a “very, very accomplished guy.”

DeSantis has been in office since early January but had struggled to fill the top post at the Department of Health, an agency that has a wide range of responsibilities, from regulating the growing medical-marijuana industry to overseeing a network of health clinics across the state.

Celeste Philip left the surgeon general’s post in January as former Gov. Rick Scott moved from the governor’s office to the U.S. Senate. Philip had been appointed to the job in 2016.

There had been speculation that DeSantis’s embrace of allowing smokable medical marijuana might make it difficult for him to find a new secretary, who by law must be a physician. DeSantis pushed through legislation last month to allow smokable marijuana, which had been banned, at least in part, because of concerns about the health effects of smoking.

During a Monday morning news conference at a fire station in Sanford, Rivkees briefly touched on the issue of medical marijuana. He noted that legislators had recently lifted the ban on smokable medical marijuana and that “we need to make sure these legislative initiatives are implemented properly.”

Rivkees said his appointment comes at a time of several “health challenges” in the state, including developing a medical workforce and making sure medicines are safe.

Another pressing health care problem in the state is the ongoing crisis with opioid addiction.

DeSantis on Monday also announced he was re-establishing the Office of Drug Control, which had been shut down by Scott. DeSantis said he wanted to make sure that state agencies operate with “one clear vision” in combating drug abuse. He added that one of the duties of the new office will be to coordinate with federal efforts.

The governor also briefly addressed a $270 million settlement that Oklahoma reached with Purdue Pharma after the state sued the drug manufacturer over its role in the opioid crisis. DeSantis said that settlement was “chump change.”

“We are going to work for more significant recovery,” said DeSantis about Florida’s ongoing lawsuits against several drug companies and drug-store chains.

**New AHCA Secretary Mary Mayhew Passes First Senate Confirmation Hearing — But Not Without Fireworks**

**By RYAN DAILEY**

Governor Ron DeSantis’ pick to head the Agency for Health Care Administration, Mary Mayhew, passed her first Senate confirmation hearing Thursday. Mayhew briefly oversaw Medicaid for the Trump administration, and was over the program in Maine for seven years prior. Some Senators grilled Mayhew on her noted opposition to Medicaid expansion.

Democratic Senator Kevin Rader was aggressive in his line of inquiry during the Appropriations Subcommittee on Health and Human Services meeting.

“Your opposition to expanding Medicaid is well known,” Rader said. “In Maine, when voters passed – through a voter initiative in, I think it was 2016 or 17 – Medicaid expansion through a ballot initiative, you supported the governor’s … determination to prevent this implementation. If Medicaid expansion is on the ballot next year in the State of Florida, or in subsequent years, and voters endorse it and vote for it – would you continue your activism here to prevent that implementation?”

During a tense exchange with Rader, Mayhew at first seemed to deflect.

“First of all, senator, again I had stepped down before that was passed at the ballot, so I was not working in the administration when the governor was protesting the implementation of that law,” Mayhew said. “I am responsible for implementing the laws that are passed – I am here in Maine to serve the governor of the state, to serve the people of the state and to be responsible to the legislature for the implementation of laws.”

But, Mayhew did eventually level with the Boca Raton Democrat about why she has long taken a stance against Medicaid expansion.

“Did I oppose Medicaid expansion in Maine? Yes. Maine expanded long before the Affordable Care Act, and we were hemorrhaging red ink,” Mayhew said.

Another Democratic Senator, Darryl Rouson, asked Mayhew about reports that the agency she now heads is pushing cuts to reimbursement rates for providers who treat children with autism. Rouson noted that he and his wife have a child who is autistic.

“It was brought to my attention that AHCA has proposed up to 54 percent cuts in rates. And it seems to me that that might be just a little bit insensitive at this time,” Rouson said.

But Mayhew cut the senator’s question short:

“First, Senator, let me say that we no longer going forward, at this time, with those rate changes and rate reductions,” Mayhew said.

Mayhew says following a public information meeting she sat in on last week and reviewing feedback, AHCA made the decision to not move forward with the rate changes “in the last couple days” before the confirmation hearing.

Senator Rader’s line of questioning included Mayhew’s history at the Maine Department of Health and Human Services. He brought up a report from the U.S. Department of Health and Human Services that scrutinized whether a Maine Medicaid waiver program complied with state and federal regulations. The program served beneficiaries with developmental disabilities.

“There were 133 deaths in the OIG report that looked at it, and it found that nine of the 133 deaths were unexplained, suspicious or untimely,” Rader said. “And for another 32 deaths, the state could not provide enough information for the office of the inspector general to make a determination.”

That program was serving about 2,600 beneficiaries in Maine. Rader says Florida’s equivalent program serves tens of thousands.

“Ultimately, the office of inspector general concluded that the state could not show that it had a system to ensure the health, welfare and safety of the 2,640 Medicaid beneficiaries with developmental disabilities covered by the Medicaid waiver,” Rader said. “Did you find there were systematic problems with Maine’s program?”

Mayhew told Raider the report did expose some flaws to the system she formerly oversaw.

“All of the deaths were in fact investigated by the Attorney General’s office. There is a panel in Maine that reviews every death. None of the deaths were as a result of abuse and neglect. It still, however, pointed out that the agency was not timely in investigating,” Mayhew said. “So there were many issues that needed to be addressed.”

Committee feedback on the DeSantis AHCA secretary pick wasn’t all negative. Several senators, like Republican Anitere Flores, commended Mayhew for being accessible.

“You’re the first person in a long time that we give an issue to, and within 24 to 48 hours, our office has a response,” Flores said.

Though the majority-Republican committee pushed Mayhew through on the first confirmation hearing, Senator Raider had some harsh words for the new agency head.

“This is just … this is really one of the worst confirmations of someone that I can imagine in the United States,” Rader said.

Mayhew’s second of three confirmation hearings will take place in the Senate Health Policy committee next week.

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**Olivia Expresses Optimism On Health Regulation Issues**

**By NEWS SERVICE OF FLORIDA • APR 4, 2019**

 They can work it out. That was House Speaker Jose Oliva’s sentiment Wednesday when asked about the differences between the House and Senate versions of certificate of need legislation.

“Certainly, we like our version, as I am certain they like their version,” Oliva, R-Miami Lakes, told The News Service of Florida. “We have to work together to get this stuff done.”

The House last week passed a measure (HB 21) that would eliminate the so-called CON program altogether.

Meanwhile, a Senate health care panel this week supported a scaled-back version (SB 1526) that would eliminate the regulatory program for only new hospital construction. Oliva has made a priority of eliminating the program, which involves hospitals, nursing homes and hospice providers needing state approval before building new facilities or starting new programs.

The Senate health care panel also has approved a bill that would establish a drug importation program, a telehealth bill and a bill that would expand “direct primary care” arrangements to include dentists, all priorities for Oliva.

“The truth is there are several things moving in the Senate that I am grateful for that probably aren’t in the form that I’d like to see them end up in. But I’m grateful they are moving. We made a commitment to really try to work together and to prevent any sort of animosity that we can,” Oliva said. “And so far, we have been able to accomplish that.”

Lawmakers are halfway through the 60-day legislative session. Oliva has made reducing health care costs a top priority for the session.

**Senate Won’t Act This Year On Surgeon General**

**By CHRISTINE SEXTON - NEWS SERVICE OF FLORIDA • APR 4, 2019**

Citing a past sexual harassment investigation at the University of Florida, Senate President Bill Galvano said Wednesday the Senate will not vote during this year’s legislative session on confirming the state’s new surgeon general.

The move could put physician Scott Rivkees, named surgeon general Monday by Gov. Ron DeSantis, in limbo for months.

In a statement to The News Service of Florida, Galvano, R-Bradenton, said he and other senators have concerns with Rivkees’ appointment and that there is not enough time left in the 2019 legislative session to fully vet a nominee who has “faced these types of allegations.” The session is scheduled to end May 3.

“The very serious allegations against Dr. Rivkees are troubling to say the least,” Galvano said. “The confirmation process will provide the opportunity for the Senate to gather additional information, but certainly with what we know at this time, I am very concerned, as are other senators. “

Even without confirmation, Rivkees can serve as the state’s surgeon general. That’s because Florida law allows two legislative sessions to expire before an agency secretary who hasn’t been confirmed must step down. The Senate could take up the Rivkees confirmation in 2020.

The News Service of Florida reported Tuesday that Rivkees, chairman of the Department of Pediatrics at the University of Florida College of Medicine and physician-in-chief at UF Health Shands Children’s Hospital, was the subject of a university sexual harassment investigation and, separately, was found by a university auditor to have not properly filed financial-disclosure information.

The university issued a statement Wednesday expressing support for Rivkees, who as surgeon general also will serve as secretary of the Florida Department of Health.

“Dr. Scott Rivkees is a talented physician who is well-equipped to advance the health and wellness interests of the state of Florida, and we look forward to the positive contributions he will make,” said the university’s statement, provided to the News Service by DeSantis’ office. “With respect to the concerns some have raised in the past, the University of Florida assessed, addressed and resolved any issues to our satisfaction.”

Rivkees’ attorney, Robert Bauer, told The News Service of Florida on Tuesday that Rivkees has acknowledged making inappropriate comments and has “moved on.”

The sexual harassment investigation stemmed from a complaint received in February 2014, according to a university investigation report.

Rivkees was alleged to have repeatedly told people, “If we can’t agree on this we’ll all have to get naked in a hot tub and work it out,” the report said. Rivkees acknowledged making the comment “and may have said it more than once,” telling investigators at the time that the pediatric intensive care unit was in “disarray” and that the comment was meant as a joke.

The report also said Rivkees was alleged to have told UF veterinary students at an off-campus event, “Well, we have something in common, neither one of us can have sex with our patients.” Rivkees denied the allegation and told UF investigators that he said to the students, “Make sure you don’t have relationships with your patients.”

Meanwhile, a financial audit, which was conducted in 2014, stemmed from an anonymous complaint that Rivkees had outside financial relationships that could pose a conflict of interest given his position with the university.

An auditor found that there was “partial merit” to the complaint and that Rivkees had not disclosed to the university his consulting firm, Scott Rivkees Consulting, which was developed to organize speaking engagements and sales of a book he wrote.

The audit said the non-disclosure was an oversight and that “no intent to deceive was indicated and is not suspected.” Rivkees subsequently completed the disclosure form.

**Florida Governor Announces Task Force On Opioid Crisis**

**By MIKE SCHNEIDER – THE ASSOCIATED PRESS • APR 2, 2019**

Florida's Office of Drug Control will be re-established in the governor's office and a state task force on drug abuse will be set up to provide a unified vision for battling the state's opioid epidemic, Gov. Ron DeSantis said Monday.

The governor appointed Attorney General Ashley Moody to chair the statewide task force, which will develop a strategy and make recommendations. The Office of Drug Control will support the task force's efforts.

Moody said Florida loses 17 people a day to the drug crisis, including one on Monday in Seminole County, where the announcement took place.

These efforts will help the people "who are fighting in the trenches on a daily basis have the tools and resources they need not only to prevent people from becoming addicted but to go after the drug organizations that seeks to poison our children and citizens," Moody said.

The drug control office will coordinate with state and federal officials in leveraging resources to reduce opioid abuse. Various state agencies already have substance-abuse programs but the Office of Drug Control will centralize those efforts so Florida can act with a unified vision, the governor said.

"The opioid epidemic has devastated families and communities throughout our state," DeSantis said during a news conference at the Sanford Fire Department. "These are issues that require serious, comprehensive action."

Former Gov. Jeb Bush established the Office of Drug Control in the late 1990s as one of his first acts as governor.  Bush's daughter, Noelle Bush, battled addiction and had a stint in Florida's drug court program.

Former Gov. Rick Scott dismantled the office as one of his first acts as governor more than a decade later. Despite calls to re-establish the office as the opioid epidemic grew worse this decade, Scott never did, and it became a priority for Moody as she campaigned for office last year.

"This office was discontinued several years ago but the importance of restoring its functions couldn't be more obvious given the circumstances before us," DeSantis said.

Bush on Monday tweeted a thanks to DeSantis. "I know his efforts will go a long way in helping Florida fight this growing and heartbreaking crisis," Bush said.

DeSantis also said Florida has secured an additional $26 million in federal funding for the state's opioid response project. At the news conference, the governor also announced Dr. Scott Rivkees as the next Florida Surgeon General. At a separate announcement later in the day in Palm Beach County, the governor said he was naming Thomas Frazer as Florida's first chief science officer.

Dr. Gary Goodman, an emergency medicine physician in Seminole County, said he sees more than a half-dozen overdoses each day and most of them require critical-care attention, like a ventilator.

"If they can give us an opportunity to take care of patients in Florida a lot better, it's going to make our days a lot easier and patient survival a lot better and a lot higher," said Goodman after the news conference. "I'm thrilled."

This story corrects the first name of the next surgeon general to Scott, not Richard.

AP writer Brendan Farrington in Tallahassee contributed to this story.