

FLORIDA SOCIETY OF CLINICAL ONCOLOGY
SUMMARY 2011 LEGISLATIVE SESSION
Erin Dunbar, MD, Chairman; Scott Tetreault, MD, Co-Vice Chairman; and
Craig Deligdish, MD, Co-Vice Chairman

The FLASCO Legislative Committee extends a huge thanks to all of you who helped support the 2011 State FLASCO Legislative Initiatives. Below is a summary of issues that are of importance to FLASCO Members:

BIOMEDICAL RESEARCH

The James and Esther King (King) and the William G. “Bill” Bankhead and David Coley (Bankhead-Coley) Cancer Research Programs are the cornerstone for public research in Florida in the areas of tobacco and cancer-related illnesses

The state’s two peer-reviewed, competitive biomedical research programs, the King Biomedical Research Program and the Bankhead-Coley Cancer Research Program, were both funded for FY 2011-12, albeit at reduced levels at \$7.2 million and \$10 million respectively. Funding designations of \$5 million each were made for the Moffitt Cancer Center, UF-Shands Cancer Hospital, and UM-Sylvester Cancer Center. House Bill 5303, which is now on the Governor’s desk, would place these allocations in statute, along with a designation of \$5 million each to King and Bankhead-Coley from annual tobacco surcharge proceeds.

SB 818 and HB 7095 – PILL BILL

SB 818 by Senator Mike Fasano (R-New Port Richey) and HB 7095 by the House Health and Human Services Committee and Representative Rob Schenck (R-Spring Hill) limit the ban on the dispensing of controlled substances by Florida physicians to only schedules II and III, require the use of counterfeit-proof scripts for controlled substances and maintain the Prescription Drug Monitoring Program database. The bills require dispensing physicians to return all inventories of schedules II and III controlled substances to the wholesale distributors or to law enforcement. Finally, the bills increase registration requirements and reporting requirements for physicians and for pharmacies. – (Sent to Governor – awaiting signature)

HB 479 Medical Liability Reform:

The FMA’s medical liability reform legislation, HB 479, was overwhelmingly approved by the Florida Legislature

HB 479 includes the following provisions

- Requires an MD, DO, or DDS, licensed in another state, to obtain an expert witness certificate before providing expert testimony in Florida.
- Gives the Boards of Medicine (BOM), Osteopathic Medicine (BOOM), and Dentistry the specific authority to discipline expert witnesses, both those licensed in state and those with expert witness certificates, who provide deceptive or fraudulent expert witness testimony.
- Requires the BOM and the BOOM to create a standard informed consent form that sets forth the recognized risks related to cataract surgery. Provides that an incident resulting from a recognized specific risk is not considered an adverse incident.

- Deletes the provision in current law that prohibits an insurance company from selling a malpractice insurance policy to a physician that gives the physician the authority to control settlement decisions.
- Excludes from evidence in any medical negligence action any information regarding an insurer's reimbursement policies or reimbursement determinations. For example, a decision by Medicare to not reimburse a hospital for treatment for a "never event" would not be admissible to show a breach of the standard of care.
- Provides that the breach of, or failure to comply with, any federal requirement is not admissible as evidence in a medical negligence case.
- Provides that the expert witness who submits the pre-suit verified expert medical opinion is no longer immune from discipline.
- Creates a new pre-suit form, the "authorization for release of protected health information."
- Provides that volunteer team physicians are immune from suit when gratuitously rendering care at a school athletic event.

SOVEREIGN IMMUNITY PROTECTION:

Sovereign Immunity – SB 1676 passed and awaits approval by Governor .

SB 1676 by Senator John Thrasher (R-Jacksonville), HB 1393 by Representative Frank Artiles (R-Miami) provide that a not-for-profit college or university that owns or operates an accredited medical school, while under contract with a teaching hospital to provide patient services, is considered a part of state government, and thus is entitled to sovereign immunity protection. This was a major priority of the University of Miami Miller College of Medicine.

PRIVACY OF FIREARMS OWNERS – HB 155 PASSED AND AWAITS APPROVAL BY GOVERNOR.

SB 432 by Senator Greg Evers (R-Crestview) and HB 155 by Representative Jason Brodeur (R-Sanford) allow health care providers and health care facilities to record information regarding a patient's access to firearms if the information is relevant to the patient's medical care. Violators would be subject to disciplinary actions, not criminal actions

CS/HB 1085 – WOMEN'S HEALTH:

GENERAL BILL by Health & Human Services Quality Subcommittee and Plakon (CO-SPONSORS) Dorworth; Gaetz; Randolph; Renuart

Women's Health: Creates "Kelly Smith Gynecologic & Ovarian Cancer Education & Awareness Act"; requires DOH to disseminate & display information about gynecologic cancers; requires department to encourage women to discuss risks of gynecologic cancers with their health care providers; requires State Surgeon General to post link to gynecologic cancer information on CDC Internet website; encourages DOH to seek any available funds to promote gynecologic cancer awareness; encourages DOH to collaborate with other entities to create systematic approach to increasing public awareness regarding gynecologic cancers; increases membership of Florida Cancer Control & Research Advisory Council

Effective Date: July 1, 2011

MEDICAID REFORM:

The Legislature reformed its current Medicaid program this year because the program was growing too fast and consuming too much of the state budget. HB 7107 and HB 7109 replace the current 5-county reform project in Broward, Duval, Baker, Clay and Nassau counties with a new plan that will be delivered through a competitively bid managed care model. Key for physicians in the bill is a cap on noneconomic damages in malpractice lawsuits against physicians by Medicaid patients.

The bills require the Agency for Health Care Administration (AHCA) to request the necessary federal waivers needed to implement this new statewide managed care plan by August 1, 2011. Under the new plan, the state is divided into 11 regions and AHCA is required to consider a number of factors when selecting qualified plans. These factors include accreditation, experience serving a similar population, availability and accessibility of primary care and specialty physicians in the provider network, establishment of certain community partnerships, accessibility of additional benefits such as dental care and disease management, commitment to quality improvement, evidence of written agreements or signed contracts with providers, comments from currently enrolled Medicaid providers, policies and procedures for preventing fraud and abuse, and certain business relationships with other qualified plans. The bills require AHCA to establish a 5-year contract with each managed care plan selected. Each plan is required to have an effective care management performance standard, which includes physician payment rates that are equal or exceed Medicare rates for similar services after 2 years of continuous operation.

OTHER LEGISLATION

In the Medicaid overhaul is a provision that will limit non-economic damages for physicians who treat Medicaid patients to \$200,000. Hospitals will not be liable for more than \$300,000

FAILED LEGISLATION:

SB 1108 by Senator Ronda Storms (R-Brandon) and HB 851 by Representative James Grant (R- Tampa) increase the amount of payment and distribution of funds in Cigarette Tax Collection Trust Fund to H. Lee Moffitt Cancer Center and Research Institute. **Did not pass**

Cancer Research and Control

SB 720 by Senator Don Gaetz (R-Destin) and HB 377 by Representative Marti Coley (R-Marianna) specify that one-third of the King Program's funding may go towards recruiting cancer, heart and lung disease researchers and one-third of the Bankhead-Coley Program's funding may go towards recruiting cancer researchers. The bills specify that the Bankhead-Coley Program may fund clinical trials to further expand cancer research and treatment in Florida. The bills also create the Florida Cancer Control and Resource Advisory Council. **Did not pass**