

FPMA Report Tallahassee Update

The Florida Legislature concluded Week 2 of its 60-day session and so far the process has been smooth. This week was dominated by SB 182 – Medical use of Marijuana by Brandes. Governor Ron DeSantis vowed to fight for the repeal of the state’s ban on smokable medical marijuana. SB 182 allows medical marijuana patients and terminally ill minors to smoke cannabis in flower form. The bill passed unanimously in the Senate 38-0 and by a landslide margin in the House 101-11 in the House. The FPMA focus over the next few weeks will be to support HB 23 by Yarborough – Telehealth and fix last sessions opioid continuing education requirements.

Set forth below are a few select healthcare bills of importance:

HB 23 by Yarborough TELEHEALTH

Telehealth: Establishes standard of care for telehealth providers; authorizes telehealth providers to use telehealth to perform patient evaluations; authorizes certain telehealth providers to use telehealth to prescribe specified controlled substances; provides that nonphysician telehealth provider using telehealth & acting within scope of practice is not deemed to be practicing medicine without license; provides that health insurer or HMO is allowed tax credit against specified tax imposed if it covers services provided by telehealth providers. Effective Date: July 1, 2019

SUMMARY ANALYSIS

Telehealth is the remote provision of health care services through the use of technology. HB 23 defines telehealth and authorizes its use in this state.

The bill authorizes Florida licensed health care professionals to use telehealth to deliver health care services within their respective scopes of practice. The bill also authorizes out-of-state health care professionals to use telehealth to deliver health care services to Florida patients if they register with the Department of Health (DOH) or the applicable board, meet certain eligibility requirements, and pay a fee. A registered telehealth provider may use telehealth, within the relevant scope of practice established by Florida law and rule, to provide health care services to Florida patients, but is prohibited from opening an office in Florida and from providing in-person health care services to patients located in Florida.

The bill also establishes standards of practice for services provided using telehealth, including patient examination, record-keeping, and prohibition on prescribing controlled substances for chronic malignant pain.

For tax years beginning on or after January 1, 2020, the bill creates a tax credit for health insurers and health maintenance organizations (HMOs) that cover services provided by telehealth. A tax credit, in the amount of one tenth of one percent of total insurance premiums received on certain

accident or health insurance policies issued or delivered in Florida in the previous calendar year, may be applied against the incurred corporate income tax or insurance premium tax.

The bill has a significant, negative fiscal impact on DOH and appropriates \$261,389 in recurring and \$15,020 in nonrecurring funds and authorizes four FTEs to implement the bill's provisions. The Revenue Estimating Conference has not estimated the potential revenue impacts of the bill. However, staff estimates, based on analysis of a previous similar bill, the bill will have a recurring negative impact on General Revenue of approximately \$30 million. See Fiscal Comments section below. The bill does not affect local government revenues.

The bill provides an effective date of July 1, 2019, except the provisions relating to the tax credit which become effective upon the act becoming a law.

CS/CS/CS/SB 182 by Brandes MEDICAL USE OF MARIJUANA

Medical Use of Marijuana; Redefining the term "marijuana delivery device" to eliminate the requirement that such devices must be purchased from a medical marijuana treatment center; redefining the term "medical use" to include the possession, use, or administration of marijuana in a form for smoking; restricting the smoking of marijuana in enclosed indoor workplaces; prohibiting a physician from certifying a patient under 18 years of age to smoke marijuana for medical use unless the patient is diagnosed with a terminal condition and the physician makes a certain determination in concurrence with a second physician who is a pediatrician, etc. Effective Date: Upon becoming a law

Summary:

CS/CS/CS/SB 182 amends various sections of the Florida Statutes related to the medical use of marijuana.

The bill:

- 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.¹
- 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.²

¹ Part II of ch. 386, F.S.; see s. 386.203(5)(5), F.S., for definition of "enclosed indoor workplace."

² Section 381.986(1)(o), F.S., defines "terminal condition" as a progressive disease or medical or surgical condition that causes significant functional impairment, is not considered by a treating physician to be reversible without the administration of life-sustaining procedures, and will result in death within 1 year after diagnosis if the condition runs its normal course.

- 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.

The bill's provisions take effect upon becoming law.