

ASSOCIATED INDUSTRIES OF FLORIDA

LEGISLATIVE DAILY BRIEF



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PATIENT SELF-REFERRAL ACT – KIDNEY DIALYSIS

The House Council for Healthy Communities takes up a really bad bill tomorrow morning related to kidney dialysis. The full Senate passed SB 726 by Senator Jack Latvala (R-Palm Harbor) last week. The bill amends current “Patient Self-Referral” law, prohibiting kidney dialysis care providers from “self-referring” and performing their own “in-house” diagnostic lab work.

Two of the world’s largest kidney dialysis companies have a major presence in Florida. In fact, one of these companies recently moved their North American headquarters to Ft. Lauderdale. Together, these companies employ hundreds of Floridians in high paying, high-tech, bio-medical jobs.

This system has performed so well for patients - whose very existence is inextricably tied to proper dialysis and lab diagnosis - that a very small fraction of competitors are seeking to pass SB 726 mandating what kind of labs the dialysis centers can make use of. This tinkering with the free market system would not only cost the state hundreds of high-end jobs but also, much more importantly, inconvenience thousands of kidney dialysis patients and potentially place their well being at risk.

During the last three legislative sessions, **three studies** have been conducted to ensure the quality of dialysis services in Florida by the Agency for Health Care Administration, the University of South Florida and the House Committee on Health Regulation. **All three concluded in their studies that no further legislative action in this area is necessary or recommended.**

Based upon on advocacy efforts and feedback today, the vote will be close. But it shouldn’t be. For example, Representative Evelyn Lynn (R-Ormond Beach) has expressed absolutely no interest in this issue and has said she would “entertain amendments” to the bill. If the bill were to be adopted, 225 jobs would be lost in her district as a direct result. Since no other state would have such a punitive prohibition, the kidney dialysis company in her district has stated it will move its offices. We thought House members were to obsess over these kinds of things when considering bills.

AIF opposes playing games with the Florida Statutes by passing a law solely intended to benefit a few who are unable to compete in the current, well-tested market system. As an added inefficiency in the health care marketplace, this proposal would serve as a cost-driver to the costs of health care and Florida’s employers.

MORE BURDENS ON EMPLOYER'S HEALTH INSURANCE CARRIERS

After adopting amendments on Second Reading, SB 362 by Senator Burt Saunders (R-Naples) is poised for final passage by the Senate. As we reported last night, the bill needed considerable work and not much of it was accomplished by the amendments today. It remains that the bill still contains a "civil cause of action" for doctors who wish to sue a carrier for non-payment of services rendered. This, as we have said before, is simply unacceptable. In addition, proponents of the bill sabotaged five weeks of negotiations with AIF and insurance carrier representatives by loading up the bill with other provisions that are not just bad policy but actually mean spirited.

They would include:

- Requires employers to report health benefit plan participants every 30 days
- Health plans must pay claims even if the patient received health services fraudulently (the patient was no longer in an HMO, for example)
- Effectively abolishes "utilization review" by requiring health plans to pay whether or not the care was medically necessary
- The bill does away with "prior authorization review" by a health plan with the obnoxious requirement that a doctor must get a response in four hours on an inquiry.

These provisions would make managed care unmanageable and push employer premiums through the roof.

The Senate was largely comatose on the floor as the issue was debated with the exception of Senator Jack Latvala (R-St. Petersburg) who seemed to be the only person who a.), understood the issues or b.), actually cared.

The original motive for the bill was the claim by doctors that they were not receiving "prompt pay" for their services to the insured from the carriers. Negotiations on the bill in both chambers have been related to solving administrative problems with the prompt pay issue and simply killing the civil cause of action provision. One positive amendment today along those lines was language creating incentives for doctors to implement electronic filing with the carriers. At this point, the House bill is tolerable and the Senate bill is not.

So-called "well intended" legislation always seems to originally contain a "sneak attack" by trial lawyers with language empowering them to bring suit against HMO with definitions and standards that would place the insurer at a costly, even crippling disadvantage. Florida's employers are the primary providers of health care benefits in Florida. Their ability to pay for this benefit must not be weakened any further by attorney-driven increases in their premiums. In addition, any problems with "prompt pay" lay at the feet of the medical practitioners, who, for whatever reasons, inadequately or unprofessionally administer their billing and provide the carriers with information that is inadequate, incomplete or just plain wrong.

BUSINESS DAMAGES

SB 248 by Senator Lee Constantine (R-Altamonte Springs) was withdrawn from the both the Appropriations Subcommittee on General Government and the Senate Appropriations Committee last night. The bill is now ready for consideration on the Senate floor on Second Reading.

Prior to 1999, businesses that were entitled to file a business damage claim had to be in business for more than five years prior to the taking of the property. This meant that businesses that were operating less than five years but which sustained substantial damage to their business could not even file a claim for those damages. In 1999, Section 73.071, F.S., was amended to allow a business in existence for more than four years to bring such a business damage claim. Because of the belief by various condemnors that such a change would “open the flood gates” of business damage claims, a sunset provision was place in the 1999 statute that was designed to “sunset” the four-year change and automatically revert the law back to five years.

SB 248 would maintain the four-year threshold for business damage claims in Florida, if adopted.

AIF supports the legislative extension of the four-year threshold for business damage claims. It is only ethical and fair that businesses whose ability to engage in commerce is inhibited or severely compromised by the state (road building, road expansion, road maintenance) should be compensated justly by the state. AIF supported the original amendment to the law that reduced the time an owner had to be in business from five years to four years in order to gain standing for compensation from the state.

\$1.1 BILLION TAX INCREASE UPDATE

The Senate Appropriations Committee incorporated their proposed \$1.1 billion tax increase into their budget proposal today and passed the Appropriations bill.

So far, the tax increase is characterized as a “one year deal” with the proponents saying it will be up to the Legislature next year on whether or not they wish to maintain the repeals placed in this budget.

Senator Don Sullivan (R-St. Petersburg) spoke passionately about the plan, saying that the numbers he and his committee were working with in his Senate Education Committee were simply unacceptable. No mention was made in the Committee hearing of a 2001 Florida Office of Program Policy Analysis and Government Accountability report which concluded that the school districts do a “poor job” at demonstrating that their programs and services are administered effectively. In other words, the school districts in too many instances don’t spend their money wisely or effectively. That’s what happens when you have a *monopoly*.

Senator Betty Holzendorf (R-Jacksonville) made comments today that accurately reflect the cloudy thinking in the Senate these days. In defense of Senate President John McKay’s (R-Bradenton) original proposed tax increase, she observed that, “the averaging working family is subsidizing big businesses who don’t have to pay the (sales) tax.” Lost on her and many others is the plain fact that the tax is, well a *sales tax*. It is a *consumption tax* and everyone pays it in one form or another. It is a consumption tax and, if anything, it only multiplies or “cascades” throughout the business pyramid if it is directly applied to business services or inputs – costing the end purchaser – even more. Politicians like so-called business taxes because they are easier to “hide” from the final consumer who only pays higher prices but may not know exactly why. The impact of a sales tax increase can and will vary from business to business and person to person, but make no mistake, a \$1.1 billion tax increase is a tax increase on *everybody*. Finally, Senator Betty Holzendorf should be advised that these Florida businesses enjoying the mythical subsidies bear the burden of the fifth highest tax rate in the country, according to Florida Taxwatch, Inc.

AIF is opposed to this new proposal that arbitrarily zeroes out sales tax exemptions for a \$1.1 billion tax increase on Florida’s citizens. AIF would support a measure that provided for a methodical review, utilizing objective criteria, of all the current sales tax exemptions enjoyed by businesses, organizations and services. Florida’s current business sales tax exemptions actually comprise only \$1.88 billion of the \$22 billion total in sales tax exemptions. We believe the vast majority of these business exemptions would withstand even the most severe scrutiny if the criteria embraced economic competitiveness, fairness and benefit to Florida’s overall economic growth.

Stay tuned to our daily brief and to our web site at www.fbnnet.com as the legislature makes some very important decisions on the state's economy. These decisions will have a major impact on the business community and AIF will be reporting to you everything that happens.

This report was prepared by Curt Leonard, Manager – Governmental Affairs at Associated Industries of Florida (AIF). Please send your comments or suggestions to us at aif@aif.com or call the Governmental Affairs department at (850)224-7173.

- For more information on all of the important legislative information concerning the business community, go to our “members only” Florida Business Network web site at <http://fbnnet.com>
- Send us your E-mail address and we will begin to send this report to you automatically via E-mail.