

Episode 17 (Part 1): 2019 Legislative Wrap-Up

[background music]

Announcer: Welcome to "You First", the Disability Rights Florida podcast.

Keith Casebonne: I'm Keith Casebonne. Welcome to this episode of You First.

For the first few months at the beginning of each year, potential legislation gets presented to our state government. Disability Rights Florida's public policy team works to provide information to our lawmakers and encourage them to pass meaningful legislation for the benefit of people with disabilities.

It is important that we act as advocates for people with disabilities because these legal decisions affect their everyday lives. We hope that in this episode of You First, we can provide you with information about this year's legislation and the impacts it has on people with disabilities.

Today we have two guests that will give us some insight on what passed and what didn't. They are our very own Disability Rights Florida public policy gurus. Olivia Babis is a public policy analyst. Tony DePalma is our director of public policy. Thank you both for being on the podcast.

Tony DePalma: Thanks, Keith. This is real exciting that we're doing a podcast like this. This is something we never had an opportunity to do in the past. The frenzy of legislative session when it's upon us makes things like this a little difficult to coordinate.

We're recording this today on July 1st, 2019. All of this legislation that we're referring to has officially gone live now and been approved by the Governor. We appreciate the opportunity.

During session, we typically have a bill track chart that balloons upwards of 200 bills at times. Of those bills, I'd say there's 20, 30, 40 that we work extensively, including member work, including committee testimony and other advocacy avenues.

To be able to explain after the fact what it means and how people can connect with this information and grow their own advocacy reach in the process is exciting for me.

Keith: Definitely want to make this an annual thing going forward too around this time.

Tony: Awesome.

Keith: We'd want to do the same thing.

Tony: I'll just jump right in. In terms of legislation that passed this year, the high-level stuff that we want to make sure people know about, I'll begin with some of the mental health and substance abuse legislation that passed, beginning with Senate Law 366 which was approved by the Governor through signature last week.

This is the Infectious Disease Elimination Program which authorizes the use and coordination of voluntary sterile needle and syringe exchange program statewide to be patterned after the pilot program in Miami-Dade.

This pilot program has been working for several years. The early and kind of extensive information that the state's been receiving from this pilot program is very positive, encouraging, and replicates results that have been produced similarly in other states regarding needle exchange programs.

It's important to note that no state, county, or municipal funding is being directed towards these authorized programs. Instead, it will be grant- and donation-based as they become set up. As a needed service in the continuum of substance abuse service delivery, we think this is an important step forward for the state and one that we'll continue to watch as it develops.

Similarly, another bill we've been watching for several years as it's gone close to passing but just never got over the cusp was House Bill 369, which was also approved last week through the Governor's signature. Within House Bill 369, among other provisions that relate to recovery residences and sober homes in the state, a equally important aspect of this legislation is its promotion of the use of peer specialists.

When we talk about peer specialists, these are individuals who have been in recovery from a substance use disorder or a mental illness for at least the last two years or the family members and caregivers of such individuals who thereupon use their own personal experience to provide services in behavioral health settings to support others in recovery.

One tricky aspect of all of this in the past has been background screening provisions related to these opportunities. Many peer specialists, logically, naturally, have criminal background histories that tie directly to their own periods of recovery. As the state screens at a level 2 background screening through Chapter 435, many of these individuals were screened out of these important positions.

The concept of peer recovery is a cutting-edge, modernizing concept across the nation that's built around recognition of the fact that it's people who've walked this journey themselves who are very often the best situated to help others through that process.

We're very excited that this legislation passed. Our organization works with the Peer Support Coalition of Florida and several other groups of this sort. This will be very exciting to see developing and hopefully grow in the coming years.

Keith: We've done a previous podcast on peer specialists and the Florida-based peer specialist network. I'm really glad to hear that's now officially law. That's wonderful.

Tony: It's been a long time coming. It's a very modern, very cutting-edge concept legislatively. As folks in recovery-oriented systems of care can vouch, this has been a long time in the making. We're happy to see that the legislation...

Keith: There's a lot of success behind that methodology.

Tony: Definitely.

One final substance abuse or mental-health-related bill that we wanted to touch on was Senate Bill 1418, which was also approved last week.

Couple years ago, the Department of Children and Families convened a task force by direction of the legislature to review Baker Act cases involving minors. When we talk about the Baker Act, of course, we're talking about Chapter 394 in the state which is Florida's system for involuntary examination and commitment procedures.

This task force found that the state has seen an increasing trend statewide and in certain counties of the initiation of involuntary examination of minors. Some of this is subject matter that we'll touch upon as we get into some of the education legislation that passed and the Parkland Commission.

Importantly, this legislation implements two more of the recommendations of this task force. The first being for the state to encourage school districts to adopt a standardized suicide assessment tool that school-based mental health professionals would implement prior to an initiation of involuntary examination. That's a very needed concept.

[crosstalk]

Tony: The second recommendation increases the number of days from the next working day to five working days within which a receiving facility must submit forms to DCF, which presumably will allow the department to capture more data on whether the minor was admitted, released, or a petition was thereafter filed.

We see this as the state trying to get its hands around this problem a little bit more sensibly, a little bit more holistically.

Keith: Also, a long time coming.

Tony: It was difficult to know that this task force was working and meeting and talking through these issues right before the Parkland tragedy happened and, in the rush to address the issue legislatively, that it didn't seem as though a source material for the discussion related back to this task force work. To see that these recommendations are still being implemented years later is a good positive.

Olivia Babis: Moving on to me, Tony gets to talk about the positive stuff. Unfortunately, [laughs] I have to talk about...

Tony: [laughs]

Olivia: ...some of the negative stuff a little bit.

One of the things that we were really concerned about this legislative session was the repeal of retroactive Medicaid eligibility. That's something that passed last year. This year, there was a push to make that repeal permanent.

Retroactive Medicaid eligibility has been a part of Medicaid since the beginning of Medicaid. What that does is that when someone becomes eligible for Medicaid, when they do that first

application, Medicaid will go back three months from when that application was first submitted and pay bills for three months.

Say, somebody's in a horrible car accident. You're in the hospital for a couple of months. You first had the accident, the last thing on your mind is, "Oh my god, I need to get my Medicaid application in!" You're not thinking, "I'm going to be permanently injured and disabled because of this accident."

With the repeal of this, say, you're in a car accident on June 25th, if you don't get the application in by June 30th, Medicaid will not pay your bills if you apply July 1st.

Keith: That's not a very big window.

Olivia: Right. They're not going to pay your bills from June 30th through your accident on June 25th.

Keith: Wow.

Olivia: It leaves those bills up to that person or the hospital or somebody else is going to have to absorb those bills. Because of instances like this, we did not want to see that repeal to be permanent. Unfortunately, it is not. The repeal is only extended until July of 2020.

We did have some small victories here. There is reporting requirements. Agency for Healthcare Administration has to submit a report to the Governor's office, to the legislature regarding the impact of the waiver for retroactive eligibility repeal.

That includes the number of Medicaid applications that are approved and denied, the reasons that they're being denied, and the rank of denial by frequency, how that is affecting people regarding medical debt for people that are applying for people that aren't submitting applications on the same month of their injury, the people that are getting chopped.

You're injured on the 25th. You're not submitting your application until July 2nd. How is that affecting them regarding medical debt? How is that affecting institutions such as hospitals and nursing homes?

Also, recommendations to improve outreach and Medicaid coverage for non-pregnant adults because this does not impact pregnant women. It does impact children. It's impacting adults in these types of situations for the Medicaid eligibility repeal.

That's one of the things where we didn't get exactly what we wanted. But we did get some successes with that. That is part of SB 2502 which is part of the budget implementation bill.

Also, part of that is what's referred to as iBudget redesign. This is the intellectual and developmental disability Medicaid waiver which pays for home- and community-based services for people with intellectual and developmental disabilities. It has been running at a deficit for a little bit. [laughs]

Keith: That's not good.

Olivia: Obviously, the legislature wants it to not run at a deficit. Like all state agencies, there is a finite amount of money that is dedicated to that agency.

The legislature has demanded that if they continue to run at a deficit for the 2018-2019 fiscal year that the Agency for Persons with Disabilities, which implements that program, they have to work with Agency for Healthcare Administration on figuring out a way for them to no longer run at a deficit.

We do have a few concerns regarding some of the proposals to get them to no longer run at a deficit. One of our main concerns with this is that they want to identify core services that are no longer considered essential for client health and safety and recommend elimination for coverage for some of those services.

We don't feel that people on the waiver, some of them that have sat on a waitlist for 10, 15 years to finally get off the waitlist and receive those services, that fixing the budget deficit should be at their expense.

There needs to be another way to fix their deficit other than cutting services for people who need them. For those people, every service is essential for them to be able to function independently in the community. That's really one of our main concerns with that program.

Other proposals are to modify the manner in which services are coordinated and provided. It does mean that there is the potential for iBudget to be placed under managed care, which a lot of our programs are. Medicaid is now running under managed care. That could potentially be a good thing. We'll see how this goes.

It has reporting requirements. As they're developing and this plan is in progress, they have to report by the end of July 31st on the progress of this, at the end of August as well, and, of course, this has to be approved by the federal government too. There is a very [laughs] planned progress for this...

Keith: Sounds like [inaudible 13:23] .

Olivia: ...to be implemented

Tony: I think the ultimate recommendations are due back to the legislature and the Governor's office by September 30th of this year. Although one interesting aspect of how this all took shape was that I don't believe that the language in Senate Bill 2502, the implementing act, specifies that the 2020 legislature has to pass this redesign or has to implement this redesign.

Olivia: There was nothing in the bill stating that as well.

Tony: That's kind of a placeholder for will the state actually move forward with the redesign and implementation or is this something that we'll revisit in future sessions? Stay tuned.

Next, we wanted to turn to some of the education legislation that passed this year. At first, it bears mentioning that, of course, the state has continued its expansion of voucher programs, Gardiner Scholarship, Hope Scholarship, a couple of other similarly structured avenues.

Which the National Council on Disability and Disability Rights Florida have routinely argued puts students with disabilities in unique peril or jeopardy as federal educational requirements don't attach to voucher placements and private placements.

IBA requirements go by the wayside, some other due process angles, and things like restraint and seclusion aspects fall away. It's a whole different ballgame in private settings.

Keith: They have less protections essentially in a private school versus a public setting.

Olivia: There is no FAPE requirement.

Tony: Which is what we would say is the underlying issue when we're talking about disability populations utilizing these voucher systems. FAPE is, of course, Free Appropriate Public Education. We would argue that that's the hallmark and the foundational regulation that dictates how school delivery operates for students with disabilities. Something to keep an eye on.

Keith: A basis for how we can advocate on their behalf.

Tony: Certainly. As the legislature's obviously moving this direction in the state, it's important to remember that there's aspects of that movement that uniquely affect disability population.

Given the fact that we're only here for a short time on this podcast, we wanted to, of course, mention Senate Bill 7030 which was approved by the Governor back in May. This is this session's continued evolution of recommendations regarding mental health service delivery and coordination in public schools that were proposed as a part of and in response to the Parkland tragedy.

Earlier drafts of this legislation were acts relating to public safety or school safety. By the time this thing passed, it was titled Implementation of the Legislative Recommendations of the Marjory Stoneman Douglas Public Safety Commission, which, for folks who watch this stuff acutely and for a long time, that's a unique posture for a legislation to pass in.

It's almost as if that in and of itself tips off the fact that the recommendations coming from this body are being viewed in a sense as gospel by the legislature.

Keith: Interesting.

Tony: I think that there's a lot of reasons why the hard meaningful work that this commission is reviewing and considering should be shepherded by the legislature with not much revision and tinkering.

This year's legislation directs the continued development of a standardized statewide behavioral threat assessment instrument for use by all K through 12 public and charter schools by this August.

Similarly, the legislation also establishes a statewide threat assessment database workgroup within the Office of Safe Schools to propose recommendations by this December regarding development of a statewide threat assessment database to provide information about any school threat assessment to authorized personnel in each school district.

Both of those concepts, the behavioral threat assessment and the sharing of information in a database related to behavioral threat assessments are obviously things that our organization is monitoring closely. We certainly agree that there's a need to review and tend to and be responsive to the mental health needs of students in public schools.

But when the apparatus proposed by the legislature invokes or necessarily hinges upon threat assessments, it moves the conversation towards the criminalization and stigmatization of mental health in schools.

A great fear of ours would be that all of these processes were being directed in a manner to just identify students with mental health needs in public schools but without actually proposing meaningful avenues to treat or coordinate that service delivery.

If a student is writing rock band lyrics or Nine Inch Nails lyrics on a Trapper Keeper, is that something that triggers this behavioral threat assessment review?

What are the different ways in which sharing this information between districts, especially considering how often students in this state transfer schools or are expelled from one school and go to another school, how can that be done sensibly, fairly, and undergirded by respect for privacy laws in the state? That's stuff we're going to be watching closely.

Another aspect of this bill that bears mentioning requires district school boards and charter schools to promote the use of a mobile suspicious activity reporting tool by advertising the tool on district websites, school campuses, newsletters, and on all mobile devices and computers issued to students and staff I believe.

You can see that a lot of what's happening in this world at the moment, it's being directed to try to, like I said, identify, share information. All of our eyes are attuned to this.

We think there's a huge need to stress the fact that mental health is already stigmatized across the state in various settings regularly. That's particularly dangerous when we're talking about adolescents and school-age children and students in public schools.

We'll touch more in a little bit about some other refinements that we expect to see in this discussion in terms of what's coming in the 2020 session. I think Olivia wanted to transition into legislation that didn't pass this year...

Olivia: [laughs]

Tony: ...or alternatively, that did pass and was subsequently vetoed.

Keith: Sounds very much like it might be the straw ban we're talking about here.

Olivia: Oh yes. [laughs] The straw ban played the biggest game of legislative gymnastics of any piece of legislation. This thing jumped on I don't know many different bills before it landed on HB 771, which actually was a recycling bill.

It got added on as an amendment to that and became known as the straw moratorium by the time we got to the end. The recycling bill was vetoed because of the amendment that was the straw moratorium.

Keith: It sounds like at a deeper level, people are understanding that it's not an environmental issue we're addressing. It's an autonomy issue.

Olivia: This really is a disability rights civil rights issue for the disability community. People with disabilities unfortunately need straws. Plastic straws are the only viable alternative for a lot of people.

Within the disability community, we don't have a replacement yet that works for everyone. As these things are being implemented throughout Florida and throughout other states, we're really running into a lot of problems.

There was the tweet heard around the world a couple weeks ago where a young woman went into a restaurant, requested a straw. Because she had an invisible disability, really got into a confrontation with the server and the manager of the restaurant. Just was traumatized by the incident and ended up just leaving...

Keith: Over a straw.

Olivia: ...before they even got a chance to order their food.

Keith: Wow.

Olivia: I don't know that she'll go back. That was a family restaurant and one of her favorite places. Ended up just leaving.

We are finding out people are getting sick from paper straws which we already knew were a choking hazard. Now we're finding out, unbeknownst to a lot of people, that paper straws contain gluten. People that have celiac disease and gluten intolerances [laughs] are getting sick from paper straws.

Keith: Wow.

Olivia: Not only are they a choking hazard and they fall apart in hot liquids, now people are getting sick from them. This is really becoming a big problem.

This did pass the legislature. We had enough votes from state legislators that understood the problem of this for the disability community. Unfortunately, the Governor didn't. This bill got vetoed. Now we're seeing these pop up all over the state.

It's becoming a real issue. It's leading to social isolation for people with disabilities. It's leading to health problems. As these continue to pass, we're running into significant issues for people with disabilities.

Keith: It's horrifying.

Tony: The veto to this legislation and just the discussion itself has given Olivia and I much opportunity to discuss the notion of environmental justice and how that concept relates to disability policy discussions, disability advocacy. I'd be interested to know more about what your own thoughts are about how that could be correctly or conscientiously coordinated.

Olivia: There are several areas that do have disability advisory boards. I served on one in Sarasota. That's one of the things that the sustainability manager did come to the Disability Advisory Board and wanted to know how can we implement this properly or can we implement this properly?

There are cities that do have disability advisory boards that didn't run it through the Disability Advisory Board. We're hearing that from other states as well, that they did not go to the disability community and ask for input on how to implement this properly or if they could implement this in a way that's not going to harm people with disabilities.

One of the pushbacks from the disability community is that there's so many other plastic items that do so much more harm than straws. Why are you attacking straws? Especially when the disability community's come out and said, "Hey, we need this, that there aren't other viable alternatives. We know what the alternatives are. We've explored this, and we're coming up empty-handed so to speak on what else we can use."

There are people within the disability community that care deeply about the environment. But they're not willing to sacrifice themselves for that as most people aren't. You're not going to sacrifice your life in order to do this minimal action to try to save the planet, to reduce plastics.

There are so many other things that we could try to reduce or work on recycling when we're talking about only 10 percent of recyclable items are being recycled. There are other programs and things that we could implement that would be so much more effective that aren't going to cause harm to an already marginalized community. I think that's a big problem.

I don't know what our next steps could be in Florida. That's something that we're talking about. That's something that's being discussed in the disability community and with a few environmental [laughs] organizations that are starting to realize that this is a problem and that we do need to address it.

But this train is already headed down the track so far. I don't know what way there is to stop it or if there is a way to stop it to try to fix this issue.

Tony: That's certainly a tough one to swallow, no pun.

Olivia: [laughs]

Keith: This concludes part one of our 2019 legislative roundup podcast. Stay tuned for part two coming in just a few days where we discuss more bills that did not get passed as well as state budget updates that relate to people with disabilities and some thoughts about the next session and what we can look out for.

You can also get more information about the legislation we discussed today as well as much more at www.disabilityrightsflorida.org/legislation. Thank you to everyone for listening to the

You First podcast or reading the transcript online. Please email any feedback about the show to podcast@disabilityrightsflorida.org.

[background music]

Announcer: The You First podcast is produced by Disability Rights Florida, a not-for-profit corporation working to protect and advance the rights of Floridians with disabilities through advocacy and education. If you or a family member has a disability and feel that your rights have been violated in any way, please contact Disability Rights Florida.

You can learn more about the services we provide, explore a vast array of resources on a variety of disability-related topics, and complete an online intake on our website at disabilityrightsflorida.org. You can also call at 1-800-342-0823. Thank you for listening to You First, the Disability Rights Florida podcast.

Transcription by CastingWords