



2014 Legislative Session Weekly Update

LeadingAge Florida

An Organization of Retirement Housing and Long-Term Care Communities

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Week Four of 2014 Session

March 28, 2014

Early Registration Extended!

The early registration discount for Advocacy in Action (April 1) and Repositioning Your Community for Success in a Changing World (April 2) has been extended through the day of the event. Click [here](#) and [here](#) to register.

Budget

The Senate and the House Appropriations Committees passed their budget proposals this week and both bills are headed to the Floors in both Chambers with a vote possible next week.

Budget figures for the initial House and Senate spending plans for the 2014-2015 fiscal year are not that far apart, especially compared to recent years

The Senate's \$74.9 billion budget - about \$400 million shy of the House plan – was voted in committee Thursday and will likely be readied for a floor vote next week.

There are, of course, key differences in specific areas. The Senate plan uses all \$226 million in the affordable housing trust fund for affordable housing programs, but the House sweeps \$137 million into general revenues for other projects, per Gov. Rick Scott's budget recommendation.

Nursing Home Quality Assessment Underpayment Audit

One issue that bubbled up in the House Appropriations Implementing bill deals with Quality Assessment amounts. You may recall back in December when AHCA informed us that some nursing homes incorrectly reported their Medicare days on their Medicaid cost report resulting in underpayment of their respective bills.

Section 5 of the bill required AHCA to perform an audit of the Quality Assessment submissions and reconcile the reported patient days and the resultant underpayments for each Medicaid participating nursing home for fiscal years 2008-09 through 2012-13. Nursing homes with a negative balance will be allowed six months to repay the outstanding amount to AHCA. Fiscal year 2013-14 is not an issue because the January 1, 2014 rates took into consideration the underpayments for the first half of the fiscal year.

To reiterate, this issue arose when some nursing homes reported their Medicare Advantage and Special Plan patient days under the Other Patient day category in their Medicaid cost report but included the Medicare Advantage and Special Plan patient days in the Medicare Category for the Quality Assessment. AHCA used the cost report patient day data to generate budget estimates, but the Quality Assessment payments were based on the days reported for Quality

Assessment. Since the Quality Assessment is **not** paid on Medicare patient days, AHCA's projections of Quality Assessment payments were overstated by the amount attributable to Medicare Advantage and Special Plan patient days.

This issue was identified when AHCA noticed that the Medicare days reported for the Quality Assessment were higher than those reported in the Medicaid cost reports. Based on the most recent estimates the underpayments for the five previous fiscal year's total \$64 million.

The Senate does not have a comparable provision in its Appropriations Implementing bill. Therefore, if the House version survives the House amendment process, the different versions will have to be resolved in conference committee meetings. It is worth noting that the nursing home budget endured significant cuts, some of which were offset by the income generated via the Quality Assessment. LeadingAge Florida will request AHCA to offset any audited underpayment amounts against budget cuts not bought back by the Quality Assessment.

CCRCs, government operated nursing homes and nursing homes with a significant amount of charity care do not have to pay the Assessment, therefore, they would not be impacted by the audit. Nursing homes with negligible Medicare Advantage and Special Plan patient days may be settled with minor underpayment amounts. On the other hand, nursing homes with significant Medicare Advantage and Special Plan caseload should start planning how to handle the amount of underpayment they may be facing.

You can participate in LeadingAge Florida's grassroots advocacy campaign by doing the following:

- Participate in the **Weekly Legislative Update Conference Calls** with LeadingAge Florida's staff and legislative consultants (**10 – 11 a.m. on Fridays, through May 2**) to learn about what's happening during the 2014 Legislative Session.
- Attend LeadingAge Florida's Advocacy in Action Conference on April 1.
- Read the "End-of-Week" *Legislative Update* for the latest on LeadingAge Florida priority legislation.
- Respond to LeadingAge Florida's calls to action during the legislative session.
- Call or email your legislators when you are concerned about an issue affecting your organization.
- Invite your legislators for tours and town hall meetings after session so they can meet with your residents or clients and their families.

FOUR SALES TAX HOLIDAYS IN HOUSE PACKAGE

The House Finance and Tax Subcommittee rolled out a wide-ranging economic development package on Wednesday that would give shoppers four sales tax-free holidays in the next year.

The committee measure (PCB 14-05) would establish a 12-day sales tax holiday in June for certain hurricane preparedness supplies and provide three days for a back-to-school sales tax-free period in August.

Under the proposal, sales taxes during certain periods in September would be lifted on the first \$1,500 of select energy- and water-efficient appliances as well as on physical-fitness facility memberships.

The back-to-school discount would be offered on clothes that cost up to \$100, school supplies worth up to \$15 and the first \$750 of the price of computers and certain accessories.

The plan also includes a permanent sales tax exemption for car seats and bicycle helmets for kids; an increase in the corporate income tax exemption from \$50,000 to \$75,000.

The package is much broader than the Senate proposal backed by Finance and Tax Committee Chairwoman Dorothy Hukill, R-Port Orange. Hukill's package is limited to a three-day back-to-school sales tax holiday (SB 792) and a measure that would scale back the communications services tax (SB 266) imposed on cable and phone services. The vehicle registration fee roll-back (SB 156) is on its way to Scott, who has said he will sign it. The bill, which would go into effect on Sept. 1, is expected to save motorists a total of \$309 million during the upcoming 2014-15 budget year by reducing individual vehicle registration fees by \$20 to \$25, depending upon the size of the vehicle.

Affordable Housing Bills

CALL TO ACTION for Housing Trust Funds

There was no changes from last week in either the House or Senate proposals. In the House Despite pressure from low-income housing advocates such as the Florida Housing Coalition, realtors and the construction industry the House Transportation and Economic Development Appropriations Subcommittee budget proposal released Tuesday would sweep \$136.8 million of affordable housing trust fund money into general revenue funds.

The total amount of revenues projected for the trust fund is projected to be \$226.1 million for the 2014-2015 fiscal years. The House Transportation and Economic Development Appropriations Subcommittee proposal would provide \$44.65 million for the State Housing Initiatives Partnership, also known as SHIP which provides grants to local governments for affordable housing projects, and \$44.65 million for the **State Apartment Incentive Loan** program, a similar program providing low-interest loans for such projects. The **State Housing Initiatives Partnership Program (SHIP)** provides funds to local governments as an incentive to create partnerships that produce and preserve affordable homeownership and multifamily housing. The program was designed to provide very low, low and moderate income families with assistance to purchase a home, money to repair or replace a home and many other types of housing assistance.

On the other side of the Capitol, the Senate plan kept all of the money intact.

Although proposals from the House and Senate are nearly identical on large portions of the transportation and economic development sections of the budget – both fully fund the transportation work program with at least \$8.8 billion – the discrepancy in the two chambers' affordable housing funding is a major sticking point.

HB 925/SB 576 Relating to Supportive Housing for the Elderly Program - by Rep. Pafford/Sen. Abruzzo

SM 576 finds that the elderly population in Florida is in need of affordable housing. The memorial urges the United States Congress to provide adequate funding for the Supportive Housing for the Elderly Program.

The Memorial is now on the Senate Special Order Calendar, to be heard on 04/03/14.

The House companion, HM 925 by Rep. Pafford, has been referred to the Local and Federal Affairs Committee and Economic Affairs Committee.

Assisted Living Facility Bills

HB 573/SB 248 Relating to Assisted Living Facilities - by Rep. Ahern/Senate Children, Families and Elder Affairs and Sen. Sobel

SB 248 is the ALF reform bill. It intends to strengthen the enforcement of current regulations for Assisted Living Facilities (ALF), by revising fines imposed for licensure violations, clarifying existing enforcement tools, and requiring an additional inspection for facilities with significant violations. It is similar to the ALF bill that failed to pass the past two years.

Specifically, if the bill is adopted this year, it will:

- Specify who is responsible for assuring that mental health residents in an ALF receive necessary services.
- Clarify the duties of the state Long-Term Care Ombudsman Program.
- Amend language related to ALF specialty licenses by:
 - Creating a provisional Extended Congregate Care (ECC) license for new ALFs and specifying when the Agency for Health Care Administration (AHCA or agency) may deny or revoke a facility's ECC license.
 - Reducing the number of monitoring visits the AHCA must conduct for ALFs with Limited Nursing Services (LNS) licenses and ECC licenses. This is also something LeadingAge Florida representatives had initially proposed a few years ago, and it remains in the bill.
- Specifying when the AHCA may waive a monitoring visit in facilities with an ECC or LNS license. This is also something LeadingAge Florida proposed.
- Requiring that facilities with one or more state supported mental health residents obtain a limited mental health (LMH) license. Current law only requires an LMH license for facilities with three or more mental health residents.
- Allow AHCA to revoke the license of a facility with a controlling interest that has or had a 25 percent or greater financial or ownership interest in a second facility that closed due to financial inability to operate or that was the subject of other specified administrative sanctions. Current law allows AHCA to deny such a facility's license during the renewal process.
- Clarify the criteria under which the AHCA must revoke or deny a facility's license.
- Specify circumstances under which the AHCA must impose an immediate moratorium on a facility.

- Amend fine amounts.
 - Amend the definition of “assistance with self-administration of medication” to add several items to the list of services for which unlicensed staff can assist residents.
 - Add certain responsible parties and agency personnel to the list of people who must report abuse or neglect to the Department of Children and Families’ (DCF or department) central abuse hotline.
 - Require an additional inspection, paid for by the facility, within 6 months of a facility being cited for specified serious violations.
 - Clarify that in a continuing care facility or retirement community that licenses units designated for independent living as ALF, the staffing requirements in rule will apply only to residents who receive AL services. This amendment was incorporated into the amended bill at the request of LeadingAge Florida. It is an alternative to our original proposal to create an ALF flexible license.
 - Require new facility staff, whom have not previously completed core training, to attend a 2-hour pre-service orientation before interacting with residents.
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- Require the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct a study of inter-surveyor reliability in order to determine the consistency with which the AHCA applies regulations to facilities, and requires OPPAGA to report its findings and recommendations by November 1, 2014.
 - Require the AHCA to implement an ALF rating system by March 1, 2015.

SB 246 has the public website in it while the House bill does not. Both bills currently have fines based on bed size. We expect that this proposal will be removed and replaced by fines based according to isolated, pattern or widespread occurrences. The House companion is HB 573 by Rep. Ahern, and it is currently in the Health & Human Services Committee. The Senate companion is in house messages.

<i>Nursing Home Bills</i>

HB 287/SB 268 Relating to Certificates of Need - by Rep. Artiles/Sen. Grimsley

SB 268 provides for Certificates of Need. It is intended to provide flexibility for nursing homes to move beds to follow population trends that have occurred and create incentives for nursing home providers to replace older nursing homes with modern buildings to better meet the needs and demands of the current nursing home resident.

LeadingAge Florida advocated strongly for the CON flexibility and the bill. We were able to insert the amendment that will allow an expedited CON review for nursing homes wishing to relocate a portion of its beds to an existing facility or a new facility in the same district, or a contiguous district, if the total number of beds in the State does not increase.

Details of this proposal include:

- Amends 408.034(5) to reduce the sub-district average occupancy from 94% to 92% and remove unnecessary language. (The redacted language refers to a waiver program that will not exist upon implementation of the long term care portion of the Statewide Medicaid Managed Care program)

- Amends 408.034(6) to allow aggregation of need across sub district lines for purposes of proposing new nursing homes.
- Amends 408.036(2)(b) to allow expedited CON review of nursing home replacements within a 30 mile radius, without regard to district lines (not to exceed 30 total beds or 25% of the number of beds licensed).
- Amends 408.036(2)(c) to allow expedited CON review of nursing home replacements beyond 30 miles in the same sub-district or in geographically contiguous sub-districts within the same district as long as the target sub-district has an 85% occupancy level.
- Allows an expedited CON review for a nursing home to relocate a portion of its beds to an existing facility or a new facility in the same district, or a contiguous district, if the total number of beds in the state does not increase.
- Amends 408.036(3)(k) to reduce the required 12-month occupancy from 96% to 94% for the addition of small numbers of nursing home beds for existing facilities to be exempt from CON review. (Additions are allowed in increments of 10 beds or 10 percent or for Gold Seal 20 beds or 10 percent of the number of licensed beds, whichever is greater.)
- Amends 408.036(3)(p) to increase the distance from 3 miles to 5 miles for the replacement of a nursing home to be exempt from CON review.
- Amends 408.036(3)(q) to allow for the consolidation or combination of licensed nursing home beds or transfers of beds within the same district instead of the current allowance within sub-districts to be exempt from CON review and clarifies the definition of multiple nursing home to use current statutory language. (This applies to providers that operate multiple nursing homes within the same district and the relocation must be within 30 miles.)

Although the bill repeals the Moratorium on the construction of new nursing home beds, it restrict the Agency for Healthcare Administration (AHCA or agency) from issuing any further CONs for nursing home beds once 2,500 total new beds statewide have been approved. This provision in the bill expires on July 1, 2017.

The House bill is currently on the House Calendar. This week the Senate bill passed the Senate Children, Families, and Elder Affairs Committee. The next stop is in the Senate Health and Human Services committee.

HB 569/SB 670 Relating to Nursing Home Litigation Reform - by Rep. Gaetz/Sen. Thrasher

HB 569/SB 670 deals with nursing home lawsuits. The bill is intended to focus lawsuits against those directly at fault, while preventing claims against “passive investors” such as banks, creditors, property landlords and others who do not make daily care decisions.

HB 569 ready to go to the House floor. SB 670 is on the Senate special order calendar.

<i>Home and Community Based Services Bills</i>

HB 935/SB 1082 Relating to Adult Day Care Centers - by Rep. Murphy/Sen. Legg

This bill revises exemptions from licensure and regulation for Adult Day Care. It provides for operation of adult day care center in temporary location under certain conditions. It also provides notification requirements when center relocates and authorizes AHCA to grant conditional license to centers that relocate; provides license renewal & inspection requirements; adds ground for agency action against owner of center or its operator or employee. The original

bill removed a day care licensure exemption for nursing homes and assisting living. The exemption has been available for over 20 years. This week, an amendment was adopted on SB 1082 to restore the original exemption from licensure. An amendment is still necessary for HB 935 to be identical. The bill's effective date is July 1, 2014. The House bill is currently in the Health Innovation Subcommittee.

Bills of Interest – All Members

HB 819/SB 1066 Relating to Department of Health - by Rep. Pigman/Sen. Grimsley

This bill authorizes DHSMV to provide reproductions of specified records to DOH. It clarifies DOH's duties to maintain confidentiality of patient records obtained under subpoena. It authorizes licensees under investigation to inspect or receive copies of related patient records; deletes requirements for size of health profession licenses & deletes fee for wall certificates; authorizes boards or DOH to waive certain fees for specified period. It requires toll-free telephone number for public reporting of certain complaints. It revises certified nursing assistant in-service training requirements and it repeals Council on Certified Nursing Assistants This week an amendment went on the bill to add another nursing home administrator to the board makeup and reduce the health care provider board member from 2 to 1. Effective Date: July 1, 2014

SB 1066 removes the requirement that medical doctors complete certain continuing education requirements, but authorizes the Board of Medicine (Board), through rulemaking, to mandate specific continuing medical education requirements. Also, the Board may, by rule, allow the fulfillment of continuing education requirements, for:

- Continuing medical education courses approved by the American Medical Association
- Attendance at board meetings in which a licensee is being disciplined
- Service as a volunteer expert witness in a disciplinary proceeding or service as a member of a probable cause panel
- Pro bono services to indigent and underserved populations or patients in critical need areas
- Performing research in critical need areas
- Training for advanced professional certification

This bill allows a board, or the Department when there is no board, to adopt rules (under certain circumstances) to waive initial application and licensure fees, and renewal of licensure fees, for health care practitioners licensed under Ch. 456, F.S. The waiver of renewal fees may not exceed 2 years.

This bill will assist the Department in investigations of health care practitioners or persons conducting unlicensed activities by allowing the Department to enter into an interagency agreement with the Department of Highway and Safety Motor Vehicles to access current digital photographic images of licensed health care practitioners and authorizing the Department, instead of the Agency for Health Care Administration, to access patient records.

In addition to the above, the bill:

- Removes the option of apprenticeship as a pathway to licensure for massage therapists.
- Aligns continuing training requirements for certified nursing assistants' certification renewals with their biennial renewal cycles and abolishes the Council on Certified Nursing Assistants.

- Removes the requirement that the Department send a notification by registered mail to each registered dental laboratory operator within 30 days following the expiration date of the dental laboratory operator's registration.
- Updates the names of certain accrediting bodies for midwifery programs and registered dietitians.
- Revises the membership structure for the Board of Nursing Home Administrators and allows for those with a master's degree in health care services or an equivalent field to take the examination to be a licensed nursing home administrator regardless of the type of bachelor's degree earned.
- Requires an inter-facility transfer in an ambulance if a patient is "bed confined" or requires the administration of medical oxygen.

SB 1066 has not been heard in committee. The house companion is HB 819 by Rep. Pigman. It was heard in the House Health Care Appropriations sub-committee. It's next stop will be in the full House Appropriations committee.

HB 629/SB 638 Relating to Charities - by Rep. Boyd/Sen. Brandes

The bill amends current law to provide increased oversight of charitable organizations and sponsors, professional fundraising consultants, and professional solicitors. The bill places additional scrutiny on charities that most commonly mislead contributors including:

- background checks and solicitation scripts for telemarketers
- tougher scrutiny for soliciting funds after natural disasters or other tragedies
- prevents charities from hiding their activities in a complicated web of connected organizations

The bill also requires additional reporting from charities that receive the most contributions by requiring:

- Reviewed financial statements
- Audited financial statement for over \$1 million
- Detailed financial reports for organizations that only spend 25% of earnings if over \$1 million

HB 629 was passed by the House Appropriations Committee and is now in Regulatory Affairs. The Senate Bill 638 by Sen. Brandes is now in now in the Appropriations Committee.

SB 782 /HB 1231 Relating to Government Data Practices - by Sen. Brandes and Rep, Beshears

This bill would require the Division of Library and Information Services of the Department of State to adopt rules providing procedures for an agency to establish schedules for the physical destruction or other disposal of records containing personal identification information. It also requires an agency that collects and maintains personal identification information to post a privacy policy on the agency's website. Finally, it will require the Agency for Health Care Administration to provide specified data and information for a public website on assisted living facilities.

Earlier this week the Senate bill passed 7-0 by the Governmental Oversight and Accountability Committee. The house bill was recently heard and the ALF website was amended out of the bill.

SB 7028 Relating to Telemedicine - by Senate Health Policy

SPB 7028 creates the Florida Telemedicine Act (the act) and defines the key components for the practice of telemedicine. The act establishes a registration process for out of state, non-Florida licensed health care practitioners with a biennial fee and exemptions from registration for limited annual consultations, emergency services, and practitioner-to-practitioner consultations without the patient present.

The standard of care for telemedicine service coincides with health care services provided in-person. The nonemergency prescribing of a legend drug based solely on an online questionnaire is specifically prohibited and a controlled substance may not be prescribed through telemedicine for chronic, non-malignant pain.

Regulatory boards, or the Department of Health (department) if there is not an applicable board, may adopt rules to administer the act. Rules prohibiting telemedicine that are inconsistent with this act must be repealed.

The act requires a telemedicine provider to be responsible for the quality of any equipment or technology and to maintain records in accordance with federal and state laws.

Under the act, if a health insurer or health plan covers telemedicine services, then remuneration must equal the amount that would have been paid for in-person services. The amount of the reimbursement is to be determined by the individual telemedicine provider and the health insurer or health plan. The act allows a health plan or health insurer to impose a deductible, copayment or co-insurance if the amount charged does not exceed the amount charged for a non-telemedicine service. Health plans and health insurers may limit telemedicine coverage to in-network providers. SPB 7028 authorizes the executive directors of the regulatory boards, along with the department to negotiate one or more interstate compacts to allow for the practice of telemedicine across state lines. An annual report of any negotiated compacts is due to the Governor and Legislature on December 31, for ratification by the Legislature during the next session.

The Medicaid program must reimburse providers for telemedicine services in the same manner as provided for in-person services. Reimbursement amounts must be negotiated between the parties, to the extent permitted under federal law. Regardless of the amount negotiated, reimbursement for both the originating and the distant site should be considered based on the services provided during the encounter. A process for discontinuation of reimbursement for a Medicaid service through telemedicine is provided if the Agency for Health Care Administration (AHCA) can document a specific telemedicine service is not cost effective or does not meet the clinical needs of Medicaid recipients. The Medicaid provisions sunset on June 30, 2017.

The AHCA is required to submit a report on the usage and costs, including any savings, of telemedicine services provided to Medicaid recipients by January 1, 2017 to the President of the Senate, the Speaker of the House of Representatives and the minority leaders of the House and Senate.

The proposed bill's effective date is July 1, 2014. It will be heard by the Senate Health Policy Committee.

On Monday the House Health Care Appropriations Subcommittee voted 10-3 to approve HB 751 by Rep Travis Cummings.

For a copy of the bills listed in this bulletin, please call Legislative Information at 800-342-1827 or use the Florida “Online Sunshine” website on the Internet at <http://www.leg.state.fl.us>. Hard copies of bills are available through House Documents (850/488-7097) or Senate Documents (850/487-5915).