



## **2016 Legislative Session – Legislative Bulletin**

**Week Two – January 22, 2016**

### **2016 Legislative Session – Stay Informed!**

This is our weekly Legislative Update/Recap report that will continue through the end of Session. Included with this report is the latest copy of the [LeadingAge Florida Legislative Bill Tracking Report](#).

### **Activity on LeadingAge Florida Priority Bills**

#### **Continuing Care Communities**

A top priority for the 2016 Session is legislation modifying the Gold Seal Nursing Home Financial Criteria for Nursing Homes that are Part of Continuing Care Retirement Communities. CS/HB 127 by Rep. Cummings (R-Orange Park) and CS/SB 542 by Sen. Stargel (R-Lakeland), filed on behalf of LeadingAge Florida, allow a non-accredited Continuing Care Retirement Community (CCRC) applying for the Gold Seal nursing home designation to submit financial statements prepared by an independent CPA for the community in its entirety as proof of compliance with the financial criteria established by AHCA. A nursing home that is part of a CCRC accredited by a national accreditation organization and that meets the minimum liquid reserve requirements in Ch. 651 would still be deemed to meet the financial criteria for the Gold Seal designation.

The bill was amended in committee to allow a corporate entity that operates nursing homes, assisted living facilities, or independent living facilities or a combination thereof to submit a consolidated financial statement for the entire corporation as proof of meeting the financial standards for the Gold Seal. This change will benefit retirement communities that are not regulated as CCRCs as well as other multi-facility corporate entities.

In the Senate Committee hearing this week, Sen. Sachs asked about the new language in the bill allowing a corporate entity operating nursing homes to submit financials for the entire corporation and whether that would qualify all nursing homes within that corporation to be deemed Gold Seal eligible. We are following up with Sen. Sachs and providing her additional written information confirming that each nursing home within the corporate entity must still apply individually for the Gold Seal designation and must meet all program eligibility requirements including quality of care, in addition to the financial requirements.

CS/HB 127 passed its last committee of reference this week and has been placed on the House Special Order Calendar for Tuesday, January 26<sup>th</sup>. CS/SB 542 also passed its last committee of reference and has been placed on the Senate Calendar.

#### **Expand the ordering/prescribing authority for Advanced Registered Nurse Practitioners (ARNPs)**

Several bills have been filed expanding the ordering/prescribing authority for ARNPs. SB 152 by Sen. Grimsley (R-Sebring) authorizes an advanced registered nurse practitioner to order any medication for administration to a patient in a hospital, ambulatory surgical center, or mobile surgical facility within the framework of an established protocol. LeadingAge Florida asked Sen. Grimsley to consider an amendment expanding the scope of this bill

to include nursing homes. Rather than amending SB 152, Sen. Grimsley filed our proposed amendment as a stand-alone bill, SB 946. SB 946 has three committees of reference and has not yet been heard in committee. HB 1241 by Rep. Plasencia (R-Orlando) includes the identical language to SB 946 as well as other provisions. It has been scheduled to be heard in its first committee on reference next Monday, January 25<sup>th</sup>.

HB 423, sponsored by House Health Quality Chairman Cary Pigman (R-Avon Park) expands drug-prescribing powers for advanced registered nurse practitioners and physician assistants and allows ARNPs to prescribe, dispense, order, and administer controlled substances, to the extent authorized under their supervising physician's protocol. Florida is the only state that doesn't allow nurse practitioners to prescribe controlled substances. During the hearing this week in the last committee of reference, Florida TaxWatch testified in support of the bill. TaxWatch has produced multiple reports on this issue and recommends removing barriers to practice for APRNs. By doing so, Florida can save money, increase access to needed primary care, and improve quality of care. HB 423 has passed all three committees of reference. The next step is consideration by the full House.

A similar bill, SB 676 by Senator Grimsley (R-Sebring), expanding physician assistants' (PA) and advanced registered nurse practitioners' (ARNP) ability to prescribe controlled substances passed the Senate Health Policy Committee. The authorization comes with limitations, such as prescribing privileges for controlled substances listed on Schedule II are limited to a 7-day supply and an ARNP or PA may not prescribe controlled substances in a pain management clinic. The bill requires PAs and ARNPs to complete 3 hours of continuing education biennially on controlled substances.

SB 676 has been scheduled for a hearing in its second committee of reference, Senate Banking and Insurance Committee, on Tuesday, January 26<sup>th</sup>.

#### **Preserve Certificate of Need for Nursing Homes**

Over the past several years, the Florida Legislature significantly reduced the number of services and facility types subjected to Certificate of Need (CON) review. LeadingAge Florida supports the retention of a CON process for nursing home beds. HB 437 by Rep. Sprowls (R-Clearwater) deletes the provisions relating to certificates of need required for new, expanded, or modified hospital construction. The bill passed its second committee of reference, the House Health Care Appropriations Subcommittee, and has one more committee of reference. Senate President Andy Gardiner (R-Orlando) has stated concerns that the certificate of need bill applies only to hospitals and not to nursing homes, which also are regulated by the licensure program. The House has made lowering the costs of health care a top priority and maintains that eliminating regulations, like certificate of need, will help accomplish that goal. LeadingAge Florida is monitoring this bill for any attempts to include nursing homes in the legislation.

HB 437 passed its last committee of reference and heads to the House Floor. A Senate companion measure has not yet been filed.

### **Activity on LeadingAge Florida Monitored Bills**

#### **Prescription Drug Monitoring Program**

CS/HB 313 by Rep. Pilon (R-Sarasota) provides for additional reporting exemptions from the Prescription Drug Monitoring Program (PDMP) for a rehabilitative hospital, an assisted living facility or a nursing home dispensing a controlled substance, as needed, to a patient as ordered by the patient's treating physician. This bill would benefit LeadingAge Florida members. As explained by Rep. Pilon, this allows a doctor to treat his/her patient by leaving an order for pain medicine at the nursing home or ALF and exempting them from the reporting requirement.

Legislation passed in 2009 established the Prescription Drug Monitoring Program (PDMP) within the Department of Health. The PDMP uses a comprehensive electronic system/database to monitor the prescribing and dispensing of certain controlled substances. Dispensers of controlled substances listed in Schedule II, III, or IV must report specified information to the PDMP database, including the name of the prescriber, the date the prescription was filled and dispensed, and the name, address, and date of birth of the person to whom the controlled substance is dispensed. Dispensers must report the dispensing of a specified controlled substance to

the PDMP database within seven days of dispensing the controlled substance. Health care practitioners are exempt from the PDMP reporting requirements in certain instances.

CS/HB 313 passed its last committee of reference and heads to the House Floor. The Senate companion, SB 964 by Sen. Grimsley has been filed and referred to three committees.

### **Property Prepared for Tax Exempt Use**

HB 301 by Rep. Burton (R-Lakeland) consolidates provisions relating to tax exemptions on property owned by certain tax-exempt organizations and expands the ad valorem tax exemption for an exempt organization that is taking affirmative steps to prepare property to be used for an exempt purpose. Current law grants this treatment to educational institutions, religious organizations, and 501(c)(3) organizations that provide affordable housing. The bill expands the exemption to all property being prepared for an educational, literary, scientific, religious or charitable purpose. A concern regarding the manner in which the bill was drafted in the 2015 session as it relates to affordable housing has been addressed in the bills filed this year.

HB 301 passed its second committee of reference and has one more stop. The Senate companion, SB 842 by Sen. Hays (R-Umatilla), has passed one committee of reference and is on the agenda for next Monday, January 25<sup>th</sup>.

### **Recovery Care Centers**

HB 85, sponsored by Rep. Heather Fitzenhagen (R-Fort Myers), allows patients to stay overnight at ambulatory surgical centers. Under the proposal, patients could stay up to 24 hours (right now the limit is 23 hours). The bill also allows the creation in Florida of recovery care centers, where patients could stay up to 72 hours after surgeries and being discharged from an ambulatory surgical center or hospital. HB 85 passed its last committee of reference and heads to the House Floor.

The Senate companion, SB 212 by Sen. Don Gaetz (R-Destin), was heard and amended in its first committee of reference this week. As amended, CS/SB 212 allows for ambulatory surgical centers to treat a patient for 24 hours after admittance into the facility. Additionally, the bill was amended to require ambulatory surgical centers, as a condition of licensure, to provide services to Medicare patients, Medicaid patients, and patients who qualify for charity care. The bill defines quality care as uncompensated care provided to uninsured patients having incomes at or below 200 percent of the federal poverty level. Charity care is not subject to collection procedures. In another departure from HB 85, CS/SB 212 was amended to delete the provisions providing for the creation of recovery care centers in Florida. The recovery care centers, which would have been authorized to care for patients for up to 72 hours following a surgery or medical procedure, are still authorized to operate under HB 85.

### **Nurse Licensure Compact**

HB 1061 by Rep. Pigman (R-Sebring) allows nurses who receive their certification in a participating state to also practice in Florida without having to go through additional training. The bill includes a structure for a revamped compact, which would supersede the current compact and need approval from participating states. Florida nurses would be able to request multi-state licenses, and nurses from other states who hold multi-state licenses would be able to practice in Florida. The aim is to recruit more nurses, and according to Rep. Pigman, "It would allow Florida to have access to what's going on in 25 other states, potentially 30 states, whereas now we're just aware of what's going on in our own state with regards to investigations of licensure." The bill would let Florida offer the multi-state license option. The move is part of ongoing state efforts to lower healthcare costs while increasing patient access to physicians.

HB 1061 passed unanimously out of its second committee of reference, the House Health Care Appropriations Subcommittee. It has one more committee of reference before it heads to the chamber floor. A linked bill providing a public records exemption, HB 1063 by Rep. Pigman relating to Public Records and Meetings/Nurse Licensure Compact, was also reported favorably its second committee of reference, the Government Operations Committee. It has one more committee of reference.

### **Missing Persons with Special Needs**

CS/SB 230 by Sen. Dean (R-Inverness) creates the "Project Leo" pilot project in five North Florida counties –

Alachua, Baker, Columbia, Hamilton, and Suwannee – to provide personal devices to aid search-and-rescue efforts for persons with special needs in the case of elopement. The bill creates a separate pilot project for the same purpose in two South Florida counties – Broward and Palm Beach. While the bill does not define special needs, the staff analysis specifically describes elopement and wandering of children with autism and individuals with Alzheimer’s disease and other forms of dementia as individuals with special needs.

CS/SB passed the full Senate on January 15<sup>th</sup>. The companion, CS/HB 11 by Rep. Porter (R-Lake City) has passed its first committee of reference and has two more committees before going to the House Floor.

### **State Veterans’ Nursing Homes**

HB 581 by Rep. Magar (R-Hope Sound) creates a site selection process for new state veterans’ nursing homes to be administered by the Florida Department of Veterans’ Affairs (FDVA). There are six state veterans’ nursing homes in Florida. Currently, no Florida law governs FDVA’s site selection process. The bill requires FDVA to contract for a study to determine the most appropriate county for construction of a new nursing home based on the greatest level of need. The study must be delivered to the Governor, President of the Senate, and the Speaker of the House of Representatives by November 1, 2016, and a new study must be conducted and submitted every 4 years thereafter. The bill provides the criteria to be used to rank each county.

HB 581 passed its last committee of reference and heads to the House Floor. No Senate companion has been filed to date.

### **Involuntary Examinations under the Baker Act**

HB 325 by Rep. Campbell (D-Miami Shores) and SB 572 by Sen. Altman (R-Cape Canaveral) authorize physician assistants and ARNPs to initiate involuntary examinations under the Baker Act of persons believed to have mental illnesses.

HB 325 has been approved by all of its committees of reference and goes to the House Floor next. SB 572 has been favorably passed out of one committee and has two more committees of reference in the Senate.

### **Residential Facilities**

HB 885 by Rep. Avila (R-Hialeah) and SB 1174 by Sen. Diaz de la Portilla (R-Miami) clarify siting requirements for community residential homes and provide a grandfathering provision for existing community residential homes lawfully permitted and operational as of the effective date of the act. The law currently addresses distance requirements for siting of community residential homes. Homes with 7 – 14 residents may not be constructed within 1,200 feet of another such home; a home of 6 or fewer residents may not be constructed within 1,000 feet of another such home. Currently, there is no requirement for the distance between a 7-14 residents home and a 6 residents or fewer home. The bill sets that distance requirement at 1,200 feet. This legislation is intended to address an issue occurring primarily in Miami-Dade.

HB 885 passed its first committee of reference. The Senate companion, SB 1174, has been scheduled to be heard next Tuesday, January 26<sup>th</sup> in the Senate Community Affairs Committee.

### **Transparency in Health Care**

SB 1496 by Sen. Bradley (R-Orange Park) and HB 1175 by Rep. Chris Sprowls (R-Clearwater) require health care providers to show more transparency about the prices of services provided.

SB 1496 would require hospitals and ambulatory surgical centers to meet new standards for providing financial information and quality of service measures to patients and to the public. Specifically, in response to requests for information, health care facilities are required to provide a written, good faith estimate of the anticipated facility charges within seven business days after receipt of the request, and to provide an itemized bill or statement within seven days of a patient being discharged. Facilities are required to establish a method of responding to billing questions within seven days after it is received. The Agency for Health Care Administration (AHCA) is required to contract with a vendor to provide a consumer-friendly, Internet-based platform that allows a consumer to research the cost of health care services and procedures by a common-named service bundle to facilitate price comparison of typical health care services provided in hospitals and ambulatory surgery centers (ASC). Quality indicators for services at the facilities will also be made available to the consumer to facilitate

health care decision making.

Of interest to LeadingAge Florida members, SB 1496 amends s. 400.165, F.S., to require nursing homes, upon request, to provide a written good faith estimate of reasonably anticipated charges for services provided by the nursing home within seven business days after receiving a request and to provide information disclosing payment plans, discounts, other available assistance, and collection procedures.

At the Health Policy Committee hearing, the Florida Health Care Association testified on this specific provision in the bill and commented that this requirement would be duplicative of current law which is even more prescriptive than what is in SB 1496. Sections 400.022 and 400.151, FS, already require a nursing home to fully inform, in writing and orally, prior to or at the time of admission and during his or her stay, of services available in the facility and of related charges for such services, and of refund policies. This information must then be listed out in the contract that is executed between the facility and resident at the time of admission. This is an inspection item included in the annual inspection of the nursing home. Therefore, nursing homes, as a matter of law and policy, already provide this information to residents and prospective residents and in a more timely manner than what is contained in bill and, because current law is more prescriptive than the bill requires, FHCA wants to ensure there isn't a conflict in the statute. FHCA committed to working with the sponsor on this concern, and the sponsor expressed an interest in looking into the concerns raised. LeadingAge Florida will be expressing similar concerns to Sen. Bradley, the sponsor of the bill.

HB 1175 establishes a Florida-specific All Payer Claims Database, which provides an online, searchable method for patients to compare provider price and quality, and a Florida-specific data set for price and quality research purposes. It also requires hospitals, ambulatory surgical centers, insurers and HMOs to make prices transparent to patients, and make quality data available to them.

SB 1496 and HB 1175 both passed their first committees of reference.

### **Telehealth**

The House Select Committee on Affordable Healthcare Access favorably approved introduction of a Committee bill on Telehealth. The bill would create a legal framework for telehealth, which involves using the Internet and other technology to provide health services remotely. 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 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.

In public testimony, Jack McRay, representing AARP, noted that 40 percent of those 60 and older in Florida either are caregivers or are receiving care. AARP supports telehealth and asked the panel to consider amending the bill to let Florida use telehealth technology to help manage a waiting list of 59,000 qualifying seniors for Medicaid home- and community-based services.

The approach in this House bill differs from Telehealth legislation filed in the Senate. SB 1686 by Sen. Aaron Bean (R-Jacksonville) creates a 19-member task force within the Agency for Health Care Administration (AHCA), to examine the use of telehealth. The membership of the task force is to include two representatives of organizations that represent health care facilities. The task force is to submit a report to the Governor and Legislature by June 30, 2017. SB 1686 is scheduled to be heard in its first committee of reference, Health Policy Committee, on Tuesday, January 26<sup>th</sup>.

### **Long Term Care Prioritization**

HB 1335 by Rep. Magar (R-Hobe Sound) and SB 7056 by the Senate Health Policy Committee relating to Long-term Care Managed Care Prioritization have been filed and both will be heard in committee next week. The bills would codify in law the role that the Department of Elder Affairs (DoEA) currently has to assess and

prioritize individuals on the waitlist for home and community-based services available through the Medicaid Long-term Care Program – a program that frail residents of affordable housing depend on. The bills do not modify the current assessment and prioritization process.

Affordable housing providers and their residents are affected by funding for the Medicaid Long-term Care Program. The amount of funds appropriated by the Florida Legislature for fiscal year 2016-17 will determine how many slots will be available for the program and what levels of impairment will qualify an individual for placement on the waitlist, which last September numbered 39,971. HB 1335 and SPB 7056 require the DoEA to establish a process for determining who is eligible for those slots and provide guidance on how that should occur.

For those not familiar with the current assessment and prioritization process for the Medicaid Long-term Care Program, it includes 8 levels of frailty, with 8 being the highest and 1 the lowest. This fiscal year, sufficient funds were allocated to put applicants who assess at a level 4 or higher on the wait list. The year before, applicants had to score at a level 5 or higher to make the wait list and be considered for services.

Currently, level 8 means the applicant is in need of protective services. Level 7 includes applicants with a high risk of needing protective services. Level 6 is for applicants age 18-21 in need of services. The remaining levels are based on activities of daily living deficits, the home environment, support available in the household, the condition of housing, etc. For example, an applicant who lives alone without support from family or friends would be given a higher score than an applicant living with an able bodied spouse.

The bills do not get into which levels would entitle one to receive priority for services. However, SB 1335 provides that the following individuals would have priority for enrollment in the program and would not be subject to participation in the screening or waitlist process: Individuals between the ages of 18 and 21 years who have chronic debilitating diseases or chronic debilitating diseases or conditions or one or more physiological or organ systems which generally makes them dependent on 24 hour-a-day medical, nursing, or health supervision or intervention; individuals determined to be at high risk and in need of Adult Protective Services; nursing facility residents who wish to transition into the community and who have resided in the skilled nursing facility in Florida for at least 60 consecutive days. SPB 7056 also provides for the same for individuals between the ages of 18 and 21 years and nursing home residents but not for individuals in need of protective services. The Senate bill specifies that if capacity is limited for the program, priority must be given to the individual with the oldest date of placement on the waitlist if they have identical priority scores.

Both HB 1335 and SPB 7056 require the DoEA to notify the individual, or his or her designated representatives, of waitlist placement and to post on its website the methodology used to calculate an individual's priority score. The bills also specify that the individual, or his or her designated representative, may request a rescreening due to a significant change in the individual's condition. In addition, the bills list the conditions under which DoEA may terminate an individual from the waitlist.

The basis for the legislation is the following implementation language included in the 2015-16 General Appropriations Act. These bills are intended to place this implementing language in statute since the language in the Act expires in July.

Section 28. In order to implement Specific Appropriation 226 of the 2015-2016 General Appropriations Act, the Agency for Health Care Administration and the Department of Elderly Affairs shall prioritize individuals for enrollment in the Medicaid Long-Term Care Waiver program using a frailty-based screening that provides a priority score (the "scoring process") and shall enroll individuals in the program according to the assigned priority score as funds are available. The agency may adopt rules, pursuant to s. 409.919, Florida Statutes, and enter into interagency agreements necessary to administer s. 409.979(3), Florida Statutes. Such rules or interagency agreements adopted by the agency relating to the scoring process may delegate to the Department of Elderly Affairs, pursuant to s. 409.978, Florida Statutes, the responsibility for implementing and administering the scoring process, providing notice of Medicaid fair hearing rights, and the responsibility for defending, as needed, the scores assigned to persons on the program wait list in any resulting Medicaid fair hearings. The Department of Elderly Affairs may delegate the provision of notice of Medicaid fair hearing rights to its contractors. This section

expires July 1, 2016.

## Activities of Interest

### **FY 2016-17 Budget – Revenue Projections Down**

This week, Florida's state economists met to develop new forecasts to predict how much money the state will collect in taxes. These forecasts are used by the Legislature in development of the 2016-17 fiscal year budget. Based on their predictions, legislators will have about \$400 million less to spend than the previously predicted amount of \$635 million. Governor Scott remains optimistic about his goal of \$1 billion in tax cuts and released the following statement:

*“Governor Scott remains confident in his \$1 billion tax cut package because while updated REC numbers show that national economic factors have led to a projected forecast of a minor reduction of \$388.5 million, recent estimates also show that if the Legislature chooses to adopt the Seminole Compact the Governor signed, it would bring in \$2.3 billion over eight years. We are pleased to also learn that we still have a significant increase in revenues of over \$1 billion in fiscal year 2016-17. Additionally, most actual revenues end up higher than revenue estimates.”*

The heart of Scott's tax plan is aimed at businesses. He wants to eliminate all corporate income taxes charged to manufacturers and retail companies, permanently cut sales taxes on manufacturing equipment and gradually reduce the state's sales taxes charged on commercial rents. Scott said those cuts will help bring new businesses to Florida, thus diversifying the state's economy.

Senate Appropriations Committee Chair Sen. Tom Lee has indicated that the forecast has bigger implications than just the Governor's tax cut. It could mean a smaller pool of money for lawmakers to spread around to deal with other priorities like the state's prison system, mental health services and growing Medicaid costs as well. Also, with every state legislative district up on the ballot this year, lawmakers will be competing for money for a myriad of hometown projects.

### **The Legislature's appropriations process will begin officially in one week**

Next week, the Florida House of Representatives begins discussing details of its budget plan. Budget subcommittees are scheduled to meet January 28 to review the details of their portions in the budget. Then a complete draft budget, including conforming and implementing legislation, will be published on January 29<sup>th</sup>. The full Appropriations Committee will debate and vote on the budget on February 3, with debate by the full House on February 10<sup>th</sup> and a vote on February 11<sup>th</sup>.

The Senate is on a similar timeline. Subcommittees will meet next week, with the full Appropriations Committee expected to take up the budget during the fourth week of session.

## **A Week in Review – News from the Capitol by Leslie Dughi, Director of Government Law & Policy - Greenberg Traurig**

The second week of session was capped off by the Senate's decision not to appeal the circuit court judge's approval of a new Senate map submitted by voting rights advocates. Some insiders believe Republicans may lose seats because the map is evenly divided between Republican and Democratic-leaning districts. The map will ultimately be approved by the Florida Supreme Court and all forty Senate seats will be up for grabs this election cycle.

Two priorities of Governor Scott – the gambling compact and a health care transparency measure – were discussed this week. The Governor's office presented an overview of the proposed \$3 billion deal with the Seminole Tribe to the Senate Regulated Industries Committee on Wednesday. The compact was signed by the Governor in early December, but the Legislature must ratify it to take effect. The compact would allow the Seminoles to add craps and roulette to their casino operations in exchange for \$3 billion in guaranteed payments to Florida over seven years. The deal would cap the number of slot machines, table games and live games at seven Seminole casinos. It would also permit, but not authorize, slot machines in Palm Beach County

and at a new facility in Miami-Dade County as well as limited blackjack at pari-mutuels in Broward and Miami-Dade counties. Further, the compact could allow pari-mutuels to maintain cardroom or slot-machine operations without continuing horse and dog racing which is currently required. Thus far, the House has not reviewed the compact.

Both Chambers moved legislation lauded by the Governor to give consumers important health care price and quality information. The House Select Committee on Affordable Health Care Access approved HB 1175 which would require hospitals, ambulatory surgical centers and physicians to provide cost estimates for non-emergency procedures prior to rendering the services. Further, it would require insurers to inform patients what amount of the procedure cost would be covered by insurance and what amount would be the responsibility of the patient. Lastly, the bill would direct the Agency for Health Care Administration (AHCA) to contract with a vendor for an all-payer claims database (APCD), which would allow Floridians to search and compare Florida-specific data for provider price and quality. A similar bill – SB 1496 by Sen. Rob Bradley – was approved by the Health Policy Committee on the same day.