



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

**Week Four – February 5, 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**

***LeadingAge Florida's top priority for the 2016 Session passed the House of Representatives unanimously (118-0) and has been referenced to committees in the Senate!*** CS/HB 127 by Rep.

Cummings (R-Orange Park) modifies the Gold Seal Nursing Home Financial Criteria for Nursing Homes that are Part of Continuing Care Retirement Communities. The legislation, filed on behalf of LeadingAge Florida, allows 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 also allows 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.

***The Senate companion, CS/SB 542 by Sen. Stargel (R-Lakeland) has been placed on Third Reading in the Senate on February 10<sup>th</sup>. This means our top legislative priority is poised to pass the Legislature next Wednesday!***

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

Several bills have been filed expanding the ordering/prescribing authority for ARNPs.

HB 1241 by Rep. Plasencia (R-Orlando) includes language advocated for by LeadingAge Florida authorizing an advanced registered nurse practitioner to order any medication for administration to a patient in a hospital, ambulatory surgical center, mobile surgical facility or nursing home within the framework of an established protocol. **The bill has passed both committees of reference and heads to the House floor.**

Sen. Grimsley (R-Sebring) filed the LeadingAge Florida language as a stand-alone bill, SB 946. SB 946 has been scheduled for its first committee hearing on February 9<sup>th</sup>.

HB 423 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. **HB 423 has passed all three committees of reference and is on the House Calendar for consideration by the full House.**

A similar bill, SB 676 by Senator Grimsley (R-Sebring), expands physician assistants' (PA) and advanced registered nurse practitioners' (ARNP) ability to prescribe controlled substances. 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. CS/SB 676 has passed two of its committees of reference and has one more to go.

#### **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. LeadingAge Florida is monitoring this bill for any attempts to include nursing homes in the legislation. HB 437 passed all committees of reference and has been placed on the House Calendar.

A Senate companion measure has not yet been filed; however Sen. Don Gaetz (R-Destin) has filed SB 1144 relating to Certificates of Need for Health Care-related projects. SB 1144 does not repeal certificate of need for hospitals but rather provides an exemption from the CON requirement for projects providing access to care for uninsured and low-income residents. The project must contribute certain revenues to the Public Medical Assistance Trust Fund and provide charity care. **SB 1144 passed its first committee of reference and has two more committees of reference. LeadingAge Florida has drafted and is advocating an amendment removing nursing homes from the exemption to the CON process created in the bill.**

#### **Physician Orders for Life-sustaining Treatment**

A "POLST" is a voluntary document specifying a patient's desired end-of-life care and medical treatment to ensure the patient's wishes are honored. While a do not resuscitate order (DNRO) is limited to the withholding of cardiopulmonary resuscitation (CPR), a POLST documents a patient's health care wishes in the form of a physician order for a variety of end of life measures, including CPR. The POLST is designed to be a portable, authoritative and immediately actionable physician order regarding life sustaining/resuscitative measures that must be honored across all treatment settings.

SB 664 by Sen. Brandes (R-St. Petersburg) directs the Department of Health to develop and adopt a POLST form by rule, authorizes specific personnel to withhold CPR pursuant to a DNRO or a POLST form which contains an order not to resuscitate, and provides immunity from civil and criminal liability to such personnel, facility staff and facilities for withholding or withdrawing CPR. The Agency for Health Care Administration (AHCA) is directed to act as a clearinghouse of information on compassionate and palliative care plans and develop and implement a database for this information. AHCA is also directed to consult with compassionate and palliative care providers, health care facilities and residents in the development and implementation of the database.

Sen. Brandes has filed SB 662, a bill linked to SB 664, relating to Public Records/Clearinghouse for Compassionate and Palliative Care Plans. This bill creates an exemption from public records for identifying information in compassionate and palliative care plans filed with the clearinghouse at the AHCA. In Florida, legislation relating to privacy of records and providing an exemption from public records requirements must be filed separately.

LeadingAge Florida's Public Policy Committee adopted unanimously a motion to support POLST legislation in concept with the understanding that staff obtain member input on the content of any related bills filed for the 2016 Legislative Session to ensure that the language provides guidance on what to do if there is a conflict between POLST and other end of life documents and ensure that faith-based organizations have the right to deny requests that are inconsistent with their religious and ethical beliefs as long as their policies are made known upon admission to the facility.

The House companion, HB 957 by Rep. Gonzalez (R-Venice) is much more comprehensive and attempts to address issues identified that are not dealt with in the Senate bill. The House bill, among other provisions, places the POLST form provisions under the Medical Transportation Services statute, rather than AHCA, requires physician certification of the POLST form, further defines the role of the Department of Health to include standardized protocols across all health care settings, and addresses out of state POLST directives, patient transfer and POLST transferability, conflicts with other advance directives, POLST for minors, and revocation of a POLST form.

SBs 664 and 662 passed the first committee of reference. An amendment to SB 664 striking all of the provisions in the bill and replacing them with new language that more closely aligns the Senate bill to the House Bill was passed by the committee. As amended, the bill now includes language regarding conflicts with other advanced directives and specifies that the bill does not support euthanasia.

The Elder Care and the Real Property and Trust Sections of the Florida Bar have concerns relating to expedited hearings and conflicts with other end of life documents.

**HB 957 has been referred to four committees in the House and will not be heard this Session, therefore POLST legislation will not pass this year.**

## **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 has been placed on House Calendar. The Senate companion, SB 964 by Sen. Grimsley passed its first committee of reference and has two more committees to go.**

### **Guardianship**

CS/CS/SB 232 by Sen. Detert (R-Venice) provides for the regulation of professional guardians, currently not regulated in Florida, by the Office of Public and Professional Guardians (previously named Statewide Public Guardianship Office) within the Department of Elder Affairs. The bill requires annual registration of professional guardians and gives the Office of Public and Professional Guardians disciplinary and enforcement powers.

**CS/CS/CS/SB 232 has been placed on the Senate Third Reading Calendar for Feb 10th. CS/HB 403 by Rep. Ahern passed two committees of reference and has one more to go before going to the full House.**

### **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 all committees of reference and has been placed on House Calendar along with a linked bill providing a public records exemption, HB 1063. The Senate companion, SB 1316 by Sen. Grimsley has been scheduled for a hearing in the first committee of reference on February 9<sup>th</sup>.**

#### **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 passed the House on Feb. 3<sup>rd</sup>. SB 572 is in its second committee of reference.**

#### **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 has passed all of its committees of reference and has been placed on House Calendar. The Senate companion, SB 1174, has passed two committees of reference and has been scheduled for its last committee hearing on February 10<sup>th</sup>.**

#### **Uniform Firesafety Provisions for Assisted Living Facilities**

HB 965 by Rep. Harrison (R-Tampa) and SB 1164 by Sen. Legg (R-Lutz) require the State Fire Marshal to adopt uniform firesafety standards for ALFs and provide firesafety requirements be based on the current editions of the National Fire Protection Association, Life Safety Code, NFPA 101 and 101A. Evacuation capability determination and firesafety requirements currently in law are deleted. The NFPA documents are revised on a three year cycle to incorporate new technologies and lessons learned from actual fire experiences. This change will allow for the adoption of the current edition of the NFPA Life Safety Code for ALFs. The legislation would not require existing facilities to retrofit, however, the new standards, if adopted, would enable facilities to take advantage of elements in the newer codes designed to reduce costs for renovations and modifications to existing buildings.

**HB 965 passed its first committee of reference and has two more committees to go. SB 1164 was amended in its first committee of reference to exempt an ALF licensed before July 1, 2016 from any requirement adopted by the State Fire Marshal that exceeds the 1994 requirements except that an ALF that undergoes building rehabilitation must meet the new firesafety codes. SB 1164 has one more committee of reference.**

#### **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.

LeadingAge Florida successfully lobbied to remove the provisions in SB 1496 requiring 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.

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 has one more committee of reference and HB 1175 has been scheduled for a hearing in its second committee of reference on February 8<sup>th</sup>.**

#### **Telehealth**

The House Select Committee on Affordable Healthcare Access favorably approved introduction of a Committee bill on Telehealth. As filed, HB 7087 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. **HB 7087 has been referred to two committees and it is scheduled to be heard in the first committee of reference on February 8<sup>th</sup>.**

The approach in HB 7087 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 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 passed its first committee of reference.

#### **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. 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 SB 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.

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. SB 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 SB 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 implementation language included in the 2015-16 General Appropriations Act. These bills are intended to place the implementing language in statute since the language in the Act expires in July.

**HB 1335 has passed two committees of reference and has one more to go.** SB 7056 has been filed and referred to two committees of reference.

### **Medical Marijuana**

SB 460 by Sen. Rob Bradley ( R-Orange Park) allows patients with terminal illnesses to have access to medical marijuana. The bill expands a 2015 law, known as the "Right to Try Act," which allows terminally ill patients to have access to experimental drugs that have not been approved for general use by the U.S. Food and Drug Administration.

SB 460 amends the Right to Try Act to include "cannabis" sold and manufactured by an approved dispensing organization in the definition of "investigational drug, biological product, or device." This will include the use of non-smokable marijuana of all strengths and doses in the Right to Try Act.

In 2015, the Legislature adopted the Right to Try Act (RTTA). The RTTA authorizes an eligible patient with a "terminal condition," meaning that the patient will die within one year if the condition runs its normal course, to receive an "investigational drug, biological product, or device," meaning a drug, product, or device that has successfully completed phase 1 of a clinical trial, but that has not been approved for general use by the United States Food and Drug Administration.

The bill further specifies that, notwithstanding the state's laws criminalizing the nonmedical use of cannabis, eligible patients under the RTTA or their legal representatives may purchase and possess cannabis for the patient's medical use and dispensing organizations may manufacture, possess, sell, deliver, distribute, dispense, and lawfully dispose of cannabis.

**SB 460 has been voted out of all three committees of reference and is on the Senate Calendar. The companion, HB 307 by Rep. Matt Gaetz (R-Shalimar) has passed one of the three committees of reference and is scheduled for a hearing in the second committee on February 8<sup>th</sup>. It is anticipated that this legislation will pass the Legislature this Session.**

### **Weapons and Firearms**

**HB 163 by Rep. Gaetz (R-Shalimar ) relating to weapons and firearms passed the House and is headed to the Senate.** The bill, referred to as open carry, specifies that the rights of an owner or lessee of real property or a private employer are not diminished and that they may prohibit the possession of a firearm on their property. In other words, owners of residential property can establish their own policy regarding carrying of weapons.

The bill also protects employers regarding gun policies by providing that an employee does not have a cause of action against an employer, including termination of employment, resulting from the employee's failure to comply with the employer's orders regarding the carrying or not carrying of, or the manner of carrying, a weapon during work hours.

**The Senate companion, SB 300 by Sen. Don Gaetz (R-Destin) has passed one committee of reference but is not expected to receive a hearing in the Judiciary Committee, the second committee of reference. This in effect renders this legislation dead this Session.**

**Prohibited Discrimination**

SB 120 by Sen. Abruzzo (D-Wellington) and HB 45 by Rep. Raschein (R-Key Largo) create the "Florida Competitive Workforce Act." The bills amend the Florida Civil Rights Act of 1992 to include "sexual orientation and gender identity or expression" as impermissible grounds for discrimination.

**SB 120 has been scheduled for a hearing in its first committee of reference on February 8<sup>th</sup>.**

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

As the House and Senate readied their respective budgets for the floor next week, lawmakers split down party lines over the House tax package and floor votes on two controversial gun bills.

After hours of debate, the House approved HB 4001 which would allow Floridians with concealed-weapons licenses to carry firearms on state college and university campuses. The measure passed on a partisan vote of 80 to 37 with most Republicans voting for the measure and most Democrats voting against it.

Another bill, HB 163, would allow the open public display of sidearms by citizens with concealed-weapons permits. It was also amended to allow legislators with concealed weapons permits to carry their guns in legislative sessions and official meetings. The bill passed 80 to 38 along party lines. Despite overwhelming support in the House, the fate of both bills is unclear in the Senate. Neither bill has been heard by the Judiciary Committee and the Chair has openly expressed concern about them -- a sentiment echoed by the Senate President.

Next week the House and Senate will approve their proposed budgets setting the stage for conference committee members to hash out a compromise between the two proposals that is ultimately delivered to the Governor. The budget is the only legislation required by the Florida Constitution for the Legislature to approve during the Regular Session.