



2016 Legislative Session – Legislative Bulletin

Week Five – February 12, 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 Legislature on February 11th. It passed both houses unanimously and will be headed to the Governor's desk for his action.

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) was laid on the table and CS/HB 127 was substituted for the bill. CS/HB 127 then passed the Senate 40-0.

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.**

The companion to HB 1241, SB 946 by Sen. Grimsley (R-Sebring) passed its first committee of reference and has two more committees to go.

HB 977 relating to behavioral health workforce allows advanced registered nurse practitioners to prescribe

controlled substances; however the bill requires the Board of Nursing to adopt a formulary to restrict the amounts and types of controlled substances that may be prescribed by ARNPs. Additional restrictions and oversight requirements relating to the prescribing authority of ARNPs are provided in the bill. **The bill is on the House Calendar.**

The Senate companion, CS/SB 1250 by Sen. Latvala (R-Clearwater) was amended in committee to authorize ARNPs under a supervisory physician and within the framework of an established protocol to prescribe, dispense, administer, or order any drug; however, an advanced registered nurse practitioner may only prescribe or dispense a controlled substance if the advanced registered nurse practitioner meets specified education and training requirements. **The bill has two more committees of reference to go.**

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. **SB 1144 was scheduled for a hearing in the second committee of reference this week, however the bill was temporarily postponed at the request of the sponsor.**

Activity on LeadingAge Florida Monitored Bills

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 is on the House Calendar.**

The Senate companion, SB 212 by Sen. Don Gaetz (R-Destin) was amended in its first committee of reference to allow 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 does not include 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. **SB 212 passed its second committee of reference this week.**

Property Prepared for Tax Exempt Use

HB 301 by Rep. Burton (R-Lakeland) and SB 842 by Sen. Hays (R-Umatilla) consolidate provisions relating to tax exemptions on property owned by certain tax-exempt organizations and expand 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 bills expand 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 last committee of reference on February 9th and is on House Calendar and SB 842 has one more committee of reference.

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.

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 230 passed the full Senate and is in House Messages. The companion, CS/HB 11 by Rep. Porter (R-Lake City) has passed its third committee of reference this week but a fourth committee of reference was added – the Appropriations Committee. The bill still must be heard by the Appropriations Committee.

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 passed the Senate and CS/HB 403 by Rep. Ahern passed its last committee of reference this week and heads 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 passed its first committee of reference this week. It has one more committee of reference.

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 and has been referred to committees in the Senate. SB 572 is scheduled to be heard by its second committee of reference on February 16th.

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 the House Calendar. The Senate companion, SB 1174, has passed all of its committees of reference and has been scheduled for Senate Special Order Calendar for February 18th.

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 and the companion, SB 1164, were amended 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. HB 965 passed two committees of reference and has one more committee to go. 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 passed its second committee of reference this week.

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 passed its first committee of reference this week.**

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 second committee of reference this week.**

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 clarify the roles of the various state agencies with authority to implement and regulate the long-term care waitlist. 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.

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 all committees of reference and heads to the House floor. SB 7056 was amended in its first committee of reference to add to the list of individuals who may bypass the screening and waitlist process for immediate enrollment for LTC services, individuals referred by Adult Protective Services as high risk and placed in an assisted living facility, which is temporarily funded by the Department of Children and Families. The Senate bill has one more committee of reference to go.

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) passed its second committee this week and has one more committee to go. 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 was heard in its first committee of reference this week. The bill was voted unfavorably with five members in support and five members against the bill which would prohibit discrimination against lesbian, gay, bisexual and transgender people in employment, housing and public accommodations. A motion was made to reconsider the bill. The Senate Judiciary Committee met again this week and voted down a motion to reconsider the bill, as proponents conceded they didn't have the votes to pass it out of committee. The bill is dead for this session.

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

The 2016 Legislative Session reached the halfway mark on Wednesday and there are now four weeks left before the scheduled end to the session on March 11th.

On Thursday, the House passed a budget on a mostly party line vote of 85 to 29 with Republicans voting for it and Democrats voting against. House Democrats raised objections over the affordable housing cuts and using approximately \$432 million in local property taxes to increase funding for education. Later in the day, the Senate took up their budget and passage proved easier than in the House. The bill passed unanimously. Florida policymakers are now in the posture of appointing conference committee members who will develop a compromise between the two budgets.

One of the areas where the House and Senate budgets do not match up is funding for affordable housing. Overall, the **House provides \$141 million for affordable housing and the Senate provides almost \$310 million.**

The House funds the State Housing Incentive Partnership (SHIP) at \$47 million. SHIP provides funds to local governments to incentivize partnerships that create and preserve affordable homeownership and multifamily housing. The program provides 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.

The Senate budget allocates \$185.8 million to SHIP.

The House funds the State Apartment Incentive Loan (SAIL) program at \$94.4 million. SAIL provides low-interest loans to affordable housing developers. These dollars are available to individuals, public entities, not-for-profit or for-profit organizations that propose the construction or substantial rehabilitation of multifamily units affordable to very low income individuals and families. There is a requirement that at least 20% of the development's units must be set aside for families earning 50 percent or less of the area median income.

The Senate provides just over \$64 million for SAIL along with another \$64 million for other affordable housing programs.

Alzheimer's

HB 5103 - Ed and Ethel Moore Alzheimer's Disease Research Program provides for the carry forward and spending of previously-appropriated but unspent money for the Ed & Ethel Moore Alzheimer's Disease Research Program for the next five years, consistent with grant timeframes, in research programs like the National Institutes of Health. (Included in both budgets) The bill passed the Legislature and heads to the

Governor's desk.

Alzheimer's Respite Care

The Senate Budget appropriates \$1,700,000 from the General Revenue Fund for Alzheimer's respite care services to serve individuals on the waitlist statewide.

The House Budget appropriates \$2,300,000 from the General Revenue Fund for Alzheimer's respite care services to serve individuals on the waitlist statewide.

Also advanced this week was the House tax package (HB 7099) which would establish a number of "sales tax holidays" ranging from school supplies to computers to hunting and fishing gear. It would also provide varying tax exemptions for brownfields, machinery and equipment for manufacturing, agricultural postharvest activities and metals recycling, among others. The largest portion of the \$1 billion package is a one percent reduction in the 6 percent sales tax on commercial leases. Further, for FY 2017-18, there would be a one-year additional one percent reduction in that tax. The bill was approved on a vote of 96-17 and it is now heading to the Senate.

Senate leadership has indicated willingness to cut taxes; but so far only a handful of bills have been approved. Those include tax credits for renewable energy production, a cut in the aviation fuel tax, and elimination of the tax on manufacturing equipment. The Senate has also supported a bill that would make a one percent reduction in the commercial lease sale tax, a measure which is also supported by the Governor.