



2016 Legislative Session – Legislative Bulletin

Week Eight – March 4, 2016

2016 Legislative Session – Stay Informed!

On March 4th we hosted our week eight **Legislative Session Weekly Briefing** conference call which will continue every Friday at 10:00 a.m. EST through the end of Session. To participate:

Call in number: 1-866-200-9760
Participant Pin: 7020321#

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. The bill has been signed by the officers and presented to the Governor who must act on the bill by March 8th.

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.

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. **HB 1241 passed the House this week.**

The companion to HB 1241, SB 946 by Sen. Grimsley was amended onto SB 152 by Sen. Grimsley. As

amended, CS/SB 152 authorizes 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 further provides express authority for a supervisory physician to authorize a physician assistant or an advanced registered nurse practitioner to order controlled substances for administration to a patient in a hospital, ambulatory surgical center, mobile surgical facility or nursing home. **CS/SB 152 was taken up on the Senate floor and substituted for HB 1241. HB 1241 was then amended on the Senate floor incorporating language requested by the Department of Health relating to the definition of prescription. The Senate passed the bill, as amended, which sends the bill back to the House for concurrence by the House of the amendment adopted by the Senate.**

HB 977 and CS/SB 1250 by Sen. Latvala (R-Clearwater) relating to behavioral health workforce allow advanced registered nurse practitioners to prescribe controlled substances; however the bills require 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 bills. **HB 977 passed the House. CS/SB 1250 passed its final committee of reference this week.**

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 passed the House this week with a 117-2 vote and has been referred to committees in the Senate.**

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 under current supervisory standards for PAs and protocols for ARNPs beginning January 1, 2017. 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 is on the Senate Calendar.**

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.

CS/HB 313 is on House Special Order Calendar for March 7th along with the Senate companion SB 964 by Sen. Grimsley.

Missing Persons with Special Needs

The bill creates the "Project Leo" pilot project in five North Florida counties – Alachua, Baker, Columbia, Hamilton, and Suwannee – and separate pilot projects in Palm Beach and Hillsborough counties. The pilot projects are to provide personal devices to aid search-and-rescue efforts for persons with special needs in the case of elopement. 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.

The pilot projects will be developed and administered by the Center for Autism and Related Disabilities at the University of Florida for the North Florida counties. The Center for Autism and Related Disabilities at Florida Atlantic University will develop and administer the Palm Beach County project and the Center for Autism and

Related Disabilities at the University of South Florida will develop the criteria for the Hillsborough County project. The bill appropriates \$100,000 in nonrecurring funds for each CARD center. Each center is to submit a report to the Governor and Legislature on the implementation and operation of its pilot project by December 15, 2017.

CS/SB 230 has passed the Senate, was taken up and amended by the House and is now is Senate Returning Messages.

Guardianship

CS/CS/SB 232 by Sen. Detert (R-Venice) passed the Florida Legislature. The bill has been signed by the officers and presented to the Governor who must act on the bill by March 10th.

The bill 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.

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 the House this week along with a linked bill providing a public records exemption, HB 1063. HB 1063 passed the House, was substituted for SB 1306 and passed the Legislature on March 4th.

HB 1061 along with the Senate companion, SB 1316 by Sen. Grimsley is on the Senate Special Order Calendar for March 8th. This legislation is positioned to pass the Legislature.

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 has been placed on Senate Calendar.

Residential Facilities

SB 1174 passed the Legislature this week.

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.

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.

CS/CS/HB 965 passed the House this week. CS/CS/HB 965 was amended on the House Floor to provide that an assisted living facility may remain under the 1994 and 1995 Life Safety Code (LSC) by affirmatively notifying the local authority. Additionally, more precise language is used to indicate the threshold of building alteration or rehabilitation that would require compliance with the current edition of the LSC. **SB 1164 was substituted for CS/CS/HB 965. CS/CS/HB 965 is on Senate Third Reading for March 7th. This legislation is positioned to pass.**

Transparency in Health Care

SB 1496 by Sen. Bradley (R-Orange Park) and HB 1175 by Rep. Chris Spowls (R-Clearwater) require health care providers to show more transparency about the prices of services provided. The transparency issue is a priority for Gov. Rick Scott.

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.

This week, the last House committee of reference approved HB 1175 after adopting an amendment that more closely aligns the bill with its Senate counterpart, SB 1496. One of the changes made increased the number of days from three to seven that a hospital has to provide patients with potential cost information about non-emergency services. The seven day allotment mirrors the Senate bill. The House also agreed to cap at \$10,000 the fine hospitals face for not promptly providing the information.

SB 1496 is on Special Order Calendar for March 7th, along with the companion, HB 1175. This legislation is positioned to pass.

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.

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** was amended in committee to increase the number of task force members to 21 and specifically added a nursing home representative to the task force. All task force members are to be appointed by the Secretary of the Agency for Health Care Administration.

HB 7087 allowing in and out-of-state health professionals to utilize telehealth passed the House this week (114-3). An amendment sponsored by Rep. Mia Jones adding the creation of a task force within AHCA, similar to the Senate bill but with 15 representatives including a nursing home representative was adopted. The purpose of the task force is to make recommendations regarding the surveys and research findings of the agency as described in the bill.

In the Senate HB 7087 was substituted for SB 1686, amended and passed the Senate as amended. The amendment adopted eliminates the provisions of the House bill relative to out of state providers. The bill will require the task force to compile data and submit a report by June 30, 2017, to the Governor, the President of the Senate, and the Speaker of the House of Representatives that analyzes:

- Frequency and extent of the use of telehealth nationally and in this state;
- Costs and cost savings associated with using telehealth;
- Types of telehealth services available;
- Extent of available health insurance coverage available for telehealth services; and
- Barriers to implementing the use of, using, or accessing telehealth services.

HB 7087 must now return to the House for its consideration of the amendment adopted by the Senate. The House can concur in the amendment or refuse to concur and ask the Senate to recede.

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.

The companion, HB 307 by Rep. Matt Gaetz (R-Shalimar) was combined with HB 1313 by Rep. Brodeur (R-Sanford). The newly combined bill tracks the previous bills but adds a provision authorizing the Florida Department of Health to add three new additional dispensing organizations if 250,000 patients across the state seek medical marijuana. The bill passed the House and is now in the Senate.

SB 460 along with HB 307 was debated on Senate Special Order Calendar on March 4th. SB 460 was substituted for HB 307 and laid on the table. HB 307 has been placed on 3rd Reading for March 7th for passage by the Senate.

Ambulatory Surgical/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 the House and is now in the Senate.**

The Senate companion, CS/SB 212 by Sen. Don Gaetz (R-Destin) allows for ambulatory surgical centers to treat a patient for 24 hours after admittance into the facility. Additionally, the bill requires 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 removed 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.

CS/SB 212 has become a train with several Senate bills amended onto the bill in its last committee of reference. Amendments added onto CS/SB 212 include provisions relating to the creation of dental accounts funded by state and local governments that would provide financial incentives to dentists willing to locate in underserved areas; authorizing direct primary care contracts; relating to managed care organizations and insurers using step therapy protocols; allowing a free clinic using volunteer health care providers that receive a grant or appropriation to maintain sovereign immunity protections; and providing sovereign immunity for child protection teams. **The bill is on Senate Calendar on Second Reading.**

Activities of Interest

The Health and Human Services Conference Committee held several meetings over the weekend and resolved most their differences. A few items were "bumped-up" to the full committee chairs for resolution. These issues were resolved Thursday evening. The major issues relevant to LeadingAge Florida members are listed below:

- Provides \$500,000 for nursing home prospective plan study,
 - *From the funds in Specific Appropriation 186, \$500,000 in nonrecurring funds from the Medical Care Trust Fund is provided to the Agency for Health Care Administration to contract with an independent consultant to develop a plan to convert Medicaid payments for nursing home services from a cost based reimbursement methodology to a prospective payment system. The study shall identify steps necessary for the transition to be completed in a budget neutral manner. Additionally, the report shall address the impact of a prospective payment system on Medicaid reimbursement rates for Hospice providers. The report shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than January 1, 2017.*
- Does not fund inflation increase for nursing home rates,
- Provides \$8.14 million for serving an additional 500 individuals on the HCBS waiver wait list,
- Provides \$1.56 million to reduce the Alzheimer's Disease Initiative wait list,

- Provides \$1.99 million to reduce the CCE waitlist,
- Authorizes 100 new PACE slots in Miami-Dade County, 200 new PACE slots in West Palm Beach County, and allows some of the Miami-Dade slots to be used Broward County.

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

Week Eight Overview.

Budget conferees worked through the week before the eighth week of session and made significant progress on a budget compromise. On Monday, unresolved issues were forwarded to the chairs of the House and Senate Appropriations Committees for negotiation. Education funding, and more specifically, the best and brightest teacher bonus program, appears to be the largest sticking point between the two Chambers. On Thursday evening, the Appropriations chairs closed out two areas of the budget – health care and natural resources. We expect meetings on the budget to continue through the weekend.

Late in the week, Senate Appropriations approved a \$419 million tax cut proposal which is supported by the House. The stripped down package would permanently eliminate the tax on manufacturing equipment, a Governor Scott priority, and would eliminate the sales tax on asphalt for government projects for a three-year period. House bill 7099 would also establish a back-to-school sales tax holiday for school supplies and clothing \$60 and under for three days in August. A major component of the Governor's plan, a reduction in the sales tax on commercial leases, was removed from the measure. Just over \$270 million of the tax package comes in the form of lowering local property taxes by approximately 6 percent. This is a result of the Legislature's decision to use state funds instead of property tax dollars for the school funding formula.

A number of major substantive issues also remain unresolved heading into the final week of session, such as the gambling compact and an economic development package. The \$3 billion gambling proposal (SB 7074) was postponed in its final committee making it nearly impossible for the measure to be approved during the regular session. However, leaving the door open for a deal, the House version (HB 7109) was scheduled for debate on the House Floor on Friday. It remains to be seen whether the House will take up the bill.

On economic development, the Senate package (SB 1646) was not heard in its last committee signaling the Legislature's unwillingness to approve this priority of the Governor. The bill would make several changes to the state's economic development programs to increase accountability and efficiency; however, the Legislature has not provided funding requested by the Governor to entice companies to Florida.

One issue heading to the Governor this week was SB 7101 which requires at least 10 of the 12 jurors in a death penalty case to recommend execution for it to be carried out. In January, the U.S. Supreme Court ruled Florida's current law unconstitutional because judges could reach a different decision than juries, which have only an advisory role in recommending death. Governor Scott has not signaled whether he will approve the measure. However, he has supported the death penalty since taking office. The Governor must act by March 10.