



2016 Legislative Session – Legislative Bulletin

Week Six – February 19, 2016

2016 Legislative Session – Stay Informed!

Today we hosted our week six **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 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.

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 has been placed on House Calendar.**

The companion to HB 1241, SB 946 by Sen. Grimsley (R-Sebring) passed its second committee of reference this week and has one more committee 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 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 passed its final committee of reference this week and now goes to the Senate floor for consideration.**

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.**

Sen. Don Gaetz (R-Destin) filed SB 1144 relating to Certificates of Need for Health Care-related projects. The bill does not repeal CON but provides that the only way you can be exempt from CON is by making an active and continuing effort to provide charity care to the uninsured and under-insured. The bill would also require new hospices, hospitals, and nursing homes to provide twice as much charity care as established facilities. New facilities that fail to provide the required amount of charity care would be penalized. In presenting the bill in committee this week, Senator Gaetz stated that, according to a Mercatus Institute study, CON was a regulatory barrier to competition and price transparency, and an out-of-date provision that failed to meet the objectives it was created to achieve. He pointed out the federal government has already repealed national CON laws.

This week, SB 1144 by Sen. Gaetz failed to pass the Senate Appropriations Subcommittee on Health & Human Services by a 6-2 unfavorable vote.

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 the House Calendar. The Senate companion, SB 964 by Sen. Grimsley is scheduled to be heard in its second committee of reference on February 22nd.

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 has been placed on the House Special Order Calendar for February 23rd, along with the companion, CS/HB 11 by Rep. Porter (R-Lake City). CS/HB 11 removes Broward County from the pilot project list and adds Hillsborough County. This legislation is positioned to pass.

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 passed the Senate and has been placed on the House Special Order Calendar for February 23 along with CS/HB 403 by Rep. Ahern. This legislation is positioned to pass.

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 the House Calendar along with a linked bill providing a public records exemption, HB 1063. The Senate companion, SB 1316 by Sen. Grimsley passed its last committee of reference this week.

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 passed its second committee of reference this week.

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 is scheduled for passage by the Senate on Third Reading on February 23rd.

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 its final committee of reference this week and has been placed on House Special Order Calendar for February 23rd. 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. 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. The bill is now ready for full floor debate.

SB 1496 has one more committee of reference and HB 1175 now heads to the House floor after passing its last 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 passed its final committee of reference this week and heads to the House floor.**

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.**

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 final committee this week and was combined with HB 1313 by Rep. Brodeur (R-Sanford). The newly combined bill tracks the previous bills but has an added provision: the Florida Department of Health is authorized to add three new additional dispensing organizations if 250,000 patients across the state seek medical marijuana. The bill now goes to the House floor. It is anticipated that this legislation will pass the Legislature this Session.

Activity of Interest

Confirmations

Thursday of this week, the Florida Senate confirmed Elizabeth Dudek as Secretary of the Agency for Health Care Administration. Secretary Dudek was one of 10 agency secretaries who would have lost her job without a vote during this session. She received unanimous support by the Senate with an affirmative confirmation vote of 35-0. As head of the health care agency, Secretary Dudek oversees Florida's Medicaid program. Along with Secretary Dudek, Sam Verghese and Mike Carroll were unanimously confirmed as Secretary of the Department of Elder Affairs and Secretary of the Department of Children and Families, respectively.

Earlier this week, the Senate Ethics and Elections Committee gave Agency for Health Care Administration Secretary Liz Dudek the nod after less than five minutes of testimony.

By contrast, health secretary and surgeon general John Armstrong testified before the Senate Health Policy Committee for nearly an hour, fielding questions about reductions in care provided at the state's county health departments and the state's growing number of AIDS cases. Secretary Armstrong cleared by just a one-vote margin, with Sen. Anitere Flores (R-Miami) joining the three Democrats on the committee to oppose his confirmation.

Budget

This week House Speaker Steve Crisafulli advised House members that budget negotiations will not begin until the week of Monday, February 22nd. As stated in his memo, "There is positive forward progress in the effort to reach an agreement on budget allocations with the Senate. However, there is still a great deal to be worked out."

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

Week Six Overview.

While progress on crafting a compromise between the House and Senate budgets appears to have stalled, both chambers moved forward on passing differing packages for gambling and economic development incentives.

The Senate committee approved a much more expansive plan than the agreement Governor Scott made with the Seminole Tribe in December. That agreement would allow the option of one additional slots facility each in Miami-Dade and Palm Beach counties but would not allow slots in other parts of Florida. It would also guarantee the state \$3 billion over the first seven years of the 20-year agreement. However, the deal must be ratified by the Legislature.

The Senate proposal would allow six additional counties to have slots in pari-mutuels and would allow slot machines in all pari-mutuel facilities. Further, the measure would provide for a voter referendum to approve gambling in other counties. Last week, the House proposal ratified the agreement struck between the Governor and the Tribe. It would also tighten some loopholes in the state's gambling laws and expand casino games in pari-mutuels in Miami-Dade, Broward and Palm Beach counties. Although the Governor and legislative leaders continue to work on the issue, the competing proposals have raised doubt on whether a compromise can be

reached before the end of session in three weeks.

On economic development, a House committee amended their reform proposal to bring it closer to the Senate version this week but how much funding each program will receive remains a sticking point between the two chambers. Both packages establish a fund to be used by the Governor to entice businesses to the state. Further, both proposals would allow legislators to review changes to incentive contracts and include provisions to ensure companies receiving incentives do not leave the state for a certain period of time. The House has set aside \$80 million for the programs which is far less than the \$250 million in the Senate proposal and also less than the amount requested by Governor Scott.

Another major issue moving forward would amend the "Right to Try Act" to allow people with terminal illnesses to use cannabis and authorize dispensing organizations to manufacture and distribute cannabis to those persons. During a House committee, the bill (HB 307) was combined with legislation that would create new regulatory standards for dispensing organizations and would authorize the Department of Health (DOH) to perform inspections and create a patient and caregiver registration card system (HB 1313). Further, the bill would allow the DOH to approve three additional dispensing organizations if the compassionate use registry reaches the benchmark of 250,000 qualified patients.

In 2014, the Legislature enacted the Compassionate Medical Cannabis Act (CMCA) which established a regulatory framework for dispensing organizations to manufacture and sell low-THC cannabis for medical use. Implementation of the act has been delayed due to legal challenges over the proposed rules. This bill will now head to the House floor. The Senate bill amending the "Right to Try Act" is waiting to be heard by the full Senate. The legislation does not contain the provisions in HB 1313 although the Senate sponsor has signaled his willingness to consider supporting those provisions.

Governor's Health Care Appointments - With no discussion, the Senate voted unanimously Thursday to approve the confirmations of 10 state-agency heads including those that lead the state's health-related Departments.

Confirmed Thursday were Mike Carroll, Department of Children and Families Secretary; Barbara Palmer, Agency for Persons with Disabilities Director; Sam Verghese, Department of Elder Affairs Secretary; and Liz Dudek, Agency for Health Care Administration Secretary.

John Armstrong, the Department of Health Secretary and the State's Surgeon General has not yet received final confirmation. Earlier in the week, the Senate Health Policy Committee voted 5 to 4 to confirm Armstrong.

Others in the Scott Administration that have been confirmed include: Department of Corrections Secretary Julie Jones, Department of Juvenile Justice Secretary Christina Daly, Florida Department of Law Enforcement Commissioner Rick Swearingen, Department of Management Services Secretary Chad Poppell, Secretary of State Ken Detzner, Department of Business and Professional Regulation Secretary Ken Lawson, Department of Environmental Protection Secretary Jon Steverson, Department of Transportation Secretary Jim Boxold and Jason Allison, executive director of the Agency for State Technology.