

# 2013 Session Wrap Up

## 2013 Regular Legislative Session is DONE. But will there be a Special Session on Medicaid Expansion?

Each legislative session has its own distinct personality. This one will be remembered as one that started with both parties working together until the last week, when the smooth sailing came to a screeching halt in the House.

House Democrats, upset that House Speaker Will Weatherford would not accept a Senate plan to use federal funds to expand Medicaid eligibility, invoked a rarely used parliamentary maneuver to force all bills to be read in full before proceeding with amendments and votes. Instead of using a reading clerk, Speaker Weatherford used "Mary," a fully computerized program which reads at a very fast pace. As a result, slowing the legislative process way down probably caused some bills to die.

As in every legislative session, a lot of bills (more than 1,800) were filed, but less than 10% (200) passed into law. Fortunately, LeadingAge Florida did not have any "must" pass bills. There were a few that we supported, most notably revisions to assisted living regulation and tort reform for nursing homes, but they were not critical to the continued operation of members.

For the first time in several years, the Legislature was not dealing with revenue deficits. Consequently, budget cuts for long-term care providers were never an issue. The budget process was relatively amicable without the usual competition among special interest groups and providers for limited funds.

### *Heath Care Budget*

With the state coffers showing a monetary surplus, the Legislature was able to increase funding in certain areas including health care. The budget that passed for Fiscal Year 2013- 14 includes a 4.7% increase in total spending and a 2.26% increase in general revenue (GR) funds over the previous year's appropriation.

Budget highlights of programs of interest to LeadingAge Florida members follows:

- **Funding for Additional Elder Waiver Slots – \$69.6 M total/ \$33.1 M GR –** Provides funding to serve an additional 5,543 individuals through the nursing home diversion program, PACE, the Assisted Living for the Elderly Waiver, the Aged and Disabled Waiver, and Community Care for the Elderly. The new PACE slots include:
  - Hillsborough County (75),
  - Lee (100),
  - Palm Beach (100), and

- Broward (50).
- **Alzheimer's Disease Initiative – \$2.30 M GR** – Restores Alzheimer's respite care services statewide, funding for Memory Disorder Clinics and other Alzheimer initiatives.
- **APD Medicaid Waiver Waitlist- \$24.2 M total, \$10.0 M GR** – Provides funding to increase those served through the Medicaid Home and Community-Based Services Waiver by approximately 750. An additional \$40.2 million (\$17.0 million GR) is also provided for the 2012-13 Fiscal Year to cover carry forward deficits.
- **Medicaid Price Level and Workload Adjustment – \$996.3 M total, \$32.9 M GR** – Increases Medicaid funding to cover caseload growth by 95,018 and provided a price level adjustment as recommended by the February 2013 Social Service Estimating Conference. No category of Medicaid eligibility is eliminated or reduced. No provider rates are reduced below current fiscal year levels.
- **Medicaid Provider Rate Increases –\$19.3 M total, \$7.98 M GR** – Increases private duty nursing rates for Licensed Practical Nurses by 10 percent; increases reimbursements for dialysis provides from \$100 to \$125 per visit; increases nursing home reimbursements for vent dependent residents by \$150 per day; and provides a 3% increase to Adult Day Training Providers.
- **Medicaid Inpatient Hospital Reimbursement Rate Adjustment - \$104.0 M, \$43.1 M GR** - Increases Hospital Inpatient Medicaid reimbursement to assist in transitioning to a Diagnostic Related Groupings (DRG) reimbursement methodology; and requires that the DRG model include a policy adjuster to maintain reimbursement levels for rural hospitals, freestanding rehabilitation hospitals, and facilities providing high levels of pediatric care.

### ***Assisted Living***

For the second consecutive year, despite involvement by the Agency for Health Care Administration and provider and consumer organizations, none of the proposed assisted living facility (ALF) bills were adopted by the Legislature.

Since the *Miami Herald* exposé on ALFs was published in 2011, the focus statewide has been to improve the enforcement of ALF regulations. In 2012, Gov. Rick Scott appointed the Assisted Living Work Group which met for two years to identify problems and recommend solutions to the governor and Legislature. LeadingAge Florida Chair Brian Robare and LeadingAge Florida ALF and HCBS Public Policy Chair Darlene Arbeit both served on the Work Group.

In addition, the Department of Elder Affairs (DOEA) and AHCA organized a Negotiated Rule-making Committee in 2012 with representation from various state agencies and stakeholders, including LeadingAge Florida Sr. Director of Regulations and Legal Affairs

Carol Berkowitz. The Negotiated Rule-making Committee was created to identify and remove outdated rules; update various provisions based on current practices such as training requirements, routine medical services, admission criteria, and staff coverage; and clarify ambiguous regulatory requirements.

This year, several ALF bills were filed. Sen. Eleanor Sobel (D-Hollywood) and Rep. Eddy Gonzalez (R-Miami) championed the two ALF legislative proposals that actually moved through the 9 weeks of session. In the end, disagreements between the House and Senate over health care priorities prevented the Legislature from adopting any ALF reforms.

**SB 646**, sponsored by Sen. Sobel passed the full Senate but never made it through the House of Representatives. The House companion bill, **HB 1319** by Rep. Gonzalez, died in the House Appropriations Committee.

During the last two weeks of session, SB 966, by Sen. Aaron Bean (R-Fernandina Beach) emerged as a vehicle for multiple health care legislative proposals, including the ALF language in SB 646 and HB 1319. LeadingAge Florida, along with other assisted living advocates met with Sen. Sobel to sort through the various proposals related to assisted living. Unfortunately, SB 966 was bogged down with more than 70 amendments, and by the last hours of session, it was apparent that the bill would not survive.

If the ALF bill had passed, it would have:

- Clarified who is responsible for assuring that mental health residents in an ALF receive necessary services.
- Clarified duties of the state Long-Term Care Ombudsman Program.
- Provided a provisional Extended Congregate Care (ECC) license for new ALFs and given AHCA greater authority to deny or revoke an ECC license.
- Reduced by half the number of monitoring visits in facilities with a Limited Nursing Services (LNS) or ECC license -- a priority of LeadingAge.
- Required that facilities with one or more, rather than three or more, state supported mental health residents obtain a Limited Mental Health (LMH) license.
- Allowed the AHCA to revoke the license of a facility with a controlling interest that has or had a 25 percent or greater financial or ownership interest in a second facility which closed due to financial inability to operate or was the subject of other specified administrative sanctions.
- Strengthened the criteria under which the AHCA must revoke or deny a facility's license.
- Expanded circumstances under which the AHCA must impose an immediate moratorium on a facility.
- Set fines for all classes of violations to a fixed amount at the midpoint of the current range.
- Require the AHCA to impose a fine for a class I violation even if it is corrected before the AHCA inspects a facility.

- Doubled fines for repeated serious violations.
- Required that fines be imposed for repeat minor violations regardless of correction.
- Doubled the fines for minor violations if a facility is cited for the same minor violation three or more times over the course of three licensure inspections.
- Created a fine in the amount of \$500 for ALFs not in compliance with background screening requirements.
- Added certain responsible parties and agency personnel to the list of people who must report abuse or neglect to the Department of Children and Families' (DCF) central abuse hotline.
- Required an additional inspection, within 6 months, of a facility cited for serious violations.
- Required new facility staff, which have not previously completed core training, to attend a 2 hour pre-service orientation before interacting with residents.
- Required that the AHCA conduct a study of inter-surveyor reliability to determine the consistency with which regulations are applied to facilities and report its findings and recommendations to the Legislature.
- Required that the AHCA propose a plan for an ALF rating system.

During the last two weeks of session, advocates met with Sen. Sobel to identify agreed upon amendments to improve the bill which Sen. Sobel intended to support if the House acted on either SB 646 or HB 1319. They included provisions to: create a new specialty licensed, known as the flexible bed license for independent living in retirement communities; lower the fine amounts from what was originally proposed in the bills; authorize trained unlicensed staff to assist with oxygen, Ted hose (compression stockings), etc.; require a study regarding the creation of a medication technician position in ALFs that would allow trained unlicensed staff to administer some medications; require provider input in the development of a proposed ALF rating system; and the availability for both consumers and providers to respond to a an ALF rating system website.

Although an ALF regulatory bill did not pass this year, the work that was done laid the groundwork for ALF legislation next year. Also, the proposed ALF rule changes that should take effect this summer are a good interim step in addressing some of the regulatory challenges that the Governor's ALF Workgroup identified. The proposed rule changes include language recommended by LeadingAge Florida clarifying that staffing requirements for retirement communities that license independent living for assisted living apply only to residents that are receiving assisted living services.

Another ALF legislative proposal of interest, **SB 616** relating to ALF Certification of Administrators by Sen. Aaron Bean and **HB 865** Rep. Dennis Baxley (R-Ocala), would have required ALF administrators to meet certain training and continuing education requirements established by a third-party credentialing entity. It also would have allowed the Department of Elderly Affairs to require additional training or education of any personal care staff in the facility -- except an administrator. We anticipate that there will be more discussion about this proposal over the interim.

## *Nursing Homes*

Although several bills were filed related to nursing homes, only HB 1159, by Rep. Marlene O'Toole passed both chambers of the Legislature.

***Nursing Home Certificate of Need/Moratorium Exemption*** -- Identical bills (**HB 1159/SB 1482**) that initially would have created an exemption for an unnamed age- restricted community to the nursing home certificate of need (CON) and the moratorium on new beds were introduced by Rep. H. Marlene O'Toole (R-Lady Lake) and by Sen. Alan Hays (R-Umatilla). The criteria for obtaining the exemption were intended to help The Villages, but were broad enough to cover The Top of the World -- another large age-restricted community. As the bills moved through committee and encountered opposition, they were amended to require an expedited review by AHCA staff that takes into account a specific formula to calculate bed need. The bill limits the number of community nursing home beds that can be approved under each application for expedited review to 120, and the total number of community nursing home beds for any single deed restricted community CON is capped at 240 beds, regardless of whether the retirement community is located in more than one qualifying county.

To determine the exact number of beds to be approved, AHCA must ensure that the rate of beds to thousand persons aged 65 and older does not exceed 16.1. In determining the number of beds to approve, the bill requires AHCA to use a prospective county population estimate three years into the future to demonstrate that the population of persons aged 65 and older will be at least 25 percent and that the rate of beds to thousand persons aged 65 and older will be no more than 16.1 In addition, the total number of beds in a new facility must be dually certified for Medicaid and Medicare. The bill provides that if the retirement community determines that more than one provider satisfies their requirements for the project they are not prohibited from notifying AHCA of their provider of choice, and AHCA is required to review the competing applications. The bill requires a qualified retirement community to make land available to applicants it deems to have met the requirements for the construction and operation of a community nursing home, only if the applicant has been issued a CON by AHCA. Finally, the bill provides for trauma centers, health care clinic licensure, children's specialty license hospitals, oral cancer treatment medication, and the prescription drug monitoring program.

HB 1159 passed both chambers and will soon become law unless vetoed by the governor, which is highly unlikely.

***Nursing Home Litigation*** -- Two other nursing home bills that were carefully monitored, but failed this session were **SB 1384** Relating to Nursing Home Litigation by Sen. Bill Galvano (R-Bradenton) and **HB 869** by Rep. Bill Hager (R-Boca Raton). The bills would have made it more difficult to sue a nursing home. They would have allowed a defendant nursing home to challenge a preliminary proffer of evidence related to a claim for punitive damages.

***Nursing Home Medicaid Eligibility -- SB 1748*** Relating to Medicaid Nursing Home Eligibility by Sen. Greg Evers (R-Crestview)/HB 1323 by Rep. Jeanette Nunez (R-Miami) would have limited the ability for persons to transfer assets to become eligible for Medicaid coverage of nursing facility services. They also did not pass.

### ***Affordable Housing***

***Community Development — HB 437*** Relating to Community Development by Rep. Daniel Davis (R-Jacksonville)/***CS/CS/SB 928*** by Sen. Wilton Simpson (R-New Port Richey) — It passed the Legislature and is now heads to the governor's office. The bill deletes an ad valorem tax exemption for property owned by certain Florida-based limited partnerships and used for affordable housing for certain income-qualified persons; and revises the powers of the Florida Housing Finance Corporation, etc.

***Housing Funds — SB 1852*** by the Appropriations Committee — Passed the Legislature without any *No* votes. The bill appropriates \$200,080,474 to several state entities for various housing and foreclosure-related programs and services, contingent upon such funds being deposited into the state treasury from the National Mortgage Settlement. This money comes from the agreement that settles the state and federal investigations finding that the country's five largest mortgage servicers routinely signed foreclosure related documents outside the presence of a notary and without really knowing whether the facts they contained were correct. Both of these practices violate the law.

Funds are appropriated, with specific restrictions and requirements, as follows:

- \$70 million for the State Housing Initiatives Partnership (SHIP) program;
- \$65 million for the State Apartment Incentive Loan Program (SAIL);
- \$10 million for housing for homeless persons;

### ***Bills of Interest***

*Many bills of interest that could affect members were monitored by LeadingAge Florida staff this session including:*

***PACE*** — HB 125 by Rep. Jimmie Smith (R-Lecanto)/SB 440 by Sen. Wilton Simpson (R-New Port Richey) would have created a Program of All-Inclusive Care for the Elderly (PACE) in the Pasco County area. SB 748 by Sen. Aaron Bean (R-Fernandina Beach)/SB 779 by Rep. Mia Jones (D-Jacksonville), if adopted would have created a PACE program in Baker, Duval, St. Johns and Nassau counties.

***Department of Elder Affairs Study*** — HB 601 by Rep. Matt Hudson (R-Naples) would have directed the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct a review and evaluation of the functions of the Department of Elderly Affairs.

**Home Health Agency Regulation** — SB 1094 by Sen. Anitere Flores (R-Miami)/HB 4031 by Rep. Jose Felix Diaz (R-Miami), which passed both chambers, reduces the mandatory fine amount levied against home health agencies (HHAs) that fail to file a quarterly report to the AHCA from the current fine of \$5,000 to a fine of \$200 per day up to a maximum of \$5,000 per quarter. The bill also exempts HHAs that do not bill Medicare or Medicaid, and are not owned by a health care entity which bills Medicare or Medicaid, from submitting the report and from the imposition of the fine for failing to file the report. This change should benefit LeadingAge Florida members that have an uncertified HHA.

**Baker Act** — HB 9 by Rep. Daphne Campbell (D-Miami Shores) would have added Advanced Registered Nurse Practitioners and Physician Assistants to the list of medical professionals who may execute an involuntary examination under the Baker Act. Currently, involuntary examinations may only be initiated by physicians, clinical psychologists, psychiatric nurses, mental health counselors, marriage and family therapists, and clinical social workers. There was no Senate companion.

**Arbitration Agreements** — CS/SB 530 by Sen. John Thrasher (R-St. Augustine) /HB 693 by Rep. George Moraitis (R-Fort Lauderdale) passed and is on its way to the governor. The measure adopts revisions to the 2000 Uniform Arbitration Act, as approved by the National Conference of Commissioners on Uniform State Laws. The bill significantly amends or repeals each section of the existing *Florida Arbitration Code*, and amends s. 682.01, F.S., to rename the chapter as the "*Revised Florida Arbitration Code*." The bill also clarifies that after June 30, 2016, all agreements to arbitrate, regardless of the date executed, will be subject to the Revised Florida Arbitration Code. This bill may affect the wording of arbitration clauses that LeadingAge Florida members now include in their contracts. Be sure to discuss the bill with your legal counsel if you use arbitration clauses or agreements.

**State Ombudsman Program** -- HB 1015 by Rep. Kenneth Roberson (R-Port Charlotte)/ SB 1212 by Sen. Darren Soto (D-Kissimmee) would have conformed terminology and programmatic requirements for the State Ombudsman Program to requirements in the Older Americans Act.

**Background Screening/Driver's License Information** -- SB 1112 by Sen. Rene Garcia (R-Hialeah)/HB 1021 by Rep. Betty Reed (D-Tampa) would have allowed the Department of Highway Safety and Motor Vehicles to share driver license photographs with the AHCA pursuant to an interagency agreement; added additional disqualifying offenses to background screening provisions; required that all persons seeking an background screening exemption from disqualification pay any court-ordered monetary penalty in full before being eligible to apply for screening etc.

**Medical Malpractice** -- SB 1792 by Sen. Tom Lee (R-Brandon) and the Senate Judiciary Committee, relating to medical negligence and malpractice, passed both chambers. There was no House companion. SB 1792 revises laws relating to ex parte

communications and qualifications of expert medical witnesses in medical negligence actions. It also allows a health care practitioner or provider who may be called as a witness in a medical negligence action to consult with his or her attorney. During a consultation, the practitioner or provider may disclose information disclosed by a patient or records created during the course of care or treatment of the patient. However, the bill prohibits the attorney from being a conduit for ex parte communications between the practitioner or provider and the defendant or the defendant's insurer. If the liability insurer for the provider or practitioner represents a defendant or prospective defendant in the action, the insurer may not choose an attorney for the practitioner, but may recommend attorneys other than the attorney representing the defendant or a prospective defendant. The practitioner's attorney may not disclose any information to the insurer, other than categories of work performed or time billed. The bill also revises informal discovery procedures under chapter 766, F.S., to authorize the defendant and his or her insurer to conduct ex parte interviews of a claimant's treating health care providers. The bill limits the class of individuals who may offer expert testimony against a defendant specialist in a medical negligence action. These experts must specialize in the same, rather than similar, medical specialty as the defendant.

**Florida Sales Tax Holiday** — SB 406 by Sen. Andy Gardiner (R-Orlando) creates the 2013 Florida Sales Tax Holiday that includes a three day period, Aug. 2 through Aug. 4, during which a number of items won't be subject to the 6 percent sales tax. There was no House companion. These items include: clothes, shoes, wallets, bags, and backpacks costing \$75 or less and school supplies costing \$15 or less would be covered by the tax holiday. Personal computers and related accessories costing \$750 or less, as long as they're not used for commercial purposes, are also covered, as are digital readers, tablets, and items like keyboards or monitors – as long as they don't include a TV tuner.

State economists have estimated the impact of the proposed three-day holiday at \$28.3 million to the state and \$6.4 million to local governments – though some economic studies have shown that people are induced to buy more uncovered items during the sales tax holiday, meaning tax collections could increase.

**Workers Compensation** — HB 655 by Rep Steve Precourt (R-Orlando)/ CS/SB 726 by Sen. David Simmons (R-Altamonte Springs) will pre-empt to the state laws on forms of compensation other than wages, such as earned sick time. The measure is aimed at preventing local governments from passing laws requiring employers to provide things like earned sick leave or other types of wages. One such effort, a proposal in Orange County to require earned sick time, was an impetus for the bill.

**Citizens Property Insurance Corp.** — SB 1770 by Senate Banking & Insurance/CS/CS/HB 835 by Rep John Wood (R-Winter Haven) made some modest changes designed to reduce the number of policies entering the state-run insurer. The bill will reduce the maximum Citizens' policy limit from \$2 million to \$1 million and further reduces this amount by \$100,000 a year for 3 years to \$700,000. Citizens will be prohibited from covering structures commencing construction after July 1, 2014,

seaward of the coastal construction control line. Finally, SB 1770 sets up an inspector general for Citizens to watch and hopefully prevent any future scandals involving lavish travel spending and questionable pensions for misbehaving employees.

**Early Voting** — HB 7013 by the House Appropriations Committee/CS/CS/CS SB 600 by Sen. Jack Latvala (R-Clearwater)

The bill which passed the Legislature makes a number of changes to state law as it relates to voting including:

- Requires a minimum of 8 days and a maximum of 14 days of early voting;
- Requires between 8 and 12 hours per day of early voting;
- Requires a minimum of 64 hours of early voting with a maximum of 168 hours;
- Expands the list of permissible early voting sites to include fairgrounds, civic centers, courthouses, county commission buildings, stadiums, convention centers, government-owned senior centers, and government-owned community centers; and
- Permits Supervisors of Elections to select one additional early voting site of his or her choosing under certain circumstances.

The following bills related to Medicaid Expansion failed to pass the 2013 Regular Legislative Session. Several legislative leaders have been calling for a special session. We will wait and see whether the Governor does indeed call for a special session.

**Health Care** — SB 1816 by the Appropriations Committee

The bill, which died, would create a program called "Healthy Florida" that would be administered by the Florida Healthy Kids Corp. Healthy Florida would have required enrollees to pay premiums and co-payments for services, with the amounts set each year in the state budget. Enrollees would have a choice of health plans, which would receive contracts on a statewide or regional basis. The program would have relied heavily on federal funding to pay for the coverage --- and would end if federal funding dropped below 90 percent.

**Health Choice Plus Program** — SB 1844 by the Health Policy Committee/ CS/HB 7169 by the Appropriations Committee

The bill, which also failed to pass, would have created a state program to help the uninsured pay for various health care options by subsidizing the costs. Florida Health Choices mission was to allow individuals to shop for a variety of health coverage's and plans. The funding would have mostly been paid for using state general revenue funds. Enrollees would have paid at least \$20 a month for their plans and the state's subsidy would have been about \$10 a month.

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