



## 2014 Legislative Session Weekly Update

### LeadingAge Florida

An Organization of Retirement Housing and Long-Term Care Communities

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**Week Five of 2014 Session**

**April 4, 2014**

The Florida Legislature has entered the second half of Florida's 60-day legislative session. So far, more than 1,700 bills have been filed and 10 have passed. It seems that lawmakers aren't pushing hard for bills that will upset important interest groups before the November elections, so it will be interesting to see how many bills are actually passed in the second half. There are still plenty of issues for the chambers to work out before sine die, but they will likely be achieved through negotiation and compromise.

### **Budget**

The House and the Senate passed their budget proposals (**HB 5001, SB 2500**) on a vote of 100-16 and 38-2, respectively. Compared to recent years, the budget figures for the two plans are not that far apart (the Senate's \$74.9 billion budget is about \$400 million shy of the House), but there are key differences in how the chambers propose to spend that money.

Leaders in both chambers said that they should be able to reach agreements on allocations -- overall spending caps for broad areas of the budget -- in the coming days and start scheduling meetings of joint House-Senate negotiation committees where they will work through the differences between the House and Senate budget proposals. In fact, the wheels have already begun turning. The Senate President announced the conferees that have been designated to negotiate with the House on the budget and related bills, and the legislative leaders are planning to start meeting by the end of next week.

You can participate in LeadingAge Florida's grassroots advocacy campaign by doing the following:

- Participate in the **Weekly Legislative Update Conference Calls** with LeadingAge Florida's staff and legislative consultants (**10 – 11 a.m. on Fridays, through May 2**) to learn about what's happening during the 2014 Legislative Session.
- Read the "End-of-Week" *Legislative Update* for the latest on LeadingAge Florida priority legislation.
- Respond to LeadingAge Florida's calls to action during the legislative session.
- Call or email your legislators when you are concerned about an issue affecting your community or organization.
- Invite your legislators for tours and town hall meetings after session so they can meet with your residents or clients and their families.

### **Advocacy in Action**

More than 60 LeadingAge Florida members descended on the Capitol Building in Tallahassee on Tuesday, April 1, and met with legislators and their aides to share their thoughts on key legislative priorities.

**Advocacy Works!** One day after our members met with Rep. Reggie Fullwood's staff, the Representative lent support to LeadingAge Florida's position on the Sadowsky Trust Fund.

In 1992, a tax on a portion of the proceeds from the documentary stamps paid on all real estate transactions was established and allocated to the Trust Fund to be used for affordable housing programs. Currently, the Senate appropriates the money collected in the Trust. In recent years, the Legislature has “swept” the Fund into the State’s general revenue allocations. This year’s current House budget proposal would sweep \$136.8 million of Trust Fund money into general revenue funds, while the Senate plan would keep all of the money intact.

While on the House Floor, Rep. Fullwood asked the House Appropriations Chairman to adopt the Senate funding position. The Representative noted that an increase in funding levels for the Sadowsky Trust Fund would create jobs. Thank you to our members who met with the Representative’s staff and advocated for Housing funds!

## *Affordable Housing Bills*

### Housing Trust Funds

As we mentioned above, the House and Senate will begin working through the differences between their budget proposals this week. One of the key differences that the Appropriations conferees will need to work out is their stances on the Sadowsky Trust Fund.

Despite pressure from low-income housing advocates such as the Florida Housing Coalition, realtors and the construction industry, the House Transportation and Economic Development Appropriations Subcommittee’s budget proposal released Tuesday would sweep \$136.8 million of affordable housing trust fund money into general revenue funds.

The total amount of revenues projected for the trust fund is projected to be \$226.1 million for the 2014-2015 fiscal years. The House Transportation and Economic Development Appropriations Subcommittee’s proposal would provide \$44.65 million for the State Housing Initiatives Partnership, also known as SHIP, which provides funds to local governments as an incentive to create partnerships that produce and preserve affordable homeownership and multifamily housing. The program was designed to provide 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. \$44.65 million would be allocated to the State Apartment Incentive Loan (SAIL) program, a similar program providing low-interest loans for such projects.

On the other side of the Capitol, the Senate plan kept all of the money intact.

Although proposals from the House and Senate are nearly identical on large portions of the transportation and economic development sections of the budget – both fully fund the transportation work program with at least \$8.8 billion – the discrepancy in the two chambers’ affordable housing funding is a major sticking point.

***HM 925/SM 576 Relating to Supportive Housing for the Elderly Program*** - by Rep. Pafford/Sen. Abruzzo

Senate Memorial 576, which finds that the elderly population in Florida is in need of affordable housing and urges the United States Congress to provide adequate funding for the Supportive Housing for the Elderly Program, passed the Senate!

The House companion, House Memorial 925 by Rep. Pafford, has been referred to the Local and Federal Affairs Committee and Economic Affairs Committee.

**HB 573/SB 248 Relating to Assisted Living Facilities** - by Rep. Ahern/Senate Children, Families and Elder Affairs and Sen. Sobel

The ALF reform bill is intended to strengthen the enforcement of current regulations for Assisted Living Facilities (ALF) by revising fines imposed for licensure violations, clarifying existing enforcement tools, and requiring an additional inspection for facilities with significant violations. It is similar to the ALF bill that failed to pass in the last two years.

Specifically, if the bill is adopted this year, it will:

- Specify who is responsible for ensuring that mental health residents in an ALF receive necessary services.
- Clarify the duties of the State Long-Term Care Ombudsman Program.
- Amend language related to ALF specialty licenses by:
  - Creating a provisional Extended Congregate Care (ECC) license for new ALFs and specifying when the Agency for Health Care Administration (AHCA or Agency) may deny or revoke a facility's ECC license.
  - Reducing the number of monitoring visits that AHCA must conduct for ALFs with Limited Nursing Services (LNS) licenses and ECC licenses. This provision was initially proposed by LeadingAge Florida representatives a few years ago.
- Specify when AHCA may waive a monitoring visit in facilities with an ECC or LNS license. This is also a LeadingAge Florida proposal.
- Require that facilities housing one or more state supported mental health residents obtain a limited mental health (LMH) license. Current law only requires an LMH license for facilities with three or more mental health residents.
- Allow AHCA to revoke the license of a facility if an entity with a controlling interest has or had a 25 percent or greater financial or ownership interest in a separate facility that closed due to financial inability to operate or was the subject of other specified administrative sanctions. Current law allows AHCA to deny such a facility's license during the renewal process.
- Clarify the criteria under which AHCA must revoke or deny a facility's license.
- Specify circumstances under which AHCA must impose an immediate moratorium on a facility.
- Amend fine amounts.
- Amend the definition of "assistance with self-administration of medication" to add several items to the list of services for which unlicensed staff can provide assistance to residents.
- Add 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 or department) central abuse hotline.
- Require an additional inspection, paid for by the facility, within 6 months of a facility being cited for specified serious violations.
- Clarify that in a continuing care facility or retirement community that licenses units designated for independent living as ALF, the staffing requirements in rule will apply only to residents who receive AL services. This amendment was incorporated into the amended bill at the request of LeadingAge Florida. It is an alternative to our original proposal to create an ALF flexible license.
- Require new facility staff, who have not previously completed core training, to attend a 2-hour pre-service orientation before interacting with residents.

- Require the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct a study of inter-surveyor reliability in order to determine the consistency with which AHCA applies regulations to facilities, and requires OPPAGA to report its findings and recommendations by November 1, 2014.
- Require AHCA to implement an ALF rating system by March 1, 2015.

SB 246 includes language for a public website or blog that would be maintained by AHCA for the sole purpose of comments from the public related to an ALF. Both bills currently have fines based on bed size. We anticipate that the House will remove this provision from the bill this Thursday, April 10 and substitute language submitted by LeadingAge Florida proposing that administrative fines be imposed based on the scope of violations cited (whether it constitutes an isolated, patterned or widespread incident) with an average fine per violation. This will remove discretion from AHCA.

On Friday morning, there was an erroneous report that the Senate bill would repeal the licensure exemption for ALF's and Nursing Homes from having a separate license for Adult Day Care. That amendment was withdrawn during the Senate's last committee meeting. The bill **WOULD NOT** repeal the exemptions, and current law remains in place.

This week, the full Senate voted on the bill and it is in House messages. The House companion, HB 573 by Rep. Ahern, is scheduled to be heard next Thursday, April 10, in the House Health and Human Services Committee.

### *Nursing Home Bills*

#### **HB 287/SB 268 Relating to Certificates of Need** - by Rep. Artilles/Sen. Grimsley

SB 268 provides for Certificates of Need. It is intended to provide flexibility for nursing homes to move beds in order to follow population trends that have occurred and create incentives for nursing home providers to replace older nursing homes with modern buildings to better meet the needs and demands of the current nursing home resident.

LeadingAge Florida advocated strongly for the CON flexibility and the bill as a whole. We were able to insert the amendment that will allow an expedited CON review for nursing homes wishing to relocate a portion of its beds to an existing facility or a new facility in the same district, or a contiguous district, provided that the total number of beds in the State does not increase. Details of this proposal include:

- Amends 408.034(5) to reduce the sub-district average occupancy from 94% to 92% and remove unnecessary language. (The redacted language refers to a waiver program that will not exist upon implementation of the long-term care portion of the Statewide Medicaid Managed Care Program)
- Amends 408.034(6) to allow aggregation of need across sub-district lines for the purposes of proposing new nursing homes.
- Amends 408.036(2)(b) to allow expedited CON review of nursing home replacements within a 30 mile radius, without regard to district lines (not to exceed 30 total beds or 25% of the number of beds licensed).
- Amends 408.036(2)(c) to allow expedited CON review of nursing home replacements beyond 30 miles in the same sub-district or in geographically contiguous sub-districts within the same district as long as the target sub-district has an 85% occupancy level.
- Allows an expedited CON review for a nursing home to relocate a portion of its beds to an existing facility or a new facility in the same district, or a contiguous district, provided that the total number of beds in the State does not increase.

- Amends 408.036(3)(k) to reduce the required 12-month occupancy from 96% to 94% for the addition of small numbers of nursing home beds for existing facilities to be exempt from CON review (Additions are allowed in increments of 10 beds or 10 percent of the number of licensed beds or, for Gold Seal, 20 beds or 10 percent of the number of licensed beds, whichever is greater).
- Amends 408.036(3)(p) to increase the distance for the replacement of a nursing home to be exempt from CON review from 3 miles to 5 miles.
- Amends 408.036(3)(q) to allow for the consolidation or combination of licensed nursing home beds or transfers of beds within the same district, instead of the current allowance within sub-districts, to be exempt from CON review and clarifies the definition of multiple nursing home to use current statutory language (This applies to providers that operate multiple nursing homes within the same district, and the relocation must be within 30 miles).

Although the bill repeals the Moratorium on the construction of new nursing home beds, it restricts the Agency for Healthcare Administration (AHCA or Agency) from issuing any further CONs for nursing home beds once 2,500 total new beds statewide have been approved. This provision in the bill expires on July 1, 2017.

The House passed the bill by a vote of 116 to 0 on Thursday, March 27. The Senate bill was voted out of the Senate Appropriations Subcommittee on Health and Human Services by a vote of 13 to 0 on Tuesday, April 2. The Senate bill's next stop is the full Appropriations Committee.

**HB 569/SB 670 Relating to Nursing Home Litigation Reform** - by Rep. Gaetz/Sen. Thrasher

HB 569/SB 670 deals with nursing home lawsuits. The bill is intended to focus lawsuits against those directly at fault while preventing claims against “passive investors” such as banks, creditors, property landlords and others who do not make daily care decisions.

HB 569 is currently on the House Floor calendar on 2<sup>nd</sup> reading. SB 670 passed the Senate Floor by a vote of 36 to 3 on Thursday, April 3.

<i>Home and Community Based Services Bills</i>
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**HB 935/SB 1082 Relating to Adult Day Care Centers** - by Rep. Murphy/Sen. Legg

This bill revises exemptions from licensure and regulation for Adult Day Care. It provides for operation of adult day care centers in temporary locations under certain conditions; establishes notification requirements when a center relocates; authorizes the Agency for Healthcare Administration (AHCA or Agency) to grant conditional licenses to centers that relocate; provides license renewal and inspection requirements; and adds grounds for Agency action against the owner of a center or its operator or employee.

The original bill removed a day care licensure exemption for nursing homes and assisting living that has been available for over 20 years. An amendment to SB 1082 to restore the original exemption from licensure was adopted. An amendment is still necessary in order for HB 935 to be identical. The bill's effective date is July 1, 2014. The Senate bill has been temporarily postponed by the Appropriations Subcommittee on Health and Human Services, and the House bill is currently in the Health Innovation Subcommittee.

<i>Bills of Interest – All Members</i>
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**HB 91/SB 508 State Ombudsman Program** – by Rep. Roberson/Sen. Detert

This bill revises the operating structure and internal procedures of the State Long-Term Care Ombudsman Program (LTCOP), housed in the Department of Elder Affairs (DOEA), to reflect current practices, maximize operational and program efficiencies, and conform to the federal Older Americans Act (OAA), 42 U.S.C. §§ 3001, et seq.

The LTCOP is operated pursuant to Part I of Chapter 400, F.S. The bill revises Part I of Chapter 400, F.S., to:

- Provide the State Ombudsman with final authority to appoint district ombudsmen.
- Include definitions of “district,” “State Ombudsman” and “representative of the office;” revise the definition of “resident;” and delete the definition of “local council” to reflect a change in organizational structure.
- Revise the duties of the State Long-Term Care Ombudsman Council.
- Revise and clarify the application and training requirements in order to be appointed as an ombudsman, including the addition of a level 2 background screening as part of the application process.
- Expand the duties of ombudsmen in the local districts to comply with the OAA, to include clarified parameters for complaint resolution and the authority to establish resident and family councils within long-term care facilities.
- Remove the notice publication requirement for internal LTCOP district staff meetings.
- Clarify the complaint investigation process and the facility assessment process.
- Conform the complaint investigation process to the requirements of the OAA.
- Require certain information to be provided to a resident of a long-term care facility upon first entering the facility to confirm that retaliatory action against a resident for filing a grievance or exercising a resident’s rights is prohibited.

The bill appears to have no significant fiscal impact on state or local government. The bill provides an effective date of July 1, 2014. The House bill was heard this week in the Health & Human Services Committee. An amendment was adopted to clarify that complaints made to the Ombudsman must be resolved or good cause must be shown for Gold Seal applicants. The Senate bill is currently in the Appropriations Subcommittee on Health and Human Services. It has not been heard.

**HB 819/SB 1066 Relating to Department of Health** - by Rep. Pigman/Sen. Grimsley

This bill authorizes the Department of Highway Safety and Motor Vehicles (DHSMV) to provide reproductions of specified records to the Department of Health (DOH or Department). It clarifies the Department's duties to maintain the confidentiality of patient records obtained under subpoena. It authorizes licensees under investigation to inspect or receive copies of related patient records; deletes requirements for size of health profession licenses; deletes the fee for wall certificates; and authorizes boards or DOH to waive certain fees for a specified period. It requires a toll-free telephone number for public reporting of certain complaints. It revises certified nursing assistant in-service training requirements and it repeals the Council on Certified Nursing Assistants. This week an amendment to add another nursing home administrator to the board makeup and reduce the health care provider board member from 2 to 1 went on the bill. The effective date is July 1, 2014.

The bill removes the requirement that medical doctors complete certain continuing education requirements, but authorizes the Board of Medicine (Board), through rulemaking, to mandate specific continuing medical education requirements. The Board may, by rule, allow the fulfillment of continuing education requirements for:

- Continuing medical education courses approved by the American Medical Association.
- Attendance at board meetings in which a licensee is being disciplined.
- Service as a volunteer expert witness in a disciplinary proceeding or service as a member of a probable cause panel.
- Pro bono services to indigent and underserved populations or patients in critical need areas.
- Performing research in critical need areas.
- Training for advanced professional certification.

This bill allows a board, or the Department when there is no board, to adopt rules (under certain circumstances) to waive initial application and licensure fees, and renewal of licensure fees, for health care practitioners licensed under Ch. 456, F.S. The waiver of renewal fees may not exceed 2 years.

This bill will assist the Department in investigations of health care practitioners or persons conducting unlicensed activities by allowing the Department to enter into an interagency agreement with the Department of Highway and Safety Motor Vehicles to access current digital photographic images of licensed health care practitioners and authorizing the Department, instead of the Agency for Health Care Administration (AHCA or Agency), to access patient records.

In addition to the above, the bill:

- Removes the option of apprenticeship as a pathway to licensure for massage therapists.
- Aligns continuing training requirements for certified nursing assistants' certification renewals with their biennial renewal cycles and abolishes the Council on Certified Nursing Assistants.
- Removes the requirement that the Department send a notification by registered mail to each registered dental laboratory operator within 30 days following the expiration date of the dental laboratory operator's registration.
- Updates the names of certain accrediting bodies for midwifery programs and registered dietitians.
- Revises the membership structure for the Board of Nursing Home Administrators and allows for those with a master's degree in health care services or an equivalent field to take the examination to be a licensed nursing home administrator regardless of the type of bachelor's degree earned.
- Requires an inter-facility transfer in an ambulance if a patient is "bed confined" or requires the administration of medical oxygen.

SB 1066 passed the Senate Health Policy Committee this week. It still has two more committee stops. The house companion, HB 819 by Rep. Pigman, passed its final committee stop this week and is now headed to the House Calendar.

**HB 629/SB 638 Relating to Charities** - by Rep. Boyd/Sen. Brandes

The bill amends current law to provide increased oversight of charitable organizations and sponsors, professional fundraising consultants, and professional solicitors. The bill places additional scrutiny on charities that most commonly mislead contributors including:

- Background checks and solicitation scripts for telemarketers.
- Tougher scrutiny for soliciting funds after natural disasters or other tragedies.
- Prevents charities from hiding their activities in a complicated web of connected organizations.

The bill requires additional reporting from charities that receive the most contributions by requiring:

- Reviewed financial statements.
- Audited financial statement for over \$1 million earned.
- Detailed financial reports for organizations that only spend 25% of earnings if they are over \$1 million.

HB 629 was passed favorable by Regulatory Affairs. The Senate companion, Senate Bill 638 by Sen. Brandes is in the Appropriations Committee.

**HB 271/SB 444 Relating to Workers' Compensation** - by Rep. Cummings/Sen. Galvano

This bill makes changes to workers' compensation insurance compliance rules. It would give companies receiving stop-work orders for not carrying enough workers' compensation insurance five more days before the order is issued, allow businesses to enter a payment plan for fines associated with the order, remove redundant reporting requirements and limit the review period for coverage gaps from three years to two years.

On April 1, 2014, the House voted unanimously in favor of HB 271. The Senate version, SB 444, still has to go before the Senate Appropriations Committee before it gets to the chamber floor.

**SB 782/HB 1231 Relating to Government Data Practices** - by Sen. Brandes and Rep, Beshears

This bill would require the Division of Library and Information Services of the Department of State to adopt rules providing procedures for an agency to establish schedules for the physical destruction or other disposal of records containing personal identification information. It also requires an agency that collects and maintains personal identification information to post a privacy policy on their website. Finally, it will require the Agency for Health Care Administration (AHCA or Agency) to provide specified data and information for a public website on assisted living facilities.

HB 1231 is currently in the House Appropriations Committee and SB 782 passed out of the Senate's Appropriation Subcommittee on Health and Human Services on Thursday, April 3 by a vote of 12 to 0.

**SPB 7028/HB 167 Relating to Telemedicine** - by Senate Health Policy

This bill creates the Florida Telemedicine Act (the Act) and defines the key components for the practice of telemedicine. The Act establishes a registration process for out-of-state, non-Florida licensed health care practitioners with a biennial fee and exemptions from registration for limited annual consultations, emergency services, and practitioner-to-practitioner consultations without the patient present.

The standard of care for telemedicine service is in line with those for health care services provided in-person. The nonemergency prescription of a legend drug based solely on an online questionnaire is specifically prohibited, and a controlled substance may not be prescribed through telemedicine for chronic, non-malignant pain.

Regulatory boards, or the Department of Health (DOH or Department) if there is not an applicable board, may adopt rules to administer the act. Rules prohibiting telemedicine that are inconsistent with the Act must be repealed.

The Act requires a telemedicine provider to be responsible for the quality of any equipment or technology and to maintain records in accordance with federal and state laws.

Under the Act, if a health insurer or health plan covers telemedicine services, then remuneration must equal the amount that would have been paid for in-person services. The amount of the reimbursement is to be determined by the individual telemedicine provider and the health insurer or health plan. The Act allows a health plan or health insurer to impose a deductible, copayment or co-insurance if the amount charged does not exceed the amount charged for a non-telemedicine service. Health plans and health insurers may limit telemedicine coverage to in-network providers. The bill authorizes the executive directors of the regulatory boards, along with the Department, to negotiate one or more interstate compacts to allow for the practice of telemedicine across state lines. An annual report of any negotiated compacts is due to the Governor and Legislature on December 31, 2014 for ratification by the Legislature during the next session.

The Medicaid program must reimburse providers for telemedicine services in the same manner as provided for in-person services. Reimbursement amounts must be negotiated between the parties to the extent permitted under federal law. Regardless of the amount negotiated, reimbursement for both the originating and the distant site should be based on the services provided during the encounter. A process for discontinuation of reimbursement for a Medicaid service through telemedicine is provided if the Agency for Health Care Administration (Agency or AHCA) can provide documentation showing that a specific telemedicine service is not cost effective or does not meet the clinical needs of Medicaid recipients. The Medicaid provisions sunset on June 30, 2017.

AHCA currently reimburses for telemedicine in the following three areas:

- Behavioral Health
- Dental
- Physician Services

AHCA is required to submit a report on the usage and costs, including any savings, of telemedicine services provided to Medicaid recipients to the President of the Senate, the Speaker of the House of Representatives and the minority leaders of the House and Senate by January 1, 2017.

Senate Proposed Bill 7028's effective date is July 1, 2014. It will be heard by the Senate Health Policy Committee. HB 167 remains on 1<sup>st</sup> reading on the House Floor.

**For a copy of the bills listed in this bulletin, please call Legislative Information at 800-342-1827 or use the Florida "Online Sunshine" website on the Internet at <http://www.leg.state.fl.us>. Hard copies of bills are available through House Documents (850/488-7097) or Senate Documents (850/487-5915).**