



2014 Legislative Session Weekly Update

LeadingAge Florida

An Organization of Retirement Housing and Long-Term Care Communities

1812 Riggins Road, Tallahassee FL 32308

(850)671-3700 – Fax: (850)671-3790 – www.leadingageflorida.org

Week Nine of the 2014 Session

May 2, 2014

Sine Die!

This year, lawmakers only passed 264 bills and filed 1,812 bills during Florida's 60-day Legislative Session, the fewest since at least 2001. Compared to the yearly averages for the last 10 years, that represents a 22% drop in bills passed and a 23% drop in bills filed.

Republican **Gov. Rick Scott's** uphill battle for reelection – he's currently polling behind his predecessor, (now) Democrat, **Gov. Charlie Crist** – is cited by some lawmakers and most political observers as the main reason for this year's low output. The GOP-controlled Legislature did not want to send Gov. Scott any bills that could possibly hinder his chances of reaching out to the political middle or upset potential campaign donors. That meant that bills favoring one interest group over another, already difficult to pass in non-election years, faced greater resistance this year, if they even got filed.

Budget

After the state-mandated 72-hour cooling off period had passed, the House and Senate voted on the budget, along with any remaining bills, in time for a prompt finish of the 2014 Legislative Session at 10:40 Friday night.

Due to a revenue surplus, a number of previously unmet needs were addressed with a budget total of \$77.1 billion; a 3.5% increase over the 2013-14 budgets of \$74.5 billion.

Housing Trust Funds

The Legislature allocated \$100 million to the **State Housing Initiatives Partnership Program (SHIP)**, and \$67.7 million to the **State Apartment Incentive Loan** program (SAIL). This constitutes full funding for SAIL and 75% funding for SHIP. While this is not what we hoped for, it is certainly an improvement.

This appropriation level represents 75% of the Sadowski funds estimated to be available for appropriation during FY 2014-2015, the highest level of funding since FY 2007-2008.

Home and Community-Based Services

The Budget Conference Committee increased funding for Community Care for the Elderly (CCE) by \$5 million to provide services to seniors on the waiting list. \$4 million of this increase is provided as recurring general revenue; \$1 million is non-recurring general revenue. This constitutes **a 9% increase** in the base budget for CCE!

In addition, \$1.3 million is provided to the Aging Resource Centers to assist seniors enrolling in the Statewide Medicaid Managed Care Long Term Care Program.

An additional 500 PACE slots were provided in the following counties:

- o Broward - 125
- o Charlotte - 10
- o Collier - 10
- o Lee - 30
- o Miami-Dade - 125
- o Pinellas - 100
- o Palm Beach – 200

For Alzheimer's Respite Care, the budget conference committee provided a \$5.7 million increase, \$4 million of which is recurring general revenue and \$1,683,000 of which is non-recurring general revenue. These new funds constitute **a 39% increase** in the Alzheimer's disease initiative's base budget. All new funding is allocated to serve seniors who are on the waiting list for care.

In addition, Assistive Care Services received \$8.4 million for an unspecified rate increase. Details will be available at a later date.

Funding for the existing waiver programs continues to be phased out as recipients are transitioned to the Statewide Medicaid Managed Care Long-Term Care Program. A new provision will require AHCA to ensure that residents eligible to transition to the existing home and community-based services waivers have first resided in a nursing home for 60 consecutive days.

The Department of Elder Affairs is tasked with developing a frailty-based scoring system to prioritize individuals for enrollment in the Medicaid Long-Term Care Waiver program.

Nursing Homes

For the first time in a very long time the personal needs allowance is increased! The allowance increased substantially from the current \$35 per month to \$100 per month.

The budget authorizes the transition to annual rate setting for nursing homes. On July 1, 2014 rates will be set for six months, on January 1, 2015 for eight months, and on September 1, 2015 and thereafter for 12 months. This provision was a recommendation of the 2009 Nursing Home Reimbursement Workgroup.

The nursing home budget received a substantial infusion of funds. The increase is \$127 million, which equates to 4.2% above the 2013-14 budget level. \$75.2 million is dedicated to price level increase. This represents an average per day increase of close to \$5. Additional authority is provided for increasing the revenues generated by the Quality Assessment. The specific impact of this provision will not be determined until the July 1, rate setting.

The Agency on Health Care Administration's estimated rate projection for July 2014 and January 2015 will be available online.

<i>Affordable Housing Bills</i>
--

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 Memorial 925 by Rep Pafford passed the Local & Federal Affairs Committee 16-0. It is now headed to the Economic Affairs Committee. The Memorial died in Committee.

SB 626/HB 587 Relating to Charitable Exemption from Ad Valorem Taxation - by Sen. Hays/ Rep Metz

This bill creates s. 196.1955, F.S., allowing property owned by an exempt organization to receive an ad valorem exemption for educational, literary, scientific, religious or charitable purposes if the property owner has taken “affirmative steps” to prepare the property for an exempt purpose. The bill consolidates the existing provisions allowing affordable housing, religious houses of worship, and educational property to receive the exemption while affirmative steps to prepare the property are being taken into one provision that would allow all educational, literary, scientific, religious or charitable property to use this exemption. At the end of five years, if the property is not in active use for an exempt purpose and affirmative steps to prepare the property are not being taken, the property owner must pay back taxes owed plus 15 percent interest. A tax lien will be placed on the property for purposes of collecting these taxes.

The 5 years deadline has been a sticking point, because some property owners, such as Habitat for Humanity, may still be raising the necessary funds to start the project at that point.

Both bills died. There was confusion about how to consolidate the existing provisions allowing affordable housing, religious houses of worship, and educational property to receive the exemption while affirmative steps to prepare the property are being taken.

Assisted Living Facility Bills

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.

On Thursday, April 10, The House Health and Human Services Committee amended HB-573 by incorporating four other legislative bills, creating Proposed Committee Substitution 573. Incorporated into PCS 573 are:

- HB 789 Rights of Grandparents
- HB 799 Transitional Living Facilities
- HB 1254 Health Care Services
- HB 7111 Recovery Care Centers

HB 573 passed the House by a vote of 101 to 14. The Senate companion bill SB 248 was never taken up by the House: HB-573 eventually became one of two main healthcare trains the other being HB-7015, amended to include many health care related issues not only in Long-Term Care, but also related to hospitals, managed care companies, ARNP's licensure, Telemedicine, Trauma Centers to name a few.

The Senate never did take up HB-573 even though LeadingAge Florida worked with the Senate to amend the bill in the event that the Senate took it up. The bill died in Senate messages.

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

The bill 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 3,750 total new beds statewide have been approved. This provision in the bill expires on July 1, 2017.

Legislation passed both chambers and is on the Governor's desk. The bill repeals the moratorium effective July 1, 2014. AHCA will be authorized to approve new community nursing beds under the CON process. However the bill prohibits AHCA from approving more than 3,750 total new beds. This bill will sunset on June 30, 2017.

LeadingAge Florida was instrumental in securing language which allows the nursing homes greater flexibility for the construction of new nursing beds and the expansion of existing nursing homes.

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.

This Legislation passed both chambers and is on the Governor’s desk. The bill amends statutory provisions relating to civil causes of action against nursing homes, the release of nursing home resident records, and timely payment of adverse final judgments. The bill limits the class of person that can be sued in the initial pleading for negligence or a violation of resident. The bill limits the licensee and its management or consulting company, managing employees and direct caregivers, whether employees or contracted, for civil cause of action. A passive investor is shielded from liability.

Home and Community Based Services Bills

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.

SB 1082 was temporarily postponed by the Appropriations Subcommittee on Health and Human Services. HB 935 is currently in the Health Innovation Subcommittee, which is its first committee stop. Both bills died in Committee.

Bills of Interest – All Members

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, and provides an effective date of July 1, 2014.

Both bills died in the Senate.

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.

Both bills died in the Senate.

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 passed the Senate and is now on its way to the Governor.

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.

HB 271 was passed by the Senate and is now on its way to the Governor's desk.

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.

SB 782 passed the Senate. HB 1231, died and its language was absorbed into HB 7113, another House train that died.

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.

Both bills died in their respective chambers.

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).