

2020 Legislative Summary

The Florida Legislature officially adjourned on March 19, 2020; however, many bills were delayed in being enrolled to the Governor because the COVID-19 pandemic. Now that the 2020-2021 state fiscal year has begun, Florida Senior Living Association is providing its members a summary of bills that were of interest this past session (with links to the bill and legislative staff analysis and staff summaries). For the bills that have passed, it is time to get ready for implementation. For the bills that did not pass, there is a good chance you will see them again. Reach out if you have questions!

KEY ALF BILLS THAT PASSED

Assisted Living Facilities – **FSLA PRIORITY BILL THAT PASSED WITH UNANIMOUS SUPPORT!!!**

HB 767 by M. Grant (SB 402 by Harrell)

Effective 7/1/20; Signed by Gov. (Ch. 2020-68, L.O.F.)

Provides policy-driven direction that modernizes seniors' assisted living experience, empowers seniors with stronger consumer protections to better manage their care, and strengthens facilities' ability to serve seniors as residential models with a health care overlay in a nationally competitive service industry. CS/CS/HB 767 amends various provisions in Ch. 429, F.S., regulating assisted living facilities (ALFs). Specifically, the bill:

- Requires AHCA to conduct a full inspection instead of an abbreviated biennial inspection to review key quality-of-care standards for a facility with a history of certain violations;
- Codifies current rule requirements relating to facility staff training and education;
- Allows ALFs to admit or retain residents that need assistive devices, which are defined as any device designed or adapted to help a resident perform an action, task, an activity of daily living, a transfer, prevention of a fall, or recovery from a fall;
- Allows ALFs to admit residents that require 24-hour nursing care, or residents that are receiving hospice services, if the arrangement is agreed to by the facility and the resident, additional care is provided by a licensed hospice, and the resident is under the care of a physician who agrees that the physical needs of the resident can be met at the facility;
- Allows ALFs to admit residents who are bedridden if they are bedridden for no more than 7 days, or no more than 14 days for an ALF licensed as extended congregate care;
- Allows the use of certain physical restraints in ALFs, including, full-bed rails and geriatric chairs,
- Allows the State Long-Term Care Ombudsman Program to assist a resident who needs to be relocated Due to a facility closure;
- Removes the requirement for ALF staff assisting with the self-administration of medication to read the label of the medication to the resident, instead requiring staff to, in the presence of the resident, confirm the medication is correct and advise the resident of the medication name and purpose; and

- Authorizes rules to address technological advances in the provision of care, safety, and security, including the use of devices, equipment and other security measures for wander management, emergency response, staff risk management, and for the general safety and security of residents, staff, and the facility.

Health Regulation

HB 713 by Rodriguez (SB 230 by Harrell)

Effective 7/1/20; Signed by Gov. (Ch. 2020-133, L.O.F.)

The bill amends programs and health care professions regulated under the Department of Health.

Portions of the bill of interest to assisted living communities and/or seniors residing in ALFs include:

- Establishes battery against a patient or resident of certain health care facilities a disqualifying offense for certain health care licenses and employment in certain health care facilities;
- Authorizes DOH to request a date of birth on a licensure application;
- Authorizes DOH to issue a temporary license that expires 60 days after issuance, rather than 30 days, to certain applicants without social security numbers;
- Extends the sunset date for Florida Center for Nursing annual reports on nursing education to January 30, 2025;
- Authorizes local governments, in consultation with DOH, to develop a special use permit process for surf pools, and exempts such pools from DOH permitting until DOH adopts rules to regulate them; and
- Requires the Agency for Health Care Administration to develop a webpage to inform the public about direct care workers.

Direct Care Workers

HB 607 by Pigman (SB 1676 by Albritton)

Effective 7/1/20; Signed by Gov. (Ch. 2020-9, L.O.F.)

The bill establishes autonomous practice authority for advanced practice registered nurses (APRNs), and amends laws regulating certified nursing assistants (CNAs), home health aides (HHAs), and their licensed practice settings. More specifically, the bill:

- Authorizes registered nurses to delegate certain tasks to a CNA or HHA, including medication administration. The bill authorizes CNAs and HHAs to assist with preventive skin care, applying bandages, and nebulizer treatments. The bill authorizes the Agency for Health Care Administration to adopt rules for the training of paid feeding assistants in nursing homes and prohibits facilities from counting paid feeding assistants toward minimum staffing standards.
- Creates s. 408.822, F.S., which beginning January 1, 2021, requires licensed nursing homes, home health agencies, hospices, and homemaker and companion services providers to complete a workforce survey at each licensure renewal. The agency must continually analyze the results of the survey and publish the results on its website and update the information published monthly. The survey includes information pertaining to:
 - The number of registered nurses and direct care workers employed by the licensee;
 - The turnover and vacancy rates of registered nurses and direct care workers and the contributing factors to these rates;
 - The average employee wage for registered nurses and each category of direct care worker;
 - Employment benefits for registered nurses and direct care workers and the average cost of such benefits to the employer and the employee; and
 - Type and availability of training for registered nurses and direct care workers.

- The bill creates the Excellence in Home Health and Nurse Registry Excellence programs to award designations to home health agencies and nurse registries that meet certain criteria. The home health agency or nurse registry may use the designation in marketing materials.

Agency for Health Care Administration

HB 731 by Perez (SB 1726 by Bean)

Effective 7/1/20; Signed by Gov. (Ch. 2020-157, L.O.F.)

The bill amends various authorizing and licensing statutes for entities regulated by the Agency for Health Care Administration (AHCA). The bill also amends laws governing the Medicaid program, administered by AHCA. Portions of the bill of interest to assisted living communities and/or seniors residing in ALFs include:

- Updates requirements for approval of comprehensive emergency management plans for newly licensed facilities;
- Allows a health care facility employee, who has previously qualified with background screening requirements, to apply for an exemption if the law is changed to add a disqualifying offense for which the employee committed prior to being screened;
- Allows AHCA to issue provisional licenses to all regulated providers/facilities;
- Authorizes risk-based, less frequent, licensure inspections for nurse registries, home medical equipment providers, and health care clinics;
- Allows AHCA to use extended inspection periods for high performing hospices and adult day care centers, which are currently inspected biennially;
- Revises a requirement for AHCA to inspect nursing homes with records of poor performance every six months for a two-year period, to instead require two surveys every year until the facility has two consecutive surveys without a citation for a class I or a class II deficiency;
- Amends the definition of home health agency to clarify that an agency that provides only home health services, but not staffing services, must be licensed as a home health agency; and
- Increases the range of services defined as “shoppable” for purposes of earning shared saving incentives offered by insurers.

Elder Abuse Facility Review Teams

SB 400 by Gibson (HB 253 by Driskell)

Effective 7/1/20; Signed by Gov. (Ch. 2020-17, L.O.F.)

The bill authorizes each state attorney to create an elder abuse fatality review team to review closed cases where the death of an elderly person was caused by, or related to, abuse or neglect. The bill includes procedures for organizing a review team, appointing members, and obtaining relevant records for review. A review team must consider the surrounding circumstances and events leading up to a fatal incident, identify any gaps in support and service delivery, and make recommendations for systematic improvements to prevent elder abuse and deaths.

The bill grants review team members immunity from monetary liability and prohibits a cause of action relating to their participation in a review team in certain circumstances, with exceptions.

The bill requires each review team to submit an annual report of findings to the Department of Elder Affairs, which must submit an annual report with the compiled information to the Governor, Legislature, and the Department of Children and Families.

Institutional Formularies Established by Nursing Home Facilities

HB 559 by Byrd (SB 1020 by Bean)

Effective 7/1/20; Signed by Gov. (Ch. 2020-103, L.O.F.)

The bill authorizes a nursing home to establish an institutional formulary by which a pharmacist may use therapeutic substitution without a new prescription to replace a resident's prescribed drug with a chemically different drug listed in the institutional formulary.

The bill requires a nursing home to obtain a prescriber's authorization to use an institutional formulary for each of the prescriber's patients in the nursing home and allows a prescriber to opt out of the institutional formulary for a specific drug or class of drugs. The nursing home must notify the prescriber prior to each therapeutic substitution and document the resident's medical record when a substitution occurs. The bill requires a nursing home to obtain informed consent from a resident or a resident's representative to use the institutional formulary for the resident.

The bill prohibits a nursing home from taking adverse action against a prescriber or resident who refuses to use the institutional formulary.

Verification of Employment Eligibility

SB 664 by Lee (HB 1265 by Byrd)

Effective 7/1/20; Signed by Gov. (Ch. 2020-150, L.O.F.)

Beginning January 1, 2021, public employers, contractors, and subcontractors must register with and use the E-Verify system to verify the work authorization status of all newly hired employees. A public employer, contractor, or subcontractor may not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

Beginning January 1, 2021, a private employer must verify the employment eligibility of a person who has accepted an offer of employment or a contract employee upon the renewal or extension of his or her contract by either using the E-Verify system or requiring the person to provide the same documentation required by the United States Citizenship and Immigration Services on its Employment Eligibility Verification form (Form I-9). If a private employer does not verify the employment eligibility of a current or future employee, the Department of Economic Opportunity (DEO) must require the private employer to provide an affidavit stating:

- The private employer will comply with the employee verification requirements;
- The private employer has terminated the employment of all unauthorized aliens in this state; and
- The employer will not intentionally or knowingly employ an unauthorized alien in this state

If a private employer does not provide the required affidavit within 30 days, the bill requires DEO to order the appropriate agency to suspend all applicable licenses held by the private employer until the private employer provides DEO with the required affidavit. If a private employer violates the verification of employment eligibility requirements three times within a 36-month period, the bill requires permanent revocation of all licenses held by the private employer specific to the business location where the unauthorized alien performed work.

Beginning July 1, 2020, the bill specifies that the executive director of DEO may not approve an economic development incentive application unless the application includes proof that the applicant is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees.

Long-Term Care

HB 1373 by Webb (SB 1544 by Albritton)

Effective 7/1/20; Signed by Gov. (Ch. 2020-46, L.O.F.)

Revises provisions relating to rescreening of certain individuals by aging resource centers; requires DOEA to maintain contact information for certain individuals & inform them of community resources; authorizes community-care-for-the-elderly service providers to dispute certain referrals.

The bill provides flexibility to the Department of Elderly Affairs (DOEA) regarding the composition of the Medicaid long-term managed care waitlist. The Long-Term Care Managed Care (LTC) program provides services to frail elderly or disabled Medicaid recipients in nursing facilities and in community settings, including an individual's home, an assisted living facility, or an adult family care home. Program enrollment is capped, so the DOEA prioritizes applicants based on frailty, and maintains a waitlist.

The bill requires DOEA to place individuals with high priority scores on the waitlist, consistent with current practice, and allows, but does not require, DOEA to add individuals with low priority scores. The bill requires annual rescreening of individuals with high priority scores, in keeping with current practice, but makes annual rescreening optional for individuals with low priority scores. The bill directs screening staff to inform individuals with low priority scores of alternative community resources that may be available and that the individual may request rescreening at any time if their circumstances change.

The bill also modifies service prioritization procedures under the Community Care for the Elderly (CCE) program, which provides community-based services to help elders with functional impairments live in the least restrictive and most cost-effective environment suitable. The program prioritizes individuals referred for services by Adult Protective Services (APS), which investigates elder abuse, neglect, and exploitation. The bill authorizes a CCE services provider to dispute an APS referral by requesting that APS negotiate or modify the referral of a vulnerable adult or victim.

OTHER BILLS OF ALF INTEREST THAT PASSED

Deregulation of Professions and Occupations

HB 1193 by Ingoglia (SB 474 by Albritton)

Effective 7/1/20; Signed by Gov. (Ch. 2020-163, L.O.F.)

Requires the Department of Highway Safety and Motor Vehicles to waive certain commercial driver license requirements for service members and veterans under certain circumstances. Provides that failing to repay a student loan issued or guaranteed by the state or the Federal Government in accordance with the terms of the loan is not considered a failure to perform a statutory or legal obligation. Deletes the requirement that the Florida State Boxing Commission adopt rules relating to a knockdown timekeeper. Revises the membership and qualifications of the Florida Building Commission.

Guardianship

SB 994 by Passidomo (HB 709 by Burton)

Effective 7/1/20; Signed by Gov. (Ch. 2020-35, L.O.F.)

Expands factors for a court to consider when appointing a guardian. Revises requirements for a petition for the appointment of a guardian. Prohibits professional guardians from petitioning for their own appointment except under certain circumstances. Prohibits guardians from taking certain actions on behalf of an alleged incapacitated person or minor.

Practice of Pharmacy

HB 389 by Sirois (SB 1094 by Diaz)

Effective 7/1/20; Signed by Gov. (Ch. 2020-7, L.O.F.)

Creates collaborative pharmacy practice agreement between pharmacist & physician. Requires agreements to be appropriate to training & scope of practice of pharmacist & physician. Requires maintenance of records & specified pharmacists to report certain diseases of public health significance to DOH. Authorizes pharmacists to test for & treat influenza & streptococcus; provides requirements for written protocol between pharmacist & supervising physician.

Prescription Drug Donation Repository Program

HB 177 by Yarborough (SB 58 by Book)

Effective 7/1/20; Signed by Gov. (Ch. 2020-23, L.O.F.)

Creates Prescription Drug Donation Repository Program within DOH. Provides criteria & conditions for donation of prescription drugs & supplies from certain authorized entities for dispensing to eligible patients. Authorizes Governor to waive program patient eligibility requirements during declared state of emergency.

Alzheimer's Disease

HB 835 by Whillhite (SB 1542 by Stargel)

Effective 7/1/20; Signed by Gov. (Ch. 2020-45, L.O.F.)

Requires state agencies to provide assistance to Alzheimer's Disease Advisory Committee. Creates position of Dementia Director within DOEA. Requires Secretary of Elderly Affairs to appoint director. Authorizes director to call upon certain agencies for assistance. Provides duties & responsibilities of director. Revises name of memory disorder clinic in Orange County.

Emotional Support Animals

SB 1084 by Diaz (HB 209 by Killebrew)

Effective 7/1/20; Signed by Gov. (Ch. 2020-76, L.O.F.)

Defines the terms "emotional support animal" and "housing provider". Prohibits discrimination in housing provided to a person with a disability or a disability-related need for an emotional support animal. Prohibits a health care practitioner from providing information regarding a person's need for an emotional support animal without having personal knowledge of that person's need for the animal. Prohibits the falsification of information or other fraudulent misrepresentation regarding the use of an emotional support animal.

Protection of Vulnerable Investors

HB 813 by McClure (SB 1672 by Broxson)

Effective 7/1/20; Signed by Gov. (Ch. 2020-157, L.O.F.)

Requires securities dealers, investment advisers, & associated persons to report knowledge or suspicion of abuse, neglect, or exploitation of vulnerable adults to DCF. Authorizes dealers & investment advisers to delay certain disbursements or transactions based on reasonable belief of financial exploitation of specified adult. Requires dealer or investment adviser to notify certain persons & OFR of such delays within specified timeframe. Authorizes dealer or investment adviser to extend delay. Provides that length of such delays may be shortened or extended by court of competent jurisdiction. Provides immunity from administrative & civil liability for dealers, investment advisers, & associated persons. Requires dealers & investment advisers to develop certain training policies or programs & maintain written records of compliance.

Housing Discrimination

SB 374 by Rouson (HB 175 by Davis)

Effective Upon Becoming Law; Has not been presented to Gov.

Provides that discriminatory restrictions are unlawful, unenforceable, and declared null and void. Removes housing discrimination as a cause of action for certain relief and damages stemming from violations of the Florida Civil Rights Act of 1992. Revises the conditions under which an aggrieved person may commence a civil action in any appropriate court against a specified respondent to enforce specified rights. Authorizes, rather than requires, a civil action to commence within a specified period after an alleged discriminatory housing practice.

Automated Pharmacy Systems

HB 59 by Willhite (SB 708 by Hutson)

Effective 7/1/20; Signed by Gov. (Ch. 2020-124, L.O.F.)

Authorizes community pharmacy to use automated pharmacy system. Provides certain medicinal drugs stored in automated pharmacy system for outpatient dispensing are part of inventory of pharmacy providing services through such system. Requires community pharmacies to adopt policies & procedures.

Homelessness

HB 163 by Altman (SB 68 by Book)

Effective 7/1/20; Signed by Gov. (Ch. 2020-44, L.O.F.)

Provides requirements for continuum of care catchment areas & lead agencies. Requires continuums of care to create continuum of care plans. Revises requirements for certain grants. Establishes grant-in-aid program to help continuums of care prevent & end homelessness. Provides program requirements.

Courts

SB 344 by Bradley (HB 211 by Fernandez-Barquin)

Effective 7/1/20; Signed by Gov. (Ch. 2020-73, L.O.F.)

Specifies that certain exemptions from court-related fees and charges apply to certain entities. Requires the court to waive any court costs or filing fees for certain proceedings involving public guardians. Provides that certain examinations may be performed and reports prepared by a physician assistant or an advanced practice registered nurse under certain circumstances.

Keep Our Graduates Working Act

HB 115 by Duran (SB 356 by Hutson)

Effective 7/1/20; Signed by Gov. (Ch. 2020-125, L.O.F.)

Prohibits state authority from denying license, refusing to renew license, or suspending or revoking license on basis of delinquency or default in payment of his or her student loan. Provides exception to requirement that certain entities prohibit candidate from being examined for or issued, or having renewed license, certificate, or registration to practice health care profession if he or she is listed on specified federal list of excluded individuals & entities. Repeals provisions relating to health care practitioners in default on student loan or scholarship obligations.

Estates and Trusts

HB 505 by Driskell (SB 358 by Berman)

Effective 10/1/20; Signed by Gov. (Ch. 2020-67, L.O.F.)

Revises provisions for estates and trusts related to precious metals as property, notice requirements for jurisdiction, filing of objections, sales involving conflicts of interest, and compensation for serving as personal representative or trustee.

Practice of Pharmacy

HB 389 by Sirois (SB 714 by Hutson)

Effective 7/1/20; Signed by Gov. (Ch. 2020-7, L.O.F.)

Creates collaborative pharmacy practice agreement between pharmacist & physician. Requires agreements to be appropriate to training & scope of practice of pharmacist & physician. Requires maintenance of records & specified pharmacists to report certain diseases of public health significance to DOH. Authorizes pharmacists to test for & treat influenza & streptococcus; provides requirements for written protocol between pharmacist & supervising physician.

Nurse Registries

HB 437 by Stone (SB 889 by Baxley)

Effective 7/1/20; Signed by Gov. (Ch. 2020-101, L.O.F.)

Authorizes the use of licensed nurse registries for the placement of attendant care provided for workers' compensation purposes.

Intermediate Care Facilities

SB 1344 by Harrell (HB 1163 by Burton)

Effective 7/1/20; Signed by Gov. (Ch. 2020-60, L.O.F.)

Requires certain facilities that have been granted a certificate-of-need exemption to demonstrate and maintain compliance with specified criteria. Provides an exemption from a certificate-of-need requirement for certain intermediate care facilities. Limits the number of such exemptions the Agency for Health Care Administration may grant.

BILLS THAT DIED (but we will likely see again!)

Independent Living Task Force

HB 39 by Gottlieb (SB 364 by Rader)

Passed Senate and Died in House

Establishes Independent Living Task Force within Florida Housing Finance Corporation. Provides for duties, membership, & meetings of task force. Requires task force to submit report to Governor & Legislature by specified date and provides for expiration.

Punitive Damages

HB 6029 by Mariano (SB 1226 by Book)

Died in House and Senate

Removes provisions requiring portion of punitive damages awarded for certain claims relating to nursing homes & assisted living facilities to be deposited into Quality of Long-Term Care Facility Improvement Trust Fund.

Damages

HB 9 by Leek (SB 1668 by Simmons)

Died in House and Senate

Requires certain medical expenses in personal injury claims to be based on certain unusual and customary amounts received. Specifies what usual and customary amount means for certain purposes.

Prescription Drug Coverage

HB 561 by Altman (SB 696 by Mayfield)

Died in House and Senate

Requires individual & group health insurers & HMOs to provide notice of prescription drug formulary changes. Specifies requirements for notice of medical necessity submitted by treating physicians. Specifies coverage requirement & restrictions on coverage modification by insurers & HMOs receiving such notice. Requires insurers & HMOs to maintain record of formulary changes; requires small employer carriers to comply with requirements for prescription drug formulary changes. Requires insurers & HMOs to apply reductions in out-of-pocket expenses for prescription drugs toward cost-sharing obligations.

Prohibited Acts by Health Care Providers

HB 309 by Massullo (SB 500 by Harrell)

Passed Senate and Died in House

Prohibits licensed health care practitioners from using specified names or titles under certain circumstances. Requires Department of Health to issue cease & desist notice to licensed health care practitioner for specified violations; provides for service of notice & penalties.

Program of All-Inclusive Care for the Elderly

HB 833 by Rommel (SB 916 by Baxley)

Died in House Returning Messages

Authorizes AHCA, in consultation with DOEA, to approve entities applying to deliver PACE services in state. Provides specified requirements for prospective & existing PACE organizations. Requires AHCA to oversee & monitor PACE program & organizations.

Assisted Living Facilities

HB 1065 by Drake (SB 784 by Baxley)

Died in House and Senate

Revises requirements relating to admission to ALFs & examination of residents. Provides minimum training requirements for medication technicians. Requires AHCA to establish & evaluate pilot projects to test consultative health quality initiatives.

Electronic Prescribing

HB 1103 by Mariano (SB 1830 by Baxley)

Passed House and Died in Senate

Requires prescriptions to be telephonically transmitted or electronically generated & transmitted. Prohibits electronic prescribing from interfering with patient's freedom to choose pharmacy. Authorizes electronic prescribing software to display information regarding payor's formulary.

Patient Access to Records

HB 1147 by Payne (SB 1882 by Lee)

Passed House and Died in Senate

Requires certain licensed facilities, providers, & health care practitioners to furnish & provide access to records & reports within specified timeframes after receiving request for such records.