



FHCA 2018 Legislative Wrap Up

OVERVIEW

The Legislature officially adjourned today, March 11, to pass the final \$88.7 billion budget for the 2018-19 state fiscal year. The extension was needed because the budget requires a 72-hour "cooling off" period, and thus a final vote could not be taken on the originally scheduled end date of March 9.

With just a few weeks left in the regular session, the Legislature's focus shifted with the tragedy that occurred at Marjory Stoneman Douglas High School in Parkland. Gun control became a priority, and legislators were grappling with ways to fund close to \$400 million in legislative proposals that addressed gun restrictions and school safety.

Florida's long term care providers had our own set of challenges that started well before the session began in January. The Hollywood Hills tragedy that occurred during Hurricane Irma put nursing centers and assisted living facilities (ALFs) in the spotlight, and more than 22 bills were filed this session that focused on nursing center and ALF disaster procedures. The Agency for Health Care Administration and Department of Elder Affairs also filed modified Emergency Environmental Rules requiring nursing centers and ALFs to maintain generators and adequate fuel supply, and those rules needed legislative ratification to take effect.

The need for increased Medicaid funding topped the list of FHCA legislative priorities, especially as providers prepared to transition to the new Prospective Payment System in October. At the same time, complying with the generator rules was expected to cost nursing centers close to \$108 million, while ALFs would need more than \$243 million to comply with the requirements.

Personal injury lawyers attempted to exploit the Hurricane Irma tragedy by proposing legislation that threatened to diminish resources for long term care residents. Several proposals sought to promote costly lawsuits by mandating liability insurance minimums and repealing limitations on punitive damage awards.

Approximately 25 bills with both a positive impact and negative effect on nursing center and ALF regulations were also filed this session. FHCA worked to advance the regulatory proposals that would enhance resident care and safety, as well as support centers with their workforce needs. The Association was successful in defeating the proposals that would have been harmful to providers.

In the end, FHCA worked with our legislative partners to secure a one-year increase of nearly \$138 million in Medicaid funding for nursing center care. Championed in the Legislature by Senate President Joe Negron (R-Palm City), the \$127 million Medicaid increase will support centers with their continuous quality improvement. An additional \$9.8 million was also secured to help nursing centers transition to the Prospective Payment System in October 2018.

Additionally, nursing center residents will see another increase to their personal needs allowance, up from \$105 to \$130 per month. That \$25 increase will go a long way to help them pay for personal items that will improve their quality of life.

The Legislature ratified the rules to maintain generators and adequate fuel, which means nursing centers and ALFs must meet these requirements when hurricane season begins on June 1, 2018. FHCA was actively involved in the discussions with the administration, the agencies and the Legislature which led to the final language.

As a result, the final rules contain several recommendations we received from members and subject matter experts and stayed focused on what is best for keeping residents safe during disasters.

FHCA members played an important role helping us advance these key priorities. Once again nearly 500 members took part in our Lobby Wednesdays, helping tell the stories about quality, emergency preparedness and making measurable improvements in residents' health care. We want to thank Bouchard Insurance, Health Care Professional Consulting Services, Inc. and Medline Industries for their sponsorship of Lobby Wednesdays. The ongoing commitment from our members and sponsors is what makes this important grassroots initiative such a success.

The work you do is difficult, and it does not go unnoticed. FHCA makes it our priority each year to lay out a legislative agenda that will help you further enhance resident quality care and quality of life, as well as support your operations. We're proud to represent you at Florida's Capitol and appreciate your support toward the success of this year's long term care legislative priorities.

**Please note that although these legislative measures have been approved by both chambers, the Governor must take action for final approval (sign the bill, allow it to become law without his signature or veto the bill). Watch your weekly Focus on Florida e-newsletter for updates on the Governor's action and effective dates on the bills we've reported on below.*

BUDGET

Governor Rick Scott released his initial budget in November, calling for full funding for nursing center care. The Governor's budget represented an increase of \$4 billion over the current \$83 billion budget, with the major driver being the increase in total Medicaid spending (\$1.4 billion). The initial budget released by the House mirrored the Governor's proposed budget for nursing center funding. The Senate, however, under the leadership of Senate President Joe Negron (R-Palm City), included an additional \$130.4 million in funding for nursing center Medicaid rates, as well as \$9.8 million to support providers in their transition to the Prospective Payment System in October.

The extension of the 2018 session resulted from a breakdown in budget negotiations over how to reimburse hospitals. The outcome for nursing centers in the final budget were contingent on that formula. In the end, **nursing centers will see a significant increase of nearly \$138 million to their Medicaid rates thanks to champions in the Legislature, including Senate President Joe Negron.**

Senator Negron led the way even before the session began to ensure a funding increase, and he delivered on that promise. Senate leaders Rob Bradley (R-Orange Park) and Anitere Flores (R-Miami), along with House Speaker Richard Corcoran (R-Land O' Lakes) also played a key role during budget negotiations, with Senator Bradley telling reporters that, "At the end of the day, helping our elderly is more important to the Senate, and the average Floridian, than a special interest fight over how to divide up a static number of hospital dollars."

The 2018-2019 budget ([HB 5001](#)) includes one year in new funding for nursing center rates in a variety of ways, all of which take effect October 1, 2018, with the implementation of the new Prospective Payment System (PPS).

- The budget includes \$102 million in funding for increasing the direct care price level from 100% to 105% of the median, increasing the quality funds from 6% to 8.5% of non-property related costs, and funds to offset increased capital projects cost through the FRVS calculation (this could include, for example, the purchase of a generator).
- There is an additional \$25 million that will increase the overall rates through the budget neutral adjustment.
- The budget also includes a separate \$9.8 million in transition funding to support providers as they prepare the transition to the PPS.
- Also included is an increase to the personal needs allowance from \$105 to \$130 per month for all Medicaid residents, which is recurring dollars.

In addition to the nursing center funding increase, the final FY 2018-2019 budget also includes funding for an additional 475 PACE slots: 100 in Miami-Dade County, 100 in Lee County, 100 in Collier County, 75 slots in Martin County and 100 slots for the combined program in Baker, Clay, Duval, Nassau and St. Johns Counties. Several home and community-based (HCBS) programs also saw additional funding for waiting list slots.

The budget appropriated \$2 million for maintenance and repair projects at the State Veterans' Nursing Homes, and \$500,000 for preliminary engineering and site planning for a new Veterans' Nursing Home in Marion County.

The budget also directs the Agency for Health Care Administration (AHCA) to seek authorization from the Centers for Medicare and Medicaid Services (CMS) to eliminate the Medicaid retroactive eligibility period (currently 90 days) for non-pregnant adults. Once approved by CMS, Medicaid eligibility will continue to begin the first day of the month in which a Medicaid application is submitted; however, there will be no retroactive period. This change is scheduled to take effect July 1, 2018.

Lastly, there is language in the budget that directs AHCA to use unexpended funds from the FY 2017-2018 nursing center budget line items to remit a Supplemental Quality Incentive Payment to nursing centers with an overall CMS Five-Star Rating score of "5" in the latest rating report. Each provider would be eligible for a pro-rate share of those dollars based on Medicaid days. This payment will only be made if there are extra unspent funds from the current year. FHCA will be working with AHCA on this in the months ahead and will share more information if extra funding becomes available.

EMERGENCY PREPAREDNESS

Emergency preparedness became a key priority for lawmakers after Hurricane Irma pounded the state in September. Shortly thereafter, House Speaker Richard Corcoran (R-Land O'Lakes) appointed a House Select Committee on Hurricane Response and Preparedness to develop recommendations on how the state could better prepare for natural disasters.

In January, the Agency for Health Care Administration and Department of Elder Affairs filed modified Emergency Environmental Control Rules requiring nursing centers (Rule 59A-4.1265) and assisted living facilities (Rule 58-5.036) to maintain generators and adequate fuel supply, and those rules needed legislative approval to take effect.

Additionally, the 2018 legislative session saw over 22 proposals filed to address disaster readiness in nursing centers, assisted living facilities (ALFs) and other health care settings.

FHCA was actively engaged with lawmakers throughout session, testifying before committees and holding meetings to recommend changes to the Emergency Environmental Control Rules, discuss funding considerations and offer solutions for strengthening emergency procedures to keep residents safe.

The House Select Committee's final recommendations that impacted health care facilities included sales tax exemptions for equipment which utilize natural gas, petroleum or diesel fuel; a requirement that nursing centers and ALFs provide adequate emergency power during power outages; and the creation of an at-risk registry to assist in the evacuation of vulnerable individuals.

Several legislative proposals developed from these recommendations successfully advanced out of the 2018 Legislature.

The tax package passing out of the Legislature [[HB 7087](#) by the House Ways and Means Committee and Rep. Paul Renner (R-Palm Coast)/Sen. Kathleen Passidomo (R-Naples)] will give nursing centers and ALFs a sales tax break of up to \$15,000 for the purchase of any equipment to generate emergency energy.

In the final days of session, the Legislature also passed [HB 7099](#), the nursing center generator rule ratification (Rule), and [SB 7028](#), the assisted living facility generator rule ratification. The Rules were modifications to the Governor's Emergency Power Plan Rules initially released in September and required legislative approval. [HB 7099](#) ratifies [Rule 59A-4.1265](#), "Emergency Environmental Control for Nursing Homes, which requires nursing centers to maintain generators and adequate fuel, while [SB 7028](#) ratifies [Rule 58A-5.036](#), "Emergency Environmental Control for Assisted Living Facilities."

FHCA appreciates the Governor, the agencies and the Legislature for listening to our concerns throughout the development of these rules, as the final language gives providers flexibility in working to meet the goal to keep residents safe and cool when the electricity goes out.

Once signed by the Governor, these Rules will become law, and nursing centers and ALFs must be in compliance no later than June 1, 2018.

LAWSUIT LEGISLATION

Prior to session, FHCA successfully opposed personal injury lawyer supported bills. [HB 655](#) / [SB 898](#) would have created multiple new causes of action against nursing centers and given the Long Term Care Ombudsman Program more watchdog authority through an "undercover system," as well as a system for reporting complaints. These bills, which were never heard in committee, also called for minimum liability insurance and increased civil penalties.

Also failing to advance was [HB 1369](#) by Rep. Amber Mariano (R-Port Richey) and [SB 1408](#) by Sen. David Simmons (R-Longwood), whose bills would have mandated minimum insurance and revised the punitive damage laws for nursing centers.

These bills failed to advance through the Legislature thanks to FHCA members educating lawmakers about the negative impact they would have and how funding is better spent on resident care than increased lawsuits.

PATIENT HEALTH, SAFETY AND WELL-BEING

Several bills addressed by the Legislature focused on the care and comfort of residents and improved operations for centers.

Those passing out of the Legislature focused on:

AHCA Regulations

[SB 622](#) by Sen. Denise Grimsley (R-Lake Placid)/Rep. Clay Yarborough (R-Jacksonville). This legislation makes helpful changes to the nursing center change of ownership process and streamlines the licensure renewal process. The bill also eliminates obsolete provisions in statute which are out of date and no longer necessary.

Protection from Financial Abuses

[HB 1059](#) by Rep. Colleen Burton (R-Lakeland)/Sen. Kathleen Passidomo (R-Naples). This legislation will allow for a temporary injunction on vulnerable adults who are considered at-risk for exploitation. FHCA actively supported this legislation, as it will protect long term care residents from financial abuses.

Patient and Staff Safety

[HB 551](#) by Rep. Colleen Burton (R-Lakeland)/Sen. Dana Young (R-Tampa). This legislation exempts from public record a health care facility's building plans, blue prints, drawings and diagrams that show its internal layout and structural elements. It will be another important step toward keeping nursing center residents and staff safe.

Pain Management

[HB 21](#) by Rep. Jim Boyd (R-Bradenton)/Sen. Lizbeth Benacquisto (R-Ft. Myers). This legislation exempts cancer, palliative care and terminally ill patients, as well as patients with chronic pain, from the 3- or 7-day supply limit for Schedule II prescriptions. FHCA worked tirelessly to ensure these exemptions were included in the final legislation so as not to affect long term care centers' ability to help their residents manage their pain.

APRN Compact

[HB 1337](#) by Rep. Cary Pigman (R-Sebring)/Sen. Jeff Brandes (R-St. Petersburg). This legislation brings Florida closer to meeting the requirements to join the APRN compact, which allows reciprocity for nurses to practice in states that are members of that compact. FHCA actively supported this legislation, which will assist centers with meeting their workforce needs. This is of particular importance during seasonal months when additional caregivers are needed to assist with the increased number of "snowbird" seniors requiring long term and post-acute care.

Legislation which failed to pass focused on:

Increased Notifications

[HB 443](#) by Rep. Emily Slosberg (D-Delray Beach) and [SB 830](#) by Sen. Gary Farmer (D-Ft. Lauderdale). This legislation would have increased notification requirements by nursing centers and ALFs to the Long Term Care Ombudsman.

Baker Act

[HB 573](#) by Rep. Kim Daniels (D-Jacksonville) and [SB 112](#) by Sen. Daphne Campbell (D-North Miami Beach). This legislation would have added ARNPs and PAs to the list of health care professionals who would be authorized to execute a Baker Act.

Consultant Pharmacists

[HB 689](#) by Rep. Cord Byrd (R-Jacksonville Beach) and [SB 914](#) by Sen. Rene Garcia (R-Hialeah). This legislation would have created more access to care by allowing a consultant pharmacist to join a health care team to order and evaluate laboratory and clinical tests, conduct patient assessments, and initiate, modify, discontinue and administer medications if authorized in the supervising physician's protocol.

Telehealth

[SB 280](#) by Sen. Aaron Bean (R-Jacksonville) and [HB 793](#) by Rep. Ralph Massullo, Jr. (R-Beverly Hills). This legislation would have established standards of care for telehealth providers.

Health Care Disaster Preparedness and Response

[HB 7085](#) by the House Health and Human Services Committee and Rep. Ralph Massullo, Jr. (R-Beverly Hills). This legislation primarily focused on special needs shelters but would have also made some statutory changes related to nursing centers' and ALFs' emergency plans, including posting a working phone number and general overview of the emergency plan on AHCA's website.

ASSISTED LIVING FACILITIES

Much of FHCA's advocacy work for its assisted living members centered around emergency preparedness. FHCA played an active role in the discussions that led to the development of final language for [Rule 58A-5.036](#), "Emergency Environmental Control for Assisted Living Facilities." FHCA offered a number of recommendations related to generator installation, fuel supply and areas of refuge. The Rule was a modification to the Governor's Emergency Power Plan Rule in September and required legislative ratification.

The Legislature passed [SB 7028](#) which ratified the Rule, and upon signature of the Governor, the Rule becomes law. As such, assisted living facilities (ALFs) will need to be in compliance by June 1, 2018.

FHCA lobbied for increased funding for ALFs in the Medicaid budget, but the Legislature was reluctant to increase the line item. Additionally, a proposal supported by FHCA to use the Quality of Long-Term Care Improvement Trust Fund as a resource for grants to ALFs purchasing generators failed to be included in the final budget.

Additionally, this year's tax package passed [[HB 7087](#) by the House Ways and Means Committee and Rep. Paul Renner (R-Palm Coast)/Sen. Kathleen Passidomo (R-Naples)] and gives ALFs a sales tax break of up to \$15,000 for the purchase of any equipment to generate emergency energy.

In the coming months, FHCA's Florida Center for Assisted Living Committee will be working closely with FHCA's Legislative Committee to meet with lawmakers on the concept of establishing a Funding Methodology Work Group as an approach for addressing Florida's assisted living demographics and challenges. The Work Group would look at policy trends and make recommendations to state agencies and the Legislature for a more modernized system of reimbursement.

CONSTITUTION REVISION COMMISSION

Every 20 years, a Constitution Revision Commission (CRC) is appointed to review Florida's Constitution, hold public hearings across the state and recommend for voter consideration proposed changes to the Constitution. Florida is the only state with such a mechanism. Two proposals were offered by CRC members which impacted Florida's long term care profession.

Proposal 88 enumerated a specific set of rights for residents of nursing centers and assisted living facilities in the Constitution. If passed and approved by the voters, this proposal would have created a new section in the Constitution to establish a "bill of rights" with expanded litigation for residents of nursing centers and assisted living facilities in Florida.

A second proposed amendment, **Proposal 54, eliminated Certificate of Need for all health care institutions in Florida, including hospitals, nursing centers, hospices and intermediate care facilities for individuals with developmental disabilities.**

After passing its initial committee and facing opposition from long term care providers across the state during public hearings, the sponsor of Proposal 88 withdrew it from consideration during the Commission's floor debate.

During its floor debate, the sponsor of Proposal 54 offered a major revision in which the provision would only apply to counties where a hospital's infection rates fall below the average. Thus, the language to eliminate CON no longer applied to nursing centers, hospices and intermediate care facilities for people with developmental disabilities. At press time, Proposal 54 is being redrafted into the form necessary to appear on the November 2018 ballot.

THANK YOU

FHCA is extremely grateful to our members for your ongoing support both before and during session. Your active involvement in the Association and your support of Our Florida Promise (OFP) and the FHC PAC plays a critical role in keeping our issues front and center with legislators.

Our ability to advocate for a Medicaid rate increase, fight back harmful legislation and pass legislative priorities that focus on the health and well-being of your residents is a combined result of the strength of our Government Affairs team, the support from FHCA's Board of Directors, Legislative Committee and OFP and the extensive reach of our members' grassroots advocacy.

FHCA wants to remind you of the importance of continuing that grassroots throughout the year. With lawmakers returning to their districts, we want to encourage you to invite them into your center to highlight the care you provide to Florida's frailest elders. In the coming weeks, we will be compiling the 2018 Legislative Scorecard which is a valuable tool for measuring lawmakers' support of our issues.

In addition, FHCA will be providing more information and resources about the Nursing Home and ALF Generator Rules and the Medicaid funding increase that takes effect under the Prospective Payment System. Make plans to attend our upcoming [Quality Symposium](#) April 4-5 at the Hilton Orlando for special sessions on these topics, as well as our [Annual Conference](#) in July.

Be on the lookout for more information about the Governor's action on the budget and other legislation in the weeks ahead. On behalf of the entire team at Florida Health Care Association, thank you again for your continued support and allowing us to represent you and the important work you do.

FHCA Lobby Wednesdays



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