

March General Legislative Recap

We are halfway through the 2024 Legislative Session. Legislation continues to move a slow pace. Likewise, we are still waiting for the General Assembly to take action on the renewal of the FRA which must pass this year. There are many pieces of legislation that impact long-term care. Below are updates on just a few issues your MHCA Lobby team is working on this session:

FY25 Budget Update:

Earlier this week, the House Budget Committee passed its version of the FY25 budget. We have great news to report. The budget included funding for a rebase based on 2022 cost reports which would reflect the post-COVID cost increases that the previous rebase did not capture.

The budget still has a long way to go before being passed by the May 10 constitutional deadline. Next week the House will debate and is expected to pass the budget. The budget can be amended during this process; however, we do not expect there to be any changes to our funding from what the House Budget Committee passed. Once the House passes the budget, the budget heads to the Senate. The Senate Appropriations Committee will craft and pass its version of the budget before heading to the floor of the Senate. Once it passes the Senate, the House and Senate will meet to iron out their differences in their versions. After that both chambers will take one final vote before the budget heads to the Governor.

We will keep you updated as this process continues to move. However, we are very excited the House Budget Committee took this huge step forward.

FRA Renewal:

The bill containing the renewal of the Federal Reimbursement Allowance ("FRA"), otherwise known as the "provider tax", SB748 was heard, voted out of committee and has been sitting on the Senate Calendar since January. Once again, there was no movement in the Senate on SB748 this month. Senate leadership continues to work to find a path forward for this must pass piece of legislation. We expect there will be lengthy floor debate on this issue in the Senate sometime in April.

As a reminder and history on this issue, the FRA will expire on September 30, 2024, if not renewed before. This program accounts for nearly \$4 billion in funding for hospitals, nursing homes, pharmacies and ambulance/emergency services through the Medicaid program. The Nursing Facility Reimbursement Allowance (NFRA) accounts for over \$60/ppd of our SNF Medicaid rate.

The sunset (or expiration date) must be extended during this legislative session otherwise the

program will end on September 30. Expiration of this program would be catastrophic to the overall budget and our SNF Medicaid rate. The program has been in effect for over 30 years. For much of its existence, there was never any discussion when renewing the state's self-imposed sunset on the program since it brings in so much federal money which funds the Medicaid program. However, in recent years, certain legislators have held the renewal of this program "hostage" in order to get their other non-related priorities across the finish line. As you may recall, the last time we renewed the program, the legislature was unable to get the renewal done during the regular legislative session due to the same issues it faces this session. As a result, in 2022 we were forced into a June special session where the renewal of the program finally passed on the last day of the fiscal year.

Our MHCA lobby team, along with other lobbyists who represent other Medicaid providers who will also be impacted, have put together an advocacy campaign to explain the severity of this situation and the extreme need for the passage of the FRA without any amendments. We will let you know in an action alert when the time is right to take action. We ask that you, your staff, residents and their families please be prepared to contact your elected officials. This issue has taken a significant amount of our time in the Capitol this year and will continue to do so until this bill is passed out of the legislature.

Digital Surveillance in LTC Facilities:

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HB1709 was heard in the House Children's and Families Committee on March 12. Aside from the sponsor of the bill there was only one individual that testified in support of the bill. While the Committee is generally supportive of the "concept" of this bill, the committee also understood the challenges and privacy concerns we brought up in our testimony. They also acknowledged there is currently a mechanism in place now for residents to install cameras in their rooms and still protect the privacy of other residents, families and caregivers.

HB1709 would require all long-term care facilities to install and operate 24-hour digital surveillance systems in common areas and mandates that recordings be retained for a period determined by the Department of Health and Senior Services. Facilities must provide copies of recordings to residents or their representatives within five business days upon request, particularly for investigations into care concerns or allegations of abuse. The Department of Health and Senior Services would be responsible for creating rules to implement the provisions, ensuring compliance with the broader regulatory framework.

This bill is personal to the sponsor due to a situation he experienced in a facility with his mother. We have talked to the sponsor of the bill who has no intent to back down from his bill, even though cameras are allowed in residents rooms. We continue to remind legislators, and the chair of the committee Rep. Hannah Kelley, that this was addressed in 2020 and residents are allowed to place cameras in their rooms under current law. The bill has not been brought up for a vote yet.

Modifies the Crime of Abuse of an Elderly or Vulnerable Person:

HB1710 was heard on March 13 in the House Emerging Issues Committee. HB1710 states that if any person knowingly acts or knowingly fails to act in a manner that results in a substantial risk to the life, body, or health of an elderly person, a person with a disability, or a vulnerable person, the offense of abuse of an elderly person, a person with a disability, or a vulnerable person is a class E felony.

The same representative that filed HB1709 dealing with cameras in facilities has filed this legislation. The Committee was supportive of this bill; however, concerned over the unintentional consequences this could have on someone who did not “intentionally” harm someone. We expect more discussion on this issue, but this issue could see movement out of committee.

Requires Long-Term Care Facilities to Obtain Liability Insurance or Reserve Accounts:

HB2519 states that Long-Term Care Facilities must maintain liability insurance in the amount of at least \$2 million to insure against losses resulting from negligent or criminal acts in regard to abuse, neglect or wrongful death of a resident. In lieu of maintaining this insurance, a facility can instead maintain a reserve account separate from operating funds, in the amount of \$2 million to cover the aforementioned criminal acts. DHSS can revoke a license if the operator of a facility fails to maintain the liability insurance or reserve account.

The same representative that filed HB1709 and HB1710 filed this legislation. The bill has not yet been referred to committee.

Compassionate Care Visits in Health Care Facilities:

HB2869 has been referred to the Government Efficiency and Downsizing Committee and will be heard on April 3. HB2869 would add penalties to health care facilities who fail to allow compassionate care visits. This bill deals with the bill passed post-COVID entitled “Compassionate Care Visitation Act” and “No Patient Left Alone Act”. The original bill creating these Acts passed during the 2022 legislative session as a result of the CMS mandate to shut down hospitals and nursing homes to visitation during COVID pandemic. This bill states that any facility violating the act could have its license revoked or suspended. In addition, a facility can be subject to a CMP of \$1,000/day for each day of the violation.

The sponsor of this bill had a personal story and was one of the sponsors of the original legislation passed in 2022. Since passing the original “Compassionate Care Visitation Act” and “No Patient Left Alone Act” a couple years ago, there has only been one facility that has been cited for violating this law and it was our understanding it was due to a misinterpretation of the law. We

will testify against this bill on the 3rd.

Inspections of Assisted Living and Residential Care Facilities:

HB1825 and SB813 were both heard and voted out of their respective committees. The House bill has one more committee vote before heading to the House Calendar for floor debate. The Senate Bill should make its way to the Senate Calendar soon.

These bills state that if an ALF or RCF receives an accreditation from a recognized accrediting entity, and submits the documentation to DHSS, so long as the facility is in good standing, the facility does not have to undergo its annual inspection. This does not apply to complaint and other surveys. It is our understanding, this accreditation is a very difficult accreditation to get.

Sen. Mary Elizabeth Coleman has filed SB813 and Rep. Travis Smith has filed HB1825 outlining this process.

Referrals to Assisted Living Facilities:

HB1733 requires certain disclosures by referral agencies to prospective residents of assisted living facilities or their representatives. In addition, the bill places certain restrictions on Assisted Living facilities when paying fees to a referral agency for placement of residents. This bill is being pushed by several long-term care placement agencies as a result of deceptive practices by some on-line referral agencies.

The bill was heard in the House Health and Mental Health Policy Committee and has been voted out of committee. The bill was been expanded to include Skilled Nursing Facilities. The language was also added to SB813 voted out of the Senate Health and Welfare Committee.

CON:

There has been no movement on any of the CON bills this session. We anticipate there will be a hearing on the Senate bill later this session. As a reminder, the Senate bill is a full repeal of CON. It is our understanding that the House bill likely will not move. The House bill would reform the CON process.

Each year legislation is filed to repeal the Certificate of Need in Missouri. This is typically filed by Republicans in order to facilitate more of a free market industry in health care. We know that the free-market argument does not translate to the long-term care industry and will continue to have conversations with the legislators who file these bills. Representative Dean Van Schoiack has filed HB1605, a CON Reform bill that was heavily influenced by MHCA and addresses the

underlying concerns about the current CON process. However, Senator Moon continues to file the full repeal of the CON process which is contained in SB1087.