



## **CT ASSOCIATION OF HEALTH CARE FACILITIES**

### **2015 Legislative Session Report**

The 2015 legislative session concluded with the passage of the Fiscal Year 16-17 biennium budget. Despite finishing the budget the legislature was forced to go into special session to complete their work. During special session the budget implementation bills, Governor's second chance society, a bonding package, a land conveyance bill and a police excessive force bill all passed.

#### **Budget**

##### Overview

The legislature passed **P.A. 15-244 (HB 7061)**, a \$40.3 billion biennial state budget for Fiscal Years 2016 (beginning July 1, 2015) and 2017, on the last day of the legislative session. The Governor has committed to signing the budget in the coming weeks. The budget was passed with a slim majority (3 votes in the House, 2 in the Senate) largely due to the increase in taxes. The package would boost spending in the general fund by 4 percent in the first year and by 3.1 percent in the second.

Overall it restores deep cuts to social services that the Governor originally proposed and expands municipal aid while raising taxes by almost \$2 billion. Most social service line items were cut by at least 6.25%.

The budget also seeks to deal with two major issues, transportation and property taxes, by dedicating portions of the sales tax to fund transportation and increase municipal aid. It dedicates \$436 million (\$159 million in FY16) in sales tax receipts to cities and towns to cut property taxes and cap the motor vehicle tax. It also makes an initial investment in transportation and dedicates a portion of the sales tax to transportation.

To get around the spending cap the budget relies on a controversial interpretation of the constitutional spending cap by removing some federal funds and pension obligations from counting against the cap.

Changes to the budget were made during the special session. The legislature passed **June 2015 SS Public Act No. 15-5 (SB 1502)** which was signed into law by the Governor. The changes focused on business taxes, hospital taxes and instead made some cuts to different agency budgets that are not expected to directly impact providers.



#### Nursing Home Rates

**June 2015 SS Public Act No. 15-5- AN ACT IMPLEMENTING PROVISIONS OF THE STATE BUDGET FOR THE BIENNIUM ENDING JUNE 30, 2017, CONCERNING GENERAL GOVERNMENT, EDUCATION, HEALTH AND HUMAN SERVICES AND BONDS OF THE STATE** caps at Fiscal Year 15 levels, for the next two fiscal years, Medicaid reimbursement to nursing homes except that the facilities that would have been issued lower rates due to an interim rate status or other agreement with DSS must receive the lower rate.

The bill also extends for the next two fiscal years the commissioner's authority, within available appropriations, to provide pro rata fair rent increases, which may, at his discretion, include increases for moveable equipment for facilities that have undergone a material change in circumstances related to fair rent additions or moveable equipment placed in service in the 2014 and 2015 cost reports and not otherwise included in their issued rates.

#### Nursing Home Worker Wage Enhancement

Also included in the Special Session legislation is a provision concerning nursing home worker wage enhancement.

The bill requires DSS, within available appropriations, to provide a pro-rate increase based on direct and indirect employee salaries reported in the facility's 2014 annual cost report, and adjusted to reflect subsequent salary increases and reasonable costs mandated by collective bargaining agreements with certified collective bargaining agents or otherwise provided by the facility to its employees.

The budget sets aside \$13 million which should amount to \$26 million when accounting for the federal Medicaid match. However, of the total amount appropriated (the state portion of the funds) for these increases, a maximum of \$9 million may go to increases based on reasonable costs mandated by collective bargaining agreements.

Note that the language was included to protect the state against potential federal reimbursement issues. The language states that *nothing in this section shall require the commissioner to distribute such adjustments in a way that jeopardizes anticipated federal reimbursement.*

The bill allows the commissioner to establish an upper limit for reasonable costs associated with salary adjustments beyond which the adjustment does not apply. A facility that receives the adjustment but does not provide the required salary increases by July 31, 2015 may have its rate decreased by the adjusted amount



Under the legislation, an “employee” for these purposes does not include a facility's manager or chief administrator, a person required to be licensed as a nursing home administrator, or anyone who receives compensation for services under a contract and is not directly employed by the facility.

#### ACUITY BASED METHODOLOGY

The bill additionally allows the DSS commissioner to implement an acuity-based methodology for Medicaid reimbursement of nursing home services. In the course of developing the system, he must (1) review the skilled nursing facility prospective payment system developed by the federal Centers for Medicare and Medicaid Services, (CMS) as well as other methodologies used nationally, and (2) consider recommendations from the nursing home industry.

#### CT HOME CARE PROGRAM FOR ELDERS

For FY 16 and FY 17, the bill limits eligibility for the state-funded CHCPE program to only those who require a nursing home level of care or live in affordable housing under the state's assisted living demonstration projects. Currently, the state-funded component provides services to individuals at risk of hospitalization or short-term nursing home placement if they do not receive a moderate amount of home care or require nursing home level of care. The legislation also increases, from 7% of the cost of care to 9%, the co-payment required from participants in the state-funded portion of CHCPE who do not live in affordable housing under the state's assisted living demonstration projects.

#### BED MORATORIUM

The bill indefinitely extends DSS' moratorium on accepting or approving requests for a CON to add new nursing home beds. It also eliminates, modifies, and adds exemptions to the moratorium.

Under current law, beds solely for AIDS or traumatic brain injury patients are exempt. The bill no longer exempts these but instead exempts beds for patients requiring neurological rehabilitation.

It also eliminates exemptions from the moratorium for requests for:

1. Medicaid-certified beds relocated from a licensed nursing facility to a small house nursing home (though the bill retains the exemption for relocating beds from one facility to another);
2. up to 20 beds from certain facilities that do not participate in Medicaid or Medicare;
3. up to 20 beds or less from certain freestanding facilities dedicated to providing hospice care services for terminally ill persons; and
4. up to 60 new or existing Medicaid certified beds relocated from a licensed nursing facility in a city with a 2004 estimated population of 125,000 to another location within that city.



#### FACILITY'S CLOSURE RATES

The bill allows the DSS commissioner to revise the rate of a nursing home that is closing down. An interim rate during the facility's closure must be based on (1) a review of the facility costs, (2) the expected duration of the close-down period, (3) the anticipated impact on Medicaid costs, (4) available appropriations, and (5) the relationship of the rate requested by the facility to the average Medicaid rate for a close-down period.

#### MEDICAID ELIGIBILITY

Under the bill, if a nursing facility has reason to know that a resident is likely to become financially eligible for Medicaid within 180 days, it must notify the resident or the resident's representative and DSS.

DSS may assess the resident to determine if he or she prefers and is able to live appropriately at home or in some other community-based setting and develop a care plan and help the resident transition to the community.

### **Nursing Home Related Legislation**

#### NURSE STAFFING LEVELS

**P.A. 15-91 (SB 855)- AN ACT CONCERNING REPORTS OF NURSE STAFFING LEVELS** requires certain health care employers to report to DPH annually, rather than upon the department's request, on the number of workplace violence incidents occurring on the employer's premises and the specific area or department where they occurred.

- For this purpose, a "health care employer" is any DPH-licensed institution (includes a hospital or nursing home) with at least 50 full- or part-time employees. It includes (1) facilities that care for or treat people with substance abuse issues or mental illness; (2) Department of Developmental Services-licensed residential facilities for people with intellectual disability, and (3) community health centers.

#### PROTECTIVE SERVICES FOR ELDERLY ABUSE VICTIMS

**P.A. 15-233 (SB 896)- AN ACT CONCERNING PROTECTIVE SERVICES FOR SUSPECTED ELDERLY ABUSE VICTIMS** makes several changes concerning DSS probate petitions and provisions on access to and disclosure of information during and after DSS investigations

- The bill allows DSS to petition the probate court for an order to enter an elderly person's premises to conduct an assessment if (1) DSS has reasonable cause to believe the elderly person may need protective services and (2) the elderly person or another individual has refused DSS access to the premises.



- It also broadens DSS' ability to issue subpoenas when investigating allegations of abuse, neglect, exploitation, or abandonment of an elderly person, narrows the circumstances under which DSS may disclose the name of the person reporting such abuse, neglect, exploitation, or abandonment, establishes circumstances when DSS may disclose an elderly person's file, both with and without authorization from the elderly person or his or her legal representative; and allows an elderly person or his or her legal representative access to DSS records pertaining to the elderly person, with certain exceptions.
- The bill removes DSS' explicit right to authorize the transfer of an elderly person from a nursing home but retains its general authority to take necessary actions to assure the health, safety, and welfare of an elderly person.

#### STATE PAYMENTS FOR RESERVED BEDS- BED HOLDS

**P.A. 15-102 (SB 862)- AN ACT CONCERNING STATE PAYMENT TO CERTAIN FACILITIES FOR RESERVED BEDS** prohibits State Supplement Program payments when the recipient's bed is not otherwise available during his or her absence.

- Under the "bed hold statute" DSS may pay State Supplement Program benefits directly to licensed residential care homes or rated housing facilities on behalf of a recipient, when the recipient is temporarily absent. This is the usual case for when there is a bed hold and permits such payment be made despite the resident being elsewhere.
- This bill will prohibit payments to facilities when the bed is uninhabitable such as when there is major damage to the home.

#### COST REPORT DEADLINES

**P.A. 15-36 (SB 893)- AN ACT EXTENDING COST REPORTING DEADLINES FOR LONG-TERM CARE FACILITIES** changes from December 31 to February 15, the annual deadline for long-term care facilities to submit fiscal year (ending September 30) cost reports to DSS.

- The department may reduce rates by up to 10% for failure to submit complete and accurate reports by the deadline.

#### MEDICARE & MEDICAID APPLICATIONS FOR PATIENTS

**P.A. 15-50 (SB 1022)- AN ACT CONCERNING REQUIREMENTS FOR FACILITIES THAT COMPLETE MEDICARE OR MEDICAID APPLICATIONS FOR PATIENTS** entitles patients of nursing homes, residential care homes, and chronic disease hospitals, or their designated representatives, to receive a copy of any Medicare or Medicaid application completed by such a facility on their behalf. It adds this right to the patients' bill of rights.

#### NOTICE OF ABUSE REPORTS

**P.A. 15-150 (HB 5257)- AN ACT REQUIRING NOTICE OF ABUSE REPORTS CONCERNING RESIDENTS OF LONG-TERM CARE FACILITIES** requires mandated reporters, including long-term



care facility administrators, nurse's aides, orderlies, and anyone else paid for providing care in such a facility, to report to DSS if they have reasonable cause to suspect or believe a resident in a long-term care facility has been abused, neglected, exploited, or abandoned, and DSS must investigate such reports.

- This act requires DSS, after receiving such a report, to notify the resident's (1) guardian or conservator, if any; (2) legally liable relative; or (3) other responsible party. The department must get the contact information from the long-term care facility and provide the notice as soon as possible, but no later than 24 hours, after receiving the report. The notice is not required when the guardian, conservator, legally liable relative, or responsible party is the suspected perpetrator.

## Healthcare Legislation

### PATIENT DESIGNATED CAREGIVERS

**P.A. 15-32 (SB 290)- AN ACT CONCERNING PATIENT-DESIGNATED CAREGIVERS** was a legislative initiative pushed by AARP that requires a hospital, when discharging a patient to his or her home, to do several things, including:

1. allow the patient to designate a caregiver at or before the time the patient receives a written copy of his or her discharge plan;
  2. document the designated caregiver in the patient's discharge plan;
  3. attempt to notify the designated caregiver of the patient's discharge; and
  4. instruct the caregiver on post-discharge tasks with which he or she will assist the patient at home.
- Post-discharge assistance includes help with basic and instrumental activities of daily living and support tasks (wound care, medication administration, and medical equipment use) in accordance with the patient's written discharge plan signed by the patient or his or her representative.

### TELEHEALTH

**P.A. 15-88 (SB 467)- AN ACT CONCERNING THE FACILITATION OF TELEHEALTH** establishes requirements for health care providers who provide medical services through the use of telehealth. Among other things, a telehealth provider must obtain a patient's informed consent, at the first telehealth interaction, to provide telehealth services.

- The bill also requires certain health insurance policies to cover medical services provided through telehealth to the extent that they cover the services through in-person visits between an insured person and a health care provider.



#### CONTINUING-CARE COMMUNITIES

**P.A. 15-115 (HB 5358)- AN ACT ESTABLISHING A BILL OF RIGHTS FOR RESIDENTS OF CONTINUING-CARE RETIREMENT COMMUNITIES** requires continuing care facility providers to give residents advance notice of major construction, ownership change, and increases in monthly service fees. It allows residents of continuing care facilities to form residents councils, defined in the bill as boards elected by residents to advocate for their rights and advise the provider on resident welfare and interests. The bill also stipulates rights and entitlements for continuing care residents.

#### MANDATED REPORTING

**P.A. 15-242 (HB 6987)- AN ACT CONCERNING VARIOUS REVISIONS TO THE PUBLIC HEALTH STATUTES** makes various changes to healthcare statutes including extending the law that prohibits regional long-term care ombudsmen and DPH and DSS employees from providing nursing or residential care homes (1) advance notice of an investigation or inspection or (2) information about a complaint filed by a mandated reporter of elder abuse unless they are specifically required to do so by state or federal regulations.

- The bill also extends this prohibition to cover all licensed health care institutions and specifies that it does not apply to inspections related to an institution's initial licensure.

#### ELDERLY ABUSE

**P.A. 15-236 (SB 1005)- AN ACT PROTECTING ELDERLY CONSUMERS FROM EXPLOITATION** makes a number of changes regarding elder abuse and enacts the Uniform Power of Attorney Act.

- Specifically, it requires mandated reporters (includes individuals paid to care for patients in nursing homes) to notify DSS when they reasonably suspect an elderly person (1) has been abused, neglected, abandoned, or exploited or (2) needs protective services.
- The bill also expands the type of training that institutions, organizations, agencies, and facilities employing individuals to care for someone age 60 or older must provide their employees. The bill requires this training to cover detecting elderly exploitation and abandonment, in addition to the current topics of abuse and neglect and informing employees of their reporting responsibilities.

#### **Other Legislation**

#### PROVIDER AUDITS

**HB 6550- AN ACT CONCERNING MEDICAID PROVIDER AUDITS** was not passed during the regular legislative session although pieces were included in the budget implementation bill **June 2015 SS Public Act No. 15-5 (SB 1502)** during special session. Unfortunately, the bill does not include long term care providers.



- The legislation makes various changes to audit procedures, it modifies the circumstances in which DSS can make findings of over- or under-payment using extrapolation of audited provider claims; prohibits DSS from extrapolating an overpayment or attempting to recover an extrapolated overpayment beyond the payment's original dollar amount if the provider presents credible evidence that a DSS error caused the overpayment; allows providers aggrieved by an audit finding to request a contested case hearing, prohibits DSS from recouping a contested provider overpayment based on extrapolation until a final decision is issued after the hearing; and requires DSS to give providers audited written notification of the statistically valid sampling and extrapolation methodology the auditors will use.
- It is expected that DSS and the Human Services will continue to work with long term care providers regarding audit processes. The bill originally did not include long term care providers and ultimately LTC providers were removed due to objections from DSS and the Administration.

#### BONDING

**June SS P.A. 15-1 (SB 1501)- AN ACT AUTHORIZING AND ADJUSTING BONDS OF THE STATE FOR CAPITAL IMPROVEMENTS, TRANSPORTATION AND OTHER PURPOSES** cancels a prior bond authorization of \$10 million for nursing home alterations, renovations, and improvements for conversion to other uses in support of right-sizing.

#### **Labor Legislation**

#### SOCIAL MEDIA

**P.A. 15-6 (SB426) AN ACT CONCERNING EMPLOYEE ONLINE PRIVACY** has been signed into law by the Governor.

- The bill prohibits employers from requesting or requiring an employee or job applicant to (1) provide the employer with a user name, password, or other way to access the employee's or applicant's personal online account; (2) authenticate or access such an account in front of the employer; or (3) invite, or accept an invitation from, the employer to join a group affiliated with such an account.
  - Personal online account is defined as an online account the employee or applicant uses exclusively for personal purposes unrelated to any of the employer's business purposes, including e-mail, social media, and retail-based Internet web sites.
- It also bars employers from firing, disciplining, or otherwise retaliating against an employee who (a) refuses to provide this access or (b) files a complaint with a public or private body or court about the employer's request for access or retaliation for refusing



such access and refusing to hire an applicant because the applicant would not provide access to his or her personal online account.

#### FAILURE TO PAY WAGES

**P.A. 15-86 (SB 914)- AN ACT CONCERNING AN EMPLOYER'S FAILURE TO PAY WAGES** requires a court to award double damages plus court costs and attorney's fees if it finds that an employer failed to pay an employee's wages, accrued fringe benefits, or arbitration award or meet the requirements for an employee's minimum wage or overtime rates.

- The double-damage requirement does not apply to employers who establish a good-faith belief that their underpayments were legal. Such employers must, however, pay full damages, plus court costs and attorney's fees.

#### PAY EQUITY

**P.A. 15-196 (HB 6850)- AN ACT CONCERNING PAY EQUITY AND FAIRNESS** was a Governor's proposal that will prohibit employers, including the state and municipalities, from taking certain steps to limit their employees' ability to share information about their wages.

- Under the bill, such sharing consists of employees under the same employer (1) disclosing or discussing the amount of their own wages or other employees' voluntarily disclosed wages or (2) asking about other employees' wages.
  - The bill bans employers from (1) prohibiting their employees from such sharing; (2) requiring employees to sign a waiver or document that denies their right to such sharing; and (3) discharging, disciplining, discriminating or retaliating against, or otherwise penalizing employees for such sharing.
- The bill allows employees to bring a lawsuit to redress a violation of its provisions in any court of competent jurisdiction. The suit must be brought within two years after an alleged violation. Employers can be found liable for compensatory damages, attorney's fees and costs, punitive damages, and any legal and equitable relief the court deems just and proper.

#### **Two labor issues that will likely be debated again next year and could impact RCHs.**

##### PAID FAMILY MEDICAL LEAVE

**HB 6932- AN ACT CONCERNING PAID FAMILY AND MEDICAL LEAVE** would have created a Family and Medical Leave Compensation (FMLC) program to provide wage replacement benefits to covered employees taking leave under the state's private-sector Family and Medical Leave Act, the family violence leave law, or the state employee family medical leave law.

- However, in the implementer bill **June 2015 SS Public Act No. 15-5 (SB1502)**, language was included that requires the labor commissioner, in consultation with the state treasurer, state comptroller, and commissioner of administrative services, to establish the procedures needed to implement a paid family and medical leave (FML) program.



- The bill also requires the labor commissioner, by October 1, 2015 and in consultation with the treasurer, to contract with a consultant to perform an actuarial analysis and report on the employee contribution level needed to ensure sustainable funding and administration for a paid FML compensation program.

#### SICK DAY EXPANSION

**HB 6784- AN ACT EXPANDING PAID SICK LEAVE** did not move out of Committee. It would have expanded paid sick leave to most employees, currently the law is limited to identified service employees. The bill also would have extended the annual maximum benefit from forty to fifty-six hours.

#### **Bills Not Acted On**

- **SB 522- AN ACT CONCERNING PRESCRIPTION DRUGS ADMINISTERED BY NURSING HOMES TO VETERANS** would have eliminated the authority of RCHs and other long term care facilities to require that drugs received through a Veteran's prescription drug plan be dispensed or administered according to the facility's policies that comply with applicable state and federal laws.
- **SB 687- AN ACT CONCERNING NOTICE TO PATIENTS OF COSTS FOR ROUTINE HEALTH SERVICES** would have required health care providers to post standard and customary prices for routine services in order for health care insurance policyholders.
- **SB 705- AN ACT CONCERNING A COMMUNITY SPOUSE'S ALLOWABLE ASSETS** would have required DSS to amend the Medicaid state plan to require that the spouse of someone in an institution who remains in the community receive the maximum amount of assets allowed by federal law
- **SB 899- AN ACT CONCERNING VOLUNTARY BED REDUCTIONS AT NURSING HOME FACILITIES** was the CAHCF proposal that would have accelerated state efforts to move nursing home residents who are capable of living in community settings by allowing nursing home facilities to voluntarily reduce beds without financial penalty.
- **HB 6284- AN ACT CONCERNING THE ADVERTISING OF SERVICES BY HEALTH CARE PROVIDERS** sought to require health care provider advertisements to (1) clearly identify the provider's type of license or other credential and (2) be free of deceptive or misleading information
- **HB 6287- AN ACT CONCERNING REPORTS OF IMPAIRED HEALTH CARE PROFESSIONALS** would have required health care professionals to report to DPH suspected impairment that may limit a person's ability to practice with skill and safety and procedures for DPH to follow when it receives such notice.
- **HB 6674- AN ACT PROVIDING FINANCIAL RELIEF TO NURSING HOMES FOR UNCOMPENSATED CARE** was another CAHCF proposal that would have required the



state to pay its Medicaid rate for a bed prior to taxing the nursing home for that same bed.

- **HB 6690- AN ACT CONCERNING NURSING HOME FACILITY MINIMUM STAFFING LEVELS** would have established a new statutory daily minimum ratio of total nursing staff. The bill increased the overall required daily ratio from 1.9 hours to 2.3 hours per patient. It does not differentiate by shift or between licensed and total nursing staff.
- **HB 6908- AN ACT CONCERNING FAIR HEARINGS** would have established an Office of Administrative Appeals in DSS, independent of DSS' legal counsel and any other DSS division, to conduct administrative appeals from DSS decisions. DSS and the administration opposed this effort.