



MARCH6DB
FOR MARCH 6, 2001

Long Term Care Reform

Amid the ceremonies of the opening day of the legislative session Tuesday, the House Elder and Long Term Care Committee began working on a proposed bill to reduce law suits against nursing homes and assisted living facilities while improving care of residents. The 90-page draft measure is modeled on the medical malpractice law. It would direct patients and their families with disputes against the facilities to voluntary arbitration rather than courts.

While the bill has a long way to go with regards to truly reforming nursing home care in Florida and giving relief to the industry from ongoing and egregious lawsuit abuse by trial attorneys, it does recognize the three key elements that must be part of the final reform package in order to be effective:

- **Caps on punitive damages.** Without reasonable caps, trial attorneys will continue to drain nursing homes and, by extension, Medicaid of needed dollars for care. Without reasonable caps, trial attorneys will be able to afford to continue sue more and more nursing homes.
- **A sound Negligence Standard.** Current law does not provide for a reasonable negligence standard established for other health care providers, such as hospitals or doctors. A reasonable negligence standard establishes common sense, legal parameters everyone can understand. It allows for truly egregious cases of negligence to be addressed by the courts without exposing all nursing home providers to the specter of bankruptcy based on incidents within professional, normative practices. Absent this needed standard in law, trial attorneys have flocked to the courtroom, suing nursing homes with little adequate or practical statutory defenses.
- **An equitable legal mechanism for arbitration.** Arbitration can effectively limit unnecessary or frivolous lawsuits while insuring that both parties, the nursing home care provider and the plaintiff, are satisfied.
-

The bill also contains needed quality care reforms, reforms that the nursing home care providers do not dispute need to be enacted. As always, it is important to note that any quality care reforms without practical tort or lawsuit reform will be an empty exercise. You can't have quality care if there are no nursing homes available to provide it.

Earlier, in his State of the State address to the joint opening session, Gov. Jeb Bush listed providing quality long-term care as one of his four priorities for the 2001 Legislature, along with improving public schools, dealing with development and cutting taxes. "Nursing homes teeter on

the verge of bankruptcy in Florida," he said, "and many will go under if we do not take decisive action to stabilize their insurance premiums by providing lawsuit relief."

Pharmacy Licensure by Endorsement

The House Committee on Health Regulation unanimously approved HB 437 by Rep. Frank Farkas (R-St. Petersburg). The legislation enables pharmacists from other states to become licensed in Florida by endorsement if they have taken the national exam within the last 12 years and are in good standing with their current state board. 48 states now have licensure by endorsement and today's vote was an important first step in making Florida the 49th. If adopted, this legislation would assist in easing the increasing shortage in experienced, highly qualified pharmacist in Florida. The bill's next stop is the House State Administration Committee.

This bill or other bills very much like it has been under consideration by the legislature for several years. Last year it was killed on a procedural maneuver and not on its substance or merits. Historically opposition to the bill has come from specific segments of the pharmacy community who see this as a competitive issue and simply do not want the increased "competition" of additional pharmacists in Florida. AIF and its pharmacy provider members have long supported licensure by endorsement for pharmacists and sees this bill as a necessary and timely change in the law.

Stay tuned to our daily brief and to our web site at www.fbnet.com as the legislature makes some very important decisions on the state's economy. These decisions will have a major impact on the business community and AIF will be reporting to you everything that happens.

This report was prepared by Curt Leonard, Manager – Governmental Affairs at Associated Industries of Florida (AIF). Please send your comments or suggestions to us at aif@aif.com or call the Governmental Affairs department at (850)224-7173.

- For more information on all of the important legislative information concerning the business community, go to our "members only" Florida Business Network web site at <http://fbnet.com>
- Send us your E-mail address and we will begin to send this report to you automatically via E-mail.