TENNESSEE HEALTH CARE ASSOCIATION/
TENNESSEE CENTER FOR ASSISTED LIVING

2014 LEGISLATIVE REPORT

A report to members on long-term care legislation acted upon during the 2014 session of the 108th Tennessee General Assembly
THE SECOND SESSION OF THE 108TH GENERAL ASSEMBLY adjourned on April 17, 2014. The legislative priorities approved by THCA's Board of Directors were largely met, although some were met by working with various state departments. All in all it was a successful session for the nursing home industry.

The Legislature finished its business in about 14 weeks, which is great for taxpayers in terms of paying for the legislative branch. The short session does, however, limit the amount of time we have to work on our issues. Those time constraints are the reason we are already planning the 2015 agenda!

The Tennessee Constitution requires the General Assembly to pass a balanced budget every year. This year, as every year, the governor proposed a budget in late January that acknowledged a decline in franchise and excise taxes paid by corporations in Tennessee. Unfortunately, by the end of session the decline in revenue continued and the governor's original budget had to be cut even further. The Tennessee Department of Revenue is continuing its research into the reasons for the decline in franchise and excise taxes. All told, the state budget proposal was reduced by about $220 million.

As for the General Assembly, every House member and half of the Senate members are up for re-election. Many legislators have no opponent while others face a primary and/or general election opponent. There are a number of legislative retirements this year, therefore several open seats exist in the House and the Senate. The 109th General Assembly will be set the day after the November election and will formally convene on Jan. 13, 2015.

A special thank you goes out to our bill sponsors: Sen. Doug Overbey (R-Maryville) and Reps. Mike Harrison (R-Rogersville), Barrett Rich (R-Somerville), Vance Dennis (R-Savannah), Mary Littleton (R-Dickson), David Shepard (D-Dickson), Bob Ramsey (R-Maryville) and Tony Shipley (R-Kingsport).

Sens. Rusty Crowe (R-Johnson City), chairman of the Senate Health Committee, Joey Hensley (R-Hohenwald), Doug Henry (D-Nashville), John Stevens (R-Huntingdon) and Overbey also were very helpful in their work on the Senate Long-Term Care Subcommittee. This subcommittee continues to be a platform to air long-term care issues, and the senators did a great job facilitating some needed changes to the PAE process and other industry problems.

I invite you to review this report and learn more about the actions of the General Assembly in 2014. I also want to thank the membership for their support throughout the year. I am proud of the efforts of our association, and I know our success this year was made possible because of your help. Please refer any questions to THCA's Government Affairs staff.
2014 Legislative Session – THCA Legislation

With the continued support of our Board of Directors and membership, THCA has just completed the most successful legislative session in recent memory. Important legislation, brought by THCA, was passed changing the traditional bed tax to a revenue based assessment that will bring in additional revenues to support the transition to a new acuity based Medicaid reimbursement system. Further, legislation to place more stringent time limits on nursing home resident appeals and a bill to extend the certificate of need (CON) moratorium were passed by the Legislature.

In addition to the legislation that was passed, other bills were introduced that brought TennCare to the negotiation table on Independent Informal Dispute Resolution (IIDR) and managed care organization (MCO) penalties for not processing Medicaid rate changes timely. The following is a summary of the highlights from the legislative session.

THE NEW NURSING HOME BED ASSESSMENT

SB 1872/HB 1783 (Overbe/Harrison)
Enacted as Public Chapter 859

THCA worked with Joe Lubarsky, a national reimbursement expert, for months to revise and modernize the Tennessee Nursing Home Bed Assessment. This methodology is being used successfully in several states and was approved by the THCA Board of Directors.

The old assessment, devised in the early 1990s, simply did not meet the needs of today’s nursing home business model. Tennessee is a low-tax state, and substantial increases in our revenue stream seem unlikely in the foreseeable future. That, coupled with substantially reduced occupancy rates, resulted in many facilities paying a substantial portion of their assessment on empty beds.

The new nursing home assessment still requires each nursing home to pay the nursing home assessment in monthly installments. The bureau will determine the assessment rate prospectively for the applicable fiscal year on a per-resident-day basis, exclusive of Medicare resident days and requires the per-resident day assessment rate to be uniform. The total amount of assessments for all nursing facilities from the commencement date through June 30, 2015, will equal 4.5 percent of the net patient service revenue. The 4.5 percent rate remains substantially below the federal limit of 6 percent.

CMS approval is pending and we will continue to use the old bed tax model until such time as Centers for Medicare & Medicaid (CMS) approval is obtained.

The new assessment bill sets up the nursing home assessment trust fund within the state Treasurer’s office. This trust fund is modeled after the Tennessee Hospital Association Trust Fund which was tapped for a portion of the balance to offset the 1 percent TennCare cut in 2015.

The nursing home trust fund will be used exclusively during the upcoming 2014-15 state fiscal year to “buy back” the 1 percent cut to nursing homes that all nursing home providers are slated to receive. There will also be an enhanced payment to help with the transition to the new acuity system and the new bed assessment.

The Bureau of TennCare will replace the Tennessee Department of Health (TDH) as the collecting entity of the provider assessment. The bureau collects the hospital assessment and the TDH preferred that all these activities move to TennCare.

Any nursing home participating in the Medicaid program that does not submit cost data as required by the bureau will be assessed a penalty of $100 for each day such provider is not in compliance. The TennCare Bureau will be investing in technological upgrades to create an online cost report system, among other reporting software upgrades.
**NURSING HOME RESIDENT APPEALS**

*SB 1871/HB 2174 (Overbey/Rich)*  
*Enacted as Public Chapter 911*

Federal law allows a nursing home resident who believes that they have been erroneously transferred or discharged to request a hearing on the matter. Unfortunately, these appeals can drag on and be legally continued for many months, placing a heavy financial burden on a facility. This bill provides relief to nursing home providers from financially onerous and lengthy appeals while complying with federal law and maintaining certain protection under the Doe order.

This law requires a hearing for a resident of a nursing facility who appeals an involuntary discharge notice to be conducted and a final order rendered within 90 days of the resident’s appeal of the notice. The 90-day period may be extended or continued with consent of both the facility and the resident. The presiding administrative law judge may allow an extension without facility consent only after a showing by the resident that he or she faces a substantial threat of irreparable damage or injury if the continuance is not granted.

Very importantly, this law authorizes the facility to participate in any proceeding or hearing when a resident appeals an initial determination that such resident is not financially or medically eligible.

**INDEPENDENT INFORMAL DISPUTE RESOLUTION**

*SB1865/HB 1884 (Overbey/Dennis)*  

THCA’s Independent Informal Dispute Resolution (IIDR) bill opened the door for some internal dispute resolution between the industry and the Tennessee Department of Health (TDH). The TDH sought us out when the bill started moving through the committee system and asked if we would agree to allow the department to outsource IIDR without legislation. Their commitment to us included a letter from Commissioner John Dreyzehner with a timeframe for having a new system up and running around October 2014. Equally as valuable is the offer to hold regular meetings with DOH to resolve issues between the department and the industry. We are beginning to see positive results already.

**MCO PROMPT PAY**

*SB1873/HB 2175 (Overbey/Rich)*

THCA filed a bill to place into the Tennessee Code certain prompt pay requirements for managed care organizations (MCO). This is another case where a bill filed by THCA elicited a request from the state to resolve a problem without a legislative fix. As with the IIDR bill, if the non-legislative remedy does not ameliorate the problem, THCA informed the parties that we will re-file legislation next year.

MCO contracts will be amended requiring all Medicaid rate changes to be paid within 60 days of notification from TennCare. This covers payments going forward as well as any retroactively applied rates. For example, if the MCO is notified of a rate change on October 1 that is retroactive to July 1, by December 1 the facility should be being paid the correct rate going forward and should have been paid for the reprocessed claims dating back to July 1.

Failure to comply with this requirement will result in a penalty to the MCO of $100 per day per facility involved for every day the claims are not accurately paid.

**ANNUAL CERTIFICATE OF NEED MORATORIUM**

*SB 1875/HB1784 (Overbey/Harrison)*  
*Enacted as Public Chapter 874*

THCA introduces this bill annually as it is necessary to control TennCare expenditures. The law will once again extend the current moratorium on the issuance of certificates of need (CON) for new nursing home and skilled nursing facility beds until June 30, 2015.
2014 Legislation Enacted Affecting Long-term Care

OPEN RECORDS FOR ASSISTED LIVING FACILITIES

SB 1629/HB1425 (Norris/McCormick) Administration Bill
Enacted as Public Chapter 949
This bill was a request of the Tennessee Department of Health (TDH) and accomplishes a couple of things of interest to THCA:

- Authorizes the submission of license application and renewals via an online application for: all professions licensed under the TDH.
- Adds the department of health annual health care facility and pharmacy survey inspection reports to the types of documents that will be available to the public if formal disciplinary charges are filed against a provider.
- Clarifies that any report prepared by or on behalf of the department of health as part of an investigation (instead of specifically an investigator’s, inspector’s or surveyor’s report) is confidential and not open to public inspection.

WORKERS’ COMPENSATION

SB 1645/HB 1440 (Norris/McCormick) Administration Bill
Enacted as Public Chapter 903
The bill as amended revises various provisions relative to workers’ compensation. It defines specialty practice group which will now be included as providers. The bill also alters distribution of proceeds from certain penalty payments and moves collections of penalties to the division of workers’ compensation rather than the department of labor. This bill as amended also alters provisions regarding specific documented findings by the court and alters penalties and procedure for noncompliance with insurance requirements. This bill further creates an exception to the caps under limited circumstances and applying to person over age 55, lacks any transferable skills, lacks a GED or high school diploma or cannot read at an 8th grade level. This provision remains in effect for two years.

ELDER ABUSE

SB 1852/HB 1768 (Crowe/Rogers)
Enacted as Public Chapter 961
This bill as amended fosters better communication between law enforcement and the TDH by requiring the clerk of the court to notify the TDH of a conviction of certain specified offenses so those convicted are placed upon the registry. Those offenses include:

- The offense of knowingly abusing, neglecting or exploiting an adult who is unable to manage his or her resources or carry out the activities of daily living due to mental or physical dysfunctions or advanced age; or
- The offense of knowingly, other than by accidental means, physically abusing or grossly neglecting an impaired adult if the abuse or neglect results in serious mental or physical harm.

This bill as amended also creates an elder abuse task force, which will consist of following members:

1. One member of the senate appointed by the speaker of the senate;
2. One member of the house of representatives appointed by the speaker of the house of representatives;
3. The executive director of the Tennessee commission on aging and disability or the director’s designee;
4. The commissioner of human services or the commissioner’s designee with knowledge of the responsibilities of the adult protective services program;
5. The commissioner of health or the commissioner’s designee;
6. The commissioner of financial institutions or the commissioner’s designee;
7. The commissioner of commerce and insurance or the commissioner’s designee;
8. A representative of the Disability Law and Advocacy Center of Tennessee appointed by the Center’s executive director;
(9) A district attorney general selected by the district attorneys general conference; and
(10) The director of the Tennessee bureau of investigation or the director’s designee.

This amendment requires the task force to:
(1) Assess the current status of elders and other vulnerable adults covered by the Tennessee Adult Protection Act;
(2) Examine the existing barriers, services and resources addressing the needs of these elder persons and vulnerable adults; and
(3) Develop recommendations to address problems associated with the abuse of these elder persons and vulnerable adults.

EMPLOYMENT LITIGATION

SB 2126/HB 1954 (Johnson/Dennis)
Enacted as Public Chapter 995
This bill specifies that no individual employee or agent of an employer will be liable for any employment related discrimination committed by an employer. The bill sets limits on compensatory damages both pecuniary and non-pecuniary. The maximum allowable damages are also based upon the number of employees the employer has at the time the cause of action arose. The following schedule applies:
- In the case of an employer who has eight or more but fewer than 15 employees at the time of the cause of action, $25,000;
- In the case of an employer who has more than 15 employees but fewer than 101 at the time the cause of action arose, $50,000;
- In the case of an employer who has more than 100 and fewer than 201 employees at the time the cause of action arose, $100,000;
- In the case of an employer with more than 200 employees but less than 501 at the time the cause of action arose, $200,000; and
- In the case of an employer with more than 500 employees at the time the cause of action arose, $300,000.

SISKIN BED RELOCATION

SB 2458/HB 2389 (Watson/Floyd)
Enacted as Public Chapter 653
This bill authorizes a qualified partial relocation of a nursing home refers to relocate up to 20 licensed nursing home beds from one nursing home to another nursing home; provided, the proposed relocation meets all of the criteria as follows:
- The current location and the proposed location of the nursing home beds are in the same county;
- The nursing home from which the beds will be located is licensed for over 100 beds;
- The nursing home at which the beds are currently located and the nursing home to which the beds will be relocated are under common ownership or control; and
- The site of the nursing home to which the beds will be relocated is on the campus of a rehabilitation hospital.

LAWSUIT LENDING

SB 1360/HB 1242 (Johnson/C. Johnson)
Enacted as Public Chapter 819
Lawsuit lending is a practice that has been around Tennessee for some time though never before have any regulations existed for lenders. This bill as amended establishes the Tennessee Litigation Financing Consumer Protection Act. This amendment prohibits litigation financiers from engaging in litigation financing transactions unless they are registered in this state. The strict limitations on fees and charges allowed by the financing company will likely deter these lenders from pursuing widespread clientele in the state of Tennessee.
2014 Legislation Not Enacted

The two-year session included nearly 3,000 bill filings, about half of which were filed in 2014. There are numerous bills tracked that never moved or had the potential for minimal impact on the long term care industry. This list includes bills which would have had direct impact on the industry but because of THCA efforts or the efforts of others, they did not pass.

1. **SB 1861/HB 1949 (Tate/Akbari)**
   This bill increased fines for elder abuse but failed to pass when the bill drew a fiscal note for incarceration costs.

2. **SB 1974/HB 1827 (Nicely/Womick)**
   This bill was written with the intent to limit the questions a pediatrician could ask of a child regarding the ownership, possession or use of a gun. This bill however, was written broadly to include all health care facilities and as such brought a flurry of amendments, including one from THCA to exclude our facilities from the provision asking about gun possession. The bill generally lacked support and did not move forward.

3. **SB 1975/HB 1723 (Finney/Fitzhugh)**
   This bill would require the expansion of Medicaid under the Patient Protection and Affordable Care Act. This bill lacked support by the majority of the membership and remains a political hot potato.

4. **SB 2019/HB 1837 (Beavers/Pody)**
   This bill would allow Tennessee to participate in a health care compact with other member states. It required the federal government to surrender control of health care programs, including Medicare and Medicaid. The member states would administer such programs with greater flexibility and full federal funding. This bill has been around for several years and fails to pass out of the house committee.

5. **SB 2042/HB 1504 (Kelsey/DeBerry)**
   This bill sought to extend the statute of limitations to two years from the current one year in wrongful death actions. The House sponsor brought this bill on behalf of a constituent, though he did not intend to include health care providers. Due to drafting related problems, among other issues, this bill did not progress.

6. **SB 2237/HB 1811 (Tracy/R. Williams)**
   This bill was brought by NHC to allow nursing homes to use a “bed bank”. The bill drew a large fiscal note due to anticipated decline in “bed assessment” revenue. However, the bill did not move forward in anticipation of the new bed assessment model making this bill unnecessary.

7. **SB 2429/HB 2342 (Harper/Love)**
   This bill was brought at the request of Nashville Mayor Karl Dean’s administration as part of the city’s plan to extricate itself from the nursing home business. The Bordeaux facility costs the city $10 million per year to operate, and the city decided to pursue a sale of the facility to Signature Healthcare. This bill would divide and relocate a portion of the beds at Bordeaux to a facility purported to be built near Skyline Medical Center, also inside the Davidson County limits. This bill went through the Senate without an issue; however, a variety of issues and a freshman House sponsor doomed this bill in the House.