

LEGISLATIVE BRIEF

End of Session Report

July 2, 2009

Thank you for all your grassroots advocacy during this difficult legislative session—it vastly improved where we began this journey in January!

The 75th Oregon Legislative Assembly adjourned Monday evening, bringing to close one of the more challenging sessions caused by the economic downturn. Legislators had to build a budget being short \$3.6 billion to fund state services/programs at the essential budget level. Your efforts were critical towards staving off drastic cuts to services for senior and people with disabilities...and will continue to be as we look forward!

Looking forward, the legislature will be back in February to deal with budget issues that are largely dependent on what the next revenue forecasts bring (next one is out in September) as well as the outcome resulting from a potential vote on the revenue measures passed this session. The measures go into effect 90 days sine die (September 20th). If tax measure opponents gather the close to 55,000 signatures required to force a statewide election, an election would most likely be held in early 2010.

Key Budget Outcomes

Following are key budget outcomes effecting seniors and people with disabilities:

- Nursing facility rates received an \$18 million add-back from the original Co-Chairs budget that takes the rate to \$208.29 (\$3.44 of this is the CNA staffing add-on) for FY 09/10.
- Community based care (assisted living, residential care and foster care) rates are maintained at current levels. There will be no COLA.
- In-home care services funding is maintained by continuing to pay for Instrumental Activities of Daily Living (IADL) hours and Activities of Daily Living (ADL).
- OPI is maintained at its current level of \$13.2 million (\$10 million in SPD budget plus \$3.2 in the HB 5054 – the "Christmas Tree" bill that passed on Monday).

- Home care worker health insurance is maintained.
- Special needs transportation received \$10 million in HB 5054.
- The state fund portion of the federal Senior Health Insurance Benefits Assistance program and the Retired Senior Volunteer Program was eliminated.

Key Bill Outcomes

Following are the outcomes on bills of most impact, potential impact or interest to Alliance members. More detail is included in the attached Alliance Bill Update and copies of the bills may be found at the highlighted links.

- [HB 2014](#) – **Passed** - This was a major victory for Alliance members. Passage of this bill will result in not-for-profit nursing homes, assisted living/residential care and CCRCs as being exempt from school construction taxes. (Certain affordable housing is already exempted.)
- [HB 2138](#) – **Passed** - Prescribes new requirements for CCRCs including the requirement that CCRCs must accept at least one resident to participate as a non-voting representative on the governing body, or with owners or managers.
- [HB 2442](#) – **Passed** - Establishes Quality Care Fund within DHS for training, technical assistance, quality improvement and licensing. Places in statute, a civil penalty cap of \$500 per day per violation not to exceed \$7,500 within any 90 day period (currently capped at \$6,000) and sets the civil penalty cap at \$15,000 per quarter for egregious cases.
- [HB 2009](#)– **Passed** - Establishes the Oregon Health Policy Board and Oregon Health Authority. Includes creation and operation of a statewide POLST registry.
- [HB 2139](#) – **Passed** - Allows DHS to file a petition to appoint a trustee of a long term care facility without giving notice to the owner of the facility if there is a serious and immediate risk of harm or death to patients in the facility.
- [HB 3507](#) – **Passed** - Modifies the definition of “political matters” and “religious matters” as the terms relate to mandatory workplace communications to employee about employer’s opinions as outlined in [SB 519](#). “Religious matters” include activities related to religious affiliation or the decision of whether to join or support a bona fide religious organization.
- [SB 158](#) – **Passed** - Creates licensing requirements and fees for referral agencies and caregiver registries. Requires DHS to establish procedures for filing complaints against home health agencies, in-home care agencies, referral agencies and caregiver registries. Imposes civil penalties (\$1,000 per violation at a cap of \$2,000) for any person, home health agency, referral agency or caregiver registry for specified violations.
- [SB 161](#) – **Passed** - Requires hospice to be licensed by DHS in order to operate in state.
- [SB 582](#) – **Passed** – Continues requirement for certain agencies/officials to notify a long term care facility or residential care facility that a person seeking admission to facility is on probation, parole or post-prison supervision after being convicted of sex crime.

- [SB 701](#) - **Passed**- Creates the Nursing Faculty Loan Repayment Program to provide loan repayments on behalf of nurse educators at nursing schools in Oregon who have earned a master's or doctoral degree from an accredited nursing education program.
- [SB 771](#) - **Passed** - Creates a number of new provisions in landlord-tenant law including a 60-day no-cause notice for terminating tenancy and allowing 30-day notice if termination meets specified criteria.
- [SB 793](#) - **Passed** - Revises regulations for life settlement insurance including the prohibition of stranger-originated life insurance (STOLI) practices or plans.
- [HB 2391](#) - **Did not pass** - Would have established Aging and Disability Resource Center program in Department of Human Services.
- [HB 2069](#) - **Did not pass** - Would have limited amount of federally deductible medical expense that elderly taxpayer may subtract in determining Oregon taxable income.
- [HB 2802](#) - **Did not pass** - Would have increased \$500,000 limit on noneconomic damages recoverable in wrongful death actions and other statutorily created causes of action to \$1,500,000.
- [HB 3388](#)- **Did not pass** - Would have expanded definition of "facility" to include assisted living, residential care and adult foster homes for purposes of residents' bill of rights, which includes residents' right to receive care from trained staff and right to receive diet that meets residents' special needs.
- [SB 393](#) - **Did not pass** - Would have required residential care facilities to maintain specified liquid reserve funds.
- [SB 654](#) - **Did not pass** - Would have required nursing home providers to offer flu shots at no cost to administrators, nurses and CNAs.

Alliance Bill Update July 2, 2009

[HB 2014](#) - **Passed** - *Provides for collection of construction taxes by state agencies and state officials.*

This was a major victory for Alliance members. Passage of this bill will result in not-for-profit nursing homes, assisted living/residential care and CCRCs as being exempt from school construction taxes. (Certain affordable housing is already exempted.) Since the original bill was passed in 2007 allowing school districts to impose the tax, the Alliance had been working with Speaker Hunt to achieve a solution for Alliance members. Bill becomes effective 91 days following sine die which is September 21, 2009.

[HB 2138](#) - **Passed** - *Prescribes new requirements for registration of continuing care retirement communities.*

The bill is the result of the work of the CCRC Advisory Council that includes Alliance members Scott Ferguson, Chair, Tom Becker and Dennis Russell. The Alliance supported the bill and expressed our appreciation to the House Human Services Committee for allowing the process to proceed as it did through the work of the Advisory Council.

One of the major changes to the CCRC statute is that CCRCs will be required to accept at least one resident to participate as a non-voting representative on the governing body, or with owners or managers.

DHS/SPD will form a rule advisory committee "as soon as they can" to revise the CCRC rules to implement the statutory changes. Bill becomes effective on Jan 1, 2010.

[HB 2442](#) - **Passed** - *Establishes Quality Care Fund.*

Establishes Quality Care Fund within Department of Human Services (DHS) for training, technical assistance, quality improvement and licensing. Requires DHS to transfer \$150,000 from the Quality Care Fund to the General Fund on June 30, 2011 in order to zero out any general fund impact for 2009-11

Bill places in statute, a civil penalty cap of \$500 per day per violation not to exceed \$7,500 within any 90 day period (currently capped at \$6,000). It also sets the civil penalty cap at \$15,000 per quarter for egregious cases (resulting in death, serious injury, rape, sexual abuse or sexual exploitation). Serious injury is defined as a physical injury that creates a substantial risk of death or that causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

Fees and civil penalties can be matched with federal Medicaid dollars to support expanded investigations and training requirements for Department of Human Services.

[HB 2009](#) - **Passed** - *Establishes Oregon Health Policy Board and Oregon Health Authority and specifies duties, functions and powers.*

[HB 2116](#) - **Passed** - *Creates Health System Fund for specified purposes, including funding of Health Care for All Oregon Children program.*

Together, HB 2009 and HB 2116 expand healthcare coverage to 115,000 Oregonians. These bills will allow the Oregon Health Plan to cover an additional 80,000 uninsured children and 35,000 more adults.

HB 2009 contains a number of sequenced health reform steps aimed at reducing the growing cost of health care and bringing more efficiency and transparency to the system. It also authorizes the establishment and operation of a statewide registry for collection and dissemination of physician orders for life-sustaining treatment (POLST)

Some of the reforms included in the bill are steps to streamline state health care agencies into one Oregon Health Authority, governed by a citizen-led Health Policy Board; simplify and standardize the transactions between medical providers and insurance carriers; and require the collection of all medical claims data to give consumers tools to compare the cost and quality of their health care.

HB 2116 is a health provider tax and provides a funding mechanism for HB 2009. The provider tax charges a fee to health providers which will be matched by \$2 billion in federal funds over the next four years to help the state provide health insurance for 200,000 Oregonians through the Oregon Health Plan (OHP) and a new shared-cost insurance product called "Kids Connect."

[HB 2139](#) - **Passed** - *Allows the Director of Human Services to file a petition to appoint a trustee of a long term care facility without giving notice to the owner of the facility if there is a serious and immediate risk of harm or death to patients in the facility.*

The bill fixes the current problem of it taking several weeks to establish a trusteeship even in the case of serious and immediate risk of harm or death to residents.

Allows DHS to appoint a temporary manager for up to six months and set the duties and responsibilities for the manager. Also, allows a trustee to prohibit any person, including the licensee, from entering or remaining on the premises.

DHS collects a fee from all long term facilities to fund a Facility Fund used to pay for the operation expenses of long term care facilities in trusteeship. This bill increases the minimum and maximum amount in the Facility Fund from no less than \$600,000 and no

more than \$750,000 (currently set at \$300,000). When the fund reaches \$750,000, DHS will discontinue collecting for the fund but will resume doing so when the fund falls below \$600,000.

[HB 3507](#) – **Passed** - *Modifies definition of political matters and scope of immunity from adverse employment action against employees, for purposes of application of employee right to decline to receive certain workplace communications.*

WHAT THE MEASURE DOES: Modifies the definition of “political matters” and “religious matters” as the terms relate to mandatory workplace communications to employee about employer’s opinions. The measure also clarifies the scope of immunity from adverse employment action against employees, as outlined in [SB 519](#).

BACKGROUND: SB 519 outlines specific employee and employer rights related to participation in employer-sponsored meetings or communications regarding religious or political matters. House Bill 3507 modifies the definitions of “political matters” to include activities related to political policy affiliation, campaigns for ballot measures, political candidates, and the decision of whether to join or support any lawful political or constituent group; and “religious matters” to include activities related to religious affiliation or the decision of whether to join or support a bona fide religious organization.

[SB 158](#) – **Passed** - *Relating to health care; appropriating money.*

Authorizes the Department of Human Services to charge hospitals fees for specified investigations and surveys. Authorizes alternative procedures for on-site inspections for health care facilities and home health agencies.

Creates licensing requirements for referral agencies and caregiver registries. Directs department to adopt rules governing referral agencies and caregiver registries. Imposes licensing fees on referral agencies and caregiver registries.

Requires department to establish procedures for filing complaints against home health agencies, in-home care agencies, referral agencies and caregiver registries. Requires home health agency to follow plan of treatment established by and periodically reviewed by physician or nurse practitioner. Imposes civil penalties (\$1,000 per violation at a cap of \$2,000) for any person, home health agency, referral agency or caregiver registry for specified violations.

BACKGROUND: Currently, there is no state licensing or Medicare oversight of health care staffing agencies that provide care to vulnerable individuals in their homes. In addition, there are currently no requirements that a provider must furnish disclosure and consent information that would assist consumers in their decision-making. In the past decade, agency fees have remained unchanged and Medicare funding has decreased. Additionally, the Department of Human Services receives no General Fund money for the program. From 1974 to 2007, survey workload has increased from 80 to 352 inspections. In 2007, investigations of patient and family complaints rose from 35 to 130. Since 2001, facilities licensed and certified by the Health Care Licensure and Certification (HCLC) program increased from 367 to 536.

SB 161 - Passed - *Relating to hospice programs; declaring an emergency.*

Summary: Requires hospice to be licensed by DHS in order to operate in state. Currently, hospice agencies are not licensed, but rather certified or accredited through Centers for Medicare and Medicaid Services (CMS), Oregon Hospice Association, and Joint Commission on Accreditation of Healthcare Organizations (JCAHO). The bill removes authority of CMS, Oregon Hospice Association and JCAHO to certify or accredit hospice programs to operate in state and establishes authority of Department of Human Services to license hospice programs.

Establishes civil penalty authority and modifies the certification and accreditation of hospice programs in Oregon by establishing the authority of the Department of Human Services (DHS) to license all hospice programs in the state. Authorizes DHS to adopt rules regarding requirements, qualifications and fees for licensure. Requires DHS to conduct inspections at least once every three years, and allows DHS to impose civil penalty of \$1,000 per day up to \$10,000 in any 30-day period for violation of terms or conditions of licensure (operative on January 1, 2010).

BACKGROUND: Inspection frequency is currently every six to ten years under the Medicare survey grant and contingent on funding levels.

SB 383 - Passed - *Allows home care worker who is party in contested case hearing conducted by Department of Human Services to be represented by labor union representative.* (SEIU bill)

SB 582 - Passed - *Relating to sex offender notification to care facilities.*

Repeals sunset on provisions requiring certain agencies and officials to notify long term care facility or residential care facility that person seeking admission to facility is on probation, parole or post-prison supervision after being convicted of sex crime.

SB 701 - Passed- *Creates Nursing Faculty Loan Repayment Program for purpose of providing loan for certain nurse educators at nursing schools in Oregon.*

Currently, the Oregon Student Assistance Commission (OSAC) offers Oregon nurse educators loan repayment programs, administered by the U.S. Department of Health and Human Services, Nursing Student Loan and Health Education Assistance Loan Program. Senate Bill 701-A creates the Nursing Faculty Loan Repayment Program to provide loan repayments on behalf of nurse educators at nursing schools in Oregon who have earned a master's or doctoral degree from an accredited nursing education program. As the agency responsible for administering the loan program, OSAC is directed to adopt rules in consultation with the Oregon State Board of Nursing and the

Oregon Center for Nursing to establish criteria for participation in the Nursing Faculty Loan Repayment Program.

SB 771 – **Passed - *Relating to landlord-tenant law; creating new provisions; and amending ORS 90.100, 90.220, 90.245, 90.300, 90.302, 90.425, 90.427, 90.429, 90.472, 90.475 and 105.124.***

Creates 60-day no-cause notice for terminating tenancy. Allows 30-day notice if termination meets specified criteria. Specifies procedures for terminating various forms of tenancy. Allows including explanation for termination of tenancy with no-cause notice.

Allows landlords, tenants and guests of tenant to enter into agreement for guest to become temporary occupant of premises. Specifies agreement contents and rights of parties.

Specifies procedure for disposition of certain personal property landlord presumes is abandoned due to death of tenant.

Requires landlord to disclose deposits, fees and rent before entering into rental agreement or accepting payment. Regulates assessment of fees. Prohibits landlord use of liquidated damages provisions.

Regulates charging of security deposits and claims against security deposits.

SB 793 – **Passed - *Revises regulations for life settlement insurance.***

WHAT THE MEASURE DOES: Revises life settlement insurance regulations. Prohibits stranger-originated life insurance (STOLI) practice or plan. Defines parameters and reporting requirements for life settlement providers, brokers, producers and agents. Requires disclosures by life insurance providers at the time of certain actions by policy owners. Requires notice be given to the owner of an individual life insurance policy under specified circumstances.

Prohibits life settlement contracts for five years after issuance of life insurance policy with exceptions. Prohibits certain solicitations and adds regulations and restrictions on advertising of life settlement contracts and related products. Grants Department of Consumer and Business Services (DCBS) rulemaking authority. Directs DCBS to provide educational information to the public regarding consumers' rights as an owner of a life insurance policy.

Outlines specific items that must be included in the informational materials. Makes violation of Life Settlement Contracts Act an unlawful trade practice. Prohibits person convicted of felony involving dishonesty or breach of trust from engaging in business of life settlements. Requires persons engaged in life settlement business to inform DCBS of suspected fraud.

EFFECT OF COMMITTEE AMENDMENT: Requires that the insurance company provide notice to the owner of an individual life insurance policy if the insured person is 60 years

or older and the life insurance company receives notice from the owner that requests either a whole or part surrender of an individual policy or to receive an accelerated death benefit under an individual policy. Clarifies that the life insurance company sends all notices of lapse of an individual policy to the owner, other than a term policy. Outlines specific information that must be contained in the notice. Directs the department to provide educational information to the public regarding consumers' rights as an owner of a life insurance policy. Outlines specific items that must be included in the informational materials. Allows certain optional items to be included in the materials as long as they are discussed in general terms for informational purposes and not be identifiable to any specific insurance licensee.

BACKGROUND: Life settlement agreements involve the sale of an existing life insurance policy before death for an amount that is generally more than the cash surrender value, but less than the net death benefit. The insured consumer agrees to transfer the policy to a third party for the benefit of an immediate payment to the insured. Stranger originated life insurance (STOLI) is the initiation or issuance of a life insurance policy for the benefit of a person who has no insurable interest in the insured at the time of policy creation. The insured consumer generally has no control over the policy.

A number of states have passed or are currently considering legislation establishing or strengthening life settlement agreement regulations, particularly focused on deterring or prohibiting STOLI transactions. Two model acts focused on life settlement agreements and STOLI transactions, one developed by the National Association of Insurance Commissioners and another developed by the National Conference of Insurance Legislators, were considered in drafting the measure.

[HB 2391](#) - **Did not pass - *Would have established Aging and Disability Resource Center program in Department of Human Services and provide funding for OPI.***

The bill passed out of House Human Services committee and was referred to Ways & Means Subcommittee on Human Services where it stayed. The bill received positive support but given the current economic climate and the fact it was a new program, it did not pass.

HB 2069, which also did not pass in the final hours, was going to be the funding vehicle. HB 2069 would have limited the amount of federally deductible medical expense that seniors may subtract in determining Oregon taxable income.

[HB 2069](#) - **Did not pass - *Would have limited amount of federally deductible medical expense that elderly taxpayer may subtract in determining Oregon taxable income.***

Diverted savings were to be used for OPI, the Senior and Disability Property Tax Deferral program administered by the counties and the Senior and Disability Transit Program.

[HB 2802](#) - **Did not pass** – Would have increased \$500,000 limit on noneconomic damages recoverable in wrongful death actions and other statutorily created causes of action to \$1,500,000.

[HB 3388](#) - **Did not pass** - Would have expanded definition of "facility" to include assisted living, residential care and adult foster homes for purposes of residents' bill of rights, which includes residents' right to receive care from trained staff and right to receive diet that meets residents' special needs.

[SB 393](#) – **Did not pass** – *Would have required residential care facilities to maintain specified liquid reserve funds.*

[SB 654](#) – **Did not pass** - *Would have required nursing home providers to offer flu shots at no cost to administrators, nurses and CNAs.*

Alliance conducted survey of nursing home members, results follow:

- Survey had 73% response rate
- Of those responding, 100% currently provide flu vaccines at no cost to staff
- Of those, 50% took a neutral position on SB 654, 25% opposed and 25% supported