

2011 Public Policy Wrap-Up



Aging Services of California... Advocating for the Right Public Policy for the Right Reasons

Two-thousand and eleven was a year of tumult and uncertainty in Sacramento as Governor Jerry Brown focused almost singularly on restoring the state's financial footing. Aging Services of California's advocacy agenda included addressing the state's monumental budget gap, preserving redevelopment funds for affordable senior housing, and halting efforts to move the financial oversight of continuing care retirement communities to the Department of Insurance. In addition to pushing the Aging Services policy agenda, staff monitored and advocated on more than 100 legislative measures in 2011. While successful on many fronts, nonprofit providers continue to face the challenges of today's economic unease with a steadfast commitment to providing quality care and services to California's older adults. Despite funding cuts at the state and federal levels, a real estate market slow to rebound, and tight capital markets, Aging Services of California's members continue to provide vibrant communities that honor their tradition of service to the community.

A true representative of the continuum of care and a steward of the nonprofit mission, Aging Services of California remains on the forefront of issues faced by its diverse membership. Our 400+ members deliver housing, care and services to approximately 100,000 older Californians every day. Our membership includes providers of affordable senior housing, skilled nursing, residential and continuing care, as well as home and community-based care.

The following list highlights the 2011 advocacy efforts and related activities:

- Advocated the drawdown of the Continuing Care Provider Fee Fund to its statutory cap resulting in a 50% reduction in annual fees for 12 months.
- Advocated for a stronger, more efficient inspection methodology at the Department of Social Services, including supporting the development of Key Indicator Tools (KITs) for visiting community care facilities.
- Proposed innovative approaches for better integrating dual eligible beneficiaries as part of the Department of Health Care Services (DHCS) pilot project.
- With its sponsors, helped to develop the 2011 Senior Policy Health Forum Hosted by the Center for Elder's Independence and On Lok.
- Established a new grassroots program, Aging Services' "Home District Week," and coordinated member visits to legislative district offices across the state.
- Coordinated over 100 meetings with legislators in conjunction with Aging Services' lobby day and LeadingAge Annual conference.
- Advocated on and monitored approximately 114 bills in the state legislature.



The following is a listing of the high priority legislation that was acted on in 2011 sorted by provider type. Please make note of bills with the "New Requirement" notation as this denotes legislation of special interest. For a copy of any bill contained in this report, contact Kristy Oriol, Policy Coordinator at koriol@aging.org. For information on specific issues, see the staff directory on the last page.

Aging Services of California Priority Legislation

AFFORDABLE SENIOR HOUSING

HUD 202 Funding: In conjunction with LeadingAge, Aging Services helped advocate to stop efforts in the Congress to reduce HUD 202 funding by 50 percent less than the FY 10 level and \$32 million below FY12. Despite generating more than 2,400 calls, funding for new HUD 202 development was eliminated. However, approximately \$25 million was awarded for the Assisted Living Conversion program.

Redevelopment Funding: Aging Services joined forces with other affordable housing advocates in an effort to preserve the second largest source of funding for the development and preservation of affordable homes in the state. As part of his 2011-12 budget proposal, Governor Brown sought to eliminate local redevelopment agencies and shift \$1.7 billion to local governments to pay for other services. The Legislature eventually followed the Governor's lead and voted to fundamentally change the nature of redevelopment in this state. On one hand, they approved a bill that would eliminate the agencies altogether. To further complicate matters, they also adopted a bill that would allow the agencies to continue to exist – provided they made annual payments to the state worth a collective \$400 million. Should agencies fail to make these payments, they would cease to exist. A number of local agencies along with two statewide organizations filed suit with the State Supreme Court in an attempt to block efforts to eliminate redevelopment agencies.

To underscore the importance of redevelopment funding to affordable senior housing, Aging Services helped to coordinate legislative visits for nearly 100 residents as part of its 2011 Public Policy Conference. Aging Services will continue to be actively engaged in the debate around redevelopment into early 2012 and beyond. It is particularly important to advocate for affordable senior housing development monies in light of the recent California State Supreme Court ruling allowing the state to eliminate redevelopment agencies.

Unlawful Detainer: SB 265 Ammiano, (D- San Francisco) would authorize a residential tenant who has been served the 3 days' notice to redeem a tenancy and continue in lawful possession by tendering to the owner or the owner's agent the amount of rent in arrears, any subsequent rent that has become due, and the reasonable court costs and attorney's fees incurred by the plaintiff. This bill failed to meet deadline and is now a two-year bill.



Smoking in Rental Dwellings: SB 332 (Padilla, D- Pacoima) authorizes a landlord of a residential dwelling unit to prohibit the smoking of tobacco products on the property, in a dwelling unit, in another interior or exterior area, or on the premises on which the dwelling unit is located. It would require that a landlord who prohibits smoking pursuant to this authority be subject to federal, state and local requirements governing changes to the terms of a lease or rental agreement for tenants. This bill, supported by Aging Services, was signed by the Governor and went into effect January 1, 2012.

Redevelopment: SB 450 (Lowenthal, D-Long Beach) would have required redevelopment agencies to include additional information relating to any major audit violations, any corrections to those violations, and planning and general administrative expenses of the Low and Moderate Income Housing Fund. It would authorize the Controller to conduct quality conduct reviews of independent financial audit reports and require the Controller to publish the results of his or her reviews. This bill was vetoed by the Governor.

Housing Authorities/Housing Certificates: SB 660 (Runner, R- Antelope Valley), would authorize any housing authority that administers a housing program and distribute federal housing certificates to eligible families with children to make compliance with the Compulsory Education Law, a continuing condition of certificate eligibility. It failed to meet deadline and is now a two-year bill.

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CONTINUING CARE RETIREMENT COMMUNITIES/RESIDENTIAL CARE FACILITIES FOR THE ELDERLY

Elimination of Continuing Care Advisory

Committee: AB 106 (Committee on Budget) formalized the Governor's elimination of boards and commissions to create increased efficiencies. Effective January 1, 2012 the Advisory Committee was eliminated. Aging Services policy staff has been meeting regularly with the Continuing Care Contracts Branch and is currently working on creating a process for more structured meetings to allow providers a forum for input to the Department.



Notification Requirements to

Residents: AB 313 (Monning, D-Santa Cruz), signed by the Governor on September 30, 2011, requires RCFEs to provide notice to

residents, the residents' responsible persons, and the local LTC Ombudsman within 10 days when specific actions are taken that could result in the suspension or revocation of the facility's license or that relate to the health and safety of residents. This includes: 1) when the Department commences proceedings to suspend or revoke the facility's license, or 2) a criminal action that relates to health and safety of the resident is brought against the facility. The new law requires that the notice include the reason given for the criminal action brought against the facility. The notice must also be posted in a conspicuous location in no less than 14-point type. AB 313 went into effect on January 1, 2012.

Annual Inspections of Community Care

Facilities: AB 419 (Mitchell, D-Los Angeles) would have re-established annual visits to all community care facilities licensed by the Community Care Licensing Division of the Department of Social Services. The bill would have also required that the inspections be based on inspection protocols that are researched based, field tested, reviewed by stakeholders and annually evaluated. The bill failed to pass out of the Assembly Appropriations Committee. It has been designated a "Two Year" Bill and can be taken up in 2012.

Department of Insurance Oversight of CCRCs: AB 748 (Yamada, D-Davis) seeks to transfer the financial oversight of Continuing Care Retirement Communities to the Department of Insurance. As written, the bill would transfer the existing staff of the Continuing Care Contracts Branch to the Department of Insurance and would leave other structures unchanged. Aging Services strongly objects to this bill and disagrees with the premise that CDI would provide superior oversight. The bill was held in the Assembly Human Services Committee without being heard. The bill was designated a "Two Year" bill and is eligible to be heard in 2012.

Charges to Deceased Persons: AB 1142 (Chesbro, D-Eureka) would have prohibited RCFEs from charging personal care fees upon the notice of death of the resident. It would further prohibit RCFEs from assessing fees for a residential living unit if a deceased after the personal property has been removed from the unit. Aging Services supported this measure. However, it was held in the Assembly Human Services Committee. The bill was designated a "Two Year" bill and is eligible to be heard in 2012.



Notification Requirements for

Financial Distress: SB 897 (Leno, D-San Francisco), signed by the Governor on September 30, 2011, requires RCFEs to notify the LTC

Ombudsman, residents and potential residents, and the Department of Social Services within two business days of the following events: 1) notice of default, trustee's sale, or any other indication of foreclosure is issued on the property, 2) an unlawful detainer action is initiated against the licensee, 3) the licensee files for bankruptcy, 4) the licensee receives a written notice of default of payment pursuant to statutory unlawful detainer procedures, or 5) a utility company has sent a notice of intent to terminate electricity, gas, or water service on the property within not more than 15 days of the notice. SB 897 is effective January 1, 2012. CCRCs are exempt from this law.

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HOME AND COMMUNITY-BASED SERVICES

The major activity in the area of Home and Community Based Services in 2011 was fighting to preserve Adult Day Health Care (ADHC). Detailed below, ADHC was eventually eliminated as a benefit. However, a similar program will continue as a result of a lawsuit settlement.



Keeping Adults Free from Institutions (KAFI) Program: Vetoed by Governor Brown, AB 96 (Committee on Budget) would have established the KAFI program as the new Adult

Day Health Care option in California, which were eliminated as a Medi-Cal optional benefit in the 2011-12 Budget Act. Subsequent litigation (*Darling et al v. Douglas*) resulted in a settlement which created the Community-Based Adult Services (CBAS) program. The CBAS program will go into effect on March 1, 2012.

Elder Economic Planning Act of 2011: AB 138 (Beall, D-San Jose), signed by the Governor on October 9, 2011, requires that the Department of Aging and the Area Agencies on Aging to use the Elder Economic Security Standard Index when planning for resource allocation under the Older Californians and Americans Acts.

AAAs/Independent Living Center Funding: AB 533 (Yamada, D-Davis) would provide continuous funding for Area Agencies on Aging and Independent Living Centers, absent a state budget. The bill was held in the Assembly Appropriations Committee's suspense file.

Program of All Inclusive Care for the Elderly: AB 574 (Lowenthal, Bonnie, D-Long Beach), signed by the Governor on September 30, 2011, expands the number of allowable PACE organizations in the state to 15 (from the existing 10) and updates the statutes to reflect PACE's status as a state optional benefit rather than a demonstration project.

California Department of Aging and Adult Services: AB 594 (Yamada, D-Davis) would have created the "California Department of Aging and Adult Services" by merging programs such as In-Home Supportive Services, Older Americans/Californians Act, Adult Protective Services, long-term care facilities and

residential care facilities into a single state department. The bill was held in the Assembly Human Services Committee and designated a "Two Year" bill. It will be eligible for hearing in 2012.

In Home Supportive Services: AB 876 (Valadao, R-Hanford) narrows the circumstances that allow a provider of IHSS to sign, on the client's behalf, the form that allows the client to hire a provider with a criminal record that includes various felonies. The bill was signed by the governor on July 7, 2011 and went into effect on January 1, 2012.

Home Care Services Act of 2011: AB 899 (Yamada, D-Davis) & SB 411 (Price, D-Los Angeles) both would establish a new licensing regime for home care services. Both bills would require DSS to license non-medical home care services (such as bathing, dressing, feeding, exercising, personal hygiene, assisting with self-administered medications, meal preparation, laundry and companionship). Whereas AB 899 established general licensure requirements, SB 411 requires random inspections of home care agencies every three years, requires employers to pay fees for individual aides' licensure, among other things. The costs associated with SB 411 exceed \$8 million. Aging services supports AB 899 and opposes SB 411. Both bills are "two year" bills and are eligible for hearing in 2012.

SKILLED NURSING FACILITIES



Elimination of Citation Review Conference and Dual Enforcement: AB 641 (Feuer, D-Los Angeles), was signed by the Governor on October 9, 2011, and eliminates the Citation Review

Conference (CRC) as a part of the appeals process. The bill also removes the prohibition on levying both federal and state penalties for licensing violations. This change allows the Department of Public Health to recommend to CMS to levy monetary penalties. This new law is effective January 1, 2012.

Complaint Investigation Periods: SB 799 (Negrete McLeod, D-Chino) would require the Department of Public Health to complete a facility complaint investigation within 90 working days. The bill would also extend the time period from 5 days to 15 working

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days in which a complainant could notify CDPH of his or her request for an informal conference to discuss the investigation's determination and would require additional mini-exit interview requirements. The bill was held in the Senate Appropriations Committee and is eligible to be heard in 2012.

MISCELLANEOUS

Mandated Elder Abuse Reporters: AB 40 (Yamada, D-Davis) would require mandated reporters to report suspected or known instances of elder or dependent adult abuse in long-term care facilities (including skilled nursing facilities, residential care facilities, adult day health centers) to both the Long-Term Care Ombudsman and local law enforcement. The bill is currently in the Senate Human Services committee and may be acted on in 2012.

Freezing of Stolen Assets: AB 1293 (Blumenfeld, D-Van Nuys), signed by the Governor on September 30, 2011, allows courts to freeze the assets of defendants involving theft, embezzlement, forger, fraud, or identify theft of an elder or dependent adult after the first offense in cases involving \$100,000 or more.

Hospice Facilities: SB 135 (Hernandez, D-Baldwin Park) would establish hospice facilities as a facility type and would establish a hospice facility licensing category that would be administered by the California Department of Public Health. SB 135 is a two-year bill and may be acted on in 2012.

TECHNOLOGY

Telehealth Advancement Act of 2011: AB 415 (Logue, R-Chico), signed by the Governor on October 7, 2011, revised and updated the existing laws to facilitate the advancement of telehealth as a service delivery mode in managed care and the Medi-Cal program. Most importantly, the definition of telemedicine was replaced by the more broad "telehealth" definition which includes care technologies in the home rather than simply healthcare provider communications. AgeTech California, Aging Services joint technology initiative, advocated strongly for the passage of AB 415. The new law went into effect on January 1, 2012.

Medical Record Confidentiality: SB 850 (Leno, D-San Francisco), signed by the Governor on October 9, 2011, requires that electronic health or medical record systems automatically record and preserve any change or deletion of electronically stored medical information, and would require the record to include, among other things, the identity of the person who accessed and changed the medical information and the change that was made to the information.

Your Aging Services policy staff are here to assist you with any questions you may have:

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