

Issues for Consideration – 2016 State Legislative Plan

New Issues

1. Minimum Nursing Home Staffing Levels
2. Enhancing Virginia's *Advance Health Care Directive Registry* (to Include *Letters of Diminishing Capacity*)
3. Campaign Finance Reform
4. Index Income Tax Age Deduction to Inflation
5. Transparency Virginia Issues
6. "Unlawful CSRS Tax"

2015 Carryover Issues

1. Enhanced Protection of Incapacitated Adults
2. Income Tax Subtraction for Retiree Health Insurance Premiums
3. Nonpartisan Redistricting Reform
4. Senior Absentee Voting

For summary information on our 2015 State Legislative issues, please see the March 2015 VFC State Legislation Newsletter at this link:

<http://www.vanarfe.org/State%20Legislation/2015SL/NARFE-Virginia%20State%20Leg%20Newsletter-Mar2015.pdf>

1. Establishment of Minimum Nursing Home Staffing Levels

Included in NARFE's Legislative Program is support for nursing home reform, including efforts to ensure that long-term care facilities are adequately staffed with experienced professionals in the medical disciplines of gerontology and nursing, and that such individuals continue to receive training and are adequately compensated. In that regard, nursing homes are notoriously understaffed. Studies have shown that more staff leads to better care.

Federal law requires Medicare and Medicaid certified nursing homes to have a registered nurse (RN) director of nursing (DON); an RN on duty at least 8 hours a day, 7 days a week; and a licensed nurse (RN or LPN) on duty the rest of the time. However, the regulations do not mandate a specific staff-to-resident ratio or a minimum number of hours per resident day for resident care, and concerns about the quality of care in nursing homes have continued. Federal staffing requirements do not require facilities to meet specific staffing ratios (e.g., 1 nurse aide for every 5 residents or a minimum number of direct care hours per resident per day (e.g., 3 hours of direct care per day.)

In view of the above, the majority of U.S. states have adopted regulations requiring nursing homes to meet minimum nursing homes staffing levels, expressed as a ratio of nurses and nurse aides to residents, including a specific number direct care hours per resident.

Virginia Regulations which relate to nurse staffing in nursing homes are minimal, and provide very general direction as to the minimal level of acceptable staffing. 12 VAC 5-371-210B provides only that the nursing facility shall provide qualified nurses and certified nurse aides on all shifts, seven days per week, **in sufficient number to meet the assessed nursing care needs of all residents**. Although most Virginia nursing homes are certified for Medicare or Medicaid and therefore have to meet the minimum Federal Medicare and Medicaid requirement of having an RN on duty at least 8 hours a day, 7 hours per week, Virginia nursing homes that are not certified for Medicare or Medicaid do not have to even meet that minimal requirement.

Legislation on the issue of nursing home staffing has been introduced during a number of Virginia General Assembly Sessions.

Senate Bill 1125 of the 2001 General Assembly Session, introduced by Leslie L. Byrne, 38th District Democrat (no longer in office) would have required nursing homes in Virginia to meet minimum nursing staffing levels expressed as a ratio of nurses to nurse aides to residents in order to be licensed. John S. Edwards, 21st District Democrat, and the late Yvonne B. Miller, 5th District Democrat, were co-patrons. It was tabled in the Senate Committee on Education and Health, but referred to the Joint Commission on Health Care for study.

House Bill, 2257 of the 2001 Session, filed by Vivian E. Watts, 39th District Democrat, would have required the Board of Health to establish staffing standards for nursing homes that will provide an average of 5 hours of direct care services per resident per 24-hour period. It was tabled by the Health, Welfare and Institutions Committee.

SB 672, filed in 2004 by John S. Edwards, 21st District, would have required staffing guidelines for nursing homes and certified nursing facilities, including staffing ratio goals taking into consideration the number of beds in a facility and average occupancy rates. It was

reported from the Committee on Education and Health, by a vote of 15-0, but was left in the Finance Committee.

A bill introduced in 2005 by John S Edwards, (SB 715), would have required nursing homes and certified nursing facilities to establish a minimum of three and one-half hours of direct care services per resident per 24-hour period. It passed the Senate by a vote of 40-Y to 0-N, but the House Committee on Health, Welfare and Institutions voted 22-0 to table the bill.

SB 207, introduced in 2006 by John S. Edwards, would also have required three and one-half hours of direct care services per resident per 24-hour period. It was left in Finance.

HB 568, introduced in 2014 by Vivian E. Watts, 39th District, would have required nursing homes to require a minimum of specific direct care services to each resident per 24-hour period. It was left in the House Health, Welfare and Institutions Committee.

HB 1396, introduced in 2015 by James A. “Jay” Leftwish, 78th District Republican, would have directed the State Board of Health and State Board of Social Services to set staffing standards for nursing homes and assisted living facilities which include staff-to-patient ratios sufficient to protect the health and safety of each resident. It was also left in the Health, Welfare and Institutions Committee.

On behalf of Fairfax Chapter 737, it is recommended that setting of minimum nursing facility staffing levels, including a minimum number of direct care hours per resident per day, be considered for inclusion as a VFC legislative issue.

Submitted by: Tom Hart, Legislative Chair, Fairfax Chapter 737, May 2015

2. Enhancing Virginia's *Advance Health Care Directive Registry* (to Include *Letters of Diminishing Capacity*)

Problem: A well-documented accompaniment to old age is diminished cognitive function, especially in the realm of financial matters. Thus, in today's increasingly atomistic society, wherein individuals are expected to "take charge" of their money matters, elder citizens are often vulnerable to financial abuse. At the same time, recent legislative efforts (with VFC's support) to increase criminal penalties for the commission of such abuse have been stymied in the General Assembly, due largely to concerns over the inherent difficulties in prosecuting cases of this nature.

Legislative Rx: In view of the above-cited evidentiary problems, a useful self-protective tool for an individual can be a "letter of diminishing capacity," wherein such individual requests anyone with access to his/her financial assets (e.g., banker, financial advisor) to alert a trusted named third party in the event of an emerging pattern of unusual transactions. In order to promote this approach, and to make it available to those without the resources to hire an estate planning attorney, the Virginia Department of Health should be mandated to allow individuals to file an LDC free-of-charge on the State's existing *Advance Health Care Directive Registry* (www.virginiaregistry.org).

Submitted by: Ed Weiler, Arlington Chapter 7, June 2015

3. Campaign Finance Reform

Problem: New forms of big money continue to undermine U.S. democracy at the federal, state, and local levels.

A) Recent-year Supreme Court rulings have decimated our decades old campaign finance laws, allowing wealthy individuals, businesses, and other organizations to pump hundreds of millions of dollars into campaigns at all government levels.

B) The growing cost associated with running for office makes campaigns prohibitively expensive for most Americans and restricts elected officials to a small minority of the population. Rising costs of running for office also mean that candidates need to spend more time fundraising, which in turn restricts their ability to meet with and listen to their constituents.

C) Our two-party system operates like a true duopoly with common funding of candidates by the same heavily-moneyed interests. This situation has tended to exclude third-party candidates or independents from competition due to expensive barriers to ballot access and has prevented their participation in public debates. This situation limits the richness and variety of our political debates.

D) Virginia is only one of four states (besides Missouri, Oregon, and Utah) that place no limits on contributions to candidates from various sources or on contributions to political action committees (PACs) and political parties. In addition, the practice of *gerrymandering* legislative districts into one-party districts has virtually eliminated real political competition in many states, like Virginia.

Legislative Goal: Enact a small donor/multiple match system of public funding.

At the 2014 NARFE National Convention, a resolution was passed allowing NARFE lobbying efforts to include legislation designed to address campaign finance reform. * While the Supreme Court ruled that restrictions on campaign spending are restrictions on free speech, it also said that it is legitimate to make public funding conditional on the acceptance of spending limits. Therefore, the political playing field can be leveled through a small donor/multiple match system of public financing for state elections. Under this system, public money is provided to candidates who accept expenditure limits and enhanced disclosure. But the core feature of the system is the multiple match feature which boosts the impact of small donations by matching contributions at a specific ratio. The small donor/multiple match system has the potential to transform Virginia's politics by incentivizing grassroots fundraising, and candidates will have a much greater incentive to reach out to ordinary voters.

Submitted by: Patti Downs, VFC State Legislation Chair, June 2015

* "NARFE supports campaign finance reform legislation that would increase the effect of small-dollar individual contributions on political campaigns and grass-roots-based political action committees relative to high-dollar individual contributions." (NARFE Magazine article "NARFE's Legislative Program for the 114th Congress (2015-2016)," January 2015 issue, p. 42.)

4. Index Income Tax Age Deduction to Inflation

I. Intent/Goal: Minimize impact of “means” testing on income tax age deduction for seniors (65+ yrs.).

II. Summary of the Problem: When taxpayers reach age 65, they are eligible for a State income tax deduction of \$12,000 if their single-filer income is less than \$50,000 or joint-filer income is less than \$75,000. If their income exceeds these *arbitrary fixed limits*, their deduction is reduced \$1 for every \$1 over the limit. This “means” testing is the result of legislation passed in 2004 and after almost ten years there has been *no adjustment for inflation*. According to OPM data for 2012, 20.7% of Federal retirees in VA have annuities more than \$50K and 3.4% exceed \$75K. Future Federal retirees are projected to have significantly higher annuities and therefore the number affected by “means” testing will significantly increase.

VII. Legislative Options & Recommendations: Priority One: Index age deduction to inflation using the CPI-U index (represents 87% of current US population). Priority Two: Increase single income limit from \$50K to \$75K and married limit from \$75K to \$100K. Priority Three: Change means testing formula to \$1 reduction for every \$10 of income over the limit. Priority Four: Eliminate means testing of age deduction.

VIII. Was Same or Similar Legislation Passed in Other States? Nine States have no personal income tax, 14 States exempt total amount of Federal annuities, and the remaining 27 States have some combination of age deduction, personal exemption, or means tested limits. No States have an inflation-indexed age deduction. Georgia does have a yearly increase in the fixed limits through 2015 and then no limits after that.

IX. Political or Legal Arguments against the Issue: There are no legal arguments since legislation prior to 2004 had no means testing and inflation indexing is accepted practice in both State and Federal law. Main political argument is that the issue reduces tax revenue to the State Budget General Fund. Second political argument is that “rich” seniors don’t need a tax deduction.

Abstracted from original 2014 issue paper by Dick Murphy, State Legislation Chair, Chapter 178, Area VII, 6/18/2013

5. Transparency Virginia Issues

This year, the VFC joined a new statewide coalition of about twenty other nonprofit organizations tracking the General Assembly's accessibility to its citizens during this legislative session. Called *Transparency Virginia*, the nonpartisan coalition is focusing on three areas: committee meeting/hearing notices, recording of votes in committees and subcommittees, and ensuring that all bills are heard in committee before the session adjourns. The coalition produced a report in April 2015, finding that:

- a) There were multiple instances where public notice of House/Senate committee or subcommittee meetings was too short.
- b) There were scores of bills in the House & the Senate that were never given a hearing.
- c) In the House, 76% of bills killed in subcommittee were without a recorded vote or any vote. In the Senate, 7% of bills were defeated in the same manner.

The full report can be found at:

<https://transparencyvirginia.files.wordpress.com/2015/04/transparencyvareportreleased.pdf>

How should we address these issues in our 2016 State Legislative Plan?

-- Patti Downs, SL Chair, 7/12/15

6. “Unlawful CSRS Tax”

Karl Beisel, a NASA retiree, filed a lawsuit against Virginia earlier this year claiming unfair and discriminatory taxing of CSRS pensions. The lawsuit alleges that the state’s income tax exemption for the Social Security portion of FERS and the Virginia Retirement System (VRS) is discriminatory because there is no comparable exemption for CSRS retirees. Violations of the equal protection clause of the 14th Amendment and Title 4, Section 111 of U.S. Code are cited in the lawsuit. Beisel wants the state to grant a comparable income tax exemption for CSRS retirees for each of the past three years. A hearing was held in early March in which the state pushed for dismissal.

NOTE: This issue was discussed as a possible issue at the June 11, 2015 State Legislation Planning Meeting but no written nomination was presented by any chapter. A written decision for the March hearing noted above was expected in April, but I can find no info on this case. Karl Beisel’s website, previously at <http://www.csrstax.com/>, has since disappeared from the internet.

-- Patti Downs, SL Chair, 7/12/15