



Activities on LeadingAge Florida Priority Bills

Continuing Care Communities

SB 1070 by Sen. Lee (R-Brandon) / HB 1033 (R-Jacksonville) by Rep. Yarborough relating to Continuing Care Contracts

The Legislation:

- Enhances regulatory authority of the Office of Insurance Regulation (OIR) to protect residents in continuing care retirement communities by providing financial triggers for OIR to identify and take corrective action against a financially challenged continuing care retirement community early enough to avoid a bankruptcy or insolvency.
- Makes changes to the process for a certificate of authority, an expansion and an acquisition, among other things, that would result in a less burdensome application process for providers.
- Enhances disclosure of information to residents.

SB 1070 was heard in its first committee of reference this week. The sponsor, Sen. Lee, offered a strike all amendment that was adopted by the committee. The amendment made several changes to the bill, including changes offered by LeadingAge Florida; however, there were other changes made that added new provisions that we had not seen before nor were discussed with us. These provisions are being reviewed by staff and members. The LeadingAge Florida advocacy team along with FLiCRA met with Sen. Lee for over two hours yesterday afternoon to discuss some of these revisions in greater detail.

Today, FLiCRA and LeadingAge Florida met for almost two hours with House legislative staff to discuss questions and concerns raised by the Chair of the Senate Insurance and Banking Subcommittee. We will find out later today if the bill is scheduled to be heard by the Subcommittee next week.

LeadingAge Florida supports SB 1070 by Sen. Tom Lee (R-Brandon) and HB 1033 by Rep. Yarborough (R-Jacksonville) that provide a balanced approach to the reform of chapter 651, F.S., relating to continuing care contracts, and incorporate policy changes proposed by OIR, FLiCRA (on behalf of residents), and LeadingAge Florida (representing providers).

Affordable Housing Trust Funds

SB 70 by Sen. Mayfield (R-Melbourne) and HB 1103 by Rep. Silvers (D-West Palm Beach) relating to State Funds prohibit the transfer or use of the state and local housing trust money for any other purpose. According to the Florida Housing Coalition, since 2001, the Legislature has swept nearly \$2.2 billion dollars from the state's affordable housing trust fund, enough to subsidize nearly 177,000 new homes, according to the Florida Housing Corp., the non-profit that administers the fund.

Governor DeSantis' proposed budget includes less than \$30 million in sweeps from trusts. For the first time in 20 years, none of that re-appropriated money will come from the Sadowski fund. Approved by voters in a 1992 Constitutional amendment ballot measure, Sadowski is funded by a 20-cent surcharge for every \$100 paid on real estate transactions. According to a December Revenue Estimating Conference forecast, the surcharge generated \$352 million in 2018.

HB 353 by Reps. McGhee (D-Cutler Bay) and Polsky (D-Boca Raton) and SB 1504 by Sen. Berman (D-Boynton Beach) relating to Housing Trust Funds require any agency receiving funds from the State Housing Trust Fund to provide a report to the Legislature identifying the manner in which the funds were spent. Further, any funds appropriated for uses other than affordable housing must be repaid within 5 years.

None of these bills has been heard in Committee.

As a member of the Florida Housing Coalition, LeadingAge Florida opposes sweeping any of the \$352 million anticipated for low-income housing to other state priorities and supports legislative efforts to prohibit the transfer of trust funds for other purposes.

Nursing Homes

Certificate of Need

HB 21 by Rep. Fitzenhagen (R-Fort Myers) relating to Health Care Facility Market Barriers repeals Certificate of Need (CON) requirements for health care facilities and replaces the CON process with a process whereby local health councils, along with regional planning councils, provide the Agency for Healthcare Administration (AHCA) information to assist the agency with licensure of health care facilities outside of a CON process. It also funds the costs of local health councils with a newly created fee imposed on hospitals, nursing homes, assisted living facilities (ALFs), etc., and removes the community/sheltered beds requirements for nursing homes in CCRCs because of the repeal of the CON process for nursing homes.

HB 21 passed its final committee of reference this week and is scheduled to be heard by the full House next Wednesday, March 20th. This bill is a priority for House Speaker Jose Oliva.

The Senate companion measure, **SB 1712 by Sen. Harrell (R-Stuart)** addresses CON requirements for hospitals only, and is scheduled to be heard in its first committee of reference on Monday, March 18th.

LeadingAge Florida supports the retention of a CON process for nursing home beds.

Nursing Home Staff Modernization

SB 1088 by Sen. Albritton (R-Bartow) and HB 897 by Rep. Roth (R-Palm Beach Gardens) relating to Nursing Home Facility Staffing revise the daily direct care staffing requirement from 3.6 to 3.9 hours per day and replace the current requirement that nursing homes provide residents with 2.5 hours of a weekly average of direct care hours per patient day by CNAs with a 2.9 hours requirement that will be met with 'direct care staff'.

SB 1088 was heard in its first committee of reference earlier this week. Several LeadingAge Florida members, in town for our Legislative Days, attended the meeting and signed up to speak in opposition to the bill. Due to time constraints, the Chairman allowed only one speaker from LeadingAge Florida to address the committee and only for 30 seconds. In addition to LeadingAge Florida members who appeared and "waived" their time to speak in opposition to the bill, representatives of the following organizations also signed up to speak in opposition: Florida State Long Term Care Ombudsman Program, Victims of Nursing Home Abuse and Neglect, SEIU, and AARP.

LeadingAge Florida supports the current requirement in Florida law of 2.5 CNA direct care hours per patient day, and opposes any effort to reduce that requirement because of its potential impact on the quality of care residents receive in Florida nursing homes.

Nursing Home Medicaid Prospective Payment System Funding

In 2018, nearly \$138 million in additional funding provided for three major changes to the Prospective Payment System (PPS) payment plan. The Direct Care Price was set at 105% of the Direct Care median, a 5% increase. Additionally, the pool of money available for the Quality Incentive was increased to 8.5% of the non-property related budget, a major jump from the 6% that was passed in 2017.

The Legislature directed AHCA to use any surplus in the nursing home line budget for FY 2017-18 to provide a Supplemental Quality Incentive to CMS 5-Star nursing homes.

The 2018-19 funding and changes to the PPS payment plan are for one year only.

LeadingAge Florida supports renewal of the \$138 million funding (\$54 million in General Revenue) for the transition and continuation of the increase in the direct care rate and the quality incentive pool. This additional funding was not included in Governor DeSantis' legislative budget recommendation to the Legislature which means we will be working on trying to get the additional funding included in the budgets proposed in the House and Senate through the Appropriations process.

The latest revenue estimating forecasts predict that there will be about \$7.4 million less in general revenue than forecast in December. Senate President Bill Galvano has stated that he expects the Senate to begin going through the budget process early next week.

Gov. Ron DeSantis has released a \$91.3 billion budget proposal, which includes general revenue and numerous other sources of money, including federal funds. House Speaker Jose Oliva, however, has signaled that he wants a smaller budget than the one DeSantis proposed. Ultimately, House and Senate leaders will have to negotiate a spending plan before the scheduled May 3 end of the legislative session.

LeadingAge Florida supports continued funding of the Medicaid PPS for nursing homes at the 2018-19 level, including the enhanced Quality Incentive of 8.5% of the non-property related payments and Direct Care price of 105% of the Direct Care median.

Medicaid Retroactive Eligibility

SB 192 by Sen. Bean (R-Jacksonville) relating to Medicaid Eligibility eliminates the 90-day retroactive eligibility period for non-pregnant adults. The bill directs AHCA to seek authorization from the federal government to maintain Florida's current waiver authority that modifies the period of retroactive eligibility for certain Medicaid recipients. Pending federal approval, the current waiver authority allowing Florida's retroactive eligibility period for a non-pregnant adult to begin on the first day of the month in which the Medicaid recipient applies for Medicaid, would continue beyond its current expiration date of July 1, 2019. Otherwise, on that date, Florida's retroactive eligibility period will revert to 90 days, which is the norm under federal Medicaid regulations.

The bill has passed two committees of reference and has one more stop – the Senate Appropriations Committee.

Assisted Living Facilities

SB 1364 by Sen. Gruters (R-Sarasota) relating to Comprehensive Emergency Management Planning for ALFs combines the current ALF comprehensive emergency management plan rule, the new emergency generator rule and the 1995 emergency management agency cross-walk. The bill gives statutory support to the Environmental Control rule and provides for preemption of emergency planning for ALFs to the state, modifies the fuel requirements, extends the implementation date to June 1, 2020 and removes onerous notification rules, among other provisions.

SB 1592 by Sen. Harrell (R-Stuart) relating to ALFs updates statutory provisions, addresses issues identified in a recent rule challenge and issues relating to enforcement.

None of these bills has been scheduled for a committee hearing.

LeadingAge Florida supports legislation codifying comprehensive emergency management plan laws, rules and regulations into a newly created section of law and providing for reasonable implementation of the emergency generator rules; and legislation updating laws relating to ALFs.

Activity on Bills Monitored by LeadingAge Florida

Aging Programs

SB 184 by Sen. Book (D-Plantation) / HB 7019 by the House Health & Human Services Committee transfer the powers, duties, and functions of the Department of Elderly Affairs relating to hospices, ALFs, adult family-care homes, and adult day care centers to AHCA, and establish that the agency is the lead agency responsible for the regulation of hospices, ALFs, adult day care centers, and adult family-care homes.

Currently, both agencies develop rules, while licensing and inspection of the facilities is solely performed by AHCA. As reported, the bifurcated regulation was an obstacle when former Gov. Rick Scott issued orders requiring emergency backup generators at nursing homes and ALFs. Both the Department of Elder Affairs and AHCA were required to issue rules about the backup-power requirements and defend the regulations from administrative challenges.

SB 184 has passed the Senate; HB 7019 has passed its two committees of reference. This legislation will pass the Legislature this Session.

A Week in Review - News from the Capitol

Florida Session - Week Two

As the deadline imposed by the Governor loomed, the Legislature approved the measure eliminating the ban on smokable medical marijuana. The bill is now on the Governor's desk for his signature. When signed, it will take effect upon becoming law.

In 2017, the Legislature passed language implementing the legalization of medical marijuana; however, it prohibited smokable options. The language was challenged and declared unconstitutional by a Florida Circuit Court. Former Governor Rick Scott appealed the decision, but shortly after DeSantis took office he urged lawmakers to approve smokable options before March 15th. If legislation was not approved by that time, he promised to abandon the appeal.

The Legislature is required, by the State Constitution, to approve one bill – the budget. Senate President Bill Galvano expedited the process with his announcement on Thursday that the Appropriations subcommittee chairs will release their funding proposals next week. In January, the Governor proposed a \$90 billion budget with funding increases for education. Galvano has pegged transportation as a priority and while Speaker Oliva's focus is on health care reform, his goal is to lower the state's per capita spending.



For more information or questions, contact [Susan Langston](#), Vice President of Advocacy, via [email](#) or call her at (850) 671-3700.

Copyright 2019 — Publication of LeadingAge Florida

Chairman: Roger A. Stevens

President/CEO: Steve Bahmer

Managing Editor: Nick Van Der Linden



Copyright Information: Copies of the articles and other information in this publication may be non-commercially reproduced for the purpose of educational or scientific advancement. Otherwise, no part of this publication may be reproduced or utilized in any form, or by any means, mechanical or electronic, including photocopying, microfilm and recording, or by any information storage and retrieval system, without the written permission of the managing editor. For permission to reproduce, contact the [managing editor](#) via email or phone (850) 671-3700.

The information provided via this bulletin is provided "as is" without representations or warranties, express or implied. LeadingAge Florida makes no representations or warranties in relation to the legal information on this website.