



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.

CS/SB 1070 is scheduled to be heard in its second committee of reference on Monday, March 25th. LeadingAge Florida presented the sponsor, Sen. Lee, with amendments addressing the remaining concerns raised by our members and met with Sen. Lee today to further discuss the amendments.

Earlier this week, we met with the House sponsor, Rep. Yarborough and Rep. Cyndi Stevenson, Chair of the House Insurance & Banking Subcommittee, regarding differences between the House and Senate bills. We also addressed questions Chair Stevenson raised regarding the bill. We expect HB 1033 to be scheduled for the next meeting of the Insurance & Banking Subcommittee, which will be held on Tuesday, March 26th. We have also provided Rep. Yarborough and Chair Stevenson the amendments drafted to CS/SB 1070 for their consideration.

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.

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.

At this point in the Session, it appears that none of these bills will be heard in Committee, therefore our attention and efforts are focused solely on the budget and ensuring that the Sadowski Trust Fund remains whole and funds are not swept for other purposes.

As previously reported, 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. According to a December Revenue Estimating Conference forecast, the surcharge generated \$352 million in 2018.

The House and Senate Appropriations Committees released their budgets this week. The House budget sweeps more than \$200 million from the affordable housing fund while the Senate budget would fully fund the Sadowski Trust Fund. The House budget provides about \$49.5 million for the State Housing Initiatives Partnership Program (SHIP) — one of the Sadowski-backed programs. It also appropriates more than \$74 million for the Rental Recovery Loan Program (RRLP), a hurricane-related affordable housing initiative.

The Senate budget, in contrast, does not sweep anything from the Sadowski Trust. It funds SHIP at more than \$170 million, and provides nearly \$54 million for other affordable housing programs, and a \$100 million appropriation for two special hurricane-related housing programs, including \$10 million for the RRLP.

Both Senate President Bill Galvano and Appropriations Committee Chair Bradley have joined Gov. Ron DeSantis in support of fully funding the trust fund this year.

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, a top priority of Speaker Jose Oliva, passed the House this week by a vote of 77-33. The House has repeatedly sought to remove the CON process, though the Senate has historically remained opposed to scaling back existing requirements.

The Senate companion measure, **SB 1712 by Sen. Harrell (R-Stuart)**, addresses CON requirements for hospitals only. The bill, scheduled for a hearing this week, was temporarily postponed by the sponsor when she became concerned that she did not have the votes to pass the bill out of committee.

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 passed its first committee of reference. HB 897 is on the agenda for the Health Market Reform Subcommittee on Tuesday, March 26.

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 House and Senate budgets released this week do not include the additional funding needed to continue the nursing home funding at the 2018-19 level. We continue to work to secure this additional funding.

The latest revenue estimating forecasts predict that there will be about \$7.4 million less in general revenue than forecast in December. The Senate wants to spend \$90.3 billion during the fiscal year that starts July 1, while the House is proposing an \$89.9 billion budget. Both legislative chambers are pitching smaller plans than Gov. Ron DeSantis' \$91.3 billion proposal --- the highest in state history. Lawmakers passed an \$88.7 billion budget for the current fiscal year.

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.

The House companion measure is included in **HB 5201**, an Appropriations Conforming Bill relating to Medicaid. The House's proposed budget for the upcoming fiscal year would make the \$103 million reduction to the state's Medicaid program by making the Medicaid retroactive eligibility cut permanent. This bill was presented as a Committee Bill to the House Health Care Appropriations Subcommittee and passed the subcommittee by just a one-vote margin with all the Democrats on the committee voting against it.

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.

This bill has not been scheduled for a committee hearing.

SB 1592 by Sen. Harrell (R-Stuart) / HB 1349 by Rep. Good (D-Sarasota) relating to ALFs updates statutory provisions, addresses issues identified in a recent rule challenge and issues relating to enforcement.

HB 1349 was reported favorably by the first committee of reference this week. It has two more committee stops. The Senate companion has not been scheduled for a 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 and is in House Messages; HB 7019 has passed its two committees of reference and is on the House Calendar. This legislation will pass the Legislature this Session.

Long Term Care Insurance - Insurer Guaranty Associations

SB 626 by Sen. Brandes (R-St. Petersburg) / HB 673 by Rep. Fischer (R-Jacksonville) relating to Insurer Guaranty Associations expand the assessment base of the Florida Life and Health Insurance Guaranty Association (FLAHIGA) to include health maintenance organizations (HMOs), life insurers and annuity insurers in order to fund long-term care insurer impairments and insolvencies.

Florida operates five insurance guaranty funds and associations to ensure policyholders' paid insurance premiums are protected and outstanding claims are settled, up to limits provided by law, if their insurer is liquidated. In response to recent long-term care insurer insolvencies, the legislation incorporates some recent changes made to the FLAHIGA Model Act and additional recommendations of stakeholders.

This legislation is a top priority of the Florida Association of Health Plans and, according to the Association President Audrey Brown, would "address instability in the long-term care insurance market and protect Florida's seniors who purchased long-term care insurance, by broadening the safety net for potential future insolvencies and ensuring seniors receive the benefits of these policies they purchased when planning for their future."

SB 626 has passed two committees of reference. HB 673 has passed its first committee of reference and is scheduled to be heard by the Ways & Means Committee on Monday, March 25th.

Telehealth

HB 23 by Rep. Yarborough (R-Jacksonville) authorizes Florida licensed health care professionals to use telehealth, simultaneous audio and video, to deliver health care services within their scopes of practice. The bill also authorizes out-of-state health care professionals to use telehealth to deliver health care services to Florida patients if they register with the Department of Health or the applicable board, meet certain eligibility requirements, and pay a fee; however they are prohibited from opening an office or providing in person services in Florida. For tax years beginning on or after January 1, 2018, the bill creates a tax credit for health insurers and HMOs that cover services provided by telehealth.

The bill has passed two of its three committees of reference.

SB 1526 by Sen. Harrell (R-Stuart) relating to telehealth prohibits Medicaid managed care plans from using providers who exclusively provide services through telehealth to achieve network adequacy; provides definitions; prohibits a telehealth provider from using telehealth to prescribe a controlled substance for the treatment of a resident of a nursing home or a patient receiving hospice services, among others, unless the controlled substance is prescribed for the resident; and prohibits a health maintenance organization from requiring a subscriber to receive services via telehealth, among other provisions.

SB 1526 is scheduled to be heard in its first committee of reference on Monday, March 25th.

APRNs Scope of Practice

SB 972 by Sen. Brandes (R-St. Petersburg) / HB 821 by Rep. Pigman (R-Sebring) relating to Innovation in the Advanced Practice Registered Nursing Workforce allow Advanced Practice Registered Nurses (APRNs) to practice without the supervision of a physician.

At a press conference earlier this week, the legislators explained their move to revamp Florida law in this area. The bills would allow APRNs to practice more freely by removing the requirement of physician oversight. "Twenty-two states have already removed barriers for APRNs," Brandes said. "It is time for Florida to modernize its health care delivery system by ensuring that Floridians have full access to health care, particularly in rural areas that are often underserved."

"It is time for us to finally catch the law up with the practice," Pigman said. "Historically, our laws did not contemplate the evolution to the sophisticated education and training APRNs receive today. We all agree that the safety and well-being of patients is paramount, and there are many independent studies that show APRNs can safely and effectively provide some of the same health care services as physicians."

The "APRN" category covers Certified Registered Nurse Anesthetists (CRNA), Certified Nurse Practitioners (CNP), Certified Nurse Midwives (CNM) and Clinical Nurse Specialists (CNS). By their estimate, Florida has more than 34,000 licensed APRNs who are working statewide.

SB 972 has not yet been heard in committee while HB 821 passed its first committee of reference this week.

Public Utility Storm Protection Plans

HB 797 by Rep. Fine (R-Palm Bay) / SB 796 by Sen. Gruters (R-Sarasota) propose to harden Florida's utilities grid against tropical storm and hurricane damage with proposed under-grounding of electric infrastructure. These bills would require public utility companies (Florida Power and Light, Duke Energy Florida, Gulf Power Company, Tampa Electric Company, and the Florida Public Utilities Corporation) to submit a transmission and distribution storm protection plan to the Public Services Commission, with updates required at least every three years. Data collected after Hurricane Irma showed that underground lines suffered minimal outages during storms.

SB 796 has passed two committees of reference; HB 797 passed its first committee of reference this week.

A Week in Review - News From The Capitol

Florida Session - Week Three

House and Senate Appropriations Subcommittees rolled out their respective budgets this week, setting the stage for earlier negotiations between the two chambers. The House has proposed a \$89.9 billion budget while the Senate proposal is slightly higher at \$90.3 billion. Some of the main differences between the two budgets include:



- **Health Care** – The Senate is seeking to reorganize the process by which hospitals are reimbursed for Medicaid services while the House cuts overall health care spending.
- **Environment** – The Senate funds environmental initiatives, such as Everglades Restoration, the Lake Okeechobee reservoir and springs restoration at a higher level than House; yet the figures are much lower than what was proposed by Governor DeSantis. The House environmental recommendations are very close to the Governor's proposal but overall, it is smaller than the Senate version.
- **Education** – The Senate provides a one-time recruitment award for teachers and retention awards for educators rated "effective" and "highly effective." DeSantis has proposed funding bonuses of approximately \$9,000 for 45,000 of the "most effective" teachers. The House budget is substantially lower than which provides for \$7,597 per full-time student, compared to \$7,779 proposed by the Senate.
- **Economic Development** – The House plan fails to fund the state's economic development program, Enterprise Florida and only funds Visit Florida through October 1st of this year. The program would be renewed if legislation reauthorizing it is approved this session. The Senate has legislation to reauthorize the program and signaled support for Visit Florida by proposing funding in the amount of \$76 million. This is the amount also proposed by Governor DeSantis.

Each chambers' full Appropriations Committees will consider the budget proposals next week in preparation for floor votes possibly in the fifth week of session. Following passage of their respective budget proposals, House and Senate leaders will name conference committees to hash out the compromise between the two measures.

Governor DeSantis signed into law this week, legislation that lifts the prohibition on using smokable medical marijuana. The Florida Department of Health will prepare rules and guidelines for those prescribing this option. On Thursday, the first sale of smokable medical marijuana occurred at a Tallahassee dispensary.

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

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Chairman: Roger A. Stevens
President/CEO: Steve Bahmer
Managing Editor: Nick Van Der Linden



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