



2019 Legislative Session  
Legislative Bulletin  
Week Four: March 29, 2019



## 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 was passed its second committee of reference on Monday, March 25th. While LeadingAge Florida had presented the sponsor, Sen. Lee, with amendments addressing the remaining concerns raised by our members, the bill passed out of committee without the requested changes.

As expected, HB 1033 was heard in the Insurance & Banking Subcommittee on Tuesday, March 26th. We also provided Rep. Yarborough and Chair Stevenson the amendments drafted to CS/SB 1070 for their consideration. A Proposed Committee Substitute was taken up and passed by the Subcommittee, however it did not include the amendatory language requested by LeadingAge Florida. We are continuing to work to have the amendatory language included in the bills as they move through the process.

***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 passed 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.

Both chambers are expected to take up and pass their respective Appropriations bills which will set the stage for the conference committee process.

***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.***

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## 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 last week and is now in the Senate and available for consideration by the Senate.

The Senate companion measure, **SB 1712 by Sen. Harrell (R-Stuart)**, addresses CON requirements for hospitals only. The bill was temporarily postponed by the sponsor last week but the bill is scheduled to be heard on Monday, April 1, in the Senate Health Policy 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, and HB 897 was scheduled to be heard earlier this week by the Health Market Reform Subcommittee, however, HB 897 was Temporarily Postponed by the Committee and SB 1088 was withdrawn from further consideration by the sponsor. These actions were taken, in part, because of the opposition to the bill but also because of ongoing discussions between LeadingAge Florida, Florida Health Care Association, and AARP that resulted in the creation of a coalition between the three associations to develop short and long-term strategies for meeting the long term health care needs of Florida's aging population in 2020 and beyond.

The short-term focus will be on the current legislative budget and the importance of properly funding nursing home care while also addressing the waiting list for home and community-based services. The goal is to raise awareness among the Legislature about the resources needed now to support seniors across the full continuum and ensure their ability to receive their long-term care in the most appropriate setting, with the highest quality outcomes.

The long-term focus will be for this coalition, along with other stakeholders to be identified and included later, to come together and develop recommendations to ensure Florida is prepared to meet the needs of its aging residents across the full continuum of care in the years

ahead with the focus on high quality standards.

The sponsors of the legislation, Sen. Ben Albritton and Rep. Rick Roth, were joined by the three organizations at a press conference earlier this week announcing the creation of the Coalition for Silver Solutions, committed to developing short- and long-term strategies to meet the health care needs of Florida's aging population. To read the full press release click [here](#). To view President & CEO Steve Bahmer's speech click [here](#). Full press conference can be viewed [here](#).

***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. SB 192 was scheduled for the Appropriations Committee meeting this week but was Temporarily Postponed.

Sen. Gibson filed two amendments to the bill and commented during the committee meeting that she hoped the content of the amendments would be included in the implementing bill. Specifically, her amendments addressed the collection of data (what's working and what's not and why) in terms of elimination of Medicaid retroactivity. She stated that, as a legislator, she needs information to ensure she and other members are well informed before doing anything that could potentially be hurtful to the most vulnerable individuals, those who don't qualify for Medicaid but could potentially qualify if they applied sooner. She doesn't want them strapped with medical debt. She further said that the Legislature would want to know the unduplicated numbers of nonpregnant adults who apply for Medicaid at a hospital or nursing home and how many were denied and the reasons why they were denied, as well as recommendations to improve outreach and Medicaid coverage for nonpregnant adults, including who would be eligible for Medicaid if they applied before they required a hospital or nursing home admission.

The Senate Appropriations Implementing bill, SB 2502 directs AHCA to seek authorization from the federal Centers for Medicare and Medicaid Services to eliminate the Medicaid retroactive eligibility period for nonpregnant adults in a manner that ensures that the elimination becomes effective on July 1, 2019. Eligibility will continue to begin the first day of the month in which a nonpregnant adult applies for Medicaid. This section expires July 1, 2020. This means the Senate continues the elimination for another fiscal year but does not make the elimination permanent.

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.

Both bills will be heard in their respective Chambers next week.

## 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 two committees of reference.

### 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 was passed by 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.

The bills would allow APRNs to practice more freely by removing the requirement of physician oversight.

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.

## 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 and is scheduled to be heard in the second committee next week.

## A Week in Review - News From The Capitol

### Florida Session - Week Four

With five weeks left in the Session, the House and Senate Appropriations Committees finalized their budgets this week. The early movement on the budget does not necessarily equate to quicker resolution in budget negotiations. The disparate priorities of the House Speaker and Senate President and their leadership teams can trigger a halt to negotiations at any point. The final compromise on the budget does not historically occur before the final days of the session.

A House committee approved language establishing a program to import prescription drugs from Canada this week and the measure now will head to the House floor. The proposal, supported by Governor DeSantis, seeks to lower prescription drug costs for the state's Medicaid program and prison system. If approved by the Legislature, federal approval is required before the law could be enacted. A representative from the U.S. Department of Health and Human Services met with the Governor's office and legislative leaders this week to convey the Trump administration's concern about safety and cost issues associated with the importation legislation.

In the Senate, legislation to implement the recently approved constitutional amendment restoring voting rights to former felons advanced. The bill requires restitution to be paid in full before an offender's rights could be restored, but allows fines and fees converted to civil liens to meet that requirement. The Senate measure also provides that those convicted of murder are not eligible to have their rights restored. The House does not include the same exclusion.

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