



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.

Both CS/SB 1070 and CS/HB 1033 passed their final committees of reference this week and will be available to be heard by the full House and Senate chambers next week. Both bills were amended in the final committee meetings to more closely align the bills, however a few distinct differences remain between the two bills that will be reconciled as they are heard on the House and Senate floors.

New language was added to both bills requiring the OIR to produce and publish an annual report on its website with additional information regarding OIR's compliance with examination timeframes and number of examinations completed. The bills also require that new language be included in continuing care contracts regarding the complex nature of the financial structure of a continuing care provider and that someone may wish to consult an attorney or financial advisor. The Senate bill modifies the triggers for a Regulatory Action Level Event for debt service coverage ratio and days cash on hand by making it "less than the greater of the minimum" as opposed to "less than the minimum" of the trigger.

The amendment to the Senate bill now includes the changes necessary to ensure that financial triggers for a Regulatory Action Level Event are tied to the annual report and to enhance quarterly reporting requirements for a provider that fails to meet two of the triggers as described under the Regulatory Action Level Event.

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 Senate passed a \$90.3 billion budget while the House budget is \$89.9 billion. 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 \$123.4 million in funding for Panhandle communities struggling to recover from last year's Hurricane Michael.

The Senate budget, in contrast, does not sweep anything from the Sadowski Trust. It has \$324 million in affordable housing, with \$100 million set aside for storm-battered areas.

The House and Senate will begin the budget conference committee process next week to work out the differences between the two budgets on this and many other items.

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 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)**, which repealed CON requirements for new hospital construction only, was significantly amended yesterday in the Senate Appropriations Committee. Prior to the last round of amendments, CS/SB 1712 limited the repeal of the CON requirements to general hospitals. Specialty hospitals and other types of hospitals would still require a CON. As amended, the bill now removes the CON requirement for new general hospitals beginning July 1, 2021. CON for all hospitals and "tertiary care" services would be eliminated on July 1, 2024 under the amendment. The bill itself does not take effect for two more years – July 1, 2021. This will allow time to address other issues/concerns prior to the effective date of the legislation.

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 and HB 897 are no longer moving through the legislative process this Session; however, ongoing discussions between LeadingAge Florida, Florida Health Care Association, and AARP regarding the bills resulted in the creation of the Coalition for Silver Solutions, 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.

For more information regarding the Coalition for Silver Solutions and its commitment to developing short- and long-term strategies to meet

the health care needs of Florida's aging population, please click [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 passed in their respective chambers do not include the additional funding needed to continue the nursing home funding at the 2018-19 level. As a member of the Coalition for Silver Solutions, Leading Age Florida is partnering with the Florida Health Care Association and AARP Florida to help secure this funding. LeadingAge Florida members and advocacy team participated in a Silver Solutions Coalition Lobby Days this week and met with key legislators to discuss the importance of funding for long-term care for nursing homes and to help reduce the waitlist for home and community based services. For more information regarding this event, please view the Advocacy section of this week's [LeadingLink newsletter](#).

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. There is no House companion, however, the elimination of the Medicaid retroactive eligibility is addressed in budget conforming bills. 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 were retained on calendar in their respective Chambers this week as House and Senate leadership address whether policy directives should be made in bills tied to the budget. Ultimately, we believe this issue will be resolved through the budget conference committee process.

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, and is dead for this year.

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 has passed both of its committees of reference. SB 1592 has passed two committees of reference. The final committee is Appropriations, which has not yet been noticed to meet again.

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 passed the Legislature and will be sent to the Governor for final action.

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 all of its committees of reference. HB 673 has passed all of its committees of reference and has been placed on Senate Special Order Calendar for April 23rd.

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 passed the House this week and will now go to the Senate.

SB 1526 by Sen. Harrell (R-Stuart) relating to telehealth was amended in the Senate Appropriations Committee to bring it more in line with the House bill.

SB 1526 has passed all of its committees of reference.

Canadian Prescription Drug Importation Program

SB 1528 by Sen Bean (R-Jacksonville) / HB 19 by Rep. Leek (R-Daytona Beach) create the Canadian Prescription Drug Importation Program. AHCA is directed to establish the Program for the safe and effective importation of prescription drugs from Canada which will have the highest potential for cost savings to the state.

Supporters believe the plan would help control increasing prescription drug costs, but opponents have said the importation idea could enable more counterfeit and dangerous drugs. They have also pointed to indications that the federal government, which has not yet authorized any state-level importation program since the option became available in 2003, remains hesitant about allowing such a program.

SB 1528 was amended to align with the House bill in its final committee of reference this week. In addition to needing to pass the Legislature, the Canadian drug importation programs would need approval from the U.S. Department of Health and Human Services, and part of the proposal would require a change in federal law. The pharmaceutical industry has been lobbying heavily against allowing importation.

HB 19 passed the House earlier last week and is available to be taken up by the Senate.

Nonemergency Medical Transportation Services

HB 411 by Rep. Perez (R-Miami) / SB 302 by Sen. Brandes (R-St. Petersburg) authorize certain nonemergency medical transportation

services, such as visits to doctor appointments, to be provided to Medicaid recipients by transportation network companies, such as Uber and Lyft. Under the bills, ride-sharing apps could contract with managed care providers who then would use Medicaid funding to pay for the rides. Proponents say it would not only save money, but make it easier for patients to make doctor appointments, improving outcomes and, potentially saving money.

HB 411 passed the House and is available to be taken up by the Senate. SB 302 is on the Rules Committee agenda for April 23rd.

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 and is not scheduled for the next committee hearing. HB 821 passed the House 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 all of its committees of reference, as has HB 797.

A Week in Review - News From The Capitol

Florida Session - Week Seven

Eager to begin the Easter Holiday, final action on more than 80 bills on the House floor occurred on Wednesday. As a result, legislative meetings ended early on Thursday, and legislators returned to their districts. Budget negotiations are scheduled to begin in earnest next week, and it appears education and health care funding levels remain unresolved between the two chambers. Other differences to be ironed out include how much to provide for Hurricane Michael recovery and whether the House will bow to the Governor and Senate and fund VisitFlorida.

Currently, the Senate budget totals \$90.3 billion while the more modest House budget is at \$89.9 billion. Gov. Ron DeSantis' proposed budget, released earlier in the year and serving as a recommendation to lawmakers, comes in at \$91.3 billion.

House Appropriations approved its tax cut package Tuesday over the objections of Democrats opposing language to allow voter-approved local tax dollars to fund charter schools. The \$102.4 million package also establishes a three-day back-to-school tax holiday, a seven-day disaster preparedness tax holiday and a reduction to 5.35% in the commercial rental sales tax.

Senate tax cut proposals are moving in separate bills this session. One proposal lowers the commercial rental sales tax from 5.7 to 3.5 percent but also requires out-of-state retailers to collect sales tax on online purchases. Other tax cuts advancing in the Senate include:

- Providing a tax exemption on the rental of certain heavy equipment;
- Increasing a tax exemption for affordable housing;
- Refunding sales taxes for certain job-training organizations; and,
- Providing a tax credit for health insurers or HMOs that cover services provided through telehealth.

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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