



2019 Legislative Session
Legislative Bulletin
Week Eight: April 26, 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/HB 1033 was amended on the House Floor to conform to the Senate Bill and passed the House unanimously. It is now in the Senate waiting for CS/SB 1070 to be placed on Special Order Calendar for consideration by the full Senate. Since CS/HB 1033 is now identical to the Senate bill, it can be substituted for the Senate Bill and passed by the Senate at that time.

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.

Once again, funds from the Sadowski trust fund were swept during the budget conference committee process this week. The recommendations coming out of the conference committee still provide a little over \$200 million for affordable housing, a portion of which is going toward housing funding in hurricane-damaged counties, however, more than \$130 million is swept for other purposes.

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 was taken up by the full Senate on Friday, April 26th. In what was presented as an agreement between the House and Senate, the bill was amended and substituted for SB 1712 and is placed on the Third Reading Calendar, which means it will be voted on by the Senate on Monday, April 29th. The scope of the bill is still limited to hospitals; nursing homes are not included in the repeal of CON requirements.

As amended, the bill would eliminate the CON requirement for new general hospitals and "tertiary services" on July 1, 2019. Tertiary services include such things as organ transplants and pediatric open-heart surgery and neonatal intensive-care units.

It would repeal a CON requirement in 2021 for specialty hospitals, such as children's hospitals.

The Senate companion measure, **SB 1712 by Sen. Harrell (R-Stuart)**, was amended in its last committee to remove 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. HB 21 was substituted for this bill, which has been laid on the table.

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 budget recommendations of the Health & Human Services/Health Care budget conference committee do not include the additional funding needed to continue the nursing home funding at the 2018-19 level. The last offer by the Senate in conference does include a line item for an additional Nursing Home Reimbursement Rate Adjustment of \$15,511,892. This item will be bumped to the Appropriations Committee Chairs for resolution.

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.

Medicaid retroactive eligibility is an issue under consideration during the conference committee process. The House position is to eliminate it for nonpregnant adults in a manner that ensures that the elimination becomes effective on July 1, 2019. The Senate offer requires the Agency for Health Care Administration, in consultation with other agencies and certain other entities, including LeadingAge Florida, to submit a report to the Governor and Legislature regarding the impact of the Medicaid retroactive eligibility waiver on beneficiaries and providers by January 10, 2020. This issue will be bumped up to the Appropriations Committee Chairs for resolution.

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 been heard on the House Floor and is set for final passage on Monday, April 29th; however the companion bill, SB 1592 is still in the Appropriations Committee, 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, has been signed by the officers and presented to the Governor for final action. He must act on this bill by Monday, April 29th.

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 been placed on Senate calendar. HB 673 has passed the House and is now in the Senate.

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 and was substituted for SB 1526 in the Senate and has been placed on the Third Reading Calendar for Monday, April 29th for final action.

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.

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. The bill was taken up by the Senate this week, substituted for HB 19, and is on the Third Reading Calendar for Monday, April 29th for final action. 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.

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 Senate Special Order Calendar for Monday, April 29th.

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 last week and is now in the Senate.

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 passed the Senate and is in House Messages. HB 797 is on Special Order Calendar, waiting for the Senate Bill to arrive so it can be taken up in lieu of the House Bill.

A Week in Review - News From The Capitol

Florida Session - Week Eight

Formal negotiations to resolve differences between the House and Senate versions of a state budget began this week. Agreement was reached on "allocations" for each budget category which included \$12.8 billion for Pre-K-12 Education; \$4.5 billion for Higher Education; \$10.17 billion for Health Care; \$200 million for Transportation, Tourism and Economic Development; \$509 million for Agriculture and Natural Resources; \$4.5 billion for Criminal and Civil Justice; and \$311 million for "General Government."

On Tuesday, conference committee meetings commenced and unresolved issues were passed up to the Appropriations Chairs by Friday morning. Any issues that remain unresolved will be negotiated ultimately between the House Speaker and Senate President over the coming weekend and early next week. In order for the session to end, as scheduled, on Friday, May 3, the budget agreement must be provided to House and Senate members by Tuesday, April 30.

On Wednesday, the House approved legislation on a vote of 69 to 47 to prohibit "sanctuary jurisdictions." The bill also requires agencies to comply with requests by Immigration and Customs Enforcement to detain a suspected undocumented immigrant until federal authorities take them into custody. Further, an agency could be fined up to \$5,000 per day for violating the law. On Thursday, the Senate considered their version; however, action was delayed when a Democratic amendment was unexpectedly approved, along with several other changes. The Senate and House versions differ somewhat, and it remains to be seen if the two chambers will agree on a final version before the close of session.

Also on Wednesday, the Senate approved language implementing several recommendations put forth by the commission formed following the Marjory Stoneman Douglas (MSDHS) tragedy last February. The bill allows teachers who volunteer to be trained to carry arms in their school. It also promotes the use of a mobile suspicious activity tool, requires school districts to establish threat assessment teams, and requires each school to designate a safe-school officer. Lastly, it creates a workgroup of experts to develop, by August 1, 2019, a standardized, statewide "behavioral threat assessment instrument" for all schools.

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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