



2019 Legislative Session
Legislative Bulletin
Week Nine: May 3, 2019



2019 Legislative Session - Stay Informed!

This is our last weekly Legislative Update/Recap report of the 2019 Session. Included with this report is the latest [LeadingAge Florida Legislative Bill Tracking Report](#).

A final 2019 Legislative Session Report will be forthcoming.

Today, May 3, we hosted our tenth and final **Legislative Session Weekly Briefing** conference call of the 2019 Session.

While the weekly legislative calls came to an end today, LeadingAge Florida will continue its [Facebook Live](#) updates every Friday at 11:00 am EST. Tune in for updates on all of the latest happenings and the opportunity to ask questions in real time.

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

Today, CS/CS/CS HB 1033 passed the Florida Senate unanimously, after previously passing the House unanimously, and will soon be delivered to Governor DeSantis for final action. Three years in the making, CCRC legislation sponsored by Sen. Tom Lee and Reps. Clay Yarborough and Cyndi Stevenson rewrites the law regulating continuing care contracts to ensure enhanced but balanced regulatory protections for seniors, while encouraging further investment and expansion of CCRCs in Florida. LeadingAge Florida led a coalition effort in support of the legislation, which was the culmination of a more than three-year effort from providers, residents, and regulators.

The bill that passed today very closely resembles the consensus language that emerged from the work of the coalition last summer. Click [here](#) to read the bill in its entirety and click [here](#) for a bill summary.

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.

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.

It was clear early in the Session that none of these bills would be heard in Committee, therefore our attention and efforts were focused solely on the budget and ensuring that the Sadowski Trust Fund remained whole and funds were 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, 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. 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.

The Legislature will vote on the final Appropriations and Implementing Bills on Saturday, May 4th.

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. Fitzhagen (R-Fort Myers) relating to Health Care Facility Market Barriers, as filed, repealed Certificate of Need (CON) requirements for health care facilities and replaced 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 funded the costs of local health councils with a newly created fee imposed on hospitals, nursing homes, assisted living facilities (ALFs), etc., and removed the community/sheltered beds requirements for nursing homes in CCRCs because of the repeal of the CON process for nursing homes.

The legislation was amended throughout the committee process and on the floor in both chambers. Earlier this week, the Florida Legislature approved legislation eliminating the "certificate of need" regulatory program for hospitals.

HB 21, a top priority for House Speaker Jose Oliva, R-Miami Lakes, passed the House by an 81-34 vote, with the Senate voting to pass the bill in a 23-17 vote. This is a major step outlined by Speaker Oliva to revamp Florida's health-care system. The bill eliminates CON regulations for new general hospitals, as well as "tertiary" health care services, on July 1, 2019. Under the longstanding regulations, hospitals have needed to receive CON from AHCA before they can build new facilities or provide tertiary services, which include such things as organ transplants and pediatric open-heart surgery, and neonatal intensive care units. Further, the bill repeals a CON requirement in 2021 for specialty hospitals, such as children's hospitals.

The measure, however, is not a complete deregulation of the CON program as the House initially advocated. The bill maintains CON requirements for nursing homes and hospices and intermediate care facilities for the developmentally disabled.

The bill now will go to Gov. Ron DeSantis for final action.

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 supported 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. We worked with members of the Coalition for Silver Solutions to advocate for the additional funding to be included in the budgets proposed in the House and Senate through the Appropriations process.

SB 2500, the 2019-2020 General Appropriations Act, as recommended by the budget Conference Committee does not include the additional funding needed to continue the nursing home funding at the 2018-19 level. It does include a line item for an additional Nursing Home Reimbursement Rate Adjustment of \$15,511,892. Further, SB 2502, the Implementing Bill for the 2019-2020 General Appropriations Act, changes the parameter for rate setting purposes for the Quality Incentive Program Payment Pool from 6 percent to 6.5 percent of September 2017 non-property related payments of included facilities. We are analyzing the impact of this change for our member facilities.

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 addressed in SB 2502, the Appropriations Implementing Bill, which will be voted on by the Legislature on Saturday, May 4th. The bill extends the elimination of Medicaid retroactive eligibility for nonpregnant adults for one more fiscal year – from July 1, 2019 – June 30, 2020. The bill further requires AHCA, 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. It also directs AHCA to include with this report a copy of the evaluation design and performance metrics submitted to the federal Centers for Medicare and Medicaid Services relating to the waiver of Medicaid retroactive eligibility.

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.

While HB 1349 passed the House unanimously and was sent to the Senate for consideration, the companion bill, SB 1592 was never

heard by the Appropriations Committee and therefore is dead for this session.

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 was signed into law by Governor DeSantis. (Chapter No. 2019-11).

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."

This week, HB 673 passed the Legislature and will be presented to Governor DeSantis for final action.

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.

HB 23 passed the Legislature and will be presented to Governor DeSantis for final action.

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.

HB 19 passed the Legislature and will be presented to Governor DeSantis for final action. The Canadian drug importation programs will still require 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 Legislature and will be presented to Governor DeSantis for final action.

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.

While HB 821 passed the House the Senate companion has not been heard in committee so the legislation is dead for this Session.

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. The bill will set up a separate Public Service Commission process that will allow utilities each year to seek to collect money from customers for storm-protection projects, such as building underground power lines.

SB 796 passed the Legislature and will be presented to Governor DeSantis for final action.

A Week in Review - News From The Capitol

Florida Session - Week Nine

An end of Session report from GreenbergTraurig will be distributed next week.



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

Copyright 2019 — Publication of LeadingAge Florida

Chairman: Roger A. Stevens

President/CEO: Steve Bahmer

Managing Editor: Nick Van Der Linden

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



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