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2019 Legislative Session
End of Session Report
May 22, 2019



2019 Legislative Session Overview

With final passage of a \$91.1 billion dollar budget for FY 2019-20, along with a \$121 million tax cut package that includes back-to-school and disaster preparedness sales-tax holidays, Florida's Legislative Session concluded on Saturday, May 4, 2019. The tax package includes tax exemptions for Hurricane Michael recovery, including exemptions and reductions for equipment replacement and building and repair materials, and refunds on fuel taxes used for agricultural shipments or hurricane debris removal. A reduction in a commercial-lease tax and a provision that exempts telecommunication companies from paying local governments for rights-of-way are also included in the tax package.

The budget includes high-profile spending issues such as \$680 million for the Everglades and other water projects; a \$242-per-student increase in school funding and funding to provide teacher pay increases; and \$50 million to maintain the state's tourism-marketing agency, Visit Florida, for at least another year.

The budget also provides \$1.85 billion for Hurricane Michael Recovery including \$115 million for affordable housing; \$45 million for Senate President Bill Galvano's priority to add or build toll roads; and \$40 million to retain the Job Growth Grant Fund, an economic program created under former Gov. Rick Scott. The health and human services budget totals \$37.6 billion with \$10.2 billion in general-revenue funding for health care and other social service programs, with much of that state money drawing federal matching funds.

Gov. DeSantis has final review of the budget and line-item veto authority. He has indicated that he would like to see more money in the state's reserve fund and vetoing budget items is one way to do so.

For the third year in a row, the 2019 Session was one of the least active in terms of bills passed. This year, the Florida Legislature passed 197 bills, representing 5.6% of the total bills filed, as compared to passage of 200 bills or 6.3% of the bills filed in 2018. No other session since 1998 (as far back as records go) has passed fewer than 200 bills. Only 16 of the 134 bills tracked by LeadingAge Florida passed this session. The session was also notable for the number of freshman serving, with the House and Senate swearing in 66 new lawmakers in November. There were 46 new members in the House and 20 in the Senate – the most new senators in state history, although some had previously been House members.

Activities on LeadingAge Florida Priority Bills

Continuing Care Retirement Communities

Support of Continuing Care Retirement Community legislation, as developed through a collaborative process with the Florida Life Care Residents Association (FLiCRA), the Office of Insurance Regulation (OIR) and other stakeholders.

LeadingAge Florida supported SB 1070 by Sen. Tom Lee (R-Brandon) and HB 1033 by Rep. Yarborough (R-Jacksonville) that provided a balanced approach to the reform of chapter 651, F.S., relating to continuing care contracts, and incorporated policy changes proposed by OIR, FLiCRA (on behalf of residents), and LeadingAge Florida (representing providers).

CS/CS/CS HB 1033 passed the House and Senate unanimously and now goes to Governor DeSantis for final action. The 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. After efforts to pass CCRC legislation in 2017 and 2018 were unsuccessful, 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 passed by the Legislature very closely resembles the consensus language that emerged from the work of the coalition last summer. 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 CCRC 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; and
- Enhances disclosure of information to residents.

Housing

As a member of the Florida Housing Coalition, LeadingAge Florida opposed 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.

LeadingAge Florida supported SB 70 by Sen. Mayfield (R-Melbourne)/HB 1103 by Rep. Silvers (D-West Palm Beach) relating to State Funds that prohibited 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 Finance Corp., the non-profit that administers the fund.

LeadingAge Florida also supported 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 that required 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 were required to 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.

For the first time in 20 years, the Governor's Legislative Budget Recommendation did not re-appropriate any of the \$352 million generated by the surcharge for the Sadowski fund for other purposes. The budget passed by the Senate would have fully funded the Sadowski Trust Fund, while the House budget swept more than \$200 million from the affordable housing fund. When the final budget was approved by the Legislature, more than \$130 million was swept for other purposes.

Certificate of Need

Support the retention of a CON process for nursing home beds.

LeadingAge Florida opposed HB 21 by Rep. Fitzenhagen (R-Fort Myers) relating to Health Care Facility Market Barriers, as filed, because it repealed Certificate of Need (CON) requirements for health care facilities, including nursing homes, and replaced the CON process with a process whereby local health councils, along with regional planning councils, would provide the Agency for Health Care 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.

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. Amended several times throughout the process, the bill, as passed, applies only to hospitals and 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 a CON from AHCA before they can build new facilities or provide tertiary services, which includes such services 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.

Nursing Home Staffing

Support the current requirement in Florida law of 2.5 CNA direct care hours per patient day, and oppose efforts to reduce that requirement as provided in the Nursing Home Staff Modernization legislation because of its potential impact on the quality of care residents receive in Florida nursing homes.

SB 1088 by Sen. Albritton (R-Bartow)/HB 897 by Rep. Roth (R-Palm Beach Gardens) relating to Nursing Home Facility Staffing revised the daily direct care staffing requirement from 3.6 to 3.9 hours per day and replaced 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'. This legislation, brought forth by the Florida Health Care Association, was designed to give nursing homes more flexibility to use specialized staff to meet the needs of residents.

After opposition from LeadingAge Florida, AARP, SEIU, the State Ombudsman, the trial bar and others, SB 1088 was withdrawn from further consideration and HB 897 was not heard in committee. Ongoing discussions between LeadingAge Florida, Florida Health Care Association, AARP and SEIU regarding the bills resulted in the creation of the Coalition for Silver Solutions, a coalition between the organizations 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 of the Coalition was on the legislative budget and the importance of properly funding nursing home care while also addressing the waiting list for home and community-based services. A Coalition 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 is for the 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](#).

Medicaid

Support 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.

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 were 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 passed by the Legislature, 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.

Support continuation of the 90-day Medicaid retroactive eligibility period for non-pregnant adults.

Sen. Bean filed SB 192 relating to Medicaid Eligibility that eliminated the 90-day retroactive eligibility period for non-pregnant adults, but no House companion bill was filed. The elimination of the Medicaid retroactive eligibility was, however, addressed in budget conforming bills.

The Appropriations Implementing bill, SB 2502, as passed by the Legislature, extends the elimination of Medicaid retroactive eligibility for non-pregnant adults for one more fiscal year – from July 1, 2019, through June 30, 2020. This section expires July 1, 2020, which means the elimination is continued for another fiscal year but is not permanent.

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

Support legislation updating laws relating to ALFs.

SB 1592 by Sen. Harrell (R-Stuart)/HB 1349 by Rep. Good (D-Sarasota) relating to ALFs updated statutory provisions, and addressed 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 this legislation failed to pass this session.

Activities on Bills Monitored By LeadingAge Florida

LeadingAge Florida's advocacy team was actively involved in legislation of interest to our members and tracked and monitored the following issues that passed the Legislature:

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) 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 was 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."

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 to deliver health care services within their scopes of practice, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of a medical data; patient and professional health-related education; public health services; and health administration. Telehealth is defined as the use of synchronous or asynchronous telecommunication technology to provide health care services.

The bill creates a regulatory framework for telehealth that includes standards of practice for telehealth providers, creation of a registration process and requirements for out-of-state telehealth providers, record-keeping requirements, and a disciplinary process for registered out-of-state providers. The Department of Health is required to create and maintain an informational website of out-of-state registered telehealth providers and to publish specific information about all out-of-state registrants.

The bill provides for disciplinary action against an out of state telehealth registrant that may include a suspension or revocation of his or her registration. Legislation also passed imposing fees on out-of-state providers.

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 (CPDI Program) and the International Prescription Drug Importation Program (IPDI Program) to import prescription drugs approved by the federal Food and Drug Administration (FDA) into the state, contingent on federal approval. AHCA is directed to establish the Canadian Program and the International Program is to be established by the Department of Business and Professional Regulation in collaboration with the Department of Health.

The CPDI Program focuses on providing savings and options for specific public programs including Medicaid recipients, clients of free clinics and county health departments; Department of Corrections inmates; clients treated in developmental disability centers; and patients treated in certain state mental health facilities. The bill establishes eligibility criteria for the types of prescription drugs which may be imported and the requirements for entities that may export or import prescription drugs. Both programs must also adhere to federal product tracing requirements. The bill includes a testing process with random sampling and batch testing of drugs as they enter the state under either program.

Both programs have an immediate suspension provision allowing either the AHCA or the DBPR to immediately suspend the importation of a specific drug or the importation of drugs by a specific importer if either a specific drug or a specific importer is in violation of any provision of the bill or any federal or state law or regulation.

HB 19 passed the Legislature and will be presented to Governor DeSantis for final action. Both drug importation programs require approval from the U.S. Department of Health and Human Services, followed by state legislative review of an implementation and funding plan, before either program can begin. The IPDI Program requires specific federal approval as there is not any current federal legislation authorizing such a program.

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.

The bill provides that transportation network company drivers and prospective drivers must undergo a Level I background screening pursuant to s. 435.03, F.S., or functionally equivalent procedures, as determined by AHCA. By October 1, 2019, AHCA is directed to update any regulations, policies, and other guidance, including the Non-Emergency Transportation Services Coverage Policy handbook, as necessary, to reflect the bill's authorizations.

HB 411 passed the Legislature and will be presented to Governor DeSantis for final action.

Health Care/Ambulatory Surgical Centers and Observation Status

HB 843 by Rep. Ana Maria Rodriguez (R-Doral)/SB 434 by Sen. Gayle Harrell (R-Stuart) relating to health care is the combination of several bills incorporating several provisions related to health care, including dental services, hospitals, physician access in a hospital, ambulatory surgical centers, and clinics, among others.

As it relates to ambulatory surgical centers, the bill allows a patient to stay in an ambulatory surgical center for up to 24 hours and deletes the current-law requirement that a patient be admitted and discharged on the same working day without staying overnight. It requires the Agency for Health Care Administration to adopt rules to ensure the safe and effective delivery of care to children in ambulatory surgical centers.

Further, the bill amends s. 395.301, F.S., to require that when a hospital places a patient on observation status instead of inpatient status, the hospital must immediately provide written notification to the patient. The bill requires the notice be given to Medicare patients through a

Medicare form and to non-Medicare patients through a form adopted by AHCA rule.

HB 843 passed the Legislature and will be presented to Governor DeSantis for final action.

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 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 the storm.

The bill sets 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.

The bill requires that, beginning December 1 of the year after the first full year of implementation of a transmission and distribution storm protection plan and annually thereafter, the commission must submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report on the status of utilities' storm protection activities. The report must include, but is not limited to, identification of all storm protection activities completed or planned for completion, the actual costs and rate impacts associated with completed activities as compared to the estimated costs and rate impacts for those activities, and the estimated costs and rate impacts associated with activities planned for completion.

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

Medical Marijuana

SB 182 by Sen. Brandes (R-St. Petersburg)/HB 7015 by the House Health & Human Services Committee eliminates the prohibition against smoking marijuana for medical use.

In 2017, the Legislature passed language implementing the legalization of medical marijuana; however, it prohibited smokable options. The language was challenged and declared unconstitutional by a Florida Circuit Court. Former Governor Rick Scott appealed the decision, but shortly after DeSantis took office he urged lawmakers to approve smokable options before March 15th. If legislation was not approved by that time, he promised to abandon the appeal.

The bill provides that the ability of a private party to restrict or limit smoking or vaping on his or her private property is not impaired. Further, it does not prohibit the medical use of marijuana in a nursing home, hospice, or assisted living facility if the facility's policies do not prohibit the medical use of marijuana.

On March 18, Gov. DeSantis signed SB 182 into law.

Prescription Drug Monitoring Program

HB 375 by Rep. Pigman (R-Sebring)/SB 592 by Sen. Albritton (R-Bartow) exempt prescribers and dispensers from the requirement to check the prescription drug monitoring program (PDMP) database if the patient to whom the drug is being prescribed or dispensed has been admitted to hospice, among other provisions. The bill also authorizes DOH to enter reciprocal agreements to share PDMP data with the U.S. Department of Veteran Affairs, U.S. Department of Defense, and Indian Health Services.

Prescription drug monitoring programs (PDMPs) are state-run electronic databases used to track the prescribing and dispensing of certain controlled prescription drugs. Florida law requires that all prescribers and dispensers consult the PDMP to review a patient's controlled substance dispensing history prior to prescribing or dispensing a controlled substance for any patient age 16 and older. A prescriber or dispenser may be subject to licensure discipline if he or she fails to consult the PDMP as required.

HB 375 passed the Legislature and will be presented to Governor DeSantis for final action.

Electronic Prescribing

HB 831 by Rep. Mariano (R-Port Richey)/SB 1192 by Sen. Bean (R-Jacksonville) require health care practitioners who maintain an electronic health record (EHR) system or who own, are employed by, or under contract with, a health care facility or practice that maintains such a system, to electronically transmit prescriptions for medicinal drugs upon renewal of the health care practitioner's license or by July 1, 2021, whichever is earlier. The bill also provides exceptions to this requirement, including if the prescription is issued to an individual receiving hospice care or who is a resident of a nursing home facility.

HB 831 passed the Legislature and will be presented to Governor DeSantis for final action.

LeadingAge Florida's advocacy team also actively tracked and monitored legislation that did not pass the Legislature and died in committee or on the Calendar, including the following bills relating to:

- Affordable Housing, including legislation relating to community housing and development, tax credit, impact fees, housing discrimination, county funding and tax reductions for affordable housing, and rent control measures
- Emergency Management including legislation relating to comprehensive emergency management planning for ALFs, strategic fuel reserves, emergency management, and medically essential utility service
- Institutional Pharmacies
- Health Innovation Commission
- Expansion of the Scope of Practice for APRNs
- Sexual Misconduct Reporting in Health Care
- Medicaid Eligibility

- Access to Patients' Records
- Assisted and Independent Living Facility Task Force
- Elder Protection - Fatality Review Teams – At-Risk Adult Alert Plans – Protection of Vulnerable Investors
- Formularies
- PACE
- Tort Reform
- POLST
- Constitution Revision Commission repeal

To review all bills monitored and tracked by the LeadingAge Florida advocacy team, please see the final Bill Tracking Report available [here](#).

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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