

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1335 Long-term Care Prioritization

**SPONSOR(S):** Magar

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	11 Y, 2 N	Guzzo	Poche
2) Health Care Appropriations Subcommittee	12 Y, 0 N	Clark	Pridgeon
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

In 2011, the Legislature created the Statewide Medicaid Managed Care Program as an integrated managed care program for all covered services, including long-term care services. The Statewide Medicaid Managed Care Program consists of two programs: the Managed Medical Assistance Program (MMA Program) and the Long-Term Care Managed Care Program (LTC Program). The MMA Program covers primary and acute medical assistance and related services to Medicaid recipients.

The LTC Program provides services to Medicaid recipients in nursing facilities and in community settings, including an individual's home, an assisted living facility, or an adult family care home. To be eligible for the LTC Program, an individual must be:

- Age 65 or older and eligible for Medicaid, or age 18 or older and eligible for Medicaid by reason of a disability; and
- Determined to require nursing home care, or be at imminent risk of requiring nursing home care.

When an individual, or the individual's representative, expresses an interest in receiving LTC services, the Department of Elder Affairs (DOEA) screens and scores the individual based on his or her frailty and need for services. The individual is then placed on the waitlist for services. When funding is available, individuals are released from the waitlist based on their priority score, which indicates their level of frailty. The individual must be determined to be medically eligible for services by DOEA, and financially eligible for Medicaid by the Department of Children and Families (DCF), before they are approved to be enrolled in the LTC Program.

The process for prioritizing individuals to be placed on the waitlist, placing them on the waitlist, and releasing them from the waitlist for enrollment in the LTC Program is not currently provided in statute or administrative rule.

HB 1335 establishes in statute the process DOEA uses to prioritize individuals for enrollment in the LTC Program. The process involves frailty-based screening, which results in a priority score that is used to place individuals on the waitlist. The bill requires DOEA to make the methodology used to calculate an individual's priority score publicly available on its website. The bill requires DOEA to rescreen individuals on the waitlist annually and provides for a rescreening due to a significant change in the individual's condition or circumstances. The bill establishes specific criteria for DOEA to terminate an individual from the waitlist. The bill exempts the following persons from the screening and waitlist process:

- Individuals age 18, 19, or 20, who have a chronic debilitating disease or conditions of one or more physiological or organ systems which make them dependent on 24-hour medical supervision;
- Individuals determined to be at high risk and referred by the adult protective services program within DCF; and
- Nursing facility residents who wish to transition into the community and who have resided in a skilled nursing facility licensed in Florida for at least 60 consecutive days.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides an effective date of July 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Statewide Medicaid Managed Care

In 2010, the Florida House of Representatives contracted with a consultant to analyze Florida's Medicaid program and identify problems and possible solutions; the consultant concluded that Florida Medicaid's fragmented, complex system made it difficult to improve value for patients and taxpayers.<sup>1</sup> As a result, in 2011, the Legislature established the Statewide Medicaid Managed Care (SMMC) program as Part IV of Chapter 409, F.S.

The SMMC program is an integrated managed care program for Medicaid enrollees to provide all mandatory and optional Medicaid benefits. A unified, coordinated system of care is a primary characteristic of the SMMC program, in part because it solves the problem of complexity with which Florida's Medicaid program was plagued for decades. In the SMMC program, each Medicaid recipient has one managed care organization to coordinate all health care services, rather than various entities.<sup>2</sup> Within the SMMC program, the Managed Medical Assistance (MMA) program provides primary and acute medical assistance and related services to enrollees. The Long-term Care Managed Care (LTC) program provides services to Medicaid recipients in nursing facilities and in community settings, including an individual's home, an assisted living facility, or an adult family care home.

##### *Managed Medical Assistance Program*

The MMA Program requires AHCA to make payments for primary and acute medical assistance and related services using a managed care model.<sup>3</sup> Managed care plans in the MMA Program are required to cover, at a minimum, the following services:

- Advanced registered nurse practitioner services;
- Ambulatory surgical treatment center services;
- Birthing center services;
- Chiropractic services;
- Dental Services;
- Early periodic screening diagnosis and treatment services for recipients under age 21;
- Emergency services;
- Family planning services and supplies;
- Health start services;
- Hearing services;
- Home health agency services;
- Hospice services;
- Hospital inpatient services;
- Hospital outpatient services;
- Laboratory and imaging services;
- Medical supplies, equipment, prostheses, and orthoses;
- Mental health services;
- Nursing care;
- Optical services and supplies;

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<sup>1</sup> Medicaid Managed Care Study, Pacific Health Policy Group, p. 73, March 2010

<sup>2</sup> This comprehensive coordinated system of care was first successfully implemented in the 5-county Medicaid reform pilot program from 2006-2014.

<sup>3</sup> S. 409.971, F.S.

- Optometrist services;
- Physical, occupational, respiratory, and speech therapy services;
- Physician services, including physician assistant services;
- Podiatric services;
- Prescription drugs;
- Renal dialysis services;
- Respiratory equipment and supplies;
- Rural health clinic services;
- Substance abuse treatment services; and
- Transportation to access covered services.<sup>4</sup>

### *Long Term Care Program*

The LTC Program provides long term care services, including nursing facility and home and community based services, to eligible Medicaid recipients. Long-term care plans are required to, at a minimum, cover the following:

- Nursing facility care;
- Services provided in assisted living facilities;
- Hospice;
- Adult day care;
- Medical equipment and supplies, including incontinence supplies;
- Personal care;
- Home accessibility adaptation;
- Behavior management;
- Home-delivered meals;
- Case Management;
- Occupation therapy;
- Speech therapy;
- Respiratory therapy;
- Physical therapy;
- Intermittent and skilled nursing;
- Medication administration;
- Medication Management;
- Nutritional assessment and risk reduction;
- Caregiver training;
- Respite care;
- Transportation; and
- Personal emergency response systems.<sup>5</sup>

To be eligible for the LTC Program, an individual must be:

- Age 65 or older and eligible for Medicaid, or age 18 or older and eligible for Medicaid by reason of a disability; and
- Determined by the Comprehensive Assessment Review and Evaluation for Long-Term Care Services (CARES) Program to require nursing facility care as defined in s. 409.985(3), F.S.<sup>6</sup>

When determining the need for nursing facility care, the nature of the services prescribed, the level of nursing or other health care personnel necessary to provide such services, and the availability of and access to community or alternative resources are all considered.<sup>7</sup> For purposes of the LTC Program, “nursing facility care” means the individual requires, or is at imminent risk of,:

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<sup>4</sup> S. 409.973(1), F.S.

<sup>5</sup> S. 409.98, F.S.

<sup>6</sup> S. 409.979(1), F.S.

<sup>7</sup> S. 409.985(3), F.S.

- Nursing home placement as evidenced by the need for medical observation throughout a 24-hour period and care required to be performed on a daily basis by, or under the direct supervision of, a registered nurse or other health care professional;
  - Also, the services are sufficiently medically complex to require supervision, assessment, planning, or intervention by a registered nurse because of a mental or physical incapacitation by the individual.
- Nursing home placement as evidenced by the need for observation throughout a 24-hour period and care and the constant availability of medical and nursing treatment;
  - Also, the services needed on a daily or intermittent basis are to be performed under the supervision of licensed nursing or other health professionals because the individual is incapacitated mentally or physically.
- Nursing home placement as evidenced by the need for observation throughout a 24-hour period and care and the constant availability of medical and nursing treatment.
  - Also, the necessary limited services are to be performed under the supervision of licensed nursing or other health professionals because the individual is mildly incapacitated mentally or physically.

The Department of Elder Affairs (DOEA) administers programs and services for elders through 11 Area Agencies on Aging (AAAs), which also operate Aging and Disability Resource Centers (ADRCs). The ADRCs provide information and referral services to individuals seeking long-term care services. The ADRCs also screen individuals for eligibility for long-term care services.

The LTC Program enrollment process is administered by DOEA, the Department of Children and Families (DCF), and AHCA. An individual in need of services or seeking services must contact the appropriate ADRC to request a screening. The screening is intended to provide the ADRC with information describing the individual's level of frailty. During the screening, the ADRC gathers basic information about the individual, including general health information and any assistance the individual needs with activities of daily living. Based on the screening, the individual receives a priority score, which indicates the level of need for services and reflects the level of the individual's frailty. Using the priority score, the individual is then placed on the waitlist.

When funding becomes available, the frailest individuals are taken off the waitlist first, based upon priority score. The individual must then go through a comprehensive face-to-face assessment conducted by the local Comprehensive Assessment and Review for Long-Term Care Services (CARES) staff.<sup>8</sup> After CARES determines the medical eligibility of the individual, DCF determines the financial eligibility of the individual. If approved for both medical and financial eligibility, AHCA must notify the individual and provide information on selecting a long-term care plan.

The process for prioritizing individuals to be placed on the waitlist, placing them on the waitlist, and releasing them from the waitlist for enrollment in the LTC Program is not currently provided in statute or administrative rule.

### **Effect of Proposed Changes**

HB 1335 establishes in statute the process DOEA uses to prioritize individuals for enrollment in the LTC Program. The process involves frailty-based screening that provides a priority score that is used to place individuals on the waitlist. The screening must be conducted by a person certified by DOEA. The bill requires DOEA to make the methodology used to calculate an individual's priority score publicly

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<sup>8</sup> Florida Department of Elder Affairs, *Comprehensive Assessment and Review for Long-Term Care Services (CARES)*, available at: [www.elderaffairs.state.fl.us/does/cares.php](http://www.elderaffairs.state.fl.us/does/cares.php) (last viewed January 23, 2016). Comprehensive Assessment and Review for Long-Term Care Services (CARES) is Florida's federally mandated pre-admission screening program for nursing home applicants. A registered nurse or assessor performs client assessments. A physician or registered nurse reviews each application to determine the level of care that is most appropriate for the applicant. The assessment identifies long-term care needs, and establishes the appropriate level of care (medical eligibility for nursing facility care), and recommends the least restrictive, most appropriate placement. Federal law also mandates that the CARES Program perform an assessment or review of each individual who requests Medicaid reimbursement for nursing facility placement, or who seeks to receive home and community-based services through Medicaid waivers.

available on its website. The bill requires DOEA to rescreen individuals on the waitlist annually and provides for a rescreening due to a significant change in the individual's condition or circumstances.

The bill authorizes DOEA to terminate an individual from the waitlist if he or she:

- Does not have a current priority score;
- Wishes to be removed from the waitlist;
- Does not keep an appointment to complete the rescreening without rescheduling beforehand;
- Is no longer eligible to receive services because he or she has not completed or met clinical or financial eligibility requirements;
- Begins the eligibility process for the LTC Program; or
- Begins receiving home and community-based services through the long-term care managed care program.

The bill provides that certain individuals have priority for enrollment in the LTC Program and are exempt from participating in the screening or waitlist process, including individuals:

- Age 18, 19, or 20, who have a chronic debilitating disease or conditions of one or more physiological or organ systems which make them dependent on 24-hour medical supervision;
- Determined to be at high risk and referred by the adult protective services program within DCF; and
- Nursing facility residents who wish to transition into the community and who have resided in a skilled nursing facility licensed in Florida for at least 60 consecutive days.

The bill provides an effective date of July 1, 2016.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 409.962, F.S., relating to definitions.

**Section 2:** Amends s. 409.979, F.S., relating to eligibility.

**Section 3:** Provides an effective date of July 1, 2016.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The process DOEA uses to prioritize individuals in the LTC Program has been included within the General Appropriations Act Implementing Bill for the last two fiscal years (Chapter 2014-56 and Chapter 2015-222, Laws of Florida). This bill permanently codifies the process in statute.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable. This bill does not appear to affect county or municipal governments.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

See Drafting Issues, Section III, c., below.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

DOEA requires specific rulemaking authority to promulgate rules associated with the LTC Program enrollment process. The bill does not provide authority for DOEA to engage in the required rulemaking process.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**