

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1335 Long-term Care Managed Care Prioritization

SPONSOR(S): Health & Human Services Committee; 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	13 Y, 0 N, As CS	Guzzo	Calamas

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 scores, which indicates their levels 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 addressed in statute or administrative rule.

HB 1335 establishes in statute the process DOEA uses to prioritize individuals for enrollment in the LTC Program. The bill authorizes DOEA and AHCA to adopt rules to implement the process. 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 adopt, by rule, a screening tool that is used to generate a priority score, and 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 referred by Adult Protective Services, within DCF, as high risk and placed in an assisted living facility, which is temporarily funded by DCF; and
- Nursing facility residents requesting transition into the community 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.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1335e.HHSC

DATE: 2/11/2016

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.¹ 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. In the SMMC program, each Medicaid recipient has one managed care organization to coordinate all health care services, rather than various entities.² The SMMC program is administered by the Agency for Health Care Administration (AHCA) and is financed with federal and state funds.³ Eligibility for the SMMC program is determined by the Department of Children and Families (DCF).⁴

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 frail elderly or disabled Medicaid recipients in nursing facilities and in community settings, including an individual's home, an assisted living facility, or an adult family care home.

Implementation of the LTC Program required approval by the federal Centers for Medicare and Medicaid Services (CMS) by virtue of 1915(b) and (c) waivers submitted by AHCA. The waivers were approved on February 1, 2013, and authorized the LTC Program to operate effective July 1, 2013, through June 30, 2016.⁵ Initial enrollment into the LTC Program began August 1, 2013.

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.

Federal law requires state Medicaid programs to provide nursing facility services to individuals, age 21 or older, and in need of nursing facility care.⁶ Further, states are prohibited from limiting access to nursing facility services by establishing waiting lists.⁷ Unlike nursing facility services, the provision of home and community based services is optional and there is a waitlist for receipt of these services.⁸

Home and community based services are delivered through a federal 1915(c), home and community based services waiver. Delivery of home and community based services to eligible recipients is

¹ Medicaid Managed Care Study, Pacific Health Policy Group, p. 73, March 2010.

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

³ S. 409.963, F.S.

⁴ Id.

⁵ Letter from U.S. Department of Health and Human Services, Disabled and Elderly Health Programs Group to Justin Senior, Deputy Secretary for Medicaid, Agency for Health Care Administration (February 1, 2013), available at http://ahca.myflorida.com/medicaid/Policy_and_Quality/Policy/federal_authorities/federal_waivers/docs/mma/Signed_approval_FL0962_new_1915c_02-01-2013.pdf (last viewed February 4, 2016).

⁶ 42 C.F.R. §483p(b).

⁷ Medicaid.gov, *Nursing Facilities, Who May Receive Nursing Facility Services*, available at <https://www.medicaid.gov/medicaid-chip-program-information/by-topics/delivery-systems/institutional-care/nursing-facilities-nf.html> (last viewed February 4, 2016).

⁸ S. 409.906(13), F.S.

dependent on the availability of annual funding. Enrollment in the home and community based services portion of the LTC Program is managed based on a priority system and waitlist. CMS approved 50,390 unduplicated recipients in the home and community based services portion of the LTC Program for FY 2015-16.⁹

As of January 1, 2016, there were 90,841 individuals enrolled in the LTC Program, including 50,390 individuals enrolled in the home and community based services portion of the LTC Program, and 40,451 individuals enrolled in the nursing facility services portion of the LTC Program.¹⁰

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.¹¹

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.¹²

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.¹³ For purposes of the LTC Program, “nursing facility care” means the individual requires, or is at imminent risk of:

⁹ Letter from U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services to Justin Senior, Deputy Secretary for Medicaid, Agency for Health Care Administration (June 11, 2015), available at http://ahca.myflorida.com/medicaid/Policy_and_Quality/Policy/federal_authorities/federal_waivers/docs/LTC_Waiver_Amend_Approval_Letter_2015-03-17.pdf (last viewed February 4, 2016).

¹⁰ Agency for Health Care Administration, *SMMC LTC Enrollment by County/Plan Report* (as of January 1, 2016), available at http://ahca.myflorida.com/Medicaid/Finance/data_analytics/enrollment_report/index.shtml (last viewed February 4, 2016).

¹¹ S. 409.98, F.S.

¹² S. 409.979(1), F.S.

¹³ 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.¹⁴

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, 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 CARES staff.¹⁵ 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 addressed in statute or administrative rule.

To maintain the LTC Program and ensure the provision of services to those depending on them, the process DOEA uses to prioritize individuals in the LTC Program have 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).

Effect of Proposed Changes

¹⁴ S. 409.985(3), F.S.

¹⁵ 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 (last viewed February 4, 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.

HB 1335 establishes in statute the process DOEA uses to prioritize individuals for enrollment in the LTC Program.

The bill directs DOEA to maintain a statewide wait list for enrollment for home and community based services through the LTC Program. The bill requires DOEA to prioritize individuals for potential enrollment using a frailty-based screening tool to calculate an individual's priority score. The priority score is used to determine the release order of individuals from the waitlist for potential enrollment. If capacity is limited for individuals with the same priority score, the individual with the oldest date of placement on the wait list receives priority for release.

The bill requires Aging Resource Center personnel certified by DOEA to perform the screening or rescreening of individuals requesting enrollment. To be placed on the wait list, an individual requesting LTC services, or the individual's authorized representative, must participate in an initial screening or rescreening. A rescreening of the individual must occur annually or upon notification of a significant change in an individual's circumstances.

The bill requires DOEA to adopt the screening tool by rule and make the methodology used to calculate an individual's priority score publicly available on its website. Upon completion of a screening or rescreening, DOEA must notify the individual or the individual's authorized representative that the individual has been placed on the wait list.

If DOEA is unable to contact the individual or the individual's authorized representative to schedule an initial screening or rescreening, actions taken to make such contact must be documented. In addition, a letter must be sent to the last documented address of the individual or the individual's authorized representative to advise the individual to contact DOEA within 30 days to schedule a screening or rescreening and notify the individual that failure to complete the screening or rescreening will result in his or her termination from the screening process and the wait list.

The bill requires the CARES program to conduct pre-release assessments of individuals upon notification by AHCA that there is available capacity in the LTC program. DOEA must release individuals from the wait list based on the priority scoring process and the pre-release assessment results. Upon release, individuals who meet all eligibility criteria may be enrolled in the LTC Program.

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

- Does not have a current priority score due to the individual's action or inaction;
- Requests to be removed from the waitlist;
- Does not keep an appointment to complete the rescreening without scheduling another appointment and has not responded to three documented attempts by DOEA to contact the individual;
- Receives an offer to begin the eligibility determination process for the LTC Program; or
- Begins receiving services through the LTC Program.

If an individual is terminated from the waitlist, and subsequently requests to be placed on the waitlist again, the individual is required to initiate a new request for placement on the waitlist and any previous priority considerations must be disregarded.

The bill provides priority enrollment for certain individuals for home and community based services in the LTC Program. Such individuals do not have to complete the screening or wait list process if all other LTC Program eligibility requirements are met, 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;
- Nursing facility residents requesting to transition into the community who have resided in a skilled nursing facility licensed in Florida for at least 60 consecutive days; and
- Referred by Adult Protective Services, within DCF, as high risk and placed in an assisted living facility, which is temporarily funded by DCF.

The bill provides rulemaking authority to DOEA and AHCA to implement the wait list process.

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 have 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:

The bill provides sufficient rulemaking authority to both DOEA and AHCA to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 9, 2016, the Health and Human Services Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Revised the definition of “rescreening” to mean the use of a screening tool to conduct annual screenings or rescreenings, due to a significant change, which determines an individual’s placement and continuation on the wait list;
- Revised the definition of “screening” to mean the use of an information-collection tool to determine a priority score for placement on the waitlist;
- Revised the definition of “significant change” to include an actual or anticipated change in an individual’s living situation as a scenario which would qualify an individual for rescreening for wait list prioritization;
- Required DOEA to prioritize individuals for potential enrollment for home and community based services through the LTC program using a frailty-based screening tool that results in a priority score used to determine an order for releasing individuals from the wait list;
- Required DOEA to adopt, by rule, the screening tool that generates a priority score;
- Clarified that if capacity is limited to individuals with identical priority scores, the individual with the oldest date of placement on the wait list must receive priority for release from the wait list;
- Established pre-requisite criteria for eligibility for LTC services, including a pre-admission screening by CARES staff to determine if an individual requesting such services is in need of nursing facility care;
- Required Aging Resource Center personnel to conduct initial screenings, annual rescreenings, and rescreenings based on notice of a significant change in an individual’s circumstances;
- Required DOEA to request that alternate contact names and contact information be provided by the individual or the authorized representative of the individual requesting enrollment for home and community based services through the LTC Program;
- Required DOEA, upon completion of a screening or rescreening, to notify the individual or the individual’s authorized representative that the individual has been placed on the wait list;
- Required DOEA to send a letter to the last documented address of the individual or the individual’s authorized representative if DOEA is unable to contact the individual to schedule an initial screening or rescreening, which must advise the individual that he or she must contact DOEA within 30 days to schedule a screening or rescreening to avoid being terminated from the wait list;
- Required DOEA to document the actions taken to make contact with an individual or the individual’s authorized representative to notify them of their placement on the wait list;
- Required the CARES program, after notification by AHCA of available capacity, to conduct a pre-release assessment;
- Required DOEA to release individuals from the wait list based on the priority scoring process and pre-release assessment results;
- Revised the situations in which DOEA is authorized to terminate an individual from the wait list;
- Required an individual, upon termination from the wait list, to make a new request for placement on the wait list;
- Added to the list of individuals who may bypass the screening and wait list process for immediate enrollment for LTC services, to include, individuals referred by Adult Protective Services as high risk and placed in an assisted living facility, which is temporarily funded by DCF; and
- Provides DOEA and AHCA with rulemaking authority to wait list process.

The bill was reported favorably as a committee substitute. This analysis is drafted to the committee substitute as passed by the Health and Human Services Committee.