

HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

BILL #: CS/HB 1335 **FINAL HOUSE FLOOR ACTION:**
SPONSOR(S): Health & Human Services 117 Y's 0 N's
Committee; Magar
COMPANION CS/SB 7056 **GOVERNOR'S ACTION:** Approved
BILLS:

SUMMARY ANALYSIS

CS/HB 1335 passed the House on March 2, 2016, and subsequently passed the Senate on March 9, 2016.

In 2011, the Legislature created the Statewide Medicaid Managed Care (SMMC) Program as an integrated managed care program for all covered services, including long-term care services. The SMMC Program consists of two programs: the Managed Medical Assistance (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. 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.

CS/HB 1335 establishes in statute the process DOEA uses to prioritize individuals for enrollment in the LTC Program. The bill authorizes DOEA and the Agency for Health Care Administration to adopt rules to implement the process. The bill requires DOEA to adopt, by rule, a screening tool that is used to generate a priority score, using frailty-based screening, and make the methodology used to calculate an individual's priority score 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. 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 was approved by the Governor on March 25, 2016, ch. 2016-147, L.O.F., and will become effective on July 1, 2016.

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

STORAGE NAME: h1335z1.HIS

DATE: March 28, 2016

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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

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 March 11, 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 March 11, 2016).

⁸ S. 409.906(13), F.S.

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 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

Currently, there are 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 As of February 25, 2016, there were 42,789 individuals on the LTC Program waitlist.¹¹

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.¹²

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.¹³

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 March 11, 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 March 11, 2016).

¹¹ Department of Elder Affairs, *Statewide Analysis Assessed Prioritized Consumer List Totals by Assessed Rank Level and Program* (February 25, 2016), (on file with Health and Human Services Committee staff).

¹² S. 409.98, F.S.

¹³ S. 409.979(1), F.S.

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.¹⁴ For purposes of the LTC Program, “nursing facility care” means the individual requires, or is at imminent risk of:

- 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.¹⁵

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.¹⁶ 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.

¹⁴ S. 409.985(3), F.S.

¹⁵ S. 409.985(3), F.S.

¹⁶ 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 March 11, 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.

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 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).

Effect of the Bill

CS/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 waitlist 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 waitlist 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 waitlist, 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 waitlist.

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. 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 waitlist.

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 waitlist 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 waitlist 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 waitlist process.

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.