HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 1373 Long-term Care
SPONSOR(S): Health Market Reform Subcommittee, Webb and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1544

FINAL HOUSE FLOOR ACTION: 111 **Y's** 0 **N's** **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 1373 passed the House on March 6, 2020, and subsequently passed the Senate on March 10, 2020.

The bill provides additional flexibility to the Department of Elder Affairs (DOEA) regarding the composition of the Medicaid long-term care (LTC) waitlist. Within the Statewide Medicaid Managed Care (SMMC) program, the 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.

An individual seeking services under the LTC program must undergo an initial needs screening by the DOEA to demonstrate the individual's level of frailty. The screening collects basic information on general health and any assistance the individual needs with activities of daily living. Based on the screening, the individual receives a priority score, which indicates the individual's level of need for services and frailty. Using the priority score, the DOEA then places the individual on a statewide waitlist. Many people on the waitlist have low priority scores, so are not eligible to receive LTC services.

The bill requires DOEA to place individuals with high priority scores of on the waitlist, consistent with current practice. DOEA may add individuals with low priority scores, but is not required to do so. The bill requires annual rescreening of individuals with high priority scores, in keeping with current practice, but makes annual rescreening optional for individuals with low priority scores. The bill directs screening staff to inform individuals with low priority scores of alternative community resources that may be available and that the individual may request rescreening at any time if their circumstances change.

The bill also modifies service prioritization procedures under the Community Care for the Elderly (CCE) program. CCE is a non-Medicaid program that provides community-based services in a continuum of care to help elders with functional impairments to live in the least restrictive and most cost-effective environment suitable to their needs. The program prioritizes applicants based on needs and frailty, and prioritizes individuals referred for services by Adult Protective Services (APS). The bill stipulates that a provider of CCE services may dispute an APS referral by requesting that APS negotiate or modify the referral of a vulnerable adult or victim of abuse, neglect, or exploitation.

The bill has no fiscal impact to state or local government.

The bill was approved by the Governor on June 18, 2020, ch. 2020-46, L.O.F., and takes effect on July 1, 2020.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Statewide Medicaid Managed Care

The Statewide Medicaid Managed Care (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.[1] The SMMC program is administered by the Agency for Health Care Administration (AHCA) and is financed with federal and state funds.[2] Eligibility for the SMMC program is determined by the Department of Children and Families (DCF).[3]

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.

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.[4] States are prohibited from limiting access to nursing facility services, but the provision of home and community based services is optional.[5] Home and community based services in Florida are delivered through a federal 1915(c), home and community based services waiver.[6] The waiver establishes that home and community based LTC services are available to qualified recipients, but subject to an enrollment cap determined by the availability of funding. As such, the LTC program is managed based on a priority enrollment system and a waitlist.

As of December 31, 2019, there were 116,507 individuals enrolled in the LTC Program, including 65,822 individuals enrolled in the home and community based services portion of the LTC Program, and 50,685 individuals enrolled in the nursing facility services portion of the LTC Program.[7]

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;

[1] This comprehensive coordinated system of care was first successfully implemented in the 5-county Medicaid reform pilot program from 2006-2014.
[2] S. 409.963, F.S.
[3] Id.
[4] 42 C.F.R. §483p(b).
[5] Medicaid.gov, *Nursing Facilities,* available at https://www.medicaid.gov/medicaid/long-term-services-supports/institutional-long-term-care/nursing-facilities/index.html (last accessed March 11, 2020).
[6] S. 409.906(13), F.S.
[7] Agency for Health Care Administration, *SMMC LTC Enrollment by County/Plan Report* (as of December 31, 2019), available at http://ahca.myflorida.com/Medicaid/Finance/data_analytics/enrollment_report/index.shtml (last accessed March 11, 2020).

- Personal care;
- Home accessibility adaptation;
- Behavior management;
- Home-delivered meals;
- Case Management;
- Occupational, speech, respiratory and physical therapies;
- Intermittent and skilled nursing;
- Medication administration;
- Medication Management;
- Nutritional assessment and risk reduction;
- Caregiver training;
- Respite care;
- Transportation; and
- Personal emergency response systems.[8]

LTC Program Eligibility

To be eligible for the LTC Program, an individual must meet age, income, and asset requirements, as determined by DCF, and clinical requirements, as determined by the Department of Elder Affairs (DOEA). Specifically, 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;
- Have annual income at or below 222% of the federal poverty level (FPL)[9]; and,
- Be in need of nursing home care, as determined by the DOEA Comprehensive Assessment Review and Evaluation for Long-Term Care Services (CARES) Program.[10]

In addition, an individual seeking Medicaid eligibility must demonstrate that he or she meets limits on personal assets. Both federal and state law set parameters for Medicaid LTC eligibility based on personal property, such as a home or vehicle, and on financial assets, such as bank accounts, stocks and bonds, and life insurance policies.[11] Life insurance policies with a cash value greater than $1,500 may not be retained by individuals seeking Medicaid eligibility. Generally, assets above certain cash thresholds must be divested at least 60 months prior to a period of Medicaid eligibility.[12]

When determining the need for nursing facility care, DOEA considers 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.[13] Imminent risk of nursing home placement can be evidenced by the need for medical observation throughout a 24-hour period and the need for care performed on a daily basis by, or under the direct supervision of, a registered nurse or other health care professional. An individual at risk of nursing home care requires services that are sufficiently medically complex to require supervision, assessment, planning, or intervention by a registered nurse because of a mental or physical incapacitation.[14]

LTC Program Enrollment

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[8] S. 409.98, F.S.
[9] This equates to $28,327 for an individual and $38,273 for a family of two. U.S. Department of Health and Human Services, *HHS Poverty Guidelines for 2020*, January 8, 2020, available at https://aspe.hhs.gov/poverty-guidelines (last accessed March 11, 2020).
[10] S. 409.979(1), F.S.
[11] U.S. Department of Health and Human Services, *Financial Requirements – Assets*, available at https://longtermcare.acl.gov/medicare-medicaid-more/medicaid/medicaid-eligibility/financial-requirements-assets.html (last accessed March 11, 2020).
[12] 42 U.S.C. §1396p. See also Agency for Health Care Administration, *Medicaid State Plan Attachments – Eligibility Conditions and Requirements*, available at https://ahca.myflorida.com/medicaid/stateplan_attach.shtml (last accessed March 11, 2020).
[13] S. 409.985(3), F.S.
[14] S. 409.985(3), F.S.

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, and 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. An individual seeking LTC services may request a rescreening any time his or her circumstances change. In addition, ADRC staff are required to rescreen waitlisted individuals on an annual basis.[15]

The prioritization of the waitlist is not described in statute, but rather in administrative rule promulgated by AHCA.[16] The rule sets five frailty-based levels based on the priority score calculation by DOEA. The levels rank the individual's level of need in ascending order, meaning that an individual with a priority score of "1" has very low needs and an individual with a priority score of "5" has very high needs. As of February 25, 2020, there were 58,000 individuals on the waitlist, with priority scores as follows[17]:

Priority Score	Waitlist Individuals
5	1,552
4	6,492
3	18,546
2	20,724
1	11,112
Total	**58,426**

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.[18] After CARES confirms 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. It is DOEA's current practice to add any individual who completes the initial needs screening to the wait list, even if he or she has very limited service needs and is unlikely to qualify for services in the future. This approach may be confusing to individuals with low priority scores, giving the impression that they qualify for services, and that services will become available at some point in time. In practice, only individuals with high priority scores will receive services. DOEA reports that only individuals with a priority score of "5" have consistently been released from the waitlist to receive services, though individuals with score of "4" are occasionally released.[19] Current law stipulates an individual may

[15] S. 409.979(3), F.S.
[16] Rule 59G-4.193, F.A.C.
[17] E-mail correspondence from Derek Miller, Legislative Analyst for the Department of Elder Affairs, March 25, 2020 (on file with staff of the Health Market Reform Subcommittee).
[18] Florida Department of Elder Affairs, *Comprehensive Assessment and Review for Long-Term Care Services (CARES)*, available at http://elderaffairs.state.fl.us/doea/cares.php (last accessed January 24, 2020). 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.
[19] Supra note 17.

request a rescreening any time his or her circumstances change, which allows individuals with low priority scores the ability to move up the waitlist if need can be demonstrated.

Community Care for the Elderly

The Community Care for the Elderly (CCE) program is a non-Medicaid program that provides community-based services in a continuum of care to help elders with functional impairments to live in the least restrictive and most cost-effective environment suitable to their needs.[20]

The CCE program provides a wide range of services to clients, depending on client needs. These services include, but are not limited to, adult day care, chore assistance, counseling, home-delivered meals, home nursing, legal assistance, material aid, medical therapeutic services, personal care, respite, transportation, and other community-based services. [21]

The DOEA administers the program through contracts with AAAs, which subcontract with CCE Lead Agencies. Service delivery is provided by 52 Lead Agencies around the state. The CCE program is funded by a combination of state general revenue and client contributions. Clients are assessed a co-payment based on a sliding scale developed by the DOEA.[22]

To be eligible for the CCE program, an individual must be age 60 or older and functionally impaired[23], as determined by an initial comprehensive assessment and annual reassessments. Primary consideration for services is given to elders referred by the Department of Children and Families Adult Protective Services (APS) program and determined by APS to be victims of abuse, neglect, or exploitation and in need of immediate services to prevent further harm.[24] Individuals not referred by APS may still receive services, but according to a prioritization which is based upon the potential recipient's frailty level and likelihood of institutional placement. Still, the required prioritization of individuals referred by APS may limit the ability of the CCE program to provide services to other populations using available state funding. The DOEA is also required to consider an applicant's income when prioritizing services – those less able to pay for services must receive higher priority than those with a greater ability to pay for services.[25]

Effect of Proposed Changes

Medicaid LTC Enrollment

CS/HB 1373 provides additional flexibility to DOEA regarding the composition of the LTC waitlist. The bill requires DOEA to continue to place individuals with high priority scores on the waitlist. However, it authorizes DOEA not to add individuals with low priority scores to the waitlist, at its discretion. The bill requires annual rescreening of individuals with high priority scores, in keeping with current practice, but makes annual rescreening optional for individuals with low priority scores.

The bill requires DOEA to maintain contact information for individuals with low priority scores, should those individuals seek rescreening in the future. The bill also directs ARDC staff to inform individuals with low priority scores of alternative community resources that may be available and that the individual may request rescreening at any time if their circumstances change.

Community Care for the Elderly

[20] S. 430.202, F.S.
[21] Florida Department of Elderly Affairs, *2019 Summary of Programs and Services – Section C: State General Revenue Programs*, January 2019, available at http://elderaffairs.state.fl.us/doea/sops.php (last accessed March 11, 2020).
[22] Id.
[23] S. 430.203(7), F.S.
[24] S. 430.205(5)(a), F.S.
[25] S. 430.205(5)(b), F.S.

The bill also modifies service prioritization procedures under the CCE program. Currently, CCE Lead Agencies to prioritize individuals referred for services by APS. The bill stipulates that a provider of CCE service may dispute such a referral by requesting that APS negotiate or modify the referral of a vulnerable adult or victim of abuse, neglect, or exploitation. In cases where the CCE service provider and APS cannot come to an agreement on the disputed referral, the APS recommendation prevails.

Subject to the Governor's veto powers, the bill takes effect on July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

A. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

B. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

C. FISCAL COMMENTS:

None.