

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: SPB 7056

INTRODUCER: Health Policy Committee

SUBJECT: Long-term Care Managed Care Prioritization

DATE: January 26, 2016

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Lloyd	Stovall		HP Submitted as Committee Bill

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

SPB 7056 addresses the long-term care Medicaid managed care program and revises ss. 409.962 and 409.949, F.S., relating to eligibility, enrollment and prioritization for the program.

SPB 7056 requires the Department of Elderly Affairs (DOEA) to maintain a statewide wait list for enrollment for the community-based services portion of the long-term care managed care program and to prioritize individuals for potential enrollment using a frailty-based screening tool that generates a priority score. The DOEA must develop the screening tool by rule. The DOEA is also required to make publicly available on its website the specific methodology used to calculate an individual's priority score. The bill requires individuals to be rescreened at least annually or upon notification of a significant change in the individual's circumstances.

When the DOEA Comprehensive Assessment and Review for Long-Term Care Services program (CARES) is notified of available enrollment capacity by the Agency for Health Care Administration (AHCA), a pre-release assessment is conducted of individuals based on the priority scoring process. If capacity is limited for individuals with identical priority scores, the individual with the oldest date of placement on the wait list will receive priority for pre-release assessment.

If found financially and clinically eligible, the individual may be enrolled in the long-term care managed care program.

An individual may also be terminated from the long-term care managed care program wait list. Once terminated, an individual would be required to initiate a new request for placement on the wait list and any previous priority consideration is disregarded.

SPB 7056 identifies certain populations that are provided priority enrollment for home and community based services through the long-term care managed care program, and that do not have to complete the screening or wait-list process as long as all other program eligibility requirements are met. These individuals are:

- Individuals who are 18, 19, and 20 years of age who have chronic, debilitating diseases or conditions of one or more physiological or organ systems which generally make the individual dependent upon 24-hour-per-day medical, nursing, or health supervision or intervention; and
- Nursing facility residents requesting to transition into the community who have resided in Florida-licensed skilled nursing facility for at least 60 consecutive days.

The bill authorizes the DOEA and the AHCA to adopt rules to implement the bill.

Both the DOEA and the AHCA estimate no fiscal impact. The effective date of the bill July 1, 2016.

II. Present Situation:

Florida Medicaid

The Medicaid program is a partnership between the federal and state governments to provide medical care to low income children and disabled persons. Each state operates its own Medicaid program under a state plan that must be approved by the federal Centers for Medicare and Medicaid Services (CMS). The state plan outlines Medicaid eligibility standards, policies, and reimbursement methodologies.

Florida Medicaid is administered by the AHCA and is financed with federal and state funds. The Department of Children and Families (DCF) determines eligibility for the Medicaid program and transmits that information to the AHCA. The AHCA is designated as the single state Medicaid agency and has the lead responsibility for the overall program.¹

Over 3.9 million Floridians are currently enrolled in Medicaid² with a projected caseload of 4.2 million for 2016-2017.³ The Medicaid program's estimated expenditures for the 2015-2016

¹ See s. 409.963, F.S.

² Agency for Health Care Administration, *Report of Medicaid Eligibles* (November 30, 2015) available at http://ahca.myflorida.com/medicaid/Finance/data_analytics/eligibles_report/docs/age_assistance_category_2015-11-30.pdf (last visited Jan. 21, 2016).

³ Agency for Health Care Administration, Senate Health and Human Services Appropriations Subcommittee Presentation, *Florida Medicaid* (October 20, 2015), slide 6, http://ahca.myflorida.com/medicaid/recent_presentations/Florida_Medicaid_to_Senate_HHS_Appropriations_2015-10-20.pdf (last visited Jan. 21, 2016).

fiscal year are \$25.7 billion.⁴ The current traditional federal share is 60.51 percent with the state paying 39.49 percent for Medicaid enrollees.⁵ Florida has the fourth largest Medicaid population in the country.⁶

Medicaid currently covers:

- 20 percent of Florida’s population;
- 27 percent of Florida’s children;
- 62.2 percent of Florida’s births; and
- 69 percent of Florida’s nursing homes days.⁷

The structure for each state’s Medicaid program is different and each state’s share of expenditures is largely determined by the federal government. Federal law and regulations set the minimum amount, scope, and duration of services offered in the program, among other requirements. Eligibility for Medicaid is based on a number of factors, including age, household or individual income, and assets. State Medicaid benefits are provided in statute under s. 409.903, F.S. (Mandatory Payments for Eligible Persons) and s. 409.904, F.S. (Optional Payments for Eligible Persons).

Applicants for Medicaid must be United States citizens or qualified noncitizens, must be Florida residents, and must provide social security numbers for data matching. While self-attestation is permitted for a number of data elements on the application, most components are matched through the Federal Data Services Hub.⁸ Applicants must also agree to cooperate with Child Support Enforcement during the application process.⁹

Federal Poverty Guidelines for 2015¹⁰				
Annual Income (rounded)				
Family Size	100%	133%	150%	200%
1	\$11,770	\$15,654	\$17,655	\$23,540
2	\$15,930	\$21,187	\$23,895	\$31,860
3	\$20,090	\$26,720	\$30,135	\$40,180
4	\$24,250	\$32,252	\$36,375	\$48,500

⁴ Office of Economic and Demographic Research, *Fiscal Analysis in Brief - 2015 Legislative Sessions, Including Special Session A* (August 2015), chart 3, p. 3 available at <http://edr.state.fl.us/Content/revenues/reports/fiscal-analysis-in-brief/FiscalAnalysisinBrief2015.pdf> (last visited Jan. 21, 2015).

⁵ Office of Economic and Demographic Research, *Social Services Estimating Conference - Official FMAP Estimate* (February 2015), <http://edr.state.fl.us/Content/conferences/medicaid/fmap.pdf> (last viewed Jan. 21, 2016). The SSEC has also created a “real time” FMAP blend” for the Statewide Medicaid Managed Care Program which is 60.43% for SFY 2015-16.

⁶ Agency for Health Care Administration, Health and Human Services Appropriations Committee Presentation, *Agency for Health Care Administration - An Overview* (January 22, 2015), slide 9,

http://www.flsenate.gov/PublishedContent/Committees/2014-2016/AHS/MeetingRecords/MeetingPacket_2759.pdf (last visited Jan. 21, 2016).

⁷ Id at 10.

⁸ Florida Dep’t of Children and Families, *Family-Related Medicaid Programs Fact Sheet*, p. 3 (January 2015), <http://www.dcf.state.fl.us/programs/access/docs/Family-RelatedMedicaidFactSheet.pdf> (last visited Jan. 21, 2016).

⁹ Id.

¹⁰ U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, *Medicaid and CHIP Program Information - 2015 Federal Poverty Level Charts* <http://www.medicaid.gov/medicaid-chip-program-information/by-topics/eligibility/downloads/2015-federal-poverty-level-charts.pdf> (last visited Jan. 21, 2016).

Minimum eligibility coverage thresholds are established in federal law for certain population groups, such as children, as well as minimum benefits and maximum cost sharing. The minimum benefits include items such as physician services, hospital services, home health services, and family planning.¹¹ States can add benefits, pending federal approval. Florida has added benefits, including prescription drugs, adult dental services, and dialysis.¹² For children under age 21, the benefits must include the Early and Periodic Screening, Diagnostic and Treatment services, which are those health care and diagnostic services and treatment and measures that may be needed to correct or ameliorate defects or physical and mental illnesses and conditions discovered by screening services, consistent with federal law.¹³

Statewide Medicaid Managed Care

In 2011, the Legislature established the Statewide Medicaid Managed Care (SMMC) Program as part IV of ch. 409, F.S.¹⁴ The SMMC has two components: the Long Term Care Managed Care (LTC) program and the Managed Medical Assistance (MMA) program. The SMMC is an integrated, comprehensive, managed care program for Medicaid enrollees that manages the delivery of primary and acute care in 11 regions.

To implement the two components and receive federal Medicaid funding, the AHCA received federal authorization through two different Medicaid waivers from the CMS. The first component authorized was the LTC's 1915(b) and (c) waivers on February 1, 2013. The waivers for the LTC program are effective July 1, 2013, through June 30, 2016, and operate concurrently.¹⁵

Initial enrollment into the LTC began August 1, 2013, and finished March 1, 2014. As of January 1, 2016, 90,841 individuals were enrolled in both the nursing home portion and the non-entitlement, home and community based services component of the LTC program.¹⁶

Long Term Care Managed Care Program (LTC)

The LTC provides services in two settings: the nursing facility and a community setting such as a recipient's home, an assisted living facility, or an adult family care home. Nursing facility services are an entitlement program for eligible enrollees; however, home and community based services are delivered through waivers and are dependent on the availability of annual funding.

¹¹ Section 409.905, F.S.

¹² Section 409.906, F.S.

¹³ See Section 905 9(r) of the Social Security Act.

¹⁴ See Chapter Laws, 2011-134 and 2011-135.

¹⁵ 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 visited Jan. 21, 2016).

¹⁶ Agency for Health Care Administration, *SMMC LTC Enrollment by County By Plan Report* (as of January 1, 2016) available at http://ahca.myflorida.com/Medicaid/Finance/data_analytics/enrollment_report/index.shtml (last visited Jan. 21, 2016).

Enrollment in the home and community based services portion of the long term care managed care program is managed based on a priority system and wait list. For the 2015-2016 state fiscal year, the state is approved for 50,390 unduplicated recipients in the home and community based services portion of the program.¹⁷

Eligibility and Enrollment

The AHCA is the single state agency for Medicaid; however through an interagency agreement with the DOEA, the DOEA is responsible for the care evaluations for all Medicaid nursing home admissions and is Florida's federally mandated pre-admission screening program for nursing home applicants, including for the LTC.¹⁸ The CARES program has 18 field offices across the state which are staffed with physicians, nurses, and other healthcare professionals who evaluate the level of care an individual may or may not need for waiver services. The frailty based assessment results in a priority score for the individual and individuals are then placed on the wait list based on their priority score.

To receive nursing facility care, an individual must also be determined to meet the requirements of s. 409.985(3). This subsection requires:

The CARES program shall determine if an individual requires nursing facility care and, if the individual requires such care, assign the individual to a level of care as described in s. 409.983(4). When determining the need for nursing facility care, consideration shall be given to the nature of the services prescribed and which level of nursing or other health care personnel meets the qualifications necessary to provide such services and the availability to and access by the individual of community or alternative resources. For the purposes of the long-term care managed care program, the term "nursing facility care" means the individual:

- (a) Requires 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 and 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 by the individual;
- (b) Requires or is at imminent risk of 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 and requires services on a daily or intermittent basis that are to be performed

¹⁷ 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 visited Jan. 21, 2016).

¹⁸ Florida Dep't of Elderly Affairs, *Comprehensive Assessment and Review for Long-Term Care Services (CARES)*, <http://elderaffairs.state.fl.us/doea/cares.php> (last visited Jan. 21, 2016).

under the supervision of licensed nursing or other health professionals because the individual is incapacitated mentally or physically; or

(c) Requires or is at imminent risk of 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 and requires limited services that are to be performed under the supervision of licensed nursing or other health professionals because the individual is mildly incapacitated mentally or physically.

Individuals are released from the wait list periodically based on the availability of funding and their priority score. Before being released; however, individuals must also meet the following eligibility requirements or participate in one of the following waivers, as applicable, to enroll in the program:

- Age 65 years or older and need nursing facility level of care;
- Age 18 years of age or older and are eligible for Medicaid by reason of a disability and need nursing facility level of care;
- Aged and Disabled Adult (A/DA) waiver;
- Consumer Directed Care Plus for individuals in the A/DA waiver;
- Assisted Living waiver;
- Nursing Home Diversion waiver;
- Frail Elder Option; or
- Channeling Services waiver.¹⁹

Individuals who are enrolled in the following programs may enroll in the LTC, but are not required to:

- Developmental Disabilities waiver program;
- Traumatic Brain and Spinal Injury waiver;
- Project AIDS Care waiver;
- Adult Cystic Fibrosis waiver;
- Program of All-Inclusive Care for the Elderly (PACE);
- Familial Dysautonomia waiver; or
- Model waiver.²⁰

Individuals, both those who are enrolled in the LTC and those on the wait list, must be re-screened, on at least an annual basis or whenever there is a significant change in circumstances, such as change in caregivers or medical condition.²¹

¹⁹ Agency for Health Care Administration, *A Snapshot of the Florida Medicaid Long-term Care Program*, http://ahca.myflorida.com/Medicaid/statewide_mc/pdf/LTC/SMMC_LTC_Snapshot.pdf (last visited Jan. 21, 2016).

²⁰ *Id.*

²¹ Application for §1915(c) Home and Community-Based Services Waiver (Effective July 1, 2013), pp. 45-46, http://www.fdhc.state.fl.us/medicaid/Policy_and_Quality/Policy/federal_authorities/federal_waivers/docs/mma/LTC_1915c_Application.pdf (last visited Jan. 22, 2016).

Aging Resource Centers

The Aging Resource Centers (ARCs) provide information to elders and adults who request long-term care services and make referrals to lead agencies for vulnerable adults in need of other services. Under contract with the Department of Elderly Affairs, the ARCs coordinate all initial screenings to determine prioritization for long-term care services, provide choice counseling for nursing facility placements, assist with informal resolution of member grievances with Medicaid long-term managed care plans, and provide enrollment and coverage information to Medicaid managed long-term care enrollees.

The ARCs are also responsible for services funded through these programs:

- Community care for the elderly;
- Home care for the elderly;
- Contracted services;
- Alzheimer's disease initiative; and
- Older American's Act.²²

The ARCs serve as a "one-stop" shop for all elder services as elders can receive a single financial determination for all services, including Medicaid, food stamps, and Supplemental Security Income.²³ Minimum standards of operation and responsibilities for the ARCs are provided in s. 430.2053, F.S., and in administrative rules under Chapter 58B-1, F.A.C.

Delivery System and Benefits

The AHCA conducted a competitive procurement to select providers in each of the 11 regions. Contracts were awarded to health maintenance organizations and provider service networks. Six non-specialty plans are currently contracted, including one provider service network that is available in all 11 regions and one health maintenance organization that is in 10 regions.²⁴ Recipients receive choice counseling services to assist them in selecting the plan that will best meet their needs.

Each plan under the LTC is required to provide a minimum level of services. These services include:

- Adult companion care;
- Adult day health care;
- Assisted living;
- Assistive care services;
- Attendant care;
- Behavioral management;
- Care coordination and case management;
- Caregiver training;
- Home accessibility training;
- Home-delivered meals;
- Homemaker;

²² See s. 430.2053(9), F.S.

²³ See s. 430.2053(9), F.S.

²⁴ *Supra* note 20.

- Hospice;
- Intermittent and skilled nursing;
- Medical equipment and supplies;
- Medication administration;
- Medicaid management;
- Nursing facility;
- Nutritional assessment/risk reduction;
- Personal care;
- Personal emergency response system;
- Respite care;
- Therapies; and
- Non-emergency transportation.²⁵

A LTC managed care plan may elect to offer expanded benefits to its enrollees. Some of the approved expanded benefits for the LTC include:

- Cellular phone service;
- Dental services;
- Emergency financial assistance;
- Hearing evaluation;
- Mobile personal emergency response system;
- Non-medical transportation;
- Over-the-counter medication and supplies;
- Support to transition out of a nursing facility;
- Vision services; and
- Wellness grocery discount.²⁶

The LTC managed care plan enrollees who are not eligible for Medicare receive their medical services through an MMA plan. Some of the same plans participate in both programs and in the same regions, and a recipient may choose the same plan, but is not required to do so.

III. Effect of Proposed Changes:

Section 1 adds four definitions to s. 409.963, F.S., relating to the long-term care managed care program (LTC):

- “Authorized representative” means an individual who has the legal authority to make decisions on behalf of a Medicaid recipient or potential Medicaid recipient in matters related to the managed care plan or the screening or eligibility process;
- “Rescreening” means the use of a screening tool to conduct annual screenings or screenings due to a significant change which determine an individual’s placement and continuation on the wait list;

²⁵ See s. 409.98, F.S.

²⁶ Agency for Health Care Administration, MMA - Model Contract - Attachment I - Scope of Services (Effective date 11/1/15) p. 5, http://ahca.myflorida.com/medicaid/statewide_mc/pdf/Contracts/2015-11-01/Attachment_I-Scope_of_Services_2015-11-01.pdf (last visited Jan. 21, 2016).

- “Screening” means the use of an information collection tool to determine a priority score for placement on the wait list;
- “Significant change” means change in an individual’s health status after an accident or illness; an actual or anticipated change in the individual’s living situation; a change in the caregiver relationship; loss of or damage to the individual’s home, or deterioration of his or her home environment; or loss of the individual’s spouse or caregiver.

Section 2 amends s. 409.979, F.S., to clarify the existing eligibility process for the home and community based services through the LTC. The bill establishes that Medicaid recipients must meet prerequisite criteria for eligibility and be determined eligible by the CARES preadmission screening program at the DOEA to require nursing facility care as defined in s. 409.985(3), F.S.

The bill clarifies that offers for enrollment in the LTC will be made subject to the availability of funds and based on wait-list prioritization. Before making any enrollment offers, the AHCA and the DOEA are required to determine that sufficient funds are available to support such enrollment.

The DOEA is directed to maintain a statewide wait list for enrollment into the program for home and community based services through the LTC. Individuals will be prioritized for enrollment through a frailty-based screening tool that results in a priority score. The priority score is used to determine the release order for individuals from the wait list 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.

Aging Resource Center personnel certified by the DOEA shall perform the screening or rescreening for those requesting enrollment in the home and community-based services through the LTC.

To be placed on the wait list, an individual requesting the long-term care 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 DOEA must adopt the screening tool that generates the priority score by rule and make publicly available on its website the specific methodology used to calculate an individual’s priority score. When an individual’s screening has been completed, the DOEA must inform the individual or the individual’s representative that the individual has been placed on the wait list.

If the DOEA is unable to contact the individual or the individual’s representative to schedule an initial screening or rescreening, a letter must be sent to the last documented address to advise the individual to contact the DOEA within the next 30 calendar days to schedule a screening or rescreening. Failure to conduct a screening or rescreening will result in the individual’s termination from the screening process and the wait list.

The bill requires the CARES program to conduct a pre-release assessment of individuals after notification by the AHCA of available capacity in the long-term care managed care program. The DOEA shall release individuals from the wait list based on the priority score process and the

prerelease assessment. An individual must be both financially and clinically eligible to enroll in the LTC.

The bill directs the DOEA to terminate an individual on the wait list if the individual:

- Does not have a current priority score due to the individual's action or inaction;
- Requests to be removed from the wait list;
- Does not keep an appointment to complete the rescreening without scheduling another appointment;
- Receives an offer to begin the eligibility determination process for the long-term managed care program; or
- Begins receiving services through the long-term care managed care program.

If an individual is removed from the wait list for one of these reasons above, and subsequently requests to be placed on the wait list, the individual is required to initiate a new request for placement on the wait list and any previous placement is disregarded.

The bill provides for priority enrollment for home and community based services through the LTC for certain individuals. These individuals are not required to complete the screening or wait-list process described in this subsection if all other LTC eligibility requirements are met:

- Individuals who are 18, 19, or 20 years of age who have chronic, debilitating diseases or conditions of one or more physiological or organ systems which generally make the individual dependent upon 24-hour-per-day medical, nursing, or health supervision or intervention or
- Nursing facility residents requesting transition into the community who have resided in a Florida-licensed skilled nursing facility for at least 60 consecutive days.

SPB 7056 provides both the DOEA and the AHCA authority to adopt rules to implement the provisions of this act.

The bill removes obsolete language.

Section 3 provides the effective date of the act as July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Elder Affairs reports no fiscal impact.²⁷

The Agency for Health Care Administration reports no fiscal impact.²⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 409.962. 409.979.

IX. Additional Information:**Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy on January 26, 2016:

The Committee Substitute names the Aging Resource Center personnel as the entity to conduct the screenings and rescreenings consistent with their current statutory duties in s. 430.2053, F.S. The CS also reinstates current law with respect to receiving long-term care services through the LTC managed care program.

A. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²⁷ Email from Jo Morris, Legislative Affairs Director, Department of Elder Affairs (Jan., 22, 2016) (on file with the Senate Committee on Health Policy).

²⁸ Conversation with Joshua Spagnola, Legislative Affairs Director, Agency for Health Care Administration (Jan. 22, 2016).