

SNAPSHOT OF STATE LEGISLATION

RELATED TO AGING SERVICES

April 5 2019

State legislatures are in full swing. Some legislatures are in session all year long while others may only be in session for five weeks or even meet every other year. The information in this snapshot came from sessions that have ended (6 states) and from states that are still in session (36). Most states will end their legislative sessions by the summer and we hope to provide an update at that time. Thus, for the states still in session, this information is accurate only as of this writing. The states are the links to the direct source of the information.

This Sampling of State Legislation is intended to provide a snapshot of top issues under consideration (and a few bills enacted) by legislatures across the states. It is based on material included in state LeadingAge newsletters and bill tracking systems, and in some cases, presentation materials shared by state staff.

MEDICAID

- **Funding News.** Big news in state legislatures relates to aging services funding. The news is mixed, with many advocates and providers on a roller coaster ride.
 - [MINNESOTA's](#) legislature is considering a package of moves that would result in \$68 million in cuts to nursing homes.
 - The [IOWA](#) legislature's aging services appropriation for FY 2020 includes \$27.5 million for nursing facility rebasing (but no additional dollars for HCBS or home health).
 - The [KANSAS](#) Senate and the state's governor recommended a 0% increase for nursing facilities and HCBS and a \$7 million increase for PACE. The House includes a 2% increase for all three.
 - [MARYLAND's](#) governor's proposed budget would include a 3% increase in the Medicaid reimbursement rate.
 - The [MISSOURI](#) House approved 1% SNF and 1.5% HCBS rate increases.
 - [OKLAHOMA's](#) House and Senate are working on the Nursing Home Quality Assurance Act that will increase Medicaid nursing home rates by \$23 per day, along with transparency and accountability to ensure quality improvement.
 - The [FLORIDA](#) legislature put nearly \$138 million into addressing three changes to the state's prospective payment system, but the funding was for one year only. The funds went toward increasing the direct care rate and the quality incentive pool. They are not included in the Governor's budget or the House or Senate proposals this year.
 - [NEW YORK's](#) final enacted budget, effective April 1, 2019, reflects the 9th consecutive year of 2% or less growth in state spending. The state Medicaid program averted an across the board cut, but it will permit such a cut under unspecified triggers.
 - [GEORGIA's](#) legislators increased the cognitive add-on from 4.5% to 5.5% for nursing homes with at least 45% of residents who meet the cognitive screen.

- **Medicaid Program.**

- The [MARYLAND](#) House is considering a bill that has already passed the Senate to prevent the state from denying HCBS waiver services to many eligible applicants due to a lack of funding. The state is looking at new conditions related to waiting lists as well.
- [CALIFORNIA's](#) legislature is contemplating expanding the assisted living waiver to 18,500 slots (13,000 more than currently exist).
- [FLORIDA's](#) Senate is considering a bill that would eliminate 90-day retroactive eligibility for nursing home residents (among others). This could be potentially harmful to low income individuals in nursing homes, causing them to accrue medical debt.

NURSING HOMES

- **CNA Training.** CMS sets standards for certified nursing assistant training, but states have some flexibility on some aspects of CNA training. [CALIFORNIA](#) has a new CNA Online Training Program that authorizes the 60-hour CNA training to be offered through online or distance learning classes. The state's legislature is currently considering a bill to bring the CNA renewal requirements in line with those for RNs and LPNs (lowering the 48-hour requirement for CNAs to 30 hours every two years). Training hours are under discussion in the **WISCONSIN** legislature too.
- **Staffing ratios and worker roles.** Legislatures can address workforce in several ways. The [NEW YORK](#) state legislature is looking to create staffing ratios for hospitals and nursing homes; it is estimated that the requirements would cost \$1.06 billion to implement in nursing homes. Similarly, [FLORIDA's](#) legislature is considering revising the daily direct care staffing requirement in nursing homes from 3.6 to 3.9 hours per day. [KENTUCKY](#) legislators are also discussing requiring staff to resident ratios in LTC facilities as a condition of licensure. [MICHIGAN](#) legislators are looking at staffing ratios for nurses and CNAs and considering a bill to prohibit mandatory overtime for nurses.
- **Swing beds** [MINNESOTA's](#) financing proposals include an expansion of the number of swing bed days allowed in hospitals that do not have a nursing home attached—from 2,000 days a year to 9,125. This could have a huge negative impact on small nursing homes in the state.
- **Transformation.** [NEW YORK](#) is in the third phase of a statewide health care facility transformation program. This year, at least \$45 million will go to nursing homes and up to \$20 million to assisted living and other programs. Funds may be used to modernize physical plants promote HIT and telehealth, foster participation in value-based payment systems or increase the quality of the resident's care or experience in nursing homes.
- **Civil Monetary Penalties.** [KENTUCKY'S](#) General Assembly is looking at a bill that would establish the Kentucky LTC facility CMP fund.

ASSISTED LIVING/LIFE PLAN COMMUNITIES/OTHER RESIDENTIAL CARE

- **Generators.** As storm season approaches each year, state laws and policies around generators become a hot topic. Nursing homes are explicitly required to have an “emergency electrical power system,” so state legislation related to generator requirements tends to be about other settings. The [NORTH CAROLINA](#) House is looking at a bill that requires all nursing homes, combination homes and adult care homes in the state to have generators. [FLORIDA](#) is codifying a set of assisted living emergency preparation rules, including a requirement for generators. On a related note, [CALIFORNIA](#) has a new law, co-sponsored by LeadingAge CA that requires residential facilities to have an emergency disaster plan, train staff on it, and conduct quarterly drills.
- **CCRC/LPC Transparency and Financial Reporting.** Resident associations in some states have successfully lobbied for introduction of bills to promote financial reporting and increased transparency by life plan communities under certain circumstances. [CALIFORNIA](#) and [WASHINGTON’s](#) legislatures are looking at such proposals. [FLORIDA’s](#) House and Senate are considering financial triggers that would require the state to take corrective action against a financially challenged CCRCs and enhance disclosure of information to residents. Similarly, the [ILLINOIS](#) house is considering modifications to the state’s Life Care Act related to disclosures.
- **Promoting CCRC development.** The CCRC Revitalization Act under debate in [NEW YORK](#) would eliminate barriers to the development and operation of communities; currently there are only 12 CCRCs in the state.
- **Mediation.** The [MARYLAND](#) legislature is considering legislation to remove a prohibition against a CCRC being represented by counsel during a mediation procedure.
- **Receivership.** Changes are under consideration in the [KANSAS](#) legislature to amend state law on licensure and receivership on adult care homes.
- **Name Change.** [GEORGIA](#) changed the name of CCRCs to Life Plan Communities.
- **Assisted Living statutes.** [KENTUCKY’s](#) legislature is considering a broad-based bill related to assisted living. It includes provisions related to owners’ background checks, the appeals process and litigation. It also would prohibit assisted living staff from being shared with another level of care.

WORKFORCE

- **Minimum Wage laws.** Eighteen states began 2019 with higher minimum wages. Eight automatically increased the wage by cost of living (**ALASKA, FLORIDA, MINNESOTA, MONTANA, NEW JERSEY, OHIO, SOUTH DAKOTA, AND VERMONT**). Ten increased the minimum wage due to legislation (**ARIZONA, ARKANSAS, CALIFORNIA, COLORADO, MAINE, MASSACHUSETTS, MISSOURI, NEW YORK, RHODE ISLAND, AND WASHINGTON**). In addition, **DC, DELAWARE, MICHIGAN AND OREGON** will see increases during the 2019 calendar year. **CALIFORNIA, NEW JERSEY, ILLINOIS, AND MARYLAND** are phasing in minimum wages of \$15/hr. within the next

two to six years. [NEBRASKA](#) legislators are considering an annual adjustment to the minimum wage.

- [NEW YORK's](#) final budget includes \$1.1 billion to support the direct cost of minimum wage increases for Medicaid funded services provided by home care agencies, nursing homes, assisted living programs, hospices, and hospitals.
- **Family Medical leave.** [MASSACHUSETTS](#) has a comprehensive new Paid Family Medical Leave Act that requires employers of all sizes to start making contributions to a Trust Fund from which FMLA benefits will be paid. Starting in 2021, employees will be eligible for up to 12 weeks of paid, job protected family leave and 20 weeks of medical leave. The Governor's proposed budget in [CALIFORNIA](#) would expand the state's paid family leave program for up to six months. [NEBRASKA's](#) legislature is looking at a family medical leave proposal too.

HOUSING

- **Housing financing.**
 - [CALIFORNIA's](#) Multifamily Housing Program is about to be replenished with funding to assist in new construction, rehabilitation, and preservation of affordable rental housing. Legislation currently being debated would modernize the senior set aside within the program.
 - [FLORIDA's](#) legislature is looking at a bill that would prohibit transfers out of state and local housing trust funds; for the past two decades, the legislature has swept \$2.2 billion from the affordable housing trust funds.
 - [NEW YORK's](#) proposed Affordable Independent Senior Housing Assistance Program would bolster the state's commitment of \$125 million to senior housing to enable senior adults to age in place in new or pre-existing housing.
- **Housing planning.** [CALIFORNIA's](#) SB 611 would require the Governor's office to establish the Housing Older Persons Effectively (HOPE) Task force as part of the state's Master Plan for Aging. The bill spells out the charge for the group and requires that it make recommendations back to the legislature.
- **Building standards.** The Dignity at Home and Fall Prevention Act under debate in the [CALIFORNIA](#) Senate would require the state housing agency to develop building standards requiring fall prevention structural features. Fall prevention is a topic that about a third of the states have addressed legislatively in recent years, but not typically through building standards.

OTHER ITEMS OF INTEREST

- **State LTSS Financing Reform.** In the absence of federal action on LTSS financing reform, states are entering the fray.
 - [WASHINGTON](#) state may become the first state with a meaningful public LTSS entitlement program. The Washington LTC Trust Act would require every working adult

to pay .58% of payroll to a fund that would provide a \$36,500 lifetime benefit, once an individual is determined functionally eligible.

- [CALIFORNIA's](#) Senate is looking to establish the California LTSS Benefits Trust.
- **Aging Plans.** There's some action in several states related to aging plans. [CALIFORNIA's](#) Senate is considering a bill to require a master plan on aging for the state and establish a "Long Term Care Czar" in the Governor's office. [KANSAS](#) is looking at creating a seniors' services taskforce. [KENTUCKY](#) legislators are considering creating an Alzheimer's and Dementia Workforce Assessment Task Force to study the health and LTSS infrastructure of the state in relation to supports for people with dementia.
- **Medical Marijuana.** Marijuana has been demonstrated to be effective for a variety of uses by older individuals, including controlling pain and reducing anxiety related to dementia. Despite the federal classification of marijuana as a Schedule I substance (high potential for dependency and no accepted medical use), 34 states already have some form of legislation legalizing its use. [GEORGIA](#) joined them in April with the passage of a law approving medical marijuana sales in the state. (Before this, medical marijuana was legal but could not be purchased in the state.) Bills to legalize medical (or recreational in some cases) marijuana or change existing state legislation are also under discussion in Oklahoma, New Jersey, Arizona, Tennessee, Texas, New Mexico, South Carolina, and Florida.
- **Adult Protective Services.** Preventing abuse and neglect is a focus for many lawmakers.
 - [MINNESOTA's](#) legislature is considering a vast financing bill that includes provisions aimed at protecting older adults, especially in assisted livings. Among the provisions are a requirement that appears to make AL participation in Medicaid mandatory, expanded civil litigation to allow private enforcement of state AL bill of right, and a prohibition from moving an individual who paid privately for a year, regardless of whether the person can continue to pay.
 - [MARYLAND's](#) House is considering a bill to add psychological abuse to the statute that protects vulnerable adults. The state's Senate is debating whether to establish a Senior and Vulnerable Adult Asset Recovery Unit to protect seniors from financial crimes.
 - The [CALIFORNIA](#) Senate is talking about a bill to add "abandonment" to the definition of neglect.
 - [TEXAS's](#) House and Senate are considering making financial abuse of the elderly a criminal offense.
 - On a related note, the [KANSAS](#) House is looking at a bill that would provide a statutory framework for adults who want decision making assistance.
- **Alzheimer's.** State legislatures addressed Alzheimer's disease in a few ways this year. [CALIFORNIA](#) has a new law that extends a voluntary contribution on income tax returns to support Alzheimer's research; in addition, the state's Department of Public Health was charged with updating the Alzheimer's plan to address the burden on at-risk and under-represented populations.

- **End of Life and Advance Care Planning.**
 - Six states and the District of Columbia have death with dignity laws. [MARYLAND](#) is debating the End of Life Act.
 - [NEW JERSEY's](#) Assembly is looking at allowing physician assistants to sign POLST forms.
 - [NEW YORK](#) legislators are considering changing current Medicaid rules to allow terminally-ill residents in assisted living to access hospice services without moving to a nursing home.
 - Most states have some type of legislation authorizing or related to Physician's Orders for Life Sustaining Treatment (POLST). [SOUTH CAROLINA](#) may join them this year. The legislature is considering legislation to allow for a medical order called a Physician Order for Scope of Treatment (POST), similar to a DNR but with additional details. Along the same lines, [KENTUCKY's](#) House is looking at a bill that permits hospitals to request that patients complete a Medical Order for Scope of Treatment (MOST).
 - [KENTUCKY's](#) House and Senate are considering a proposal to create a Palliative Care Interdisciplinary Advisory Council within the Cabinet for Health and Family Services. It would include a consumer and professional education program.
 - [GEORGIA's](#) legislature passed a law to allow medical technicians in assisted living to administer liquid morphine to residents on hospice.

- **Certificate of Need.** Thirty-five states still have CON laws (though the federal requirement to have one was eliminated in 1987) to control changes in the number of various types of inpatient beds. The [MARYLAND](#) legislature is considering legislation to exempt certain types of facilities, including existing hospice programs. The [FLORIDA](#) House is looking at a bill to repeal the state's CON process.