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**2023 Legislative Session –**

2023 was a budget year, which occurs every two-years in Indiana. This means that this “long” Session did not conclude until April 28. Unless otherwise noted (like in HB 1454), all new legislation becomes effective July 1, 2023.

The LeadingAge Indiana Team worked hard this Session educating and persuading legislators on two Bills in particular: [House Bill (HB) 1461 – Long-Term Care Services](https://iga.in.gov/static-documents/2/6/9/a/269ae978/HB1461.06.ENRS.pdf); and [HB 1454 – Department of Local Government and Finance](https://iga.in.gov/static-documents/b/b/0/e/bb0edb6b/HB1454.05.ENRS.pdf) (property tax exemption language). The Team delivered some significant achievements overall and, in particular with respect to those two Bills – all of which is described below. Members can also review the [final Bill Track List](file:///H:\Week%2017%20Bill%20Tracker%20-%20LeadingAge.pdf) for a summary of all relevant Bills that passed this Session. All Bills (passed or not) from this past Session can be found [here](https://iga.in.gov/legislative/2023/bills/).

[**HB 1001**: **State budget.**](https://iga.in.gov/legislative/2023/bills/house/1001)

* The Budget Bill fully funds the Governor/FSSA’s Medicaid appropriation at $3,721,500,000 for FY 24; $4,196,600,000for FY 25.
* Contains specific funding for FSSA’s rate matrix, covering HCBS waiver services, dentists, home health agencies, and other providers.
* Establishes a minimum 4-year rate schedule for Medicaid providers who do not currently have a schedule (AL and other A&D Waiver services). This was originally part of HB 1461: Long term services.
* Extends the Quality Assessment Fee (QAF) for another two years at current rates (also in HB 1461).
* Establishes a Medicaid Oversight Committee, which consists of House and Senate fiscal/public health leadership, the OMB director, and the FSSA secretary.
* Appropriates $75M in FY 24 and $150M in FY 25 to support a public/private “partnership between the state, local government, and health care providers” to improve local public health services. The Governor’s Public Health Commission initially called for $250M.
* Appropriates $50M/year for Community Mental Health (SEA 1)

A more detailed presentation of the budget can be found [here](https://www.indianahouserepublicans.com/clientuploads/2023/CCR__5/FY24-25_Budget_-_Overview_of_HB_1001_-_CCR05.pdf?_t=1682634895).

[**HB 1352**: **Telehealth services.**](https://iga.in.gov/legislative/2023/bills/house/1352)

* Provides (beginning January 1, 2024) that OMPP may not require: (1) a provider that is licensed, certified, registered, or authorized with the appropriate state agency or board and exclusively offers telehealth services to maintain a physical address or site in Indiana to be eligible for enrollment as a Medicaid provider; or (2) a telehealth provider group with providers that are licensed, certified, registered, or authorized with the appropriate state agency or board to have an in-state service address to be eligible to enroll as a Medicaid vendor or Medicaid provider group.

[**HB 1422: Dementia care.**](https://iga.in.gov/legislative/2023/bills/house/1422)

* Provides that an area agency on aging (AAA) designated may establish a dementia care specialist program.
* Allows an area agency to designate at least one individual as a dementia care specialist to administer the program.
* Provides that FSSA’s Division of Aging may employ a dementia care specialist coordinator.
* Sets forth the duties of: (1) a dementia care specialist; and (2) the dementia care specialist coordinator; if an area agency or the division establishes those positions.

[**HB 1454: Department of local government finance**](https://iga.in.gov/legislative/2023/bills/house/1454)**.**

* While not the main thrust of this Bill, the final text included critical language pursued by LAIN all Session (and for months before as well) that secures property tax exempt status for not-for-profit (NFP) nursing homes, assisted living communities and other health facilities in taxable years 2022, 2023, 2024, and 2025. [See the actual Bill Conference Committee report (starting on p. 278)].  It also has some retroactive applicability for some properties that were exempt in tax years 2019-2021. Additional detailed analysis can be found [here.](file:///H:\Leading%20Age%20-%20Summary%20of%20Section%20222%20of%20HEA%201454.docx)
* This is not a permanent fix, but it does provide some certainty for now and allows us the opportunity to continue educating legislators on this important issue.
* For background, most (if not all) NFP senior living providers have had exempt status for decades. However, every so often, a county assessor challenges the precision of the controlling statutes. This effort aimed to clarify once and for all the will of the legislature. We still have some work to do, but this was a great start in that direction.

**[HB 1457: Public health matters.](https://iga.in.gov/legislative/2023/bills/house/1457)**

* Establishes standards for unlicensed assisted living (AL) facilities providing dementia care/memory care services.
  + Requires that these providers meet/abide by current regulations applicable to licensed AL facilities. (see pp. 5-7).
* Repeals the provision concerning a provisional license for certain hospice programs.
* Provides that the definition of “home health services” includes community-based palliative care.

[**HB 1461: Long term services.**](https://iga.in.gov/legislative/2023/bills/house/1461)

* LeadingAge Indiana representatives, along with many individual members, made numerous connections with legislators around the state in support of this Bill as well.
* As part of the Budget Bill, establishes a new Medicaid rate methodology for assisted living A&D Waiver providers that have a certain % Medicaid population; goal is to employ a predictable and stable means of rate increases over time.
* Provides some state oversight and accountability opportunities on temporary worker agencies; also ensures that agency workers are properly licensed before placement with health care providers.
  + HB 1461 prohibits temporary heath care staffing agencies from poaching a health care facility’s; and/or engaging in the requirement of non-compete or conversion fee agreements. (see pp. 13-20).
  + Notably, most new laws only apply prospectively (after July 1, 2023). However, it is not clear whether the legislature intended these prohibitions (no non-compete, no poaching, no conversion fees) to apply right away or not until after July 1, 2023. This point is particularly important to contracts signed / placements made before 7/1/23. Presumably for any new contracts, providers will negotiate the new laws into those new contracts.
  + Providers would be wise to contact legal counsel on the particulars of executing new or re-negotiating any existing placements/contracts.
* Consistent with CMS regulations, provides that leases for AL/RCF residents who receive Medicaid are subject to Indiana landlord/tenant law rather than the Discharge Rules.
* Requires FSSA to contract with more than one entity to provide functional eligibility determinations for individuals applying for the A&D Medicaid waiver;
* Requires FSSA to report to the budget committee and legislative council certain information concerning: (1) the average length of time to conduct function eligibility assessments; and (2) a plan to provide functional eligibility not later than 72 hours from the eligibility assessment.
* Relaxes rules surrounding transfer of Medicaid beds within a county (“certificate of need” implications); does not expand the number of beds in any county.
* As part of the Budget Bill, reauthorizes the QAF for an additional two years in its current form.
* Streamlines the licensure process for both HFA and RCA licensesin an attempt to bring the process more in line with other neighboring states; also reduces some of the RCA licensure requirements with more of a focus on experience over time.
  + Keeps the current RCA licensure, however, the training requirements will be greatly curtailed to achieve parity with other states.
  + Training requirements will be codified in lieu of administrative code changes which will expedite their effective date.
  + New RCA License Requirements (starting on p. 22):
    - Minimum 21 years old, high school diploma, pass criminal background check (already covered in IC 25-0.5-1-8)
    - Additionally, must meet **one** of these requirements:
      * (1) be licensed as an HFA or licensed health care professional (can specific exactly if need be – MD, RN, NP, APRN, etc.);
      * (2) have at least one year of management experience in health care, housing, hospitality or providing similar services to the elderly;
      * (3) have an associate degree in the field of gerontology or health care;
      * (4) hold a baccalaureate degree or higher from an accredited university; or
      * (5) complete a 100-hour board approved, specialized course in residential care facility administration.
    - Pass state jurisprudence exam, specific to the regulations governing residential care facilities.
    - Biennial completion of 20 hours of continuing education (unless HFA license holder)
* HFAs (starting on p. 25)
  + - Lowers the required number of Administrator in Training (AIT) hours for HFA licensure dependent on educational attainment level and job experience.
    - Allows a preceptor to train up to four (4) administrators-in-training (AITs), if the sole duty is to precept the AITs.
    - Streamlines HFA testing application requirements.
    - Simplifies reactivating inactive license requirements.
    - Eliminates temporary HFA permit (redundant to provisional license).

[**SB 7**: **Physician noncompete agreements.**](https://iga.in.gov/legislative/2023/bills/senate/7)

* Provides (beginning July 1, 2023) that a primary care physician and an employer may not enter into a noncompete agreement;
* Provides (beginning July 1, 2023) that a physician noncompete agreement is not enforceable if any of the following circumstances occur: (1) The employer terminates the physician's employment without cause. (2) The physician terminates the physician's employment for cause. (3) The physician's employment contract has expired, and the physician and employer have fulfilled the obligations of the contract;
* Specifies a process by which a physician or employer may pursue mediation to determine a reasonable price to purchase a release from a noncompete agreement.

[**SB 474**: **Home health agencies.**](https://iga.in.gov/legislative/2023/bills/senate/474)

* Allows a home health agency to: (1) provide services in any county in Indiana; and (2) satisfy supervising home health aide services requirements by complying with federal law.
* Allows: (1) the IDOH to adopt rules concerning the oversight and supervision of the services a home health agency provides in noncontiguous counties; and (2) the state health commissioner to waive rules adopted concerning home health agencies if certain conditions are met.
* Provides that a home health agency is not required to conduct a preemployment physical on a job applicant before the individual has contact with a home health agency patient.
* Allows a registered home health aide to administer gastrointestinal and jejunostomy tube feedings to a specific patient if specified conditions are met. Requires the state department to approve at least one training curriculum concerning the administration of tube feedings.
* Repeals laws concerning drug testing of home health agency employees.