

the provisions of ch. 651, F.S., and the recommendations of the task force form the basis of this legislation.³ This bill provides disclosures to residents of CCRCs, provides for more financial transparency in the operation of CCRCs, and clarifies and updates several provisions in ch. 651, F.S., many of which are reflective of current practices in CCRCs. Among its key provisions, the bill:

- Increases transparency by requiring providers to give the residents' council chair a copy of ch. 651, F.S., the quarterly and annual reports that must be filed with the OIR, and, if requested, a copy of new contracts approved by the office.
- Gives residents the right to receive memos and announcements from the residents' council as well as unrestricted access to the council.
- Increases the availability and distribution of certain information and reports to residents and prospective residents.
- Increases allowable cancellation processing fees for prospective residents who cancel a contract prior to occupancy.
- Clarifies that a provider may assess a non-refundable application processing fee and provides that taxes and insurance that must be factored into the escrow account as a debt service reserve pertain to "property" taxes.
- Clarifies that if a prospective resident signs a contract but delays moving into the community, he or she is considered to have occupied a unit in the facility when he or she pays an entrance fee, or any portion thereof, and has begun paying a monthly fee. The proposed language also reiterates that such resident has seven days from the date of signing the contract to cancel without financial penalty.
- Changes the OIR inspections from once every three years to once every five years.
- Requires the Continuing Care Advisory Council (council) to report annually the council's findings and recommendations concerning continuing care facilities to the Governor and the Commissioner of the OIR.
- Requires the OIR to disclose to council members specified information regarding complaints filed with the Division of Consumer Services within the Department of Financial Services and to notify the council regarding rule changes and scheduled rule workshops and hearings.
- Repeals the current law regarding provisional certificates issued under prior law.

This bill substantially amends the following sections of the Florida Statutes: 651.011, 651.012, 651.022, 651.0235, 651.026, 651.033, 651.035, 651.055, 651.081, 651.083, 651.085, 651.091, 651.105, 651.114, 651.1151, 651.121, and 628.4615. This bill repeals section 651.133, Florida Statutes.

II. Present Situation:

Continuing care retirement communities (CCRCs), also known as life-care facilities, are retirement facilities that furnish residents with shelter and health care for an entrance fee and

Ass'n of Homes and Services for the Aging, *About FAHSA*, <http://www.faha.org/displaycommon.cfm?an=2> (last visited Apr. 14, 2010).

³ The OIR participated in meetings of the task force and served as a resource to the task force.

monthly payments.⁴ A major benefit of joining a CCRC is that residents are provided a continuum of care for the rest of their lives in an environment familiar to them, close to family and friends. Residents are offered a variety of social and medical services while residing in independent living or assisted living arrangements or nursing homes. Currently there are 70 CCRCs in the state and another three are under development. Approximately 29,000 residents call these facilities home.⁵

With the rather unique nature of CCRCs, oversight responsibility of these entities is shared among several state agencies. The Department of Financial Services (DFS) may become involved after a contractual agreement has been signed by both parties or during a mediation process. These matters are usually initially addressed through DFS's Consumer Helpline. The Agency for Health Care Administration regulates other aspects of CCRCs, such as assisted living, skilled nursing care, quality of care, and concerns with medical facilities. Because residents pay, in some cases, considerable amounts in entrance fees and ongoing monthly fees, there is a need to ensure that CCRCs are in the proper financial and managerial position to provide service not only to the present residents, but to future residents. Accordingly, the Office of Insurance Regulation (OIR) is given primary responsibility to authorize and monitor the operation of facilities and to determine facilities' financial status and the management capabilities of their managers and owners.⁶

The OIR is also empowered to discipline a facility for violations of residents' rights.⁷ These rights include a right to: live in a safe and decent living environment, free from abuse and neglect; freedom to participate in and benefit from community services and activities and to achieve the highest possible level of independence, autonomy, and interaction within the community; present grievances and recommend changes in policies, procedures, and services to the staff of the facility, governing officials, or any other person without restraint, interference, coercion, discrimination, or reprisal.⁸

In order to operate a CCRC in Florida, a provider must obtain from the OIR a certificate of authority predicated upon first receiving a provisional certificate. The application process involves submitting a market feasibility study and various financial information, including projected revenues and expenses, current assets and liabilities of the applicant, and expectations of the financial condition of the project.⁹

As part of the ongoing monitoring of the facility, current law requires providers to submit annual reports to the OIR, which must include information to assess the financial viability of the provider. Current law also provides for the scrutinizing of provider escrow accounts and the

⁴ Florida Dep't of Financial Servs., *Long-Term Care: A Guide for Consumers*, 18 (2009), available at <http://www.myfloridacfo.com/Consumers/Guides/Health/docs/LongTermCare2009.pdf> (last visited Apr. 14, 2010).

⁵ Office of Insurance Regulation, *Presentation to the Governor's Continuing Care Advisory Council* (Nov. 3, 2009), available at <http://www.floir.com/pdf/2009CouncilPresentation.pdf> (last visited Apr. 14, 2010).

⁶ See ss. 651.021 and 651.023, F.S.

⁷ Section 651.083, F.S.

⁸ *Id.*

⁹ See ss. 651.021-651.023, F.S.

maintaining by providers of specified minimum liquid reserves. Also, each continuing care contract must be submitted and approved by the OIR prior to its use in the state.¹⁰

Regarding examinations and inspections, the OIR may at any time, and at least once every three years, examine the business of any applicant for a certificate of authority and any provider engaged in the execution of care contracts or engaged in the performance of obligations under such contracts, in the same manner as is provided for examination of insurance companies pursuant to s. 624.316, F.S.¹¹ The OIR is also authorized to discipline facilities for violations of a plethora of regulatory requirements by denying, suspending, or revoking certificates of authority or, in lieu thereof, to levy a fine not to exceed \$1,000 per violation. However, if it is found that the provider knowingly and willfully violated a lawful order of the OIR or a provision of ch. 651, F.S., the office may impose a fine in an amount not to exceed \$10,000 for each such violation.¹²

Current law also addresses issues related to meetings and communications between a provider and residents. Quarterly meetings are required, and residents' organizations may be represented at such meetings.¹³ Also, there has been created in statute the Continuing Care Advisory Council, which acts in an advisory capacity to the OIR, meeting at least once a year to recommend to the OIR needed changes in statutes and rules and upon the request of the OIR to assist with any corrective action, rehabilitation, or cessation of the business plan of a provider.¹⁴

III. Effect of Proposed Changes:

This bill is the result of a joint task force created by the Florida Life Care Residents Association and the Florida Association of Homes and Services for the Aging, in cooperation with the Office of Insurance Regulation (OIR), to review ch. 651, F.S., and make recommendations on changes needed to the law. This bill provides disclosures to residents of Continuing Care Retirement Communities (CCRCs), provides for more financial transparency in the operation of CCRCs, and clarifies and updates several provisions in ch. 651, F.S.

Section 1. Amends s. 651.011, F.S., relating to definitions under the continuing care law. The bill clarifies certain provisions in this section without making substantive changes and rearranges the definitions in alphabetical order.

Section 2. Amends s. 651.012, F.S., relating to exempted facilities. The bill makes technical changes to statutory cross-references.

Section 3. Amends s. 651.022, F.S., relating to information that is to be provided to the OIR in the application for a provisional certificate of authority of a continuing care facility. Under current law, any person who owns any interest in or receives any remuneration from any professional service firm that provides goods, services, or a lease to the continuing care facility for which the application is made, with a real value of \$500 or more, must provide the name of

¹⁰ See ss. 651.026, F.S., 651.033, F.S., 651.035, F.S., and 651.055, F.S.

¹¹ Section 651.105, F.S.

¹² Sections 651.106 and 651.108, F.S.

¹³ Section 51.085, F.S.

¹⁴ Section 651.121, F.S.

the professional service firm on the POCA application form. The bill increases this threshold requirement to \$10,000 or more, which is consistent with IRS guidelines.

The bill also adds continuing care residency contracts, reservation contracts, escrow agreements, and wait list contracts to the list of information that must be included on the application for a provisional certificate of authority. The continuing care contracts and escrow agreements must be approved by OIR if they comply with certain statutory provisions. No other form of contract or agreement may be used by a provider until it has been submitted to OIR for approval.

The bill removes the above language from information that must be provided in a market feasibility study.

Section 4. Amends s. 651.0235, F.S., relating to validity of provisional certificates of authority and certificates of authority. The bill makes technical changes.

Section 5. Amends s. 651.026, F.S., pertaining to annual reports. Current law requires that if a provider has multiple licensed facilities, the provider must provide a separate statement of operations for each facility. The bill expands this provision to require that if a provider has more than one licensed facility, or has operations that are not licensed under ch. 651, F.S., then the facility must submit a balance sheet, statement of income and expenses, statement of equity or fund balances, and statement of cash flows for each facility licensed under ch. 651, F.S.

The bill also specifies that if the names of the balance sheet, statement of income and expenses, statement of equity or fund balances, or statement of cash flows change based on revisions to generally accepted principles, the annual reports must contain financial statements using the new terminology.

Section 6. Amends s. 651.033, F.S., relating to escrow accounts. The bill authorizes a provider to assess a non-refundable fee for processing a prospective resident's application for continuing care, which is separate from an entrance fee.

Section 7. Amends s. 651.035, F.S., relating to minimum liquid reserve requirements to clarify and reflect current practices. The bill clarifies that the debt service reserve is calculated using property taxes rather than all taxes and that debt service held pursuant to a trust indenture may only be used to reserve for property taxes rather than all taxes. The bill clarifies that property taxes are excluded from operating reserve rather than all taxes and also deletes obsolete language related to a phase-in of reserve requirements.

Section 8. Amends s. 651.055, F.S., relating to contracts. Regarding contracts between providers and residents, the bill clarifies that if a prospective resident signs a contract but delays moving into the community, he or she is deemed to be occupying a unit in the facility when he or she pays the entrance fee, or any portion thereof, and has begun paying monthly maintenance fees. The proposed language also reiterates that such resident has seven days from the date of signing the contract to cancel without financial penalty. Proponents of the bill indicate that some people enter into a contract and pay fees strictly for insurance purposes and do not move in until they

need services. Current law does not address this situation, which, according to the bill's proponents, was not anticipated in previous revisions to ch. 651, F.S.¹⁵

The bill also clarifies conditions under which a processing fee may be charged and increases the current processing fee from 4 percent to 5 percent in the event of cancellation. A resident has the right to cancel a continuing care contract within seven days after execution, and during that seven-day period, the resident's funds must be held in an escrow account. The bill further clarifies that except for a resident who postpones moving into the facility but is deemed to have taken possession of a unit, if a prospective resident dies or becomes ill before moving into the facility, the prospective resident, or the resident's legal representative, is entitled to a full refund.

Section 9. Amends s. 651.081, F.S., relating to residents' organizations. The bill changes the terminology from "residents' organization" to "residents' council." The bill requires that within 30 days after an election of a newly elected president or chair of the residents' council of a continuing care facility, the provider must give the president or chair a copy of ch. 651, F.S., and all related rules, or provide him or her direction to a public website to obtain the information provided in the chapter.

Section 10. Amends s. 651.083, F.S., relating to residents' rights. The bill clarifies that residents of continuing care facilities have the right to receive memos or announcements from or approved for distribution by the residents' council and that a provider may not restrict a resident's access to the residents' council.

Section 11. Amends s. 651.085, F.S., relating to quarterly meetings between residents of a continuing care facility and the governing body of the provider. The bill requires that at quarterly meetings where monthly maintenance fee increases are discussed, the president or chair of the residents' council must be provided a written summary of reasons why a monthly maintenance fee is to be increased, and the bill permits a "designated representative" of the provider to attend council meetings.

Section 12. Amends s. 651.091, F.S., relating to availability, distribution, and posting of reports and records, and the requirement for full disclosure. The bill specifies that a management company is an agent of the provider when it comes to disclosing information to residents as required by law. The legislation expands the list of items that must be provided to the president or chair of the residents' council to include:

- A summary of entrance fees collected and refunds made for the period covered in the annual report;
- A copy of the quarterly statement if one is required; and
- A copy of newly approved continuing care contracts when requested.

Residents can get this information from the OIR; however, in some cases a record request is required as well as a copying fee.

¹⁵ Information provided or communicated to the Senate Committee on Banking and Insurance.

Additionally, the bill provides that a provider must make full disclosure to a prospective resident and provide several pieces of information, including a copy of s. 651.071, F.S., which relates to contracts executed by a provider being preferred claims upon liquidation or receivership.

Section 13. Amends s. 651.105, F.S., relating to examination and inspections. The bill changes the OIR inspections from once every three years to at least once every five years to conform to requirements for other entities regulated by the OIR. The bill also states that the examinations shall include confirmation that all disclosure requirements to the president or chair of the residents' council have been made.

Section 14. Amends s. 651.114, F.S., pertaining to delinquency proceedings. The bill makes technical and conforming changes.

Section 15. Amends s. 651.1151, F.S., relating to administrative and management contracts. The bill makes technical and conforming changes.

Section 16. Amends s. 651.121, F.S., pertaining to the Continuing Care Advisory Council (council). The bill specifies that the vice chair, rather than the secretary, to the council is to be annually elected or appointed for one year to conform to current practice. The council's job is to act in an advisory capacity to OIR on matters pertaining to the operation and regulation of continuing care facilities. The legislation requires the council chair to report the council's findings and recommendations concerning continuing care facilities annually to the Executive Office of the Governor and the Commissioner of Insurance Regulation. It also requires the OIR, on an annual basis, to provide the council with a summary and comparison of data on continuing care facilities based on information submitted in the two most recent annual reports and a summary of the number, type, and status of complaints related to continuing care facilities that have been filed with the Division of Consumer Services in the Department of Financial Services. In addition, the bill requires the OIR to notify council members of proposed rule changes and scheduled rule workshops and hearings related to the administration of ch. 651, F.S.

Section 17. Repeals s. 651.133, F.S., which is an obsolete provision relating to provisional certificates issued under prior law.

Section 18. Amends s. 628.4615, F.S., relating to specialty insurers and corrects a cross-reference.

Section 19. Provides an effective date of July 1, 2010. According to the Office of Insurance Regulation:

The legislation affects the form and substance of audited financial statements. The July 1, 2010, date occurs in that period when auditors are preparing provider financial statements actually filed in July. The Office recommends the effective date for changes to financial statements become effective October 1, 2010.¹⁶

¹⁶ Office of Insurance Regulation, 2010 – *Bill Analysis, SB 2030* (Mar. 12, 2010) (on file with the Senate Committee on Judiciary).

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:

Residents who cancel their contracts with continuing care retirement communities (CCRC) will be subject to an increase in the allowable processing fee to 5 percent from 4 percent.

The bill increases the threshold for identifying persons named in the application for a provisional certificate of authority who are associated with a business entity that provides goods, services, or a lease to the continuing care facility from \$500 or more to \$10,000 or more.

Residents of continuing care facilities will benefit under the provisions of the bill because they will have access to financial and other information about their facilities.

C. Government Sector Impact:

According to the Office of Insurance Regulation (OIR), the legislation may result in an anticipated increase in contract and form filings with the office. However, the OIR states that the operational requirements of administration and enforcement can be absorbed within current resources.¹⁷

VI. Technical Deficiencies:

None.

¹⁷ *Id.*

VII. Related Issues:

According to the Office of Insurance Regulation, the definition of CCRC “occupancy” in Rule 69O-193.002(17), Florida Administrative Code, will need to be amended to conform to the bill.¹⁸

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on April 13, 2010:

The committee substitute eliminates the provision that increased the application filing fee for a certificate of authority and a provisional certificate of authority for a continuing care facility.

- B. **Amendments:**

None.

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

¹⁸ *Id.*