

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1253

Continuing Care Facilities

SPONSOR(S): Proctor

TIED BILLS:

IDEN./SIM. BILLS: SB 2030

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance, Business & Financial Affairs Policy Committee		Cooper	Cooper
2) Elder & Family Services Policy Committee			
3) Full Appropriations Council on Education & Economic Development			
4) General Government Policy Council			
5)			

SUMMARY ANALYSIS

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 monthly payments. In Florida, CCRCs are regulated by the Department of Financial Services, the Agency for Health Care Administration and the Office of Insurance Regulation (OIR); the latter primarily through chapter 651, F.S. The OIR authorizes and monitors a facility's operation as well as determines the facility's financial status and the management capabilities of its managers and owners. The OIR is also empowered to discipline a facility for violations of residents' rights. Currently there are 70 CCRCs in the state, which are home to approximately 25,000 residents.

This bill clarifies and updates several provisions in chapter 651, F.S., many of which are reflective of current practices in CCRCs. Among its key provisions, the bill:

- Increases fees for certificates of authority as well as allowable provider cancellation processing fees.
- Adds new content requirements for annual reports.
- Clarifies that a provider may assess a non-refundable application processing fee.
- Clarifies that the taxes and insurance that must be factored into the escrow account as a debt service reserve pertain to "property."
- 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 7 days from the date of signing the contract to cancel without financial penalty.
- Adds new requirements for the residents' council regarding providing notice to residents.
- 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.
- Changes OIR inspections from "at least once every 3 years" to "at least once every 5 years" to conform to requirements for other entities regulated by OIR.
- Requires the Continuing Care Advisory Council to report annually the Council's findings and recommendations concerning continuing care facilities to the Governor and the Commissioner of OIR.
- Requires OIR to disclose to Council members specified information regarding complaints filed with DFS and to notify the Council regarding rule changes and scheduled rule workshops/hearings.
- Repeals current law regarding provisional certificates issued under prior law.

Increasing fees will result in additional revenues to the state and negatively impact the private sector; both in an indeterminate amount. The OIR indicates that any additional workload requirements generated by the bill can be absorbed within current resources. The bill's effective date is July 1, 2010.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

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 monthly payments.¹ A major benefit of joining a CCRC is that residents are provided a continuum of care 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, which are home to approximately 25,000 residents.²

With the rather unique nature of CCRCs, oversight responsibility of these entities is shared among several state agencies. The Department of Financial Services may become involved after a contractual agreement has been signed by both parties or during the mediation process. These matters are usually initially addressed through the Department's Consumer Helpline. On the other hand, the Agency for Health Care Administration regulates other CCRC aspects, 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 in the present but also in the future. 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.³ The OIR is also empowered to discipline a facility for violations of residents' rights.⁴ 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.⁵

¹ *Long-Term Care: A Guide for Consumers*, Florida Department of Financial Services, p.18 at <http://www.myfloridacfo.com/Consumers/Guides/Health/index.htm> (Last viewed on March 15, 2010).

² Presentation to the Governor's Continuing Care Advisory Council November 3, 2009 at <http://www.floir.com/pdf/2009CouncilPresentation.pdf> (Last viewed on March 15, 2010).

³ ss. 651.021, and 651.023, F.S.

⁴ s. 651.083, F.S.

⁵ *Id.*

In order to operate a CCRC in Florida a provider must obtain from 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.⁶

As part of the ongoing monitoring of the facility, current law requires providers to submit annual reports to 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 maintaining by providers of specified minimum liquid reserves. Also, each continuing care contract must be submitted and approved by OIR prior to its use in the state.⁷

Regarding examinations and inspections, OIR may at any time, and must at least once every 3 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.⁸The 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 OIR or a provision of chapter 651, F.S, the office may impose a fine in an amount not to exceed \$10,000 for each such violation.⁹

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.¹⁰ Also, there has been created in statute the Continuing Care Advisory Council, which acts in an advisory capacity to OIR, meeting at least once a year to recommend to the office needed changes in statutes and rules and upon the request of OIR to assist with any corrective action, rehabilitation or cessation of the business plan of a provider.¹¹

Proposed Changes in the Bill

Certificates of Authority

The bill increases the filing fee for a certificate of authority and a provisional certificate of authority from \$75 and \$50, respectively, to \$5,000, as, according to the bill's proponents, originally requested by OIR. Subsequently, the office noted that these fee increases are in excess of the \$1,500 now charged to insurance companies for a certificate of authority and have suggested that if a reasonable fee increase is appropriate to reflect costs associated with regulation of CCRCs, it may be reasonable to set the fee at \$1,500.

The bill also 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. Also regarding the applications for a provisional certificate it adds wait list contracts to the list of contract forms that must be approved by OIR if they are used by a provider.

⁶ ss. 651.021-651.023, F.S.

⁷ s. 651.026, F.S., s.651.033, F.S., s.651.035, F.S. and s.651.055, F.S.

⁸ s. 651.105, F.S.

⁹ ss. 651.106 and 651.108, F.S.

¹⁰ s. 651.085, F.S.

¹¹ s. 651.121, F.S.

Annual Reports

The bill expands financial statement requirements to require supplemental financial information and cash flow information from any additional licensed facility or operations that are not part of the licensed facility. Current law requires that if a provider has multiple licensed facilities the provider must provide a separate statement of operations for each facility. The proposed change will require that any provider with multiple licensed facilities also provide a balance sheet, statement of cash flows, and a statement of changes in equity for each licensed facility.

The bill also specifies that if financial terms change based on revisions to generally accepted principles, the new terminology will be required in the annual report, opinion, and schedules.

Escrow Accounts and Minimum Liquid Reserves

The bill clarifies that a provider may assess a non-refundable application processing fee on a prospective resident, which is separate from an entrance fee, and that the taxes and insurance that must be factored into the escrow account as a debt service reserve pertain to "property." It also deletes obsolete language related to a phase-in of reserve requirements.

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 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 7 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 don't 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 re-writes of chapter 651, F.S.

The bill also clarifies conditions under which a processing fee may be charged and increases the allowable processing fee from 4% to 5% in the event of cancellation. The bill further clarifies that a person who postpones moving into the facility but takes possession of a unit and begins paying fees is a resident for the purpose of refunds to which prospective residents are entitled if they die or become ill before moving in.

Residents' Council/Rights/Meetings

The bill requires that within 30 days after an election a newly elected president or chair of the residents' council shall be provided a copy of chapter 651, F.S., and rules or be provided direction to a public website to obtain the information. It also clarifies that residents 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.

Regarding the current requirement for quarterly meetings between residents and the governing body of the provider, the bill requires that the president or chair of the residents' council be provided a written summary of reasons why a monthly maintenance fee is to be increased and permits a "designated representative" of the provider to attend council meetings.

Availability and Distribution of Reports

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. It 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 annual statement, a copy of the quarterly annual statement if one is required, and a copy of newly approved continuing care contracts when requested.

Examinations and Inspections

The bill changes the requirement for OIR to conduct an examination of each CCRC from “at least once every 3 years” to “at least once every 5 years”. This change in examination and inspections conforms to the same timeframes for other entities regulated by 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.

Continuing Care Advisory Council

The bill creates a new requirement for the Advisory Council chair to report the Council's findings and recommendations annually to the Governor and OIR. It also requires OIR, on an annual basis, to provide the Council with a summary and comparison of data on CCRCs based on information submitted in the two most recent annual reports. The OIR is also to provide a summary of the number, type and status of complaints related to CCRCs that have been filed with the DFS. Because, according to the Office, it has been providing this information to the Council, the requirement does not represent a new responsibility or role for the Office. Finally the bill creates a new subsection to require the Office to notify the Advisory Council of proposed rule changes or scheduled rule workshops and hearings related to the administration of chapter 651, F.S.

Provisional Certificates Issued Under Prior Law

The bill repeals s.651.133, F.S., which, according to OIR, is obsolete and no longer enforced.

B. SECTION DIRECTORY:

Section 1. Amends s. 651.011, F.S., relating to definitions.

Section 2. Amends s. 651.012, F.S., relating to exempted facility; written disclosure of exemption.

Section 3. Amends s. 651.015, F.S., relating to administration; forms; fees; rules; fines.

Section 4. Amends s. 651.022, F.S., relating to provisional certificate of authority; application.

Section 5. Amends s. 651.0235, F.S., relating to validity of provisional certificates of authority and certificates of authority.

Section 6. Amends s. 651.026, F.S., relating to annual reports.

Section 7. Amends s. 651.033, F.S., relating to escrow accounts.

Section 8. Amends s. 651.035, F.S., relating to minimum liquid reserve requirements.

Section 9. Amends s. 651.055, F.S., relating to contracts; right to rescind.

Section 10. Amends s. 651.081, F.S., relating to resident’s council.

Section 11. Amends s. 651.083, F.S., relating to residents’ rights.

Section 12. Amends s. 651.085, F.S., relating to quarterly meetings between residents and the governing body of the provider; resident representation before the governing body of the provider.

Section 13. Amends s. 651.091, F.S., relating to availability, distribution, and posting of reports and records; requirement of full disclosure.

Section 14. Amends s. 651.105(1), F.S., relating to examination and inspections.

Section 15. Amends s. 651.114, F.S., relating to delinquency proceedings; remedial rights.

Section 16. Amends s. 651.1151, F.S., relating to administrative, vendor, and management contracts.

Section 17. Amends s. 651.121, F.S., relating to Continuing Care Advisory Council.

Section 18. Repeals s. 651.133, F.S., relating to provisional certificates issued under prior law.

Section 19. Amends s. 628.4615, F.S., relating to specialty insurers; acquisition of controlling stock, ownership interest, assets, or control; merger or consolidation

Section 20. Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

As written, the fee for a certificate of authority is increased from \$75 to \$5,000; and the fee for a provisional certificate of authority is increased from \$50 to \$5,000. This fee would not apply to existing CCRCs and the number of new applications for either provisional certificates of authority or certificates of authority cannot be determined. However, as of November 3, 2009 there were 3 CCRCs with a provisional certificate of authority. The sponsor of the bill has indicated he will be offering an amendment to eliminate the fee increase.

2. Expenditures:

According to OIR, the legislation will result in an anticipated increase in contract and form filings with the office. However, OIR states that "the operational requirements of administration and enforcement can be absorbed within current resources."¹²

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Residents who cancel their contracts with CCRCs will be subject to an increase in the the allowable processing fee from 4% to 5%.

¹² Office of Insurance Regulation 2010—Bill analysis, HB 1253, March 12, 2010. (On file with the Insurance, Business & Financial Affairs Policy Committee.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. It does not reduce the percentage of a state tax shared with counties or municipalities. The bill also does not reduce the authority that municipalities have to raise revenue.

2. Other:

None

B. RULE-MAKING AUTHORITY:

No additional authority necessary. However, OIR notes that "Rule 69O-193.002(17) – definition of CCRC 'occupancy' will need to be amended to conform to this legislation."¹³

C. DRAFTING ISSUES OR OTHER COMMENTS:

In their analysis of HB 1253, OIR raised what they characterized as a technical concern.

"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."¹⁴

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

¹³ *Id.*

¹⁴ *Id.*