# FINAL BILL ANALYSIS

**BILL #:** *CS/CS/HB 1037*

**FINAL HOUSE FLOOR ACTION:**
*114 Y's* *0 N's*

**SPONSOR:** *Rep. Bembry & Passidomo*

**GOVERNOR'S ACTION:** Approved

**COMPANION BILLS:** *CS/SB 1340*

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## SUMMARY ANALYSIS

CS/CS/HB 1037 passed the House on April 29, 2011, and subsequently passed the Senate on May 6, 2011. The bill was approved by the Governor on June 21, 2011, chapter 2011-193, Laws of Florida, and takes effect July 1, 2011.

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.

CS/CS/HB 1037 allows continuing care at-home contracts to be offered to consumers in Florida. Continuing care at-home contracts and programs allow seniors to receive services offered by a CCRC in their own homes while reserving the right to shelter to be provided by the CCRC at a later date. Continuing care at-home contracts specify the exact services to be provided to an individual by a provider in exchange for an initial fee and a recurring monthly premium. Continuing care at-home contracts provide seniors the flexibility of receiving services in their home until they are ready to move to a traditional continuing care retirement center.

The bill creates s. 651.057, F.S., establishing a new regulatory scheme for continuing care at-home contracts. The provisions of the bill closely reflect the provisions regulating continuing care contracts found throughout chapter 651, F.S. The bill also establishes criteria for providers seeking provisional certificates of authority and certificates of authority to offer continuing care at-home contracts. The bill provides the OIR with authority to regulate the issuance of provisional certificates of authority and certificates of authority, and to approve continuing care at-home contracts for use in Florida. The bill makes numerous conforming changes to reflect the provisions of the bill.

The bill does not appear to have a fiscal impact on state or local government.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Current Situation

Continuing Care Retirement Communities (CCRCs)

A CCRC is a facility that provides seniors with a lifetime "continuum of care". Residents of a CCRC pay a one-time entrance fee, which can vary widely depending on geographic location and services offered, and continuing monthly payments in exchange for housing, services and nursing care, usually in one location, enabling seniors to age in place.[1] The services provided by the CCRC and purchased by the resident are governed by contract, or resident service agreement. Entry fees can range from $20,000 to more than $1,000,000. The average CCRC entrance fee nationally was $248,000 in 2010, up from a national average of $238,600 in 2009. Monthly payments can range from $1,000 to $3,000, depending on location and the type of services desired. The average age of a person who moved into a CCRC in 2009 was 81.[2]

There are nearly 1,900 CCRCs in the United States.[3] The typical CCRC has fewer than 300 total units; about one third of CCRCs have more than 300 units; and only 8 percent of CCRCs have more than 500 units.[4] The majority of CCRCs in the U.S. were built for the specific purpose of being a CCRC. Other CCRCs evolved from nursing homes. Roughly half of the CCRCs in the U.S. are faith-based. Others are sponsored by a university, health system, military group or fraternal organization. Lastly, the majority of CCRCs are part of a multi-site system, offering different levels of care.[5]

CCRCs feature a combination of living arrangements and nursing beds. The typical accommodations and services are:

- Independent living units- a cottage, townhouse, cluster home, or apartment; the resident is generally healthy and requires little, or no, assistance with activities of daily living
- Assisted living- a studio or one-bedroom apartment designed for frail individuals who can still maintain a level of independence but need some assistance with activities of daily living
- Nursing- nursing services are offered on-site or nearby the CCRC to provide constant care for recovery from a short-term injury or illness, treatment of a chronic condition, or higher levels of services
- Memory-care support- offers dedicated cognitive support care with the goal of maximizing function, maintaining dignity, preserving sense of self, and optimizing independence

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[1] State of Connecticut General Assembly, Office of Legislative Research, Research Report, *Continuing Care Retirement Community "At Home" Programs,* February 21, 2008, available at: http://www.cga.ct.gov/2008/rpt/2008-R-0110.htm.
[2] Margaret Wylde, PhD., ProMature Group, for American Seniors Housing Association, *Independent Living Report 2009.*
[3] The Ziegler National CCRC Listing & Profile, 2009 lists 1,861 CCRCs.
[4] *Id.*
[5] *Id.*

There are 70 CCRCs in Florida; 50 of which have 2,493 sheltered nursing home beds.[6] Three CCRCs have more than 100 beds.[7] There are 15 CCRCs with 790 sheltered nursing home beds that meet the criteria for extension. The current law allows these 15 CCRCs to extend the use of 30 percent of the facility's existing licensed beds to residents who are not CCRC contract holders. Therefore, 237 beds are currently open to non-CCRC residents.

In order to offer continuing care[8] services in Florida, a provider must be licensed by obtaining a certificate of authority (COA).[9] To obtain a COA, each applicant must first apply for and obtain a provisional COA.[10] The OIR is responsible for receiving, reviewing and approving or denying applications for provisional COAs within a specified time period.[11] Upon receipt of a provisional COA, a provider may collect entrance fees and reservation deposits from prospective residents of a proposed continuing care facility.[12]

To obtain a COA, each provider holding a provisional COA must submit additional documentation regarding financing of the proposed facility, receipt of aggregate entrance fees from prospective residents, completed financial audit statements, and other specific information.[13] The OIR is required to issue a COA once it determines that a provider meets all requirements of law, has submitted all necessary information required by statute, has met all escrow requirements, and has paid appropriate fees set out in s. 651.015(2), F.S.[14] Also, a COA will only be issued once a provider submits proof to the OIR that a minimum of 50 percent of the units available, for which entrance fees are being charged, are reserved.[15] After receiving a COA, a provider can request the release of entrance fees held in escrow.[16] Once in possession of a COA, a provider may fully market its continuing care facility and begin operation of the facility.

Continuing care services are governed by a contract between the facility and the resident of a CCRC. In Florida, continuing care contracts are considered an insurance product, and are reviewed and approved for the market by the OIR.[17] By law, each contract for continuing care services must:

- Provide for continuing care of one resident, or two residents living in a double occupancy room, under regulations set out by the provider;
- List all property transferred to the facility by the resident upon moving to the CCRC, including amounts paid or payable by the resident;

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[6] Presentation to the Governor's Continuing Care Advisory Council, September 14, 2010 at: http://www.floir.com/pdf/2009CouncilPresentation (Last viewed on April 13, 2011) and telephone conversation with a representative of the Agency for Health Care Administration, April 13, 2011.
[7] *Id.*
[8] S. 651.011(2), F.S., "...furnishing shelter or nursing care or personal services as defined in s. 492.02, whether such nursing care or personal services are provided in the facility or in another setting designated by the contract for continuing care, to an individual not related by consanguinity or affinity to the provider furnishing such care, upon payment of an entrance fee."
[9] S. 651.011(8), F.S.
[10] S. 651.022, F.S.; *see also* s. 651.022(2) and (3), F.S., for detailed description of information, reports and studies required to be submitted with an application for a provisional COA.
[11] S. 651.022(5) and (6), F.S.
[12] S. 651.022(7), F.S., which requires the fee to be deposited into escrow or place in deposit with the department until a COA is issued by OIR.
[13] S. 651.023(1), F.S.
[14] S. 651.023(2)(a), F.S.
[15] *Id.*
[16] S. 651.023(4), F.S.
[17] S. 651.055(1), F.S.

- Specify all services to be provided by the provider to each resident, including, but not limited to, food, shelter, personal services, nursing care, drugs, burial and incidentals;
- Describe terms and conditions for cancellation of the contract given a variety of circumstances; and
- Describe all other relevant terms and conditions included in statute.[18]

Continuing Care At-Home (CCAH)

CCAH programs allow a resident that resides outside the CCRC the right to future access to shelter, nursing care or personal services by contracting with the CCRC for services while remaining in their home.[19] Participants pay a one-time entrance fee and monthly premiums for access to a varying range of home-based services, including care coordination, routine home maintenance, in-home assistance with activities of daily living, nursing services, transportation, meals, and other social programs.[20] CCAH programs give participants the ability to use personal, health care and other concierge services offered by the CCRC until they are ready to move to the CCRC. CCAH programs are generally less expensive than the cost of moving to a CCRC.

To qualify for a CCAH program, new members must meet age requirements, be in good health, and not require services at the time of enrollment. While the goal of a CCAH program is to provide services within the client's home, most programs provide nursing or assisted living facility care, if needed.[21]

New Jersey, Pennsylvania, Ohio, Tennessee, and Maryland are among the states that offer CCAH programs. Regulation of CCAH programs vary widely. For instance, Maryland and Pennsylvania require CCAH contract providers to meet the same requirements as CCRCs. Ohio and Tennessee do not regulate CCAH programs. Connecticut passed a law in 2008 allowing for CCAH contracts. New Hampshire and Maine passed legislation establishing CCAH contracts effective January 2011.

Florida does not specifically provide for CCAH contracts in current law.

Florida Task Force on CCAH Programs

A task force composed of individuals from the Florida Association of Homes and Services for the Aging, the Florida Life Care Residents Association, and representatives of the OIR began meeting in August 2010. The task force was charged with determining if any changes to chapter 651, F.S., were required to allow a CCRC to offer CCAH contracts to consumers. The bill is a result of the work of the task force.

**Effect of Changes**

The bill creates s. 651.057, F.S., governing CCAH contracts. The bill creates authority to allow providers of continuing care services to offer CCAH contracts to consumers. The bill also

[18] *Id.*
[19] *See supra* at FN 1.
[20] *Id.*
[21] *See supra* at FN 1.

creates a regulatory scheme to govern CCAH contracts, which is closely related to the regulation of CCRCs and continuing care contracts.

In addition to the provisions of s. 651.055, F.S., a provider offering CCAH contracts must disclose the following information in the contract:

- Whether transportation will be provided to residents for travel to and from the facility for services;
- That the facility is not liable to residents living outside of the facility beyond the delivery of services and future access to care;
- The mechanism for monitoring residents living outside of the facility;
- The policy for a resident relocating to a difference residence and no longer in need of services from the current facility.

A provider offering CCAH contracts must also ensure that subcontractors providing services to residents are properly licensed or certified according to applicable law; include operating expenses in the calculation of the operating reserve; and include operating activities for CCAH contracts in the total operation of the facility when submitting financial reports to the OIR.

A provider who possesses a COA and wishes to offer CCAH contracts must:

- Submit a business plan with specific information, including, but not limited to, a description of services to be provided, fees to be charged, a copy of the CCAH contract, an actuarial study presenting the impact of providing CCAH contracts on the overall operation of the facility, a market feasibility study and sufficient documented interest in CCAH contracts to support the program;
- Demonstrate to the OIR that offering CCAH contracts will not put the provider in an unsound financial condition;
- Comply with s. 651.021(2), F.S., but allowing for an actuarial study to be substituted for a feasibility study; and
- Comply with all other requirements of chapter 651, F.S.

A provider offering CCAH contracts must have a facility licensed under chapter 651, F.S., and be in good standing to offer CCAH contracts. The facility must also have accommodations for independent living which are intended for individuals who do not require supervision. The combined total of outstanding continuing care and CCAH contracts allowed at a facility may be up to 1.5 times the combined number of independent living units, assisted living units, and nursing home units at the facility or four times the combined number of assisted living units and nursing home units at the facility. The number of independent living units at a facility must be equal to or greater than 10 percent of the first one hundred continuing care contracts and CCAH contracts issued by the facility, and 5 percent of the combined contracts beyond the first one hundred contracts issued by the facility.

The bill exempts the residences of residents living outside of the facility, pursuant to a CCAH contract, from inclusion in approval of one sheltered nursing home bed for every four proposed residential units by AHCA. A provider may seek approval from AHCA for an extension of the number of beds to offer to persons who are not residents of the CCRC and who are not a party to a continuing care contract not to exceed 30 percent of the total sheltered nursing home beds or 30 sheltered beds, whichever is greater, if the use of the beds by residents of the facility is not sufficient to cover operating expenses.

The bill amends s. 651.021, F.S., to require any person engaging in the business of issuing contracts for CCAH or constructing a facility for the purpose of providing continuing care to

obtain a COA from the OIR. Written approval is required from the OIR before constructing a new facility or marketing an expansion of an existing facility equivalent to the addition of at least 20 percent of existing units or 20 percent or more in the number of CCAH contracts. The 20 percent figure can be calculated based on the total of existing units and existing CCAH contracts. Expansion is defined as the construction of additional units or offering additional CCAH contracts, or a combination of both. If the expansion is solely for CCAH contracts, an actuarial study presenting the financial impact of the expansion may substitute for a feasibility study required of proposals for new construction.

The bill amends s. 651.022, F.S., to include CCAH contracts as eligible for a provisional COA. The bill amends section 651.023, F.S., to require certain information to be included in reports to be submitted to the OIR for a COA if the report is completed by a certified public accountant and in the instance where the report is completed by an independent consulting actuary. The bill also requires a provider seeking a COA or expansion under a previous statutory section for CCAH contracts to meet the same minimum reserve requirements[22] for continuing care and CCAH contracts, independent of each other.

In cases of an expansion of existing CCRC units or CCAH contracts, the bill requires a minimum of 75 percent of moneys paid for all or any part of an entrance fee for a CCRC and 50 percent of moneys paid for all or any part of an initial fee for a CCAH contract to be placed in escrow or on deposit with the department, pursuant to s. 651.033, F.S. The bill confirms that a resident or prospective resident is not entitled to any interest payment on an entrance fee or deposit paid to a provider, unless the continuing care contract specifically provides for payment of interest. The bill states that the provision relating to payment of interest only pursuant to the terms of the continuing care contract is remedial in nature and clarifies existing law.

The bill permits contracts for continuing care and CCAH to include agreements to provide care for any duration. The bill requires a provider to, within 30 days of receipt of a letter from the OIR, file a new residency contract with the OIR for approval, upon notice that a noncompliant residency contract exists. Until the new contract is reviewed and approved by the OIR, the previously approved contract may be used by the provider.

The bill adds the term “continuing care at-home” to sections throughout chapter 651, F.S., where the term “continuing care” is found. The bill adds the definitions of “continuing care at-home”, “nursing care”, “personal services” and “shelter” to s. 651.011, F.S. Also, the bill expands the definition of “facility” to mean a place where continuing care is furnished and may include one or more physical plants on a primary or contiguous site or an immediately accessible site. The bill defines “primary or contiguous site” and “immediately accessible site”. The added definitions are consistent with the provisions of the bill that allow for continuing care at-home and allow for services to be provided at a CCRC.

The bill provides for three residents who hold continuing care contracts or CCAH contracts to be members of the Continuing Care Advisory Council, established under s. 651.121, F.S.

[22] S. 651.035, F.S., requires CCRCs to maintain, in escrow, a minimum liquid reserve consisting of various reserves. For instance, each provider must maintain a debt service reserve equal to the amount of all principal and interest payments due during the fiscal year on any mortgage loan or other long-term financing of the facility. Also, a provider must maintain an operating reserve equal to 30 percent of the total operating expenses projected in the feasibility study required by s. 651.023, F.S., for the first 12 months of operation. The statute includes additional details related to the composition of the minimum liquid reserve.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The OIR advises that the costs for updating and modifying technology programs to accommodate amended form filings can be absorbed within current budgetary resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Providers choosing to offer CCAH contracts have another source of revenue. Some continuing care providers will be able to receive additional revenue from utilizing empty skilled nursing beds for non-continuing care residents. These service changes may create competition between CCRCs and skilled nursing home providers.

D. FISCAL COMMENTS:

None.