The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: CS/SB 1340

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Bogdanoff

SUBJECT: Continuing Care Retirement Communities

DATE: April 13, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	**Fav/CS**
2.			BI	
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS........................		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This bill authorizes the use of continuing care at-home contracts in order to allow individuals to receive services offered by a continuing care retirement community (CCRCs) in their own homes while reserving the right to shelter to be provided by the CCRC at a later date. The provisions of the bill closely reflect the provisions regulating continuing care contracts found throughout ch. 651, F.S.

This bill substantially amends following sections of the Florida Statutes: 651.011, 651.012, 651.013, 651.021, 651.022, 651.023, 651.033, 651.035, 651.055, 651.071, 651.091, 651.106, 651.114, 651.118, 651.121, and 651.125.

This bill creates section 651.057, Florida Statutes.

II. Present Situation:

Continuing Care Retirement Communities

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 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. Entry fees can range from $2,000 to $500,000 or more and monthly fees can range from $250 to $5,000 or more.[2] As of July 2009, there were 1,891 individual CCRCs in the United States.[3] Currently, there are 70 CCRCs in Florida and approximately 28,978 residents call a CCRC home.[4]

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.[5]

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.[6] 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.[7] A certificate of authority will only be issued once a provider submits proof that a minimum of 50 percent of the units available have been reserved.[8]

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 OIR.[9] 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.

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[1] 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 April 6, 2011).
[2] *Id*. at 19.
[3] U.S. Gov't Accountability Office, *Older Americans: Continuing Care Retirement Communities Can Provide Benefits, but Not Without Some Risk*, 3 (GAO-10-611) (June 2010), *available at* http://www.gao.gov/new.items/d10611.pdf (last visited April 6, 2011).
[4] Office of Insurance Regulation, *Presentation to the Governor's Continuing Care Advisory Council* (Sept. 14, 2010), *available at* http://www.floir.com/pdf/2009CouncilPresentation.pdf (last visited April 6, 2011).
[5] See ss. 651.021 and 651.023, F.S.
[6] Section 651.022, F.S.
[7] See ss. 651.021-651.023, F.S.
[8] Section 651.023(2)(a), F.S.
[9] Section 651.055(1), F.S.

- List all property transferred to the facility by the resident upon moving to the CCRC, including amounts paid or payable by the resident.
- 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 the terms and conditions for cancellation of the contract given a variety of circumstances.
- Describe all other relevant terms and conditions included in statute.[10]

Continuing Care At-Home

Some states have started to offer continuing care at-home (CCAH) programs which 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.[11] 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.[12] These at-home 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. These programs are generally much less expensive than the cost of moving to a CCRC.[13]

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.[14]

New Jersey, Pennsylvania, Ohio, Tennessee, Maryland, and Connecticut are among the states that offer CCAH programs.[15] New Hampshire and Maine passed legislation establishing CCAH contracts effective January 2011. The regulation of these programs varies from state to state.[16]

Florida does not provide for CCAH contracts in current law. The problem with providing CCAH programs in Florida is the statutory definition of "continuing care," which means furnishing *shelter* and nursing care or personal services pursuant to a contract.[17] According to Rule 69O-193.002(25) of the Florida Administrative Code, the term "shelter" means an independent living unit, room, apartment, cottage, villa, personal care unit, nursing bed, or other living area **within a facility** set aside for the exclusive use of one or more identified residents. Accordingly, under current Florida law, at-home care may not be provided because the care must be given within a facility.

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[10] *Id.*
[11] Office of Legislative Research, Connecticut General Assembly, *Continuing Care Retirement Community "At Home" Programs* (Feb. 21, 2008), *available at* http://www.cga.ct.gov/2008/rpt/2008-R-0110.htm (last visited April 6, 2011).
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.*; *see also* Office of Insurance Regulation, *supra* note 4.
[16] Office of Insurance Regulation, *supra* note 4.
[17] Section 651.011(2), F.S.

Florida Task Force on Continuing Care Retirement Communities

In June 2009, the Florida Life Care Residents Association and the Florida Association of Homes and Services for the Aging created a joint task force to review the provisions of ch. 651, F.S., and the recommendations of the task force form the basis of this legislation.[18]

III. Effect of Proposed Changes:

This bill authorizes the use of continuing care at-home contracts in order to allow individuals to receive services offered by a continuing care retirement community (CCRCs) in their own homes while reserving the right to shelter to be provided by the CCRC at a later date.

The bill defines the term "continuing care at-home" to mean "pursuant to a contract other than a contract described in subsection (2) [relating to continuing care], furnishing to a resident who resides outside the facility the right to future access to shelter and nursing care or personal services, whether such services are provided in the facility or in another setting designated in the contract, by an individual not related by consanguinity or affinity to the resident, upon payment of an entrance fee."

The bill creates s. 651.057, F.S., to govern continuing care at-home (CCAH) contracts. A provider offering CCAH contracts must:

- Disclose in the contract whether transportation will be provided to residents, that the provider has no liability for residents living outside the facility, the mechanism for monitoring residents, the process that will be followed to establish priority if a resident wishes to exercise his or her right to move into the facility, and the policy that will be followed if a resident living outside the facility relocates to a different residence;
- Ensure that persons employed by or under contract with the provider who assist in the delivery of services to residents residing outside the facility are appropriately licensed or certified as required by law;
- Include operating expenses for CCAH contracts in the calculation of the operating reserve;
- Include the operating activities for CCAH contracts in the total operation of the facility when submitting financial reports to the office.

In order to offer CCAH services, a provider must submit a business plan, demonstrate that the proposal to offer CCAH contracts will not place the provider in an unsound financial condition, comply with the requirements of s. 651.021(2), F.S.,[19] and comply with the requirements of ch. 651, F.S. Additionally, the provider must have a licensed facility and accommodations for independent living which are primarily intended for residents who do not require staff supervision.

The bill provides that the combined number of outstanding CCRC and CCAH contracts allowed at a facility may be the greater of:

[18] The Office of Insurance Regulation participated in meetings of the task force and served as a resource to the task force.
[19] Section 651.021(2), F.S., provides that before constructing or marketing for an expansion of a facility for the addition of at least 20 percent of existing units, written approval must be obtained from the Office of Insurance Regulation and the application must include a feasibility study.

- 1.5 times the combined number of independent living units, licensed assisted living units, and licensed nursing home units; or
- 4 times the combined number of licensed assisted living units and nursing home units at that facility.

Additionally, the number of independent living units at the facility must be equal to or greater than 10 percent of the initial 100 contracts and 5 percent of the combined number of outstanding CCRC and CCAH contracts in excess of 100 issued by that facility.

Section 651.021, F.S., is amended to require written approval from the Office of Insurance Regulation (OIR) before constructing a new facility or marketing the 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. If a provider is offering both continuing care and CCAH, the 20 percent is based on the total of both existing units and existing contracts for CCAH. The bill provides that an “expansion” includes the increases in the number of constructed units or CCAH contracts or a combination of both. If the expansion is only for CCAH contracts, an actuarial study presenting the financial impact of the expansion may be substituted for the feasibility study required of proposals for new construction.

Section 651.023, F.S., provides that OIR shall issue the holder of a provisional certificate of authority a certificate of authority if the holder of the provisional certificate provides information regarding any material change in status of the information in the application for the provisional certificate and a feasibility study is prepared. The bill amends this section of law to provide that if the feasibility study is prepared by an independent certified public accountant, it must contain an examination opinion for the first three years of operations and financial projections having a compilation opinion for the next three years. If the feasibility study is prepared by an independent consulting actuary, it must contain mortality and morbidity data and an actuary’s signed opinion that the project as proposed is feasible and that the study has been prepared in accordance with standards adopted by the American Academy of Actuaries.

Under current law, a certificate of authority may not be issued until the project has a minimum of 50 percent of the units reserved and proof is provided to OIR.[20] The bill provides that if a provider offering CCAH contracts is applying for a certificate of authority or approval of an expansion, then the same minimum reservation requirements must be met for the continuing care and CCAH contracts, independently of each other.

The bill further provides that for an expansion of a continuing care facility or CCAH contracts, a minimum of 75 percent of the moneys paid for all or any part of an initial entrance fee for continuing care and 50 percent of the moneys paid for all or any part of the initial fee collected for CCAH shall be placed in an escrow account or on deposit with the department. If a provider offering CCAH contracts is applying for a release of escrowed entrance fees, the same minimum requirement must be met for the continuing care and the CCAH contracts, independently of each other. Additionally, a provider is entitled to secure release of moneys held in escrow if, among other things, the consultant who prepared the feasibility study (or an approved substitute)

[20] Section 651.023(2)(a), F.S.

certifies *within 12 months before the date of filing for office approval* that there has been no material adverse change in status with regard to the study.

The bill amends s. 651.055, F.S., to provide that a prospective resident, resident, or resident's estate is not entitled to interest of any kind on a deposit or entrance fee unless specifically provided for in the continuing care contract. The bill permits contracts for continuing care and CCAH to include agreements to provide care for any duration. The bill also requires a provider to file a new residency contract for approval within 30 days after receipt of a letter from OIR notifying the provider of a noncompliant residency contract. The bill provides that pending review and approval of the new residency contract, the provider may continue to use the previously approved contract.

Section 651.118, F.S., requires the Agency for Health Care Administration (AHCA) to approve one sheltered nursing home bed for every four proposed residential units in a continuing care facility, unless the provider demonstrates why fewer beds are needed. The bill amends this section of law to provide that AHCA does not need to approve sheltered nursing home beds for the residences of residents residing outside the facility pursuant to a CCAH contract. Additionally, current law authorizes providers to use nursing home beds for persons who are not residents of the continuing care facility and who are not parties to a continuing care contract for a certain period of time. The provider may request an extension from AHCA that does not exceed 30 percent of the total sheltered nursing home beds *or 30 sheltered beds, whichever is greater*.

In addition to the term "continuing care at-home," which is defined above, the bill amends s. 651.011, F.S., to add definitions of "nursing care," "personal services," and "shelter." The bill also expands the definition of "facility" and amends the definition of "continuing care."

Finally, the bill makes technical and conforming changes by adding the term "continuing care at-home" to provisions throughout ch. 651, F.S.

The bill provides an effective date of July 1, 2011.

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:

This bill authorizes continuing care at-home (CCAH) contracts to be provided to individuals who want to receive services offered by a continuing care retirement community (CCRC) in their own homes while reserving the right to shelter to be provided by the CCRC at a later date. Receiving CCAH is a less expensive option for individuals needing services than a CCRC; therefore, the bill has the potential to save these individuals money.

According to the Office of Insurance Regulation, providers choosing to implement CCAH programs will have another revenue source. Some continuing care providers will be able to receive additional revenue from utilizing empty skilled nursing beds for non-continuing care residents. The impact of these service changes would likely create some measure of competition between CCRCs and skilled nursing home providers.[21]

C. Government Sector Impact:

According to the Office of Insurance Regulation, there may be costs for updating and modifying technology programs to accommodate amended form filings, but these costs will be absorbed within current resources.[22]

VI. Technical Deficiencies:

On line 408, the bill uses the term "initial fee" when referring to moneys collected for continuing care at-home, whereas, the term "initial entrance fee" is used when referring to moneys collected for continuing care. On line 423, the bill uses the term "entrance fees" when referring to monies escrowed for continuing care at-home. The bill appears inconsistent in regards to these provisions.

VII. Related Issues:

None.

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 Children, Families, and Elder Affairs on April 12, 2011:

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[21] Office of Insurance Regulation, *SB 1340* (Mar. 17, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[22] *Id*.

The committee substitute makes several changes recommended by the Office of Insurance Regulation (OIR) and the Florida Association of Homes and Services for the Aging. Specifically, the committee substitute:

- Changes references in the title to the Office of Insurance Regulation (instead of the Office of Financial Regulation);
- Clarifies that the continuing care at-home contract is different than the contract for continuing care;
- Provides that a prospective resident, resident, or resident's estate is not entitled to interest on a deposit or entrance fee unless it is specified in the continuing care contract;
- Requires a provider to file a new residency contract for approval within 30 days after receipt of a letter from OIR notifying the provider of a noncompliant residency contract;
- Allows a provider to continue to use a previously approved contract pending review and approval of a new residency contract;
- Removes language requiring a provider to include a feasibility study (or actuarial study) in the business plan in order to offer continuing care at-home (however, a feasibility or actuarial study is still required in order to receive a certificate of authority);
- Provides that the combined number of outstanding continuing care and continuing care at-home contracts allowed at a facility may be the greater of one and one-half times the combined number of independent living units, assisted living units, and nursing home units at the facility or four time the combined number of assisted living units and nursing home units at that facility. Additionally, the CS provides that the number of independent living units at the facility must be equal to or greater than 10 percent of the initial 100 continuing care and continuing care-at home contracts and 5 percent of the combined number of outstanding continuing care and continuing care at-home contracts in excess of 100 issued by that facility; and
- Makes technical changes.

B. Amendments:

None.

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