

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 Appropriations Subcommittee on General Government

BILL: CS/SB 1126

INTRODUCER: Banking and Insurance Committee and Senator Altman

SUBJECT: Continuing Care Communities

DATE: April 7, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1126 requires continuing care facilities to provide refunds of entrance fees within 90 days after the continuing care contract is terminated and the unit is vacated, instead of within 120 days of the notice to cancel as under current law. The provision applies to contracts entered into on or after January 1, 2016, and contract addendums that are approved by the Office of Insurance Regulation (OIR). The bill requires continuing care contracts to specify one of three sources of payment for refunds paid from the proceeds of subsequent entrance fees and prohibits refunds conditioned on receipt of the entrance fee for the same unit as of October 1, 2016. The bill also, in specified circumstances, requires the contract to include a statutorily required time frame for the refund of an entrance fee (if the entrance fee refund will be paid from the proceeds of the next entrance fee for a like or similar unit).

The bill requires continuing care retirement communities (CCRCs) to establish residents' councils, whose activities must be independent of the CCRC. Currently, the formation of residents' councils are optional. The bill requires each residents' council to designate a resident to represent them before the governing body of the provider.

The bill specifies that continuing care and continuing care at-home contracts are preferred claims in a bankruptcy, receivership, or liquidation and are subordinate only to secured claims.

The bill revises disclosure requirements for third-party audits of the CCRC and notice requirements related to examination reports and any related corrective action plan.

There is no fiscal impact to the state.

The bill is effective on October 1, 2015.

II. Present Situation:

Continuing Care Retirement Communities (CCRC)

A continuing care facility provides shelter and nursing care or personal services to residents upon the payment of an entrance fee.¹ According to representatives of CCRCs, continuing care facilities generally feature apartment style independent living units, assisted living units, and nursing care, typically all on a single campus.² Many also offer assisted living, memory support care, and other specialty care arrangements.³ These facilities also provide residents with dining options, housekeeping, security, transportation, social and recreational activities, and wellness and fitness programs.⁴ Continuing care facilities may also offer at-home programs that provide residents CCRC services while continuing to live in their own homes until they are ready to move to the CCRC.⁵ In addition to the entrance fee, a CCRC also generally charge residents monthly fees to cover costs related to health care and other aspects of community living.⁶

There are currently 71 licensed continuing care retirement communities in Florida.⁷ Continuing care retirement communities are spread throughout the state, with Palm Beach, Sarasota, and Pinellas counties having the greatest numbers of these communities. Almost 25,000 residents lived in a CCRC during 2013.

Oversight responsibility of these entities is shared primarily between the Agency for Health Care Administration (AHCA) and the Office of Insurance Regulation (OIR). The AHCA regulates aspects of CCRCs related to the provision of health care 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 services to present and future residents. Accordingly, the 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.⁸ If a continuing care provider is accredited through a process substantially equivalent to the requirements of chapter 651, F.S., the OIR may waive requirements of that chapter.⁹ 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.

¹ Section 651.011, F.S.

² Jane E. Zarem, *Today's Continuing Care Retirement Community*, pg. 2 (July 2010).

³ Zarem, *supra* note 2, at 2.

⁴ Zarem, *supra* note 2, at 2.

⁵ Section 651.057, F.S.

⁶ About Continuing Care Retirement Communities, AARP.org, http://www.aarp.org/relationships/caregiving-resource-center/info-09-2010/ho_continuing_care_retirement_communities.html (last visited March 7, 2015).

⁷ Office of Insurance Regulation, *Presentation to the Governor's Continuing Care Advisory Council* (September 29, 2014).

⁸ See ss. 651.021 and 651.023, F.S.

⁹ Section 651.028, F.S.

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.¹⁰ 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.¹¹ 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.¹²

Continuing Care Retirement Community Contracts

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.¹³ 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;
- 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; and
- Describe all other relevant terms and conditions included in statute.¹⁴

The entrance fee is an initial or deterred payment made as full or partial payment for continuing care.¹⁵ According to CCRC providers, entrance fees typically are strongly correlated to local housing prices, though they range widely.¹⁶ Generally, entrance fees range from \$100,000 to \$1 million.¹⁷ Under Florida law, a continuing care contract must specify the terms governing the refund of any portion of the entrance fee.¹⁸ A CCRC facility may only retain up to two percent of the entrance fee per month of resident occupancy along with a processing fee of up to five percent.¹⁹ If the continuing care contract provides that the facility will only retain up to one percent of the entrance fee per month, the contract may also provide that the refund will be paid from the proceeds of the next entrance fees received by the provider,²⁰ or, if the provider is no longer marketing CCRC contracts, within 200 days after the date of notice.²¹ If the contract is cancelled before the unit is occupied, the entire entrance fee must be refunded other than a

¹⁰ Section 651.022, F.S.

¹¹ See ss. 651.021-651.023, F.S.

¹² Section 651.023(4)(a), F.S.

¹³ Section 651.055(1), F.S.

¹⁴ *Id.*

¹⁵ See s. 651.011(5), F.S.

¹⁶ Zarem, *supra* note 2, at 9.

¹⁷ About Continuing Care Retirement Communities, AARP.org, http://www.aarp.org/relationships/caregiving-resource-center/info-09-2010/ho_continuing_care_retirement_communities.html (last visited March 7, 2015).

¹⁸ Section 651.055(1)(g)1., F.S.

¹⁹ Section 651.055(1)(g)2., F.S.

²⁰ For units for which there are not prior resident claims.

²¹ Section 651.055(1)(g)3., F.S.

processing fee of up to five percent of the entire entrance fee.²² Florida law requires the contract to specify the terms under which a contract is cancelled due to the resident's death, which may include a provision allowing the CCRC provider to retain the entire entrance fee.²³

Rights of Residents in a Continuing Care Retirement Community

The OIR is also authorized to discipline a facility for violations of residents' rights.²⁴ 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; and 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.²⁵

Current law requires CCRCs to hold quarterly meetings at which residents' organizations may be represented.²⁶ The meetings are for the purpose of holding a free discussion of subjects such as the facility's income, expenditures, financial trends, and problems, as well as proposed changes in policies, programs, and services. If the CCRC proposes the imposition or increase of a monthly maintenance fee, additional duties are placed on the CCRC provider to provide notice and give reasons for the proposed action.

Residents of a CCRC may form a residents' council for the purpose of representing residents in quarterly meetings with the CCRC provider.²⁷ Florida law provides a process by which a residents' council is formed. The residents' council must be created by a vote in which at least 40 percent of the total resident population participates and a majority of the participants vote in favor of creating the council.²⁸ A residents' council may designate a resident to represent them before the governing body of the provider.²⁹ The residents' council representative must be invited to participate in the portion of any meeting of the full governing body of the CCRC during which proposed changes in resident fees or services will be discussed.³⁰

If the OIR institutes receivership or liquidation proceedings against a CCRC, the continuing care contracts are deemed preferred claims against assets of the provider.³¹ Such claims are subordinate, however, to any secured claim and the priority claims detailed in s. 631.271, F.S. Florida law does not specify the claim status of continuing care contracts in a bankruptcy proceeding.

²² Section 651.055(1)(g)4., F.S.

²³ Section 651.055(1)(h), F.S.

²⁴ Section 651.083, F.S.

²⁵ *Id.*

²⁶ Section 651.085, F.S.

²⁷ Section 651.081, F.S.

²⁸ Section 651.081(2), F.S.

²⁹ Section 651.085(2), F.S.

³⁰ Section 651.085(3), F.S.

³¹ Section 651.071, F.S.

III. Effect of Proposed Changes:

Refunds of Entrance Fees at Cancellation of Continuing Care Contracts

Section 1 amends s. 651.055, F.S., to revise the statutory requirements for refunding portions of entrance fees to residents who do not have a transferrable membership or ownership right in the continuing care facility.

The bill requires continuing care facilities to provide refunds of entrance fees within 90 days after the continuing care contract is terminated and the unit is vacated, instead of within 120 days of the notice to cancel under current law. The provision applies to all contracts entered into on or after January 1, 2016. For contracts entered into before that date, the continuing care resident may execute a contract addendum approved by the OIR providing for a refund within 90 days. The bill does not change the requirement that CCRC providers may only retain up to two percent of the entrance fee per month of occupancy by the resident.

If the continuing care contract provides for the CCRC to retain no more than one percent per month of resident occupancy, current law allows continuing care contracts to specify that an entrance fee refund will be paid from the proceeds of the next entrance fee received by the CCRC for which there are no prior claims. The bill requires continuing care contracts to specify one of three sources of payment for the refund:

- The entrance fee refund will be paid from the proceeds of the next entrance fee;
- The entrance fee refund will be paid from the proceeds of the next entrance fee for a like or similar unit³² for which there are no prior claims; or
- The entrance fee refund will be paid from the proceeds of the next entrance fee for the unit being vacated. This option may only be used until October 1, 2016. The option is allowed until October 1, 2016, because there are CCRCs that currently have this option in their contracts. Such CCRCs must submit to the OIR for approval by August 2, 2016, a new or amended contract that uses one of the other refund options.

The bill also requires the contract to specify the following time frames for the refund of an entrance fee if the continuing care contract specifies that the entrance fee refund will be paid from the proceeds of the next entrance fee for a like or similar unit:

- If the refund is due upon the resident's death or relocation to another level of care that results in termination of the CCRC contract, the refund must be made the earlier of 30 days after the CCRC receives the next entrance fee for a like or similar unit or within a specified maximum number of months or years, as specified by the contract.
- If the refund is due because the resident vacates the unit and voluntarily terminates³³ the contract after the seven day rescission period, the refund must be paid within 30 days after the CCRC receives the next entrance fee for a like or similar unit for which there are no prior claims.

³² The bill defines "like or similar unit" as a category that has similar characteristics including comparable square footage, number of bedrooms, or location. Each such category must contain at least 5 percent of the total number of residential units or, if the units are not single family homes, at least 10 units.

³³ Under the bill, a continuing care contract is voluntarily terminated when a resident provides written notice of intent to leave and moves out of the CCRC after the 7-day rescission period.

If the CCRC is not marketing continuing care contracts, refunds must be paid within 200 days after the contract terminates and the unit is vacated.

Waiver of Continuing Care Facility Requirements

Section 2 amends s. 651.028, F.S., to limit the OIR's authority to waive requirements placed on accredited CCRCs by ch. 651, F.S. The bill specifies that a waiver may only be given to a CCRC that is accredited without stipulations or conditions. The bill maintains current law allowing only those waivers that are consistent with the security protections of the chapter. The only requirement typically waived by the OIR is the requirement to submit quarterly financial reports.³⁴

Priority of Claims at Bankruptcy, Receivership, or Liquidation

Section 3 amends s. 651.071, F.S., to specify that continuing care and continuing care at-home contracts are preferred claims in a bankruptcy, subordinate only to secured claims. It is uncertain the extent to which the amendment will affect the rulings of federal bankruptcy courts regarding priority of claims. The bill also deletes current law specifying that in a receivership or liquidation proceeding, CCRC contract claims are subordinate to the priority claims listed in s. 631.271, F.S., related to the estate of an insurer. Current law makes such contracts preferred claims in a liquidation or receivership, but subordinates them to secured claims and the priority claims listed in s. 631.271, F.S.

Residents' Councils and Quarterly Meetings

Section 5 amends s. 651.081, F.S., to require each CCRC to establish a residents' council, which must be established through an election by the residents. Under current law, it is optional both to establish a residents' council and to do so through the election process outlined in statute.

The bill provides mandatory attributes of a residents' council. Residents' council activities must be independent of the CCRC provider. Additionally, the CCRC provider is not responsible for the costs of the residents' council or ensuring the council's compliance with statute. The residents' council must adopt its own bylaws and governance documents. The governing documents may include term limits for council members.

The council must also provide for open meetings when appropriate. The residents' council must provide a forum for residents to submit issues or make inquiries, particularly on matters that impact the general residential quality of life and cultural environment of the CCRC. The council governing documents must define the process by which residents may submit such inquiries and issues and the timeframe for the council to respond. The council must also serve as a liaison to provide input on such matters to the appropriate representative of the CCRC.

If a licensed CCRC files for federal chapter 11 bankruptcy, the CCRC must include in its required filing with the United States Trustee the 20 largest unsecured creditors, the name and contact information of a designated resident of the residents' council, and, if appropriate, a

³⁴ See Office of Insurance Regulation, *Senate Bill 1126 Agency Analysis* (March 3, 2015) (on file with the Senate Committee on Banking and Insurance).

statement explaining why the designated resident was chosen by the residents' council to serve as a representative of the residents' interest on the creditors' committee.

Section 6 amends s. 651.085, F.S., to require the OIR to request verification from each CCRC that required quarterly meetings between the CCRC governing body or designated representative and the residents are held and open to all residents. Currently, the OIR is only required to request verification upon receiving a complaint from the residents' council.

The bill also requires the residents' council to designate a resident to represent them before the governing body of the provider. A licensed CCRC provider may allow a resident of a facility to be a voting member of the board of directors or governing body of the CCRC, and may establish criteria for the selection of that resident. If the board or governing body of a licensed CCRC provider operates more than one facility, it may select a resident from among its facilities to serve on the board or governing body on a rotating basis.

Notice of Examination Report and Corrective Action Plan; Disclosure of Audit

Section 4 amends s. 651.105, F.S., to require the OIR to provide notice to the CCRC executive officer of all compliance deficiencies identified by the OIR in an examination. The bill also directs the OIR to determine during each routine examination whether all required disclosures have been made to the CCRC executive officer. A representative of the provider must give a copy of the OIR final examination report and any corrective action plan to the executive officer of the CCRC governing body within 60 days after report issuance.

Section 7 amends s. 651.091, F.S., to require each CCRC to distribute a copy of the most recent third-party financial audit filed with the annual report to the president or chair of the residents' council within 30 days after filing the annual report with the OIR. The CCRC must also designate a staff person to provide an explanation of the audit.

Effective Date

Section 8 provides an effective date of October 1, 2015.

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:

Under CS/SB 1126, residents of CCRC communities that enter bankruptcy, receivership, or liquidation may benefit from continuing care contracts that are made priority claims subordinate only to secured claims.

C. Government Sector Impact:

The Office of Insurance Regulation and the Department of Children and Families each indicated there is no fiscal impact to their respective agencies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 651.055, 651.028, 651.071, 651.105, 651.081, 651.085, and 651.091.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on March 10, 2015:

The CS makes technical and clarifying changes to the bill.

B. Amendments:

None.