

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 783 Continuing Care Contracts

SPONSOR(S): Health & Human Services Committee; Insurance and Banking Subcommittee; Grant, J.; Shaw

TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 438

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Hinshelwood	Luczynski
2) Health & Human Services Committee	19 Y, 0 N, As CS	Grabowski	Calamas
3) Commerce Committee			

SUMMARY ANALYSIS

Continuing Care Retirement Communities (CCRCs) offer a transitional approach to the aging process, accommodating residents' evolving needs as to their level of care. A CCRC can include independent living apartments or houses, as well as an assisted living facility or a nursing home. CCRCs may also offer at-home programs that provide residents with services while continuing to live in their own homes until they are ready to move to the CCRC. The fees associated with a CCRC include an initial entrance fee and monthly fees to cover costs related to health care and other aspects of community living.

Regulatory oversight responsibility of CCRCs in Florida is shared primarily between the Agency for Health Care Administration (AHCA) and the Office of Insurance Regulation (OIR). Although the OIR has enforcement authority over CCRCs, the CCRC statutes lack the framework that the OIR uses to protect consumers of other insurance products, including early intervention concepts like impairment, a statutory requirement to provide supplementary information to support or explain filings, and clear authority to prohibit incompetent and untrustworthy individuals from exercising control over a CCRC.

The bill makes the following revisions to the regulation of CCRCs:

- Improves early warning signs of a CCRC's solvency issues.
- Provides the OIR with authority to approve or disapprove third-party management of a CCRC.
- Imposes an express duty on CCRC providers to produce records and gives the OIR standing to petition a court for production of such documents.
- Requires that records be maintained in this state but permits cloud-based storage.
- Requires a CCRC provider to give current and prospective residents notice of delinquency proceedings.
- Revises and streamlines provisions of law relating to applications for licensing and acquisition of a CCRC.
- Revises annual, quarterly, and monthly reporting requirements for CCRC providers to the OIR.
- Revises minimum liquid reserve requirements, duties of escrow agents, and processes for withdrawals from a CCRC's liquid reserve.
- Amends grounds for suspension or revocation of a CCRC provider's certificate of authority.
- Authorizes OIR to, under certain circumstances, issue an immediate suspension order on a CCRC as well as a cease and desist order on a person that violates CCRC regulations..
- Modifies the membership of the Continuing Care Advisory Council by replacing the attorney representative with another resident representative.
- Requires the Department of Children and Families to provide a copy of investigation results to OIR in cases when a CCRC resident is the alleged victim of abuse, neglect, or exploitation.

The bill has no fiscal impact on local governments or the state and an indeterminate fiscal impact on the private sector.

The bill provides an effective date of January 1, 2019.

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

STORAGE NAME: h0783c.HHS

DATE: 2/16/2018

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background: Continuing Care Retirement Communities (CCRCs)

CCRCs offer a transitional approach to the aging process, accommodating residents' evolving needs as to their level of care. A CCRC can include independent living apartments or houses, as well as an assisted living facility or a nursing home. CCRCs may also offer at-home programs that provide residents with services while continuing to live in their own homes until they are ready to move to the CCRC.¹ The fees associated with a CCRC include an initial entrance fee and monthly fees to cover costs related to health care and other aspects of community living.²

Regulatory oversight responsibility of CCRCs in Florida is shared primarily between the Agency for Health Care Administration (AHCA) and the Office of Insurance Regulation (OIR). The OIR regulates CCRC providers³ as specialty insurers. AHCA regulates aspects of CCRCs related to the provision of health care, such as nursing facilities, assisted living facilities, home health agencies, quality of care, and medical facilities.⁴

Background: Regulatory Oversight

Certificate of Authority (COA) Granted by the Office of Insurance Regulation

Because residents may pay, in some cases, considerable amounts in entrance fees and ongoing monthly fees, the OIR is given primary responsibility to regulate and monitor the operation of CCRCs and to determine facilities' financial condition and the management capabilities of their managers and owners.⁵ If a provider is accredited through a process "substantially equivalent" to the requirements of ch. 651, F.S., the OIR may waive any requirements of the chapter.⁶

In order to operate a CCRC in Florida, a provider must obtain from the OIR a COA predicated upon first receiving a provisional COA.⁷ The application process involves submitting various financial statements and information, and expectations of the financial condition of the project, and copies of contracts.⁸ Further, the applicant must provide evidence that the applicant is reputable and of responsible character.⁹ A COA will be issued once a provider meets the requirements prescribed in s. 651.023, F.S.¹⁰

Continuing Care 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

¹ s. 651.057, F.S.

² AARP, *About Continuing Care Retirement Communities*, available at http://www.aarp.org/relationships/caregiving-resource-center/info-09-2010/ho_continuing_care_retirement_communities.html (last visited Jan. 27, 2018); s. 651.011(2), F.S.

³ A "provider" is "the owner or operator . . . which . . . provides continuing care or continuing care at-home for . . . a fee . . . for the period of care . . ." s. 651.011(12), F.S.

⁴ Agency for Health Care Administration reports, available at <http://www.floridahealthfinder.gov/reports-guides/nursinghomesfl.aspx> (last visited Jan. 27, 2018); s. 651.118, F.S.

⁵ ss. 651.021, 651.22, 651.023, F.S.

⁶ s. 651.028, F.S.

⁷ s. 651.022, F.S.

⁸ ss. 651.021-651.023, F.S.

⁹ s. 651.022(2)(c), F.S.

¹⁰ s. 651.023(4)(a), F.S.

approved by the OIR.¹¹ A CCRC enters into contracts with residents to provide housing and medical care in exchange for an entrance fee and monthly fees. Entrance fees are a significant commitment by the resident, as entrance fees range from around \$100,000 to over \$1 million.¹² CCRCs offer different types of contracts that provide for varying amounts of monthly fees and levels of healthcare discounts.¹³

All CCRC contracts provide for a refund of a declining portion of the entrance fee if the contract is cancelled for reasons other than the death of the resident, during the first 4 years of occupancy by the resident, in the CCRC.¹⁴ However, many contracts exceed this requirement and contain minimum refund provisions that guarantee a refund of a specified portion (typically 50 to 90 percent) of the entrance fee upon the death of the resident or termination of the contract regardless of the length of occupancy by the resident.¹⁵

Financial Requirements/Solvency

CCRCs are required to file an annual report with the OIR, which includes an audited financial report, and other detailed financial information, such as a listing of assets maintained in the liquid reserve required under s. 651.035, F.S., and information about fees required of residents.¹⁶ Section 651.033, F.S., prescribes requirements relating to the establishment and maintenance of escrow accounts. Providers are required to maintain a minimum liquid reserve, as applicable, as prescribed in s. 651.035, F.S.

Rights of Residents in a Continuing Care Retirement Community

The OIR is also authorized to discipline a facility for violations of residents' rights.¹⁷ 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.¹⁸

Each CCRC must establish a resident's council to provide a forum for residents' input on issues that affect the general residential quality of life, such as the facility's financial trends, and problems, as well as proposed changes in policies, programs, and services.¹⁹ CCRCs are required to maintain and make available certain public information and records.²⁰

Residents are also represented on 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.²¹ The Council is composed of ten members, including:

- Three administrators of CCRC facilities;
- Three residents of CCRCs;
- An attorney;
- A certified public accountant;

¹¹ s. 651.055(1), F.S.

¹² Office of Insurance Regulation, Agency Analysis of House Bill 783, p.2 (Nov. 27, 2017).

¹³ *Id.*

¹⁴ s. 651.055, F.S.

¹⁵ Office of Insurance Regulation, *supra* note 12, at 2.

¹⁶ s. 651.026, F.S.

¹⁷ s. 651.083, F.S.

¹⁸ *Id.*

¹⁹ s. 651.081, F.S.

²⁰ s. 651.091, F.S.

²¹ S. 651.121, F.S.

- A representative of the business community whose expertise is in the area of management; and,
- A representative of the financial community who is not a facility owner or administrator.²²

OIR Enforcement Authority

If a provider fails to meet the requirements of ch. 651, F.S., relating to a provisional COA or a COA, the OIR must notify the provider of any deficiencies and require the provider to make corrective action within a period determined by the OIR.²³ If the provider does not correct the deficiencies by the expiration of such time required by the OIR, the OIR may initiate delinquency proceedings as provided in s. 651.114, F.S., or seek other relief provided under ch. 651, F.S.²⁴ The OIR may deny, suspend, or revoke the provisional COA or the COA of any applicant or provider for grounds specified in s. 651.106, F.S.

If the OIR institutes receivership or liquidation proceedings against a CCRC, the continuing care contracts are deemed preferred claims against assets of the provider.²⁵ Such claims are subordinate, however, to any secured claim. Florida law does not specify the claim status of continuing care contracts in a bankruptcy proceeding.

Although the OIR has enforcement authority over CCRCs, ch. 651, F.S., lacks the framework that the OIR uses to protect consumers of other insurance products, including early intervention concepts like impairment, a statutory requirement to provide supplementary information to support or explain filings, and clear authority to prohibit incompetent and untrustworthy individuals from exercising control over a CCRC.²⁶ The need for better regulatory oversight became apparent with the case of a CCRC in Tampa in which unapproved owners and managers failed to cooperate with examination by the OIR and with other provisions of state law.²⁷ That CCRC remains in bankruptcy, the resolution of which may result in the cancellation of residents' contracts.²⁸ Previously, a bankruptcy court in 1997 cancelled residents' contracts for a different CCRC in Tampa.²⁹ Additionally, a CCRC in St. Augustine filed for bankruptcy in 2013 and 2016, which resulted in residents or their estates receiving only 20 percent of their entrance fee refunds.³⁰

Involvement by the Department of Financial Services (DFS)

The DFS may become involved with a resident after a CCRC contractual agreement has been signed by both parties or during a mediation or arbitration process.³¹ Typically, residents will contact the Division of Consumer Services of the DFS, which receives and resolves complaints involving products and persons regulated by the OIR or the DFS.³²

Chapter 631, F.S., governs the rehabilitation and liquidation process for insurers in Florida. Federal law provides that insurance companies are not eligible to be a debtor in federal bankruptcy proceedings and are instead subject to state laws regarding receivership.³³ In Florida, the Division of Rehabilitation and Liquidation within the DFS is responsible for managing insurance companies placed into

²² *Id.*

²³ s. 651.105(4), F.S.

²⁴ *Id.*

²⁵ s. 651.071, F.S.

²⁶ Office of Insurance Regulation, *supra* note 12, at 2.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ Rules 69O-193.062 and 69O-193.063, F.A.C.

³² s. 624.307, F.S.

³³ Historically and currently, Florida CCRCs have entered bankruptcy despite being regulated as a specialty insurer in Florida and despite the federal Bankruptcy Code precluding insurance companies from being a debtor in bankruptcy.

receivership. The goal of rehabilitation is to return the insurer to solvency. The goal of liquidation, however, is to liquidate the business of the insurer and use the proceeds to pay claims, including those of policyholders, creditors, and employees.

Effect of the Bill

Solvency

Section 651.034, F.S., is created to establish a framework of required actions if a provider falls below specified levels of three key indicators: occupancy, days cash on hand, and the debt service coverage ratio. The key indicators were selected based on their tendency to highlight problematic financial developments. If the provider's performance falls below the specified levels on two of the three key indicators, it is considered "a regulatory action level event," and the provider is required to submit a corrective action plan; the OIR is required to perform an examination or analysis of the provider; and the OIR is required to issue a corrective order specifying any corrective actions that the OIR determines are required.

The bill creates a definition for "impaired" to allow for earlier intervention by the OIR in an effort to prevent harm to Florida consumers. The impairment framework has been an effective tool in preventing, or minimizing the impact of, insurer insolvencies. The current intervention framework for CCRCs is triggered only after a provider becomes insolvent, meaning it is unable to pay its obligations as they come due in the normal course of business. The establishment of the impairment framework will allow the OIR to begin partnering with a provider much sooner in order to mitigate or resolve any potential issues that would put resident interests in jeopardy. A provider would be considered impaired if it fails to hold the minimum liquid reserve or it does not maintain specified levels of days cash on hand or debt service coverage ratio.

Sections 651.022 and 651.023, F.S., are amended to prohibit the OIR from approving an application for a provisional COA or COA if it includes in the financing plan any encumbrance on renewal or replacement reserves required by ch. 651, F.S.

Section 651.114(3), F.S., is amended to clarify that the OIR is not prohibited from taking other regulatory action while a corrective action plan is under review. One CCRC in recent years successfully delayed receivership proceedings by asserting that the OIR was prohibited from further action. Although a court ultimately rejected the assertion, it is beneficial to make such clarification.

Section 651.071, F.S., is amended to state that resident contracts are policyholder loss claims (class 2) in the event of receivership. This would put continuing care contracts in priority just behind secured creditors. Currently, in the event of receivership, continuing care contracts would receive a lower priority alongside unsecured creditors.

Management

The definition of "manager" or "management" is codified, and accompanying provisions close a loophole that has allowed third-party management serving under an oral contract to evade regulation. Currently, Rule 690-193.002(13), F.A.C., specifies that a manager or management company agrees to administer the day-to-day activities of a facility pursuant to a written contract with the provider. However, the rule does not address situations where a manager or management company does not have a written contract with the provider. The bill requires that a third-party management contract be in writing and that the provider will not be subject to a penalty or fee if such contract is cancelled upon issuance of an order by the OIR requiring removal of the manager or management company.

Section 651.043, F.S., is created to allow for disapproval and removal of unqualified third-party management if the OIR finds, for example, that management is incompetent or untrustworthy or that management is affiliated with a person who has a history of involvement with business operations that

have been marked by manipulation of assets or accounts or by bad faith, to the detriment of residents, stockholders, investors, creditors, or the public. Currently, the OIR does not have authority to disapprove unaffiliated management except by taking action against the COA of the provider. This section allows providers to hire management when needed while requiring proper vetting of third-party managers and management companies. To prevent actions to the detriment of the interests of the residents, the bill would also allow the OIR to institute a fast-track administrative proceeding in the event a disapproved manager is not timely removed.

Duty of Providers to Cooperate with the OIR

Section 651.105, F.S., is amended to require that a CCRC provider give the OIR, upon request, documents and information for persons and entities related to the provider or facility. The books and records of related entities often impact the financial state of the CCRC provider and may be relevant to the ability of the CCRC to provide residents with the contracted level of care. One CCRC in recent years challenged the OIR on whether the OIR had authority to obtain books and records of affiliates. The bill specifies that the provider has a duty to respond to written correspondence from the OIR and to provide documents, data, records, financial statements, and pertinent information as requested by the OIR. The bill also specifies that the OIR would have standing to petition for injunctive relief to compel access to or production of such documents and information.

Section 651.013, F.S., is amended to add references to s. 624.318, F.S., which applies generally to insurers, in order to clarify the duty of every person being examined, and its officers, attorneys, employees, agents, and representatives, to “make freely available” to the OIR the accounts, records, documents during an examination or investigation. Section 624.318, F.S., also specifies that “any individual who willfully obstructs the department, the office, or the examiner in the examinations or investigations authorized by this part is guilty of a misdemeanor.” This proposal adds consequence to a person’s refusal to produce records upon request, as happened with one CCRC in recent years.

Records Retention and Storage

The definition of “records” is amended and clarified to include all documents and correspondence regardless of the physical form, characteristics, or means of transmission. The current definition refers to “permanent” records without specifying how permanence is determined, thus leaving open the possibility that providers could simply declare a record as nonpermanent to allow deletion.

Section 651.051, F.S., is amended to specify that all records and assets be maintained in the state unless prior written approval from the OIR allows for removal. It also permits electronic storage of records on a web-based, secured storage platform so long as the records are readily accessible to the OIR. One CCRC in recent years created and maintained documents and records outside of the state, and the OIR was not able to gain access to them.

Service of Process

Section 651.013, F.S., is amended by adding references to ss. 624.307 and 624.422, F.S., in order to clarify that CCRCs must appoint the Florida Chief Financial Officer for the purposes of service of process and to clarify the role of the DFS Consumer Services for the purposes of consumer complaints. These provisions are applicable to other insurance licensees, as well.

Increased Transparency to Residents

The bill requires a provider to give written notice of a delinquency proceeding under ch. 631, F.S., to its residents within three business days after the initiation and must include a notice of the delinquency proceeding in any written materials provided to prospective residents.

The bill also revises the representation of the Continuing Care Advisory Council to include four current CCRC residents, rather than three. Under the bill, the Council will no longer require an attorney to be a member, keeping total membership at ten individuals.

Applications

Licensing Applications

The bill creates s. 651.0215, F.S., to create a consolidated application that would allow an applicant to qualify for a certificate of authority without first obtaining a provisional certificate of authority if certain conditions are met, including conditions relating to the handling of escrowed funds.

The bill amends the standard for the OIR to utilize when reviewing an applicant. Currently, the law requires evidence that an applicant is “reputable and of responsible character,” whereas the bill requires evidence that an applicant is “competent and trustworthy.” This standard is consistent with other areas of the Florida Insurance Code.

The bill clarifies that an applicant must disclose material changes that occur while a provisional COA, COA, or consolidated application is pending before the OIR, which is consistent with other requirements in the Florida Insurance Code.

The bill creates definitions for “actuarial opinion”, “actuarial study”, and “actuary”.

Acquisition Applications

The bill clarifies which statutes apply to each type of acquisition transaction, including the new, streamlined provisions of s. 651.0245, F.S., which provides an application for the simultaneous acquisition of a facility and the issuance of a COA. Under current law, if a person wants to acquire an existing facility and become the provider, they must submit an acquisition application, a provisional COA application, and a COA application. The bill streamlines the application process by creating a single combined application. The language used in the bill is taken directly from the current application sections, ss. 628.4615, 651.022, and 651.023, F.S., but eliminates duplicate requirements.

The bill requires an acquisition filing for a person who assumes the role of a general partner of a CCRC provider or otherwise assumes ownership or possession of, or control over, 10 percent or more of a provider’s assets or who seeks to acquire 10 percent or more of the ownership interest of a CCRC provider. In the case of one CCRC in recent years, the CCRC had a limited partnership structure, and in early 2014 there was a change in the limited partners. The OIR’s position requiring a person acquiring the general partnership in a CCRC to file an acquisition application was upheld in litigation.³⁴ Codifying the ruling in statute will make this requirement clear to those seeking to acquire partnership interests in the future.

The bill establishes that a Schedule 13G form may be filed in lieu of a disclaimer of control or acquisition application. For situations where a parent company of a CCRC provider is publicly traded, this change would allow the filing of a 13G in lieu of a disclaimer of control or acquisition filing. A 13G is a SEC filing used to report a party’s ownership of stock in a company. Insurers are able to use this filing, and some CCRCs have requested that the OIR accept such filings from them.

Financial Reporting

Section 651.026, F.S., is amended to require that the provider annually submit management’s calculation of the provider’s debt service coverage ratio and days cash on hand for the current reporting

³⁴ Office of Insurance Regulation. *Agency Bill Analysis for HB 783*. November 27, 2017. On file with staff of the Committee on Health and Human Services.

period and an opinion from an independent certified public accountant of management's calculations. The provider is also required to annually submit its occupancy at each facility.

The OIR is required to publish annually, within 90 days after the conclusion of the annual reporting period, an industry benchmarking report that contains the median days cash on hand for all providers, median debt service coverage ratio for all providers and median occupancy rate by setting (independent living, assisted living, skilled nursing) and for the entire facility.

Section 651.0261, F.S., is amended to require that, within 45 days after the end of each fiscal quarter, each provider submit a quarterly unaudited financial statement and a detailed listing of assets maintained in the liquid reserve. This would allow the OIR to determine whether the provider is impaired and to take action to assist providers who may fall below the impairment threshold. The bill permits the OIR to require monthly reporting of certain information if it finds that such information is needed to properly monitor the financial condition of a provider or facility or is otherwise needed to protect the public interest. OIR may require monthly reporting if any of the following apply:

- The facility has been operational for less than 2 years;
- The provider is subject to administrative supervision proceedings, a corrective action plan, or delinquency, receivership, or bankruptcy proceedings;
- The provider or facility reports an adverse material change in finances;
- The facility has experienced a change of ownership in the past 2 years; or,
- The facility is found to be impaired under the newly-established definition.

Reserving Requirements

Section 651.035, F.S., is amended to require providers that do not have a mortgage loan or other financing on the facility, to deposit monthly in escrow one-twelfth of their annual property tax liability.

Section 651.033, F.S., is amended to specify the duties that apply to escrow agents, including that an escrow agent must receive the OIR's prior approval before releasing escrowed funds. These changes are based on conversations with escrow agents who expressed confusion over their statutory responsibilities because some of the requirements are beyond those customarily undertaken by escrow agents. The bill also provides a framework for CCRCs to request a withdrawal of reserve funds and grants the OIR authority to require the transfer of reserve funds into the custody of the DFS's Bureau of Collateral Management if the OIR finds that the provider is impaired or insolvent in order to ensure the safety of those assets.

Suspension and Revocation

Section 651.106, F.S., is amended to add impairment to the list of grounds for suspension or revocation of a COA. The bill expressly provides that the OIR may suspend or revoke a COA if owners, managers, or controlling persons who are incompetent or untrustworthy, who cause the operation of the provider to be hazardous to potential and existing residents, who jeopardize the reasonable promise of successful operation of the provider or facility, who is affiliated with any person whose business operations are or have been marked by manipulation of assets or accounts or by bad faith, or whose own business operations have been marked by manipulation of assets or accounts or by bad faith. The bill also expressly provides that the OIR may suspend or revoke a COA if owners, managers, or controlling persons violate the change in third-party management approval procedures or persist in appointing disapproved managers.

Immediate Suspension Orders

Section 651.1141, F.S., is created to specify that certain statutory violations are grounds for the OIR to issue an immediate suspension order. Certain violations of the following statutes are grounds for the issuance of an immediate suspension order:

- s. 651.024, F.S., relating to acquisition.
- s. 651.035, F.S., relating to minimum liquid reserve requirements.
- s. 651.043, F.S., relating to approval of change in third-party management.
- s. 651.105, F.S., relating to examination and inspections.

Adult Protective Investigations

Section 415.1055 is amended to require that the Department of Children and Families provide OIR with a copy of investigation results whenever a CCRC resident is the alleged victim of abuse, neglect, or exploitation.

B. SECTION DIRECTORY:

- Section 1.** Amends s. 415.1055, F.S., relating to notification to administrative agencies.
- Section 2.** Amends s. 651.011, F.S., relating to definitions.
- Section 3.** Amends s. 651.012, F.S., relating to exempted facility; written disclosure of exemption.
- Section 4.** Amends s. 651.013, F.S., relating to chapter exclusive; applicability of other laws.
- Section 5.** Creates s. 651.0215, F.S., relating to consolidated application for provisional certificate of authority and certificate of authority; required restrictions on use of entrance fees.
- Section 6.** Amends s. 651.022, F.S., relating to provisional certificate of authority; application.
- Section 7.** Amends s. 651.023, F.S., relating to certificate of authority; application.
- Section 8.** Amends s. 651.024, F.S., relating to acquisition.
- Section 9.** Creates s. 651.0245, F.S., relating to application for the simultaneous acquisition of a facility and issuance of a certificate of authority.
- Section 10.** Amends s. 651.026, F.S., relating to annual reports.
- Section 11.** Amends s. 651.0261, F.S., relating to quarterly statements.
- Section 12.** Amends s. 651.033, F.S., relating to escrow accounts.
- Section 13.** Creates s. 651.034, F.S., relating to financial and operating requirements for providers.
- Section 14.** Amends s. 651.035, F.S., relating to minimum liquid reserve requirements.
- Section 15.** Creates s. 651.043, F.S., relating to approval of change in third-party management.
- Section 16.** Amends s. 651.051, F.S., relating to maintenance of assets and records in state.
- Section 17.** Amends s. 651.071, F.S., relating to contracts as preferred claims on liquidation or receivership.
- Section 18.** Amends s. 651.105, F.S., relating to examination and inspections.
- Section 19.** Amends s. 651.106, F.S., relating to grounds for discretionary refusal, suspension, or revocation of certificate of authority.

- Section 20.** Amends s. 651.114, F.S., relating to delinquency proceedings; remedial rights.
- Section 21.** Creates s. 651.1141, F.S., relating to immediate suspension orders.
- Section 22.** Amends s. 651.121, F.S., relating to continuing care advisory council.
- Section 23.** Amends s. 651.125, F.S., relating to criminal penalties; injunctive relief.
- Section 24.** Provides an effective date of January 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None. The bill increases the regulatory responsibilities of OIR with regard to CCRCs but the increased workload can likely be absorbed within existing resources.³⁵

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may result in increased costs to CCRC providers by requiring more filings and reports to the OIR as well as more disclosures to current and prospective residents. However, the bill contains a streamlined process for simultaneously acquiring a facility and obtaining a COA, and the bill contains a consolidated application process for obtaining a provisional COA and COA. These processes may offer CCRC providers cost savings. As for CCRC residents, better regulatory oversight of CCRCs may lead to fewer losses as a result of a facility or provider filing for bankruptcy, which has resulted in residents receiving little to no refund of their entrance fees. Given the difficulty in quantifying any increase in costs to CCRC providers and the impossibility in quantifying avoidance of future losses to CCRC residents, the impact on the private sector is indeterminate.

D. FISCAL COMMENTS:

None.

³⁵ Id.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill will require significant revisions to the rules and forms governing CCRCs to conform to the statutory changes.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 30, 2018, the Insurance and Banking Subcommittee considered one strike-all amendment, which was adopted, and reported the bill favorably as a committee substitute. The committee substitute makes the following deletions and modifications:

- Deletions:
 - Authorization for the OIR to examine affiliates of a CCRC provider.
 - Requirements for a CCRC provider to give certain notices to the residents' council such as advance notice of financing transactions to the residents' council and notice of change in ownership and disclosure of any distribution of assets or income between facilities owned by the provider.
 - New and amended processes for applications for licensing, acquisition, and expansion.
 - Expanded process for resident complaints filed with the OIR.
 - Prohibition on, and criminal penalties attached to, impaired or insolvent CCRCs accepting new continuing care contracts.
- Modifications:
 - Amended standards and requirements for a person to obtain a certificate of authority.
 - Amended reporting requirements for CCRC providers to the OIR.
 - Clarified authority for the OIR to approve or disapprove third-party management, not employee managers.
 - New requirement that a CCRC provide the OIR, upon request, documents and information for persons and entities related to the CCRC.
 - Amended scope of new authority for the OIR to take administrative action.
 - Other technical and clarifying changes.
 - Effective date change from July 1, 2018, to January 1, 2019.

On February 15, 2018, the Health and Human Services Committee considered one strike-all amendment, which was adopted, and reported favorably as a committee substitute. The committee substitute:

- Requires DCF to provide the Office of Insurance Regulation (OIR) a copy of its investigation of a claim of abuse, neglect, or exploitation of a vulnerable adult resident of a continuing care provider.
- Makes the occupancy trigger for a regulatory action level event an average over the 12-month period ending with the reporting date.
- Provides a consolidated application process for a person to obtain a provisional certificate of authority and certificate of authority.

- Provides an application process for the simultaneous acquisition of a facility and issuance of a certificate of authority.
- Authorizes OIR to require, under certain circumstances, that continuing care providers or facilities file monthly statements and other information.
- Removes the requirement that a continuing care provider immediately notify the OIR of the occurrence of an impairment or regulatory action level event.
- Gives contracts signed by the provider class 2 status for the purpose of prioritizing claims against a provider's estate in liquidation and receivership proceedings.
- Replaces the OIR immediate final order authority in the bill with authority for OIR to immediately suspend a provisional certificate of authority or a certificate of authority for certain statutory violations.
- Authorizes OIR to issue a cease and desist order for violations of ch. 651, F.S., or any OIR rules and agreements.
- Amends the membership of the Continuing Care Advisory Council by replacing the attorney position with an additional resident position.

The staff analysis has been updated to reflect the committee substitute as passed by the Health & Human Services Committee.