

CCRC Regulatory Changes Are Coming – Are You Prepared?

**LeadingAge Florida 52nd Annual Convention & Expo, June 30, 2015 3:30 – 4:30 PM
Presenter: Mary Ellen Early, LeadingAge Florida Public Policy Liaison**

2015 Legislative Session

- ▶ 1754 filed
- ▶ 231 (13%) Passed
- ▶ Lowest number since 2000
- ▶ HB 749 among those that passed



CCRC Stakeholders



FLORIDA OFFICE OF
INSURANCE REGULATION



Their Perspectives



RESIDENTS



PROVIDERS



REGULATORS



FLiCRA/LEADINGAGE FL CH. 651 TASK FORCE

- ▶ 4th such task force – three of which led to changes in Ch. 651
- ▶ 3 LeadingAge Florida members representing for-profit, multi and single site non-profit
- ▶ 3 FLiCRA members representing single site non-profit, for-profit multi and non-profit multi
- ▶ Staff from both associations
- ▶ Representatives from the Office of Insurance Regulation (OIR)
- ▶ Met monthly for one year to iron out an agreement
- ▶ Regular conference calls and meetings with LeadingAge Florida members to discuss and develop a position on Task Force proposals



OIR's Wish List

- ▶ *Require additional disclosures to prospective residents about refundable entrance fees and how they are treated in a bankruptcy.*
 - ▶ *Clarify refund provision related to like-kind and specific units.*
 - ▶ *Add language stating that officer, director, or manager of an insolvent CCRC at the time of and 2 years prior to the insolvency may no longer hold such a position in this state unless they can demonstrate that their actions did not contribute to the insolvency.*
 - ▶ *Prohibit a CCRC from filing for bankruptcy without OIR's approval.*
 - ▶ *Require rehabilitation before bankruptcy similar to what is required for traditional insurance companies.*
 - ▶ *Review the rights of trustees and lenders to ensure that OIR could take action against a provider that is not in compliance with Florida law regardless of what is in a CCRC's loan documents.*
 - ▶ *Eliminate entrance fee refunds that are tied to the next entrance fee received for a vacated unit.*
-



FLiCRA's Priorities

- ▶ Mandate a resident as voting board member.
- ▶ Eliminate lengthy delays in entrance fee refunds by mandating a specific maximum timeframe for making refunds.
- ▶ Give residents priority standing in a bankruptcy.
- ▶ *Revisit regulatory perks for accredited CCRCs.*
- ▶ *Strengthen financial disclosure requirements.*

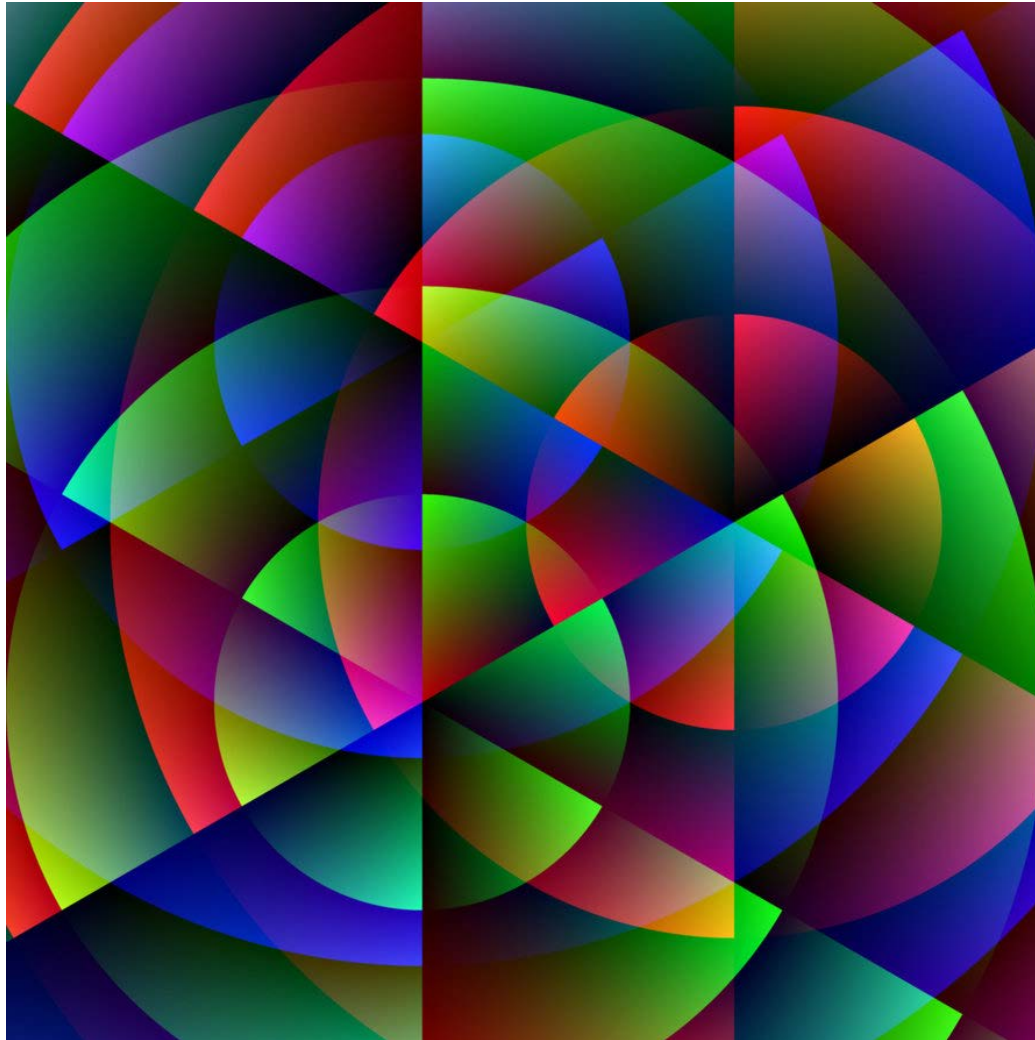


LeadingAge Florida Priorities

- ▶ Avoid changes to Ch. 65 I that would increase costs to contract holders.
- ▶ Avoid changes that could make it more difficult to finance or refinance a CCRC.
- ▶ Retain as much flexibility as possible so that business models are not disrupted.
- ▶ Oppose a resident on the board mandate.
- ▶ Codify in law authority to use contracts tying refund to occupancy of like/similar unit.



The Outlook



Regulatory Reform Bill

- ▶ HB 749, sponsored by Rep. Charles Van Zant, R-Palatka, passed the House with unanimous approval on April 16.
- ▶ Senate substituted the House bill for CS/SB 1126 by Sen. Thad Altman, R-Indian River, and passed it unanimously on April 24.
- ▶ The bill passed with one technical amendment and one substantive amendment that deleted FLiCRA's proposed language related to resident standing in a bankruptcy.
- ▶ Signed into law by Gov. Scott on June 10, 2015.
- ▶ Takes effect on October 1, 2015.



Traditional Entrance Fee Contracts

- ▶ Must pay refunds 90 days after the contract is terminated and unit is vacated versus current 120 days after resident gives notice to terminate.
- ▶ Applies to contracts entered into on or after January 1, 2016.
- ▶ Residents who sign a contract before January 1 may voluntarily sign a contract addendum approved by OIR that provides for the revised refund provision.



Contracts with Refunds Contingent on Re-occupancy of Unit

- ▶ Phases out use of contracts that tie refunds to re-occupancy of the vacated unit.
- ▶ Gives CCRCs with these contracts until January 1, 2016 to change their business model and get new contracts approved.
- ▶ Prohibits OIR from approving new contracts with this language in it effective October 1, 2015.



Contracts with Refunds Contingent on “Sale” of Like/Similar Unit

- ▶ For contracts entered into on or after January 1, 2016, requires CCRCs that tie entrance fee refunds to next entrance fee received for a “like or similar unit” to make refunds for contracts that are not voluntarily terminated the earlier of:
 - ▶ 30 days after receipt of the next entrance fee received for a like or similar unit for which there is no prior claim; or
 - ▶ No later than a specified a maximum number of months or years as determined by the provider and specified in the contract.
- ▶ For contracts that are voluntarily terminated, the refund must be made within 30 days after receipt of the next entrance fee received for a like or similar unit for which there is no prior claim.
- ▶ Defines “like or similar unit.”



Like or Similar Unit

- ▶ Grouping of residential units categorized by characteristics such as:
 - Comparable square footage,
 - Number of bedrooms,
 - Location,
 - Age of construction,
 - Or a combination of these features as specified in the residency or reservation contract.

Must consist of at least 5% total number of residential units designated for independent living or 10 units, whichever is less. Groupings consisting of single-family homes may contain fewer than 10 units.



of CCRCs by Contract Type

- ▶ 7 – Currently Uses “Like” or “Similar Kind”
 - ▶ 5 – Previously Used “Like” or “Similar Kind” and Have Outstanding Contracts
 - ▶ 3 - Previously Used “Like” or “Similar Kind” and But Do Not Have Outstanding Contracts
 - ▶ 53 – Do Not Use “Like” or “Similar Kind”

 - ▶ Nationally -- 48% reported that they refund the entrance fee when the unit is reoccupied. Roughly one-quarter of providers refund the entrance fee after a fixed time period, regardless if the unit is reoccupied or not.
-



Accredited CCRCs

- ▶ Clarifies that a CCRC must be accredited without stipulation for OIR to waive quarterly reports or conduct audits every 5 years instead of the standard 3 years.
- ▶ The waiver of these regulatory options is at OIR's discretion and is not mandated.



Disclosure

- ▶ Requires the provider to give a copy of the final examination report and corrective action plan, if one is required by OIR, to the chair or officer of the governing body of the provider within 60 days of the issuance of the report.
- ▶ Requires OIR to notify the executive officer of the governing body in writing of all deficiencies identified during examinations/inspections.
- ▶ Requires CCRCs to provide a copy of the most recent third-party financial audit to the president or chair of the Residents' Council.



Bankruptcy

- ▶ Requires a facility that files for chapter 11 bankruptcy to include with its filing, the name and contact information of a designated resident selected by the Residents' Council for consideration to serve on the Creditors' Committee, if appropriate.
- ▶ Does not address bankruptcy in any other way.



Residents' Council

- ▶ Requires every CCRC to establish a Residents' Council.
- ▶ Clarifies that a Residents' Council is the formal liaison between residents and the provider and the forum for residents to submit issues or inquiries related to the quality of life and the cultural environment of the CCRC.
- ▶ Clarifies that the activities of the Residents' Council are independent of the provider, and the provider is not responsible for associated costs or ensuring compliance with Residents' Council responsibilities.



Residents' Council (continued)

- ▶ Requires a Residents' Council to adopt by-laws and governing documents that: (1) define how residents may submit issues and (2) include a reasonable timeframe for responding to resident issues and inquiries.
- ▶ Specifies that by-laws may include term limits to foster new leaders.



Resident Representation on Board

- ▶ Specifies that a CCRC may appoint at its sole discretion a resident to the Board or governing body, and stipulates that is the CCRC's responsibility and right to establish criteria for selecting that resident.



Summary

- ▶ Adds new consumer protections by strengthening requirements for refundable refunds.
- ▶ Phases out refunds tied to re-occupancy of the unit that is vacated
- ▶ Increases transparency for Residents and future Residents.
- ▶ Ensures Board's are informed of OIR actions.
- ▶ “Cleans up” other minor issues within statutory language.



Questions?



Other Bills that Affect CCRCs

- ▶ **HB 1001 – ALF Regulation**
- ▶ **SB 7018 – Ombudsman Restructuring**
- ▶ **HB 889 – Health Care Representative Designation**
- ▶ **HB 5 – Guardianship Reform**
- ▶ **HB 309 – Hospital Observation Stays**



What's in ALF Bill/HB 1001 by Rep. Ahern

▶ Enhanced Violations and Penalties

- ✓ Moratorium for failure to provide surveyors access to ALF.
- ✓ \$500 fine for non-compliance with employee background screening requirement.
- ✓ Denial/Revocation of license for two or more moratoria issued within a two-year period, two or more unrelated Class I violations during same survey/investigation or two or more Class I violations arising from separate surveys/investigations within 2-years.
- ✓ \$2,500 fine if an ALF terminates residency of an individual for exercising their rights pursuant to the Residents Bill of Rights



What's in HB 1001 (continued)

▶ Expansion of Medication-related Tasks in Standard ALFs by Trained Staff

- ✓ Assistance with insulin syringe pre-filled by a pharmacist or insulin pen pre-filled by manufacturer.
- ✓ Assistance with use of nebulizer.
- ✓ Assistance with glucometer.
- ✓ Assistance with anti-embolism stockings.
- ✓ Assistance with oxygen cannula but not titration.
- ✓ Assistance with vital signs.
- ✓ Assistance with colostomy bag.



What's in HB 1001 (continued)

- ▶ Reduces monitoring visits for ECC and LNS licensed facilities from:
 - ✓ Quarterly to twice a year for ECC and authorizes AHCA to waive one visit if facility had an ECC license for at least 2 years, has good regulatory history and no ombudsman complaints that results in a licensing citation; and
 - ✓ Twice a year to annually for LNS and authorizes AHCA to make the visit in conjunction with another inspection or waive the monitoring visit if facility had a LNS license for 2 years or more, has good regulatory history and no ombudsman complaints that results in a licensing citation.
 - ✓ Gives AHCA more time to focus on problem ALFs.
-



HB 1001 – Other Significant Changes

- ✓ Creates provisional ECC license for newly licensed ALFs.
 - ✓ Expands the role of a case manager for mental health residents residing in ALFs.
 - ✓ Requires local ombudsman council to conduct exit consultation with ALFs after administrative assessment to discuss issues/concerns.
 - ✓ Requires ALFs to inform residents that retaliatory action may not be taken when residents exercise their rights.
 - ✓ Increases the amount of individual resident cash from \$200 to \$500 for which a facility may provide safekeeping.
 - ✓ Expands consumer information website.
 - ✓ Effective July 1, 2015.
-



Ombudsman Restructuring

SB 7018 by Sen. Children, Families & Elder Affairs Committee HB293 by Rep. Roberson – effective July 1, 2015

- ✓ Removes responsibility of Governor to appoint Ombudsman and gives it to the DOEA Secretary.
 - ✓ Gives the state ombudsman sole authority to replace an ombudsman.
 - ✓ Specifies that after receiving training, an ombudsman becomes certified.
 - ✓ Requires the state ombudsman to create districts.
 - ✓ Expands the investigative role of the ombudsman to include exploitation.
 - ✓ Authorizes the ombudsman to assist with creation of Family and Resident Councils.
 - ✓ Specifies that ombudsman “may” disclose findings of an assessment to the facility rather than “shall.”
 - ✓ Requires ALFs to provide residents with the Ombudsman Council e-mail address and inform them of the right to advocate without retaliation.
-



Health Care Representative Designation

HB 889 by Rep. Wood/SB 1224 by Sen. Joyner

- ✓ Allows principle to designate whether health care surrogate may
 - make decisions without determination of incapacity or
 - only if the principle is incapacitated.
- ✓ Includes suggested health care surrogate form which offers the option.
- ✓ Effective October 1, 2015.



Guardianship Reform

HB 5 by Rep. Passidomo/ SB 318 Senator Diaz de la Portilla

- ✓ Filed in response to investigative report by the *Sarasota Herald-Tribune*.
- ✓ Prohibits abuse, exploitation or neglect of elderly ward.
- ✓ Clarifies responsibility of guardians.
- ✓ Effective October 1, 2015.



Hospital Observation Stays

HB 309 by Rep. Harrison/ SB 768 by Senator Gaetz

- ✓ Requires hospitals to notify patients of observation status in discharge papers.
- ✓ Takes effect on July 1, 2015

Observation stays are treated as outpatient services and often result in higher out-of-pocket expenses. They do not count toward 3-day hospital stay to qualify for Medicare coverage of skilled nursing or rehab services if needed.



In Closing...

**View Specific Bills or Follow the Legislature
while in Session**

Go to Florida



✓ www.leg.state.fl.us

