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 Committee on Fiscal Policy

BILL:	CS/SB 622
INTRODUCER:	Banking and Insurance Committee and Senator Yarborough
SUBJECT:	Continuing Care Contracts
DATE:	April 24, 2023
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Sanders	Betta	AEG	**Favorable**
3.	Johnson	Yeatman	FP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 622 revises many provisions of ch. 651, Florida Statutes, of the Insurance Code governing continuing care retirement communities[1] (CCRC), which are regulated by the Office of Insurance Regulation (OIR). The CCRCs provide lifelong housing, household assistance, and nursing care in exchange for a significant entrance fee and monthly fees. A CCRC can include an independent living apartment or house, as well as an assisted living facility or a nursing home. The CCRCs 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. The CCRCs appeal to older Americans because they offer an independent lifestyle for as long as possible but also provide the reassurance that, as residents age or become unable to care for themselves, they will receive the additional care they need.

The bill provides many changes relating to CCRCs, including regulatory oversight and transparency for residents.

[1] Continuing care retirement communities, also known as life plan communities, are a long-term care option for older people who want to stay in the same place through different phases of the aging process. American Association of Retired Persons (AARP), *Family Caregiving Basics, How Continuing Care Retirement Communities Work* (January 27, 2022), https://www.aarp.org/caregiving/basics/info-2017/continuing-care-retirement-communities.html (last visited April 12, 2023).

As it relates to regulatory oversight, the bill:

- Makes it easier for a provider to access escrowed resident fees as part of an expansion, allowing access to the escrowed funds once 75 percent of the proposed units have been reserved rather than once payment in full has been received for 50 percent of the units.
- Reduces the time for the OIR to approve or deny an expansion application from 45 days to 30 days from the date the application is deemed complete;
- Specifies when a provider is using an escrow account held pursuant to a trust indenture or mortgage lien to meet its minimum liquid reserve requirement, the trust indenture, loan agreement, or escrow agreement must require the provider, trustee, lender, escrow agent, or another person designated to act in their place to notify the OIR in writing at least 10 days before the withdrawal of any portion of the debt service reserve funds required to meet the provider's minimum liquid reserve requirement. Further, the notice must include an affidavit sworn to by the provider, the trustee, or a person designated to act in their place which includes the amount of the scheduled debt service payment, the payment due date, the amount of the withdrawal, the accounts from which the withdrawal will be made, and a plan with a schedule for replenishing the withdrawn funds;
- Removes the requirement for a provider to obtain prior approval from the OIR to withdraw funds from a debt service reserve required to be escrowed pursuant to a trust indenture of mortgage lien if the funds will be used to pay principal and interest payments;
- Expands the types of financial institutions that can provide a letter of credit to a provider to satisfy its minimum liquid reserve requirements by adding state-chartered financial institutions as well as federally-chartered financial institutions;
- Allows a provider to assess a cancellation penalty against a person who signs a residency contract and rescinds it within seven days if the person had previously signed a reservation agreement and did not cancel it within 30 days; and
- Requires the OIR to commence examinations of CCRCs within 12 months after the end of the most recent fiscal year covered by the examination. Further, the scope of the examination may include events subsequent to the end of the most recent fiscal year and the events of any prior period, which affects the present financial condition of the provider.

As it relates to transparency for residents, the bill:

- Clarifies a resident is eligible to participate in residents' council matter, including elections, if the person meets the definition of a resident, as provided in s. 651.011, F.S.;
- Requires a provider that owns or operates more than one facility in Florida to have a designated resident representative at each facility;
- Requires that the designated resident representative to be notified by the provider at least 14 days in advance of any meeting of the full governing body at which the annual budget and proposed changes in resident fees or services are on the agenda or will be discussed so that the resident can attend and participate in that portion of the meeting;
- Requires each facility to provide written notice to the president or chair of the residents' council within 10 business days after a change in management; and
- Requires each facility to provide a copy of the OIR final examination report and corrective action plan, if applicable, to the president or chair of the residents' council within 60 days after issuance of the report.

The bill has a significant negative impact on state revenues and expenditures. See Section V. Fiscal Impact Statement.

II. Present Situation:

Continuing Care Retirement Communities (CCRC)

A provider[2] or a CCRC offers shelter and nursing care or personal services upon the payment of an entrance fee.[3] The CCRCs offer a transitional approach to the aging process, accommodating residents' changing level of care. A CCRC can include an independent living apartment or a house, as well as an assisted living facility or a nursing home. The CCRCs 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.[4] A CCRC enters into contracts with seniors (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 one million dollars.[5]

Regulation of CCRCs

In Florida, regulatory oversight responsibility of CCRCs is shared between the Agency for Health Care Administration (AHCA) and the Office of Insurance Regulation (OIR).[6] The OIR regulates CCRC providers[7] as specialty insurers. The 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.[8] There are currently 70 licensed continuing care retirement communities in Florida.[9]

Oversight by the Office of Insurance Regulation

The OIR has primary responsibility to license, regulate, and monitor the operation of CCRCs and to determine facilities' financial condition and the management capabilities of their managers and owners.[10] Continuing care services are governed by a contract between the facility and the resident of a CCRC, which is subject to approval by the OIR.[11] As part of the regulation of CCRCs, the OIR reviews applications for licensure, reviews expansion applications, conducts solvency monitoring through the review of financial statements and other documents, monitors minimum liquid reserve levels, and conducts examinations of each facility every three to five

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[2] Section 651.011(23), F.S., defines a provider as an owner or operator that provides continuing care.
[3] Section 651.011(13), F.S.
[4] Sections 651.057 and 651.118, F.S.
[5] Office of Insurance Regulation, *Senate Bill 622 Agency Legislative Analysis* (Feb. 15, 2023) (on file with Senate Committee on Banking and Insurance).
[6] Chapter 651, F.S., and s. 20.121, F.S.
[7] Section 651.011(12), F.S., a provider means an owner or operator.
[8] Agency for Health Care Administration, *available at* https://quality.healthfinder.fl.gov/index.html (last viewed April 12, 2023) and s. 651.118, F.S.
[9] Office of Insurance Regulation, *Presentation to the Continuing Care Advisory Council* (2022), *available at* https://floir.com/docs-sf/default-source/continuing-care-retirement-communities/2022ccacpresentation.pdf?sfvrsn=5709d51b_2 last visited (April 12, 2023).
[10] *See* ss. 651.021, 651.22, and 651.023, F.S.
[11] Sections 651.055 and 651.057, F.S.

years. It is a felony of the third degree for any person to maintain, enter into, or perform any continuing care or continuing care at-home contract without actually having a valid provisional Certificate of Authority (COA) or COA. One may not avoid such criminal liability by simply being in pursuance of a COA.[12]

In order to operate a CCRC in Florida, a provider must generally obtain from the OIR a certificate of authority predicated upon first receiving a provisional certificate of authority.[13] A provisional certificate of authority is issued once a provider meets the requirements prescribed in s. 651.023, F.S. The application process for a provisional certificate of authority and a certificate of authority involves submitting audited financial reports, feasibility studies, copies of contracts, and other information.[14] Further, the applicant must provide evidence the applicant is reputable and of responsible character.[15]

The issuance of a provisional COA allows the applicant to collect entrance fees and reservation deposits from prospective residents. All entrance fees and reservation deposits must be placed in an escrow account or on deposit with the Department of Financial Services (DFS).[16] The requirements for a provisional COA application and a COA application[17] require that the feasibility study must show projections for the first five years of operations. For a provisional COA, the preparer of the feasibility study may be the provider or a contracted third party.[18] Like the provisional COA application, an application for a COA requires the submission of various information, such as an audited financial report. For a COA application, a feasibility study must be prepared by an independent consultant. If the feasibility study is prepared by an independent certified public accountant (CPA), it must contain an examination opinion[19] or a compilation report[20] containing financial forecasts and projections.

A COA may not be issued until documentation evidencing the project has a minimum of 50 percent of the units reserved for which the provider is charging an entrance fee is provided to

[12] Section 651.125, F.S,
[13] Section 651.022, F.S.
[14] See ss. 651.021-651.023, F.S.
[15] Section 651.022(2)(c), F.S.
[16] Section 651.023(5), F.S.
[17] Section 651.023, F.S.
[18] Section 651.022 (3)(j), F.S., provides the preparer of the feasibility study for a provisional certificate of authority (COA) may be the provider or a contracted third party.
[19] This is undefined term in ch. 651, F.S.
[20] An audit is the highest level of assurance service a certified public accountant (CPA) performs and is intended to provide a user comfort on the accuracy of the financial statements. The CPA performs procedures in order to obtain "reasonable assurance" (defined as a high but not absolute level of assurance) about whether the financial statements are free from material misstatement. In contrast, the CPA does not obtain any assurance for a compilation because the CPA is not required to verify the accuracy or completeness of the information provided or otherwise gather evidence for the purposes of expressing an audit opinion or a review conclusion. The compilation report states the CPA did not audit or review the financial statements and accordingly does not express an opinion, a conclusion or provide any assurance on them. American Institute of Certified Public Accountants, *Guide to Financial Statement Services: Compilation, Review and Audit*, *available at* https://us.aicpa.org/content/dam/aicpa/interestareas/privatecompaniespracticesection/qualityservicesdelivery/keepingup/downloadabledocuments/financial-statement-services-guide.pdf (last visited April 12, 2023)

the OIR. For a COA application, in order for a unit to be considered reserved, the provider must collect a minimum deposit of the lesser of $40,000 or 10 percent of the entrance fee.[21]

Applications

Consolidated Application for a Provisional Certificate of Authority and a Certificate of Authority (COA) Applications

Section 651.0215, F.S., provides a consolidated application process, including requirements for handling escrowed funds, in order for an applicant to obtain a COA without first obtaining a provisional COA. The applicant must provide a feasibility study prepared by an independent consultant[22] as well as audited financial statements,[23] and other specified information to the OIR. If the feasibility study is conducted by an independent certified public accountant, it must contain an examination report, or a compilation report[24] acceptable to the OIR.

Expansion Applications

Section 651.0246, F.S., specifies the application process and information required to obtain approval from the OIR for expansion. This section also provides automatic approval is granted for expansions up to 35 percent of the existing units if the provider exceeds the statewide median for days cash on hand, debt service coverage ratio, and total facility occupancy for the most recent two consecutive reporting periods. In order to obtain this automatic approval, the provider must submit a letter to the OIR indicating the planned number of units, the proposed sources and uses of funds, and an attestation they understand and will comply with all minimum liquid reserve and escrow account requirements.

A feasibility study, prepared by an independent certified public accountant, is required to be submitted as part of an expansion application. The study includes an independent evaluation and examination opinion as to whether the assumptions contained in the study are reasonable and the project is feasible.[25] A minimum of 75 percent of the moneys paid for all or any part of an initial entrance fee or reservation deposit collected for units in the expansion and 50 percent of the moneys paid for all or any part of an initial fee collected for continuing care at-home contracts in the expansion must be placed in an escrow account or on deposit with the Department of Financial Services (DFS), as prescribed in s. 651.033, F.S.[26]

The provider may secure release of the moneys held in escrow within seven days after the receipt by the OIR of an affidavit by the provider the following conditions have been satisfied:

- A certificate of occupancy has been issued;
- The provider has received payment in full for at least 50 percent of the total units of a phase or of the total of the combined phases constructed;
- Documents evidencing commitments have been secured or the provider's long-term financing has been approved by the OIR; and

[21] Section 651.023(4)(b), F.S.
[22] Section 651.0215(2)(b), F.S.
[23] Section 651.0215(2)(f), F.S.
[24] *See supra* note 19.
[25] Section 651.0246(2)(a), F.S.
[26] Section 651.0246(3), F.S.

- Documents evidencing the provider has sufficient funds to meet the minimum liquid reserve requirements of s. 651.035, F.S., which may include funds deposited in the initial entrance fee account.[27]

Within 30 days after receipt of an application for expansion, the OIR must examine the application and notify the applicant in writing, requesting any additional information.[28] Within 15 days after the OIR receives all the requested information, the OIR must notify the applicant in writing that the requested information has been received.[29] If the OIR fails to notify the applicant within the 15-day period, the application is deemed complete for purposes of the review.[30] Within 45 days of the OIR deeming the application complete, the OIR must complete its review and approve or deny an expansion.[31]

Continuing Care Contracts

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 four years of occupancy in the CCRC.[32] However, some contracts may exceed this requirement and contain minimum refund provisions that guarantee a refund of a specified portion of the entrance fee upon the death of the resident or termination of the contract regardless of the length of occupancy by the resident.[33] The CCRC may assess a forfeiture fee equal to two percent of the entrance fee if the resident cancels his or her reservation after 30 days for reasons that are within the control of the resident.[34]

Reserving and Escrow Requirements

Section 651.035, F.S., which contains minimum liquid reserve requirements, requires 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 and to pay property taxes out of such escrow. Each facility is required to maintain a minimum liquid reserve for operations, debt service, and facility upkeep based on the facility's expenses and debt service obligations. Providers are required to obtain approval from the OIR prior to withdrawing all or a portion of the funds used to satisfy a facility's minimum liquid reserve requirement. Facilities who want to use a letter of credit to fund their minimum liquid reserve are limited to those institutions that participate in the State of Florida Treasury Certificate of Deposit Program.[35]

A provider may withdraw funds held in escrow without the approval of the OIR if the amount held in escrow exceeds the requirements of s. 651.035, F.S., and if the withdrawal will not affect compliance with this section.[36] Any other proposed withdrawals are subject to approval by the

[27] Section 651.0246((4), F.S.
[28] Section 651.0246(5)(a), F.S.
[29] *Id*.
[30] *Id*.
[31] Section 651.0246(6), F.S.
[32] Section 651.055, F.S.
[33] *See supra* note 4.
[34] *Id.*
[35] Section 651.035(5), F.S.
[36] Section 651.035(7)(a), F.S.

OIR. Within 30 days after a filing for such a request for withdrawal is deemed complete, the OIR must notify the provider of its approval or disapproval of the request.[37]

Any increase in the minimum liquid reserve must be funded no later than 61 days after the minimum liquid reserve calculation is due to be filed.[38] If the minimum liquid reserve is less than the required minimum amount at the end of any fiscal quarter due to a change in the market value of the invested funds, the provider must fund the shortfall within 10 business days.[39] Further, the section authorizes the OIR authority to require the transfer of reserve funds into the custody of the DFS Bureau of Collateral Management if the OIR finds the provider is impaired or insolvent in order to ensure the safety of those assets.[40]

Section 651.033, F.S., contains requirements for a provider's escrow account and the duties that apply to escrow agents, including the prohibition an escrow agent may not release or otherwise allow the transfer of funds without the written approval of the OIR, unless the withdrawal is from funds in excess of specified statutory requirements.

Financial Reporting

Section 651.026, F.S., requires the provider to annually submit the management's calculation of the provider's debt service coverage ratio, occupancy, and days cash on hand. The OIR is required to publish, on its website by August 1 of each year, an industry report for the preceding calendar year that contains, for all providers, the median days cash on hand, median debt service coverage ratio, and median occupancy rate by setting (independent living, assisted living, skilled nursing, and the entire facility).

Section 651.0261, F.S., requires each provider must submit a quarterly unaudited financial statement of the provider or of the facility, days cash on hand, occupancy, debt service coverage ratio, and a detailed listing of the assets maintained in the liquid reserves within 45 days after the end of each fiscal quarter.[41] This information is intended for the OIR to use for monitoring the financial condition of a provider or facility on an ongoing basis. If a CCRC falls below the thresholds set for two or more of the key indicators (days cash on hand, debt service coverage ratio, or occupancy) at the time of the quarterly report, the CCRC must submit to the OIR an explanation of the circumstances and a description of the actions the CCRC will take to meet the requirements. The last quarterly statement for a fiscal year is not required if a provider does not have a regulatory action level event, an impairment, or a corrective action plan pending.

Section 651.0261, F.S., authorizes the OIR to require monthly reporting of certain information if it finds such information is needed to properly monitor the financial condition of a provider or facility, or is otherwise needed to protect the public interest.[42] The section also specifies certain circumstances under which monthly filings may be required, such as a provider being subject to delinquency, receivership, or bankruptcy proceedings.[43]

[37] Section 651.035(7)(b), F.S.
[38] Section 651.035(10), F.S.
[39] Section 651.035(11), F.S.
[40] Section 651.035(8), F.S.
[41] Section 651.0261(1), F.S.
[42] Section 651.0261(2), F.S.
[43] Section 651.0261(3), F.S.

Financial Indicators and Solvency Framework

***Regulatory Action Level Event*[44]**

Section 651.034, F.S., provides a framework of required actions if a provider falls below specified levels of three key indicators at the time of the annual report: occupancy, days cash on hand[45], and the debt service coverage ratio[46]. 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 following three key indicators at the time of the annual report, it is considered a "regulatory action level event":

- The provider's debt service coverage ratio is less than the greater of the minimum ratio specified in the provider's bond covenants or lending agreement for long-term financing or 1.20:1 as of the most recent annual report filed with the OIR; or, if the provider does not have a debt service coverage ratio required by its lending institution, the provider's debt service coverage ratio is less than 1.20:1 as of the most recent annual report filed with the OIR;
- The provider's days cash on hand is less than the greater of the minimum number of days cash on hand specified in the provider's bond covenants or lending agreement for long-term financing or 100 days. If the provider does not have a days cash on hand required by its lending institution, the days cash on hand may not be less than 100 as of the most recent annual report filed with the OIR; or,
- The occupancy of the provider's facility is less than 80 percent averaged over the 12-month period immediately preceding the annual report filed with the OIR.

If the provider is a member of an obligated group having cross-collateralized debt, the obligated group's debt service coverage ratio and days cash on hand must be used to determine if a regulatory action level event has occurred. In the event a regulatory action level event occurs, 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 the OIR determines are required. For new CCRCs, the OIR may exempt a provider from the consequences of a regulatory action level event or impairment until the earlier of the CCRC reaching stabilized occupancy, the time projected to achieve stabilized occupancy, or five years from the date of issuance of the COA.

Impairment

The bill creates a definition for "impaired" or impairment" to allow for earlier intervention by the OIR in an effort to prevent harm to Florida consumers. The impairment framework has been

[44] Section 651.011(25), F.S., defines "regulatory action level event."

[45] "Days cash on hand" is an accounting term to account for the number of days an organization can continue to pay operating expenses, given the amount of cash available. AccountingTools, *What Is Days Cash on Hand?* (April 2, 2023), https://www.accountingtools.com/articles/days-cash-on-hand.html#:~:text=What%20is%20Days%20Cash%20on,generating%20any%20cash%20from%20sales (last visited April 12, 2023).

[46] Debt service ratio applies to corporate, government and personal finance. In relation to corporate finance, the debt-service coverage ratio (DSCR) is a measurement of the firm's available cash flow to pay current debt obligations. The DSCR shows investors whether a company has enough income to pay its debts. Investopedia, Jason Fernando, *Debt-Service Coverage Ratio (DSCR): How to Use and Calculate It* (March 23, 2023), https://www.investopedia.com/terms/d/dscr.asp (last visited April 12, 2023).

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 is considered impaired if it fails to hold the minimum liquid reserve.[47] Additionally, a provider without mortgage or bond financing would be considered impaired if it does not maintain the specified level of days cash on hand, and a provider with mortgage or bond financing would be considered impaired if it does not maintain specified levels of days cash on hand and debt service coverage ratio.[48] If the provider is a member of an obligated group having cross-collateralized debt, the obligated group's debt service coverage ratio and days cash on hand must be used to determine if the provider is impaired.[49] The OIR may forego taking action for up to 180 days after an impairment occurs if the OIR finds there is a reasonable expectation the impairment may be eliminated within the 180-day period.

Sections 651.022 and 651.023, F.S., 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, F.S., requires that a provider, determined by the OIR to not be in compliance with ch. 651, F.S., must submit to the OIR and the Continuing Care Advisory Council a plan for obtaining compliance with ch. 651, F.S., and solvency. The OIR is not prohibited from taking other regulatory action while a plan for obtaining compliance or solvency is under review.

Section 651.114, F.S., provides circumstances under which the OIR's remedial rights are not subordinate to the rights of a trustee or lender. Those circumstances include the following:

- The provider engaged in the misappropriation, conversion, or illegal commitment or withdrawal of minimum liquid reserve or required escrowed funds;
- The provider refused to be examined by the OIR; or
- The provider refused to produce any relevant accounts, records, and files requested as part of an examination.

Even if the OIR's remedial rights are suspended, an impaired provider must make available to the OIR copies of any corrective action plan approved by the trustee or lender to cure the impairment.

Section 651.1065, F.S., requires an impaired or insolvent provider to receive prior approval of the OIR before writing new contracts if its proprietor, general partner, member, officer, director, trustee, or manager knows, or reasonably should know, the CCRC is impaired or insolvent, even if the provider's COA has not been formally suspended. This is intended to help protect potential residents who may be considering investing substantial funds to enter into a CCRC contract. The OIR will have discretion to allow the issuance of new contracts where safeguards are adequate. Violating this section is a felony of the third degree.

[47] Section 651.011(15)(a), F.S.
[48] Section 651.011(15)(b), F.S.
[49] Section 651.011(15), F.S.

Examinations of Providers

Section 651.105, F.S., requires the OIR to examine at least once every three years any applicant for a COA and any provider engaged in the execution of care contracts or engaged in the performance of obligations under such contracts. If a provider is accredited under s. 651.028, F.S., such examinations must occur at least once every five years. Further, any duly authorized officer, employee, or agent of the office may have access to, and examine any records, with or without advance notice, to secure compliance with, or to prevent a violation of, any provision of this chapter.[50]

Rights of Residents; Transparency

Rights of Residents

The OIR is also authorized to discipline a facility for violations of residents' rights.[51] 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.[52]

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.[53] CCRCs are required to maintain and make available certain public information and records, such as records of all cost and inspection reports pertaining to that facility, a concise summary of the last examination report issued by the OIR, and a summary of the most recent annual statement.[54]

Disclosures and Notices

Chapter 651 requires provider to give many types of notices to the residents or residents' council. These assists residents and prospective residents to remain apprised of the status and stability of the provider and to take action to protect their interests.

A provider is required to furnish the following information to the chair of the residents' council: a notice of the issuance of any examination reports; a notice of the initiation of any legal or administrative proceedings by the OIR or the DFS; a notice of any change in ownership filing submitted to the OIR; any master plans approved by the provider's governing board; and any plans for expansion or phased development.[55] Additionally, a provider must post in a prominent place in the facility a notice that contains the OIR's website and phone number and the website

[50] Section 651.105(2), F.S.
[51] Section 651.083, F.S.
[52] *Id*.
[53] Section 651.081, F.S.
[54] Section 651.091, F.S.
[55] Section 651.091(2), F.S.

and toll-free consumer helpline for the DFS Division of Consumer Services (Division).[56] The notice must also state that either the OIR or the Division may be contacted for the submission of inquiries and complaints with respect to potential violations of law.

Section 651.091(3), F.S., requires the following disclosures to prospective residents: a notice of the issuance of any examination reports; a notice of the initiation of any legal or administrative proceedings by the OIR or the DFS; notice that, if the resident does not exercise the right to rescind a continuing care contract within seven days after executing the contract, the resident's funds held in escrow will be released to the provider; a statement that distribution of the provider's assets or income may occur or a statement that such distribution will not occur; and a disclosure of any holding company system or obligated group of which the provider is a member. Additionally, the provider must obtain written acknowledgment the prospective resident or his or her legal representative received the disclosures required by s. 651.091(3), F.S.

Section 651.055(3), F.S., requires contracts with a resident disclose CCRC facilities in Florida are regulated by the OIR. Additionally, the contract disclosure must state "[t]he financial structure of a continuing care provider can be complex, and the decision to enter into a contract for continuing care is a long-term commitment between a resident and the continuing care provider. You may wish to consult an attorney or financial advisor before entering into such contract."

Section 651.111, F.S., provides for the handling of resident complaints against providers, including a requirement the OIR provide a written acknowledgement of any complaint within 15 days of receipt of the complaint and a written statement to the complainant specifying any violations of law and any actions taken. Such additional procedures will keep residents better informed as to the status and outcome of a complaint.

Continuing Care Advisory Council

Section 651.121, F.S., creates the council and provides membership and duties of the ten members comprising the council is an advisory contains requirements for membership of the Continuing Care Advisory Council. The members include three members representing facilities with active COAs, one representative of the business community, one representative of the financial community, a certified public accountant, and four residents who hold continuing care contracts with a facility certified in Florida.

Department of Financial Services' Oversight of CCRCs

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.[57] Typically, residents will contact the DFS Division of Consumer Services, which receives and resolves complaints involving products and persons regulated by the OIR or the DFS.[58]

[56] Section 651.091, F.S.
[57] Rules 69O-193.062 and 69O-193.063, F.A.C.
[58] Section 624.307, F.S.

Chapter 631, F.S., governs the rehabilitation and liquidation process for insurers in Florida. Federal law provides insurance companies are not eligible to be a debtor in federal bankruptcy proceedings and are instead subject to state laws regarding receivership.[59] In Florida, the Division of Rehabilitation and Liquidation within the DFS is responsible for managing insurance companies placed into 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.

III. Effect of Proposed Changes:

Section 1 amends s. 651.011, F.S., to create definitions for the following terms:

- "Designated resident representative" means a resident elected by the residents' council to represent residents on matters related to changes in fees or services as specified in s. 651.085(2) and (3); and
- "Residents' council" means an organized body representing the resident population of a certified facility. A residents' council shall serve as a liaison between residents and the appropriate representative of the provider.

Section 2 amends s. 651.0246, F.S., relating to expansions. Subsection (2)(a) is amended to clarify the certified public accountant is responsible for preparing an independent evaluation and examination opinion for the first five years of operation.

Subsection (4) is revised to allow a provider to have access to escrowed resident fees when the provider has collected a reservation deposit for at least 75 percent of the proposed units for which an entrance fee is to be charged. Further, a provider must use the funds for the sole purpose of paying secured indebtedness as specified in the feasibility study. The minimum reservation deposit must be the lessor of $40,000 or 10 percent of the then-current entrance fee for the unit being reserved. If the expansion is to be completed in multiple phases, the 75 percent reservation requirement applies separately to each phase of the expansion.

Currently, the provider may have access to the escrowed funds if payment in full has been received for 50 percent of the units of a phase or of the total of the combined phases constructed. Subsection (6) is revised to reduce the time for the Office of Insurance Regulation (OIR) to approve or deny an expansion application from 45 days to 30 days from the date the application is deemed complete.

Section 3 amends s. 651.026, F.S., relating to annual reports, to clarify if a provider's financial statements are consolidated or combined with the financial statements of additional entities owned or controlled by the provider, the financial report must include as supplemental information a separate balance sheet, statement of income and expenses, statement of equity or fund balance, and statement of changes in cash flow for the individual provider and each additional entity comprising the consolidated or combined financial report. A similar

[59] The Bankruptcy Code expressly provides that "a domestic insurance company" may not be the subject of a federal bankruptcy proceeding. 11 U.S.C. s. 109(b)(2). The exclusion of insurers from the federal bankruptcy court process is consistent with federal policy generally allowing states to regulate the business of insurance. See 15 U.S.C. s. 1012 (McCarran-Ferguson Act).

supplemental presentation and reporting requirement is created for a provider that is a member of an obligated group.

Section 4 amends s. 651.033, F.S., relating to escrow accounts, to expand the number of eligible escrow agents by removing the requirement a federal financial institution must have a branch in Florida. The section also provides technical changes. The section also authorizes a provider to hold a resident's check for a seven day rescission period without receiving a request from the resident.

Section 5 amends s. 651.034, F.S., relating to financial and operating requirements. Subsection (6) extends the time the OIR may exempt a provider from certain regulatory actions, such as the submission of a corrective action plan, when the provider's financial results, do not meet certain levels. The change in time frame is extended from five years from the date the provider received its certificate of occupancy to five years after the end of the provider's fiscal year in which the certificate of occupancy was issued.

Section 6 amends s. 651. 035, F.S., relating to minimum liquid reserves. The section eliminates the requirement for a provider to obtain prior approval from the OIR to withdraw funds from a debt service reserve that required to be escrowed pursuant to a trust indenture of mortgage lien if the funds will be used to pay principal and interest payments.

Subsection (1) requires when a provider is using an escrow account held pursuant to a trust indenture or mortgage lien to meet its minimum liquid reserve requirement, the trust indenture, loan agreement, or escrow agreement must require that the provider, trustee, lender, escrow agent, or another person designated to act in their place must notify the OIR in writing at least 10 days before the withdrawal of any portion of the debt service reserve funds required to meet the provider's minimum liquid reserve requirement. The notice must include an affidavit sworn to by the provider, the trustee, or a person designated to act in their place which includes the amount of the scheduled debt service payment, the payment due date, the amount of the withdrawal, the accounts from which the withdrawal will be made, and a plan with a schedule for replenishing the withdrawn funds. If the plan is revised by a consultant that is retained as prescribed in the provider's financing documents, the revised plan must be submitted to the OIR within 10 days after approval by the lender or trustee.

Subsection (5) also expands the types of financial institutions that can provide a letter of credit to a provider, and can be used to satisfy its minimum liquid reserve requirement by adding Florida state-chartered financial institutions and specified federal financial institutions

Section 7 amends s. 651.055, F.S., relating to continuing care contracts; right to rescind. The section is amended to authorize a provider to assess a cancellation penalty against a person who signs a residency contract and rescinds it within seven days, if the person had previously signed a reservation agreement and did not cancel it within 30 days. A prospective resident who has signed a reservation agreement and cancels their agreement after 30 days is generally subject to a cancelation penalty. Currently, a person who rescinds a residency contract receives a full refund. As a result, a resident who wants to avoid the reservation agreement cancellation penalty may sign a residency contract and then rescind the contract within seven days, and receive a full

refund. The change in this section would not allow this type of transaction to avoid the cancellation penalty.

Section 8 amends s. 651.081, F.S., relating to residents' council, to clarify a residents' council can establish and maintain its own governance documents, such as bylaws or operating agreements, policies, and operating procedures, which may include establishment of committees. It also gives a resident the right to participate in residents' council matters including elections. The section removes the provision that the residents must allow for open meetings when appropriate.

Section 9 amends s. 651.083, F.S., relating to residents' rights, to clarify that residents have access to ombudsman staff.

Section 10 amends s. 651.085, F.S., relating to quarterly meetings between residents and the governing body of the provider, to require each continuing care retirement community (CCRC) have its own designated resident representative and to clarify the designated resident representative must be a resident and is to be nominated and elected by the residents' council.

This section also clarifies a representative of a provider must notify the designated resident representative at least 14 days in advance of any meeting of the full governing body at which the annual budget and proposed changes in resident fees or services are on the agenda or will be discussed so that the resident can attend and participate in that portion of the meeting. The section also requires any resident who serves as a member of a board or governing body of the facility to perform their duties in a fiduciary manner, including the duty of confidentiality, duty of care, duty of loyalty, and duty of obedience, as required of any individual serving on the board or governing body.

Section 11 amends s. 651.091, F.S., relating to availability of reports and records, to require each facility to provide a copy of the final examination report and corrective action plans, if applicable, to the executive officer of the governing body of the provider and the president or chair of the residents' council within 60 days after issuance of the report. It also requires the CCRC to notify the president or chair of the residents' council in writing of a change in management within 10 business days after the change, and to disclose to prospective residents whether the provider has one or more residents serving on its board or governing body and whether that individual has a vote or is serving in a nonvoting, ex officio capacity.

Section 12 amends s. 651.105, F.S, relating to examinations, to require each examination by the OIR, must cover the preceding three or five years of the provider, whichever is applicable, and must be commenced with 12 months after the end of the most fiscal year covered by the examination. The section provides the scope of the OIR's examination may include events subsequent to the end of the most recent fiscal year and the events of any prior period which relate to possible violations of this chapter or which affect the present financial condition of the provider. Further, the OIR is required to conduct an interview with the current president or chair of the residents' council or their designee, as part of the examination.

Section 13 and **Section 14** amends ss. 651.012 and 651.0261, F.S., respectively, to provide conforming changes.

Section 15 provides this act takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Providers will have access to escrowed resident fees as part of expansion sooner since the provider can access the escrowed funds once 75 percent of the proposed units have been reserved rather than only allowing access if payment in full has been received for 50 percent of the units.

The bill expands the number of eligible escrow agents by removing the requirement the financial institution must have a branch in Florida.

The bill expands the types of financial institutions that can provide a letter of credit to a provider to use to satisfy its minimum liquid reserve requirement by adding Florida state-chartered financial institutions and specified federal, financial institutions.

C. Government Sector Impact:

In order to implement the provisions of the bill, the Office of Insurance Regulation (OIR) has indicated a need for one additional Financial Control Analyst for continuing care

retirement communities (CCRC) examinations and investigations of consumer inquiries and complaints. For this position, the OIR will require an appropriation of $101,051 in recurring funds and $4,682 in nonrecurring funds from the Insurance Regulatory Trust Fund. The estimated cost includes $90,000 in recurring funds for salaries and benefits, 60,000 in rate, as well as $11,051 in recurring funds and $4,682 in nonrecurring funds to fill the requested position.[60]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The term "office" refers to the Office of Financial Regulation. However, the term "office" is not defined in ch. 651.011, F.S. The term is used throughout ch. 651, F.S.

The term "examination opinion" is not defined in ch. 651, F.S. The term is used in ss. 651.023 and 651.0246, F.S.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 651.011, 651.0246, 651.026, 651.033, 651.034, 651.035, 651.055, 651.081, 651.083, 651.085, 651.091, 651.105, 651.012, and 651.0261.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on April 5, 2023:
The CS:

- Removes provisions allowing the Office of Insurance Regulation to waive financial reporting requirements under specified circumstances.
- Removes provision revising criteria for conducting feasibility study required as part of an expansion application.
- Revises financial reporting requirements as it related to consolidated or combined financial statements and an obligated group.
- Provides technical, conforming changes.

B. Amendments:

None.

[60] Email from Kevin Jacobs, Office of Insurance Regulation to Lisa Johnson, Senate Committee on Banking and Insurance, (April 4, 2023) (on file with Senate Committee on Banking and Insurance Committee).