

To: FLICRA Membership
From: Bennett Napier, CAE
Date: May 7, 2011
Re: 2011 End of Legislative Session Report

Continuing Care At Home/Without Walls Legislation

During the last week, Senate Bill 1340 was withdrawn from its last committee of reference and placed in a posture for reading by the full Senate. The Senate took up and passed House Bill 1037, the companion bill late Friday afternoon, the last day of the legislative session. It now awaits the Governor's signature and will become law on July 1st.

A bill signing ceremony by the Governor has been requested. Many thanks go out to Senator Ellyn Bogdanoff and Representatives Bembry and Passidomo who spearheaded the legislation. The unified advocacy from the Florida Life Care Residents Association and the Florida Association of Homes and Services for the Aging truly paid off.

The bill creates s. 651.057, F.S., governing continuing care at home (CAAH) contracts. The bill creates authority to allow providers of continuing care services to offer CCAH contracts to consumers. The bill also creates a regulatory scheme to govern CCAH contracts, which is closely related to the regulation of CCRCs and continuing care contracts.

In addition to the provisions of s. 651.055, F.S., a provider offering CCAH contracts must disclose the following information in the contract:

- Whether transportation will be provided to residents for travel to and from the facility for services;
- That the facility is not liable to residents living outside of the facility beyond the delivery of services and future access to care;
- The mechanism for monitoring residents living outside of the facility;
- The policy for a resident relocating to a different residence and no longer in need of services from the current facility.

A provider offering CCAH contracts must also ensure that subcontractors providing services to residents are properly licensed or certified according to applicable law; include operating expenses in the calculation of the operating reserve; and include operating activities for CCAH contracts in the total operation of the facility when submitting financial reports to the OIR.

A provider who possesses a Certificate of Authority and wishes to offer CCAH contracts must:

- Submit a business plan with specific information, including, but not limited to, a description of services to be provided, fees to be charged, a copy of the CCAH contract, an actuarial study presenting the impact of providing CCAH contracts on the overall operation of the facility, a market feasibility study and sufficient documented interest in CCAH contracts to support the program;
- Demonstrate to the Office of Insurance Regulation that offering CCAH contracts will not put the provider in an unsound financial condition;
- Comply with s. 651.021(2), F.S., but allowing for an actuarial study to be substituted for a feasibility study; and
- Comply with all other requirements of chapter 651, F.S.

A provider offering CCAH contracts must have a facility licensed under chapter 651, F.S., and be in good standing to offer CCAH contracts. The facility must also have accommodations for independent living which are intended for individuals who do not require supervision. The combined total of outstanding continuing care and CCAH contracts allowed at a facility may be up to 1.5 times the combined number of independent living units, assisted living units, and nursing home units at the facility or four times the combined number of assisted living units and nursing home units at the facility. The number of independent living units at a facility must be equal to or greater than 10 percent of the first one hundred continuing care contracts and CCAH contracts issued by the facility, and 5 percent of the combined contracts beyond the first one hundred contracts issued by the facility.

Written approval is required from the OIR before constructing a new facility or marketing an expansion of an existing facility equivalent to the addition of at least 20 percent of existing units or 20 percent or more in the number of CCAH contracts. The 20 percent figure can be calculated based on the total of existing units and existing CCAH contracts. Expansion is defined as the construction of additional units or offering additional CCAH contracts, or a combination of both. If the expansion is solely for CCAH contracts, an actuarial study presenting the financial impact of the expansion may substitute for a feasibility study required of proposals for new construction.

In cases of an expansion of existing CCRC units or CCAH contracts, the bill requires a minimum of 75 percent of moneys paid for all or any part of an entrance fee for a CCRC and 50 percent of moneys paid for all or any part of an initial fee for a CCAH contract to be placed in escrow or on deposit with the department pursuant to s. 651.033, F.S.

The bill adds the term "continuing care at-home" to sections throughout chapter 651, F.S., where the term "continuing care" is found. The bill adds the definitions of "continuing care at-home", "nursing care", "personal services" and "shelter" to s. 651.011, F.S. Also, the bill expands the definition of "facility" to mean a place where continuing care is furnished and may include one or more physical plants on a primary or contiguous site or an immediately accessible site. The bill defines "primary or contiguous site" and "immediately accessible site". The added definitions are consistent with the provisions of the bill that allow for continuing care at-home and allow for services to be provided at a CCRC.

Assisted Living Facilities

House Bill 4045 previously reported on during the April 29th report passed the House and Senate and awaits the Governor's signature.

Nursing Home Tort Reform/Medicaid Reform

House Bill 661 and Senate Bill 1396 which dealt with "changes" to damages in nursing home liability claims were rolled into House Bill 7107 and 7109 which addresses Medicaid Managed Care.

Both bills passed the legislature and await the Governor's signature. These bills which are over 150 pages each addressed a number of reforms. Here are some highlights most relevant to continuing care residents. Again, many continuing care retirement communities do not have Medicaid beds in their skilled nursing centers but it is important to know some of the changes relative to eligibility requirements for low income seniors.

Limitation on Noneconomic Damages for Medicaid Providers

The bill amends s. 766.118, F. S., to create a limitation on noneconomic damages⁵² for negligence of practitioners⁵³ providing services and care to Medicaid recipients. The limitation will apply when a Medicaid recipient brings an action for personal injury or wrongful death alleging medical negligence by the practitioner. The amount of noneconomic damages is limited to \$300,000 per person; however, no practitioner individually will be liable for more than \$200,000.

Medicaid is created as three managed care programs:

- The Medicaid Managed Medical Assistance Program – primary and acute care
- The Long-Term Care Managed Care Program – residential and home and community based care, alone or paired with primary acute care for comprehensive coverage
- The Managed Long-term Care for Persons with Developmental Disabilities Program - – residential and home and community based care, alone or paired with primary acute care for comprehensive coverage

The Agency for Health Care Administration is responsible for administering the Long-term Care Managed Care Program, but may delegate specific duties to the Department of Elder Affairs and other state agencies. Implementation of the program shall begin July 1, 2012 with full implementation by October 1, 2013.

Medicaid recipients who are 65 years old or older or who are eligible for Medicaid by reason of a disability will be eligible for the long-term care program, subject to a wait-list prioritization and availability of funds. Additionally, the recipients must be determined by the CARES Program to require a nursing facility level of care.

A nursing facility level of care means the individual:

- Requires nursing home placement as evidenced by the need for medical observation throughout a 24 hour period and requires care to be performed on a daily basis under the direct supervision of a health professional of medically complex services because of mental or physical incapacitation; or
- Requires or is at imminent risk of nursing home placement as evidenced by the need for observation throughout a 24 hour period and requires care to be performed on a daily basis under the supervision of a health professional because of mental or physical incapacitation; or
- Requires or is at imminent risk of nursing home placement as evidenced by the need for observation throughout a 24 hour period and requires limited care to be performed on a daily basis under the supervision of a health professional because of mild mental or physical incapacitation.

For detailed information on particular bills, you can visit the Legislature's website at www.leg.state.fl.us and download and print copies of the final bill language adopted and legislative staff analyses of the legislation.