

President's Message



Communication and Connection - One of the best parts of serving as FLiCRA President this year has been the opportunities provided to meet with FLiCRA chapters at continuing care retirement

communities (CCRCs) throughout the state. Beginning within a month of being named President, I began filling requests to speak at the annual meetings of chapters at the rate of once and sometimes twice a month, and am scheduled through December. Timing was just right for presentations to include the FLiCRA/LeadingAge proposed amendments to Chapter 651, Florida Statutes, and then the language as adopted after the omnibus bills' successful passage at the 2015 Florida Legislative Session.

The value of communication and connection of our State Board with FLiCRA chapters was demonstrated based on the comments and questions posed by residents at these meetings, interactions with FLiCRA Chapter Boards, and almost always with members of the CCRC residents' councils as well. Because FLiCRA membership reflects a collective identity, a top consideration is to show membership FLiCRA's productivity in accomplishing its goals, and to show that we engage in productive discussions about priority issues of importance to CCRC residents. Our Members Matter!

“When You’ve Seen One CCRC, You’ve Seen ONE CCRC” – For one thing, this was apparent as applied to the titles of the various residents' councils at different CCRCs, and what seemed to be varying perceptions of their roles and operations. The sections of the law that address residents' councils were discussed early on during CCRC bankruptcy issues; in this regard, in the case of a bankruptcy a new amendment was adopted to alert a bankruptcy court that a resident had been nominated by the residents' council to serve on a creditors committee. Three other amendments to this same section were adopted to provide more direction and guidance to residents' councils and to clarify functions in general.

In presenting these particular changes to the FLiCRA chapters, this gave opportunity to point out the residents' council is by law the formal body designated to represent residents with management. FLiCRA's primary mission is to review and interpret current and pending legislation related to the regulation and control of CCRCs. The FLiCRA Policy Statement was cited in defining the relationship of a FLiCRA chapter and its board of directors to a residents' council and the management and ownership of a CCRC.

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*“A Resident-Led
 Association to
 Ensure Quality
 of Life in
 Retirement*

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A paragraph within the Policy states:

Neither the FLiCRA Board nor the FLiCRA Chapter has any responsibility for monitoring compliance by owners or management with legislative regulations or with continuing life-care agreements between residents and the owners, but that this responsibility lies with the Board of Directors of the Residents' Association (Council).

However, the Policy also states: The FLiCRA Board will endeavor to inform the Residents' Council of current or pending legislation or other regulations, which it considers important and pertinent to the interests of the residents.

“What I Did This Summer” - I attended, as a

member, the American Mensa 2015 Annual Gathering (Louisville, KY) for the Brain Health Colloquium - Research, Challenges & Breakthroughs. For one whole day, an outstanding in-depth presentation featured top neurosurgeons, neurophysiologists, neuropsychologists, and researchers who make these issues their life's work. I was drawn to this year's Gathering in particular, as it seems that I have seen more and more fellow residents in my CCRC experiencing cognitive decline.

Repeated surveys show that of all the things that people value most, good health is the most treasured. Brain health is where it all begins. Cognition is really thinking skills; an impaired “executive function” of the brain refers to a collection of things done by the brain, including memory, reasoning, multi-tasking, problem-solving and planning skills.

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2014 - 2015 FLiCRA State Board of Directors

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Ombudsman Program Changes Pass Legislature

Senate Bill 7018 passed the Legislature this year. The key provisions of most interest to residents is provided in this summary. The sections of law are indicated by Florida Statutes 400 references. The bill became a law on July 1, 2015.

Sections 1-3: s. 400.0060, s. 400.0061 and s. 400.0063 Definitions, findings and legislative intent

- Creates or revises definitions related to the State Long-Term Care Ombudsman Program.
- Modifies terminology to conform to other changes in the bill.
- Clarifies legislative intent.

Section 4-5: s. 400.0063 and s. 400.0065 Program duties and responsibilities

- Specifies that the State Long-Term Care Ombudsman Council must consist of one “certified” ombudsman for each local council in a district in addition to three at-large members. Requires each local council to select a representative to serve on the state council.
- Requires the DOEA Secretary (rather than the Governor) to appoint the three at-large positions to the State Council from a list of individuals provided by the state ombudsman.
- Gives the state ombudsman authority to make or rescind appointments of individuals serving as an ombudsman.

Section 6: s. 400.0069 Long-term care ombudsman districts; local long-term care ombudsman councils

- Adds exploitation to the list of allegations that representatives of the Long-Term Care Ombudsman Program may investigate.
- Expands ombudsmen investigations to include actions or omissions by providers of long-term care services, other public agencies, guardians, or representative payees which may adversely affect the health, safety, welfare, or rights of residents.
- Expands the duties of representatives of the State Long-Term Care Ombudsman Program to include providing technical assistance for the development of resident and family councils.
- Requires prospective ombudsmen to complete a level II background screening.

Section 8: s. 400.0071 Complaint procedures

- Requires DOEA, in consultation with the state ombudsman, to adopt rules that include procedures for receiving, investigating, identifying, and resolving complaints.

Change in Personnel at OIR

Chris Struk was promoted recently to Programs and Policy Coordinator for Life and Health where he reports directly to Office of Insurance Regulation Deputy Commissioner Rich Robleto. Until Chris trains his replacement, he will continue to review forms and contracts submitted by continuing care retirement communities to OIR for review and approval. He has sole responsibility for this function. Chris does not anticipate that a new CCRC forms analyst will be in place before the fall.

This change comes at a pivotal time since the CCRC bill (HB 749), which takes effect on October 1, 2015, requires contract changes that will affect all CCRCs.

We extend our congratulations to Chris for this promotion and wish to express our appreciation for the assistance he has provided to FLiCRA members and staff over the past 15 years. Chris' contact information has not changed. He may be contacted at 850-413-2480.

Hospital Observation Stay Crisis

On May 21, the U.S. Senate Special Committee on Aging held a hearing on the “Hospital Observation Stay Crisis.”

The Committee heard from two different panels of witnesses on issues regarding the current issue of Medicare patients who are being kept in hospitals on “observation” status rather than being formally admitted to the facilities. For Medicare patients, the practical difference between being admitted and being kept for observation appears virtually non-existent – the patient experience is the same. In fact, during the hearing several witnesses and the Senators concurred that, absent some affirmative act of notification on the hospital’s part, any given patient has no way of knowing on what basis he or she is being kept in the hospital. While the care is the same, however, the financial impact for those in the hospital under observation status can be enormous. Medicare coverage for observation status patients is far more limited, as the patient is not considered an inpatient under Medicare Part A.

Moreover, in order for Medicare to cover a beneficiary in the context of a skilled nursing facility (SNF) after a hospital stay, that beneficiary must have been officially admitted to the hospital for a minimum of three days.

The hearing’s first focus was on the Centers for Medicare and Medicaid Services (CMS) and on the Recovery Audit Contractors (RACs) that seek to identify improper Medicare payments. The witnesses suggested that Congress pass legislation requiring that, for patients who have been in the hospital for over twenty-four hours, hospitals provide affirmative notification of admission status and the potential financial ramifications. Ranking Member Claire McCaskill strongly expressed her preference that patients be unequivocally notified of their stay statuses upfront and be sufficiently educated on the financial consequences.

Senator Susan Collins was also concerned with communication of stay status to hospital patients. She

remarked about the length of time it can take new legislation to pass and encouraged CMS to use the agency’s implicit regulatory power to implement the changes administratively rather than waiting for the legislation. While legislation has passed through the House requiring stay status notification to patients who have been in the hospital over twenty-four hours, she is concerned there will be a delay in the legislation’s becoming law and would like CMS to step in now. She also stated that she had some concerns that notifying a patient of observation status may result in that patient’s prematurely leaving the hospital despite being in need of care, but she nonetheless advocated for notification. Additionally, Senator Collins also encouraged CMS to use the agency’s audit procedures to identify providers who need further education about this issue.

Senator Elizabeth Warren called for a study on the impact of the “two-midnight rule,” which provides guidelines for when a patient should be given inpatient status. Under the rule, if a doctor expects the patient will need to stay in the hospital over at least two midnights and admits the patient based on that expectation, the patient’s stay should be covered by Medicare Part A benefits. Senator Warren would like to see data on the impact the rule has had on beneficiaries and noted that Congress needs those numbers before the legislators can move forward in the law-making process. She expressed willingness to work with her colleagues to achieve legislative reform, but said, “CMS needs to step up here with its regulatory authority.”

The second panel was more focused on the role of skilled nursing facilities in this status dichotomy. Current law states that, in order to receive Medicare coverage for a stay at a skilled nursing facility, a patient must first have stayed at a hospital with inpatient status for a minimum of seventy-two hours (three days). A doctor on the panel set forth the premise that the only difference between observation and inpatient status is financial. Ms. Tori Gaetani of Beacon Health in Maine testified about a pilot program Beacon Health has conducted for the past

year through which the group issues waivers of the three-day minimum hospital stay rule for Medicare patients seeking skilled nursing care.

Ranking Member Claire McCaskill noted the immense complexity of this area of the law given the “arbitrary” rules and acronyms. In her frustration she asked, “Shouldn’t we, like, make this a little simpler?” Senator McCaskill asked the panelists who, exactly, decides whether to admit a patient or to keep him or her for only observation. The panelists responded that a utilization manager, who has access to the patient’s financial information and knows whether the patient is covered by Medicare, makes the ultimate decision.

Senator Susan Collins focused on the positive results Ms. Gaetani has found with the pilot program in Maine. The program gives waivers to the three-day minimum stay rule and has produced better patient outcomes and great savings for Maine’s healthcare system. Senator Collins and Ms. Gaetani noted that Beacon Health maintains some basic medical requirements for its program so the use of the waivers is not an “opening of the floodgates.” Senator Collins commended the program and noted she would like to see the revocation of the three-day minimum stay rule in national Medicare legislation.

Senator Sheldon Whitehouse asked the panel whether doctors are sufficiently aware of the three-day minimum stay rule such that they will keep patients in the hospital longer than necessary so as to open access for those patients to skilled nursing facility care. The panelists said that the practice has been known to happen. Senator Whitehouse shook his head and turned to Ms. Gaetani to commend her work with the waivers, then told the others, “[The waiver program] seems like the right way to go.” Senator Whitehouse encouraged other states to implement similar programs.

As Senator Collins said during the hearing, legislation in this area has been and will continue to be slow-going. The Senators, however, seemed to agree that patient notification should be at the forefront of reform and that the two-midnight and

three-day minimum rules most likely should be reformed in kind. While Congress strives to achieve a more efficient healthcare system for Medicare beneficiaries, regulatory agencies and state healthcare systems are urged to take action within their spheres of authority.

Congress has two bills addressing this subject, (HR 1179) (S 569), that deems an individual receiving outpatient observation care services in a hospital to be an inpatient with respect to satisfying the three-day inpatient hospital stay requirement for Medicare coverage of a post-hospitalization stay in a skilled nursing facility.

by Hillary Anderson

About the Author:

Hillary Anderson is a rising 2nd year law student at Syracuse University College of Law in Syracuse, NY. In 2014, Ms. Anderson graduated with honors from Ursinus College in Collegeville, PA, where she received a B.A. in Business and Economics. Ms. Anderson is a Summer 2015 intern with the ABA Commission on Law and Aging.

Steve Bahmer Named President and CEO of LeadingAge Florida

Tallahassee, Fla. - LeadingAge Florida – The Board of Trustees is pleased to announce, after a national search, Stephen D. Bahmer has been selected as CEO of LeadingAge Florida. LeadingAge Florida is a 52-year-old trade association whose not-for-profit members represent the continuum of care and housing for Florida’s senior citizens.

Steve comes to Tallahassee after serving as CEO of LeadingAge Wyoming. He said he sees his new role as an opportunity to continue serving and helping to strengthen the organizations that serve our elderly.

United States Settles Disability Discrimination Case Involving Residents of a Continuing Care Retirement Community

The United States filed a consent order recently that resolves allegations that Fort Norfolk Retirement Community Inc. (Fort Norfolk) violated the Fair Housing Act by instituting policies that discriminated against residents with disabilities at Harbor's Edge, a continuing care retirement community in Norfolk, Virginia.

The consent order, which still needs to be approved by the court, was filed along with a complaint, in the U.S. District Court of the Eastern District of Virginia. The complaint alleges that beginning in May 2011, Fort Norfolk instituted a series of policies that prohibited, and then limited, residents in the assisted living, nursing and memory support units at Harbor's Edge from dining in dining rooms or attending community events with independent living residents. The complaint also alleges that when residents and family members complained about these policies, Fort Norfolk retaliated against them. In addition, the complaint alleges that Fort Norfolk had policies that discriminated against residents who used motorized wheelchairs by requiring those residents to pay a non-refundable fee, obtain liability insurance and obtain Fort Norfolk's permission.

Under the consent order, Fort Norfolk will pay \$350,000 into a settlement fund to compensate residents and family members who were harmed by these policies. Fort Norfolk will also pay a \$40,000 civil penalty to the United States. In addition, Fort Norfolk will appoint a Fair Housing Act compliance officer and will implement a new dining and events policy, a new reasonable accommodation policy and a new motorized wheelchair policy.

"This consent order will ensure that all residents with disabilities at Harbor's Edge are treated equally and that spouses and friends will be able to eat and socialize together," said Principal Deputy Assistant Attorney General Vanita Gupta of the Civil Rights Division. "We are very pleased with Fort Norfolk's willingness to work with us to achieve this important

resolution."

Individuals who are entitled to share in the settlement fund will be identified through a process established in the consent order.

For more information contact the Department of Housing and Urban Development at 1-800-669-9777 or through its website at:
http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp.

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A national study, The Aging Brain, conducted by the National Institute on Aging (supported by the National Institute of Health) cited percentages of age-related cognitive decline as showing up in: 18% of ages 71-79; 24% of ages 80-89; 37% of ages 90 and older. We might consider that the Bad News.

Let's look at this as the Good News: Emerging discoveries and insights report there are ways to build and regain cognitive function. That sounds like this can help us build our own "owners manuals" for healthier brains, based on these "Domains of the Brain Health Lifestyle": Nutrition, Physical Activity, Mental Stimulation, Socialization, and Spiritualization or Meditation, i.e., some means to minimize stress. Most CCRCs offer resources for residents to take advantage of all of these valuable ways to help the brain.

FLiCRA can claim that it does its part as a source to lessen stress, by alleviating concerns for an ongoing good quality of life and security, from a number of important standpoints.

FLiCRA: Trusted protection for over 25 years.

Pat Arends, FLiCRA President



**FLiCRA 2015 Annual Conference & Chapter Delegates Meeting
November 5, 2015 • Edgewater Pointe Estates, Boca Raton**

Thursday, November 5, 2015

8:15 a.m. – 9:00 a.m.

Registration & Continental Breakfast

9:00 a.m. – 10:00 a.m.

“CCRC Residents – Driving Business Models for Now and the Future”

Keynote Speaker: Katherine Pearson, Penn State, Professor of Law

10:00 a.m. – 10:15 a.m.

Break

10:15 a.m. – 12:00 p.m.

Board, Membership & Chapter Delegates Meeting

TOPICS: Resident Council Duties in New Law; Membership Growth; FLiCRA State Board Elections; FLiCRA State Budget Adoption

12:00 p.m. – 12:20 p.m.

Break

12:20 p.m. – 2:00 p.m.

Membership Luncheon

“2016 Legislative Session – Early Bird Gets the Worm, Session Starts in January”

Speaker: Bennett Napier, CAE

**Please mail registration forms
by October 28, 2015 to:**

FLiCRA
325 John Knox Road, L103
Tallahassee, FL 32303

**Please call the FLiCRA office at (850) 906-9314 if you
require any special needs due to a disability.**

Location

Edgewater Pointe Estates

23315 Blue Water Circle
Boca Raton, FL 33433
Phone: 561-391-6305

All meetings will be held at Edgewater Pointe Estates.

Directions from North Florida: On Florida Turnpike, take exit 75 for FL 808 towards Glades Road. Turn Right on FL 808 West/Glades Road. Go less than 0.25 miles, turn left at 1st Red Light onto Boca Rio Road. Turn left onto SW 18th Street (1.2 miles). Turn right on Blue Water Circle.

Directions from Naples Area: Take Interstate 75 South. When in Broward County, Continue on Interstate 595 E/Fort Lauderdale. Use left 2 lanes to merge onto FL 869 N/Sawgrass Expressway, go 22.7 miles. Continue onto SW 10th St. Turn left onto FL845 North/Powerline Road. Turn Right onto SE 18th Street. Turn right onto Bluewater Circle.

Hotel Information for Lodging

**There is no formal FLiCRA room block at a hotel.
Prices are subject to change.**

La Quinta Inn & Suites Deerfield Beach I-95

100 Southwest 12th Ave, Deerfield Beach, FL 33442
2.17 miles from Edgewater Pointe Estates
(954) 428-0661 (room rates starting at \$89.00)

Quality Suites Deerfield Beach

1040 E Newport Center Dr, Deerfield Beach, FL 33442
3.2 miles from Edgewater Pointe Estates
(954) 570-8887 (room rates starting at \$79.00)

FLiCRA 2015 Annual Conference & Chapter Delegates Meeting Registration Form

Please Duplicate for Multiple Registrants

\$17.00 per person (includes AM refreshments and lunch on Thursday)

\$10.00 per person (includes AM refreshments on Thursday ONLY)

Name(s): _____

Community Name: _____

Address: _____ Apt. No.: _____

City: _____ State: FL Zip: _____

Phone: _____ Email: _____

Total Amount Enclosed: \$ _____

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Growing Economy Means More Money for 2016-17 State Budget

State economists predict lawmakers will have \$657.5 million more than previously anticipated for the next state budget. The latest General Revenue (GR) forecast shows the state's GR fund is expected to reach \$31.6 million for the 2016-17 budget year. The growing available funds mean recurring revenues exceed current recurring expenses by \$1.6 billion.

"Florida's economy is returning to its pre-recession days, and the available funds for the state budget reflect that strength," said Dominic M. Calabro, President and CEO of Florida TaxWatch. "Tourism is very strong and more Floridians are able to find jobs and they are spending money throughout the state." The increased budget estimates are due to Florida's steady, if not spectacular, economic recovery. The state's sales tax is the largest source of General Revenue funds, and is projected to bring in \$21.957 billion this year, totaling more than 77 percent of total General Revenue.

"Even with more cash to spend, lawmakers can't count on a big budget surplus yet," said Kurt Wenner, Vice President of Research for Florida TaxWatch. "There will be increased costs next year, including an additional 26,000 public school students and at least \$500 million in new Medicaid spending. There will still be intense competition for any extra dollars."

In the fall, state economists will create the Long Range Financial Outlook to provide a clearer picture of the projected revenues versus projected expenses. Revenue projections will also be adjusted again before the Legislature begins to draft the 2016-17 budget in January.

Source: Florida TaxWatch