Florida Life Care Residents Association
FLiCRA
A resident-led association to ensure quality of life in retirement communities

The Resident CONNECTION

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President's Message

The FLiCRA Board and staff went full tilt in trying to keep membership informed of the status of the important bill filed for the 2017 State Legislative Session for additional financial protection for residents of continuing care retirement communities (CCRCs).

The session came to a close without the bill being heard, but not because of anything FLiCRA did or didn't do. Through technology's possibilities for constant connectedness, and along with your FLiCRA chapter presidents, the measures undertaken by FLiCRA throughout the exhaustive process were conveyed to you. From the mashup of events, the core of this message will be based on reassurance to our members that those strategic efforts were not for naught, as we intend to build on their cumulative effects as we strive on.

Without pause we now move forward for legislative proposals for the 2018 Legislative Session, because the legislature will convene beginning in January instead of March. This means the legislative committees will also begin meetings earlier than usual. It is likely that the State District Legislative Delegation public hearings will be held earlier; FLiCRA regional directors and chapter presidents will plan ahead to be placed on this year's District agendas for the opportunity to ask for support throughout the state.

FLiCRA must lay out the framework for the work ahead. Again, such work will take place through a joint task force in transactional meetings in which FLiCRA shall continue as a strong member. A schedule of these collaborative meetings must be set soon, with an aim for full participation by the Office of Insurance Regulation (OIR). A plan for a beginning strategy could/should be to first focus on those task force provisions of 8-30-16 along with the 2-15-17 FLiCRA positions stated thereafter, which came to be affirmed as in general agreement by the other two stake-holders (LeadingAge and OIR). Deliberation could then proceed on the more complex issues and the full implications of the OIR proposals in particular. In this regard, it is expected that the task force will have benefit of unbiased expert resources to aid in sorting through the explanatory depth and in parsing differences encountered.

We understand that to achieve passage of the bill to be proposed and filed, success is more likely if two of the three stakeholders are in agreement. This will take full recognition of our connectedness for comity in avoidance of "myside bias" or power plays that prove antithetical to the goal.

Continued on Page 2

In This Issue

"A Resident-Led Association to Ensure Quality of Life in Retirement Communities"

Continued from Page 1

The "interactionist perspective for congruence in group decision-making" is the subject of entire textbooks, always with an emphasis on practical reason designed to generate sound judgments. An effective date of the enacted bill must be sought to be as early as possible in 2018 to avoid risk of another full year without enforcement of vital protection.

As to other legislation during the past 2017 session, FLiCRA tracked a number of proposed bills that could have possible impact on the welfare or finances of CCRC residents. FLiCRA voiced strong opposition to a Senate bill with a proposed new Prospective Payment System regarding Medicaid funding. The bill, as proposed by the Florida Health Care Association, was defeated this year; this system would have decreased funding for high-quality nursing facilities while additional funding would have gone to lower rated facilities. In FLiCRA's "Call to Action" CCRC residents responded vigorously to legislators with telephone calls and emails.

The legislative challenges faced commanded the most FLiCRA board attention, nonetheless progress was certainly made on other matters of importance. Notable among these: The FLiCRA board's membership committee conducted a chapters-wide survey and produced the "Best Practices for Retention and Recruitment of FLiCRA Membership" which, following board approval, will be provided to regional directors and chapters.

FLiCRA: Trusted Protection for Over 27 Years with YOUR Membership support!

Pat Arends
FLiCRA President

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The Region 6 Director position is open. Interested residents in Southwest Florida may contact Bennett Napier, CAE at bennett@executiveoffice.org for more information.

2017 Legislative Session Wrap Up

End of Session Report

The 2017 Florida Legislative Session ended Monday evening, May 8th. The session was extremely contentious from the start with major differences of opinion on many issues between the House, Senate and the Governor.

Generally speaking, it was one of the most controversial sessions in over twenty five years. With that said, very few bills actually passed the Legislature this year compared to other historical trend lines, for bills passed.

Continuing Care Retirement Community Regulation Reform

As was shared during the course of the session, Senate Bill 1430 and House Bill 1349 did not get a committee hearing and thus no legislative action occurred.

FLiCRA would like to thank Senator Tom Lee and Representative Cyndi Stevenson for filing legislation on CCRC reform.

The bills as drafted created significant concerns based on certain provisions. However, FLiCRA's board of directors believes and stands by the premise that some reform needs to occur and the bill sponsors were steadfast in that belief as well.

During the course of the legislative session, considerable progress was made to hammer out provisions that most stakeholders could agree to that would provide additional resident protections without negatively impacting the market viability of CCRCs in Florida.

FLiCRA is committed to work with LeadingAge Florida and the Office of Insurance Regulation during the summer on finalizing a compromise bill for presentation for the 2018 legislative session.

Medicaid Reimbursement for Nursing Homes Prospective Payment System

Senate Bill 2514 was the major bill that would implement a new Nursing Home Prospective Payment System (PPS). The House of Representatives did not include the Senate PPS language in their proposed budget.

During budget negotiations during the last several days, Senate and House leaders agreed on a compromise that puts a one year delay on a new payment system until October 1, 2018. All things considered, this was a legislative success based on the objectives of FLiCRA and LeadingAge Florida.

Further, the final budget included a requirement that the Agency for Health Care Administration form a technical advisory workgroup of long-term care stakeholders to make recommendations to the Legislature about the PPS Plan by December 1, 2017. This ensures a process is in place to update quality measures, review the transition plan and evaluate potential peer groups and changes to the rate components.

FLiCRA wishes to thank its membership for rallying during mid-April on a call to action to key Senate and House leaders. Over two thousand members sent emails in within 72 hours and hundreds of member phone calls were also made on this important issue.

FLiCRA members and residents from Westminster Oaks in Tallahassee and Westminster Woods, St. Johns, Florida came to the capitol to show the Senate Appropriations Committee resident support for a PPS system that focused on quality and did not take funding from four and five star nursing homes operated by CCRCs.

Continued on Page 4

Continued from Page 3

FLiCRA also participated as a supporting organization as part of several media releases and a press conference spearheaded by LeadingAge Florida.

Insurer Insolvency

Senate Bill 730 and House Bill 837 were titled the Florida Insurer's Rehabilitation and Liquidation Act. The bills included various provisions from a model bill put forth by the National Association of Insurance Commissioners.

House Bill 837 passed the Legislature on May 3rd.

Taxation

House Bill 7109 was originally filed by the Ways and Means Committee.

A section of the bill deals with nonprofit homes for the aged relative to the homestead exemption equivalent under Florida Statute 196.

It adds new wording to current law in terms of the type of information that has to be included on affidavits filled out by residents in nonprofit homes for the aged in order for the community to receive the tax exemption for each living unit.

House Bill 7109 passed as part of the overall state budget package on May 8th.

Health Facility Regulation

Senate Bill 1760 and House Bill 1195 addressed health care delivery in long term care facilities. There were key provisions in the bills that would have impacted CCRCs that offer assisted living and also skilled nursing portion of the campuses.

Both bills died on the House and Senate floor.

Certificate of Need Process for Nursing Homes

House Bill 7 and Senate Bill 676 related to repealing the Certificate of Need Process (CON) for all health care related facilities in Florida.

The Certificate of Need Process which has been in place in Florida for many years establishes a vetting process for new providers wishing to establish and open up a new facility.

The Florida Health Care Association, LeadingAge Florida and FLiCRA all were opposed to any process that would repeal a requirement for a CON for Florida's licensed nursing homes including those at CCRCs. During the course of the session, nursing homes and hospices were removed from the proposal. Other facilities such as hospitals remained in the proposal.

At the close of the session, both bills died on the floor, so no changes to the CON process occurred for any health care facility this year.

2018 FLORIDA LEGISLATIVE SESSION DATES

January 9, 2018
Regular Session convenes (Article III, section 3(b), Constitution)
12:00 noon, deadline for filing bills for introduction (Rule 3.7(1))

February 24, 2018
All bills are immediately certified (Rule 6.8)
Motion to reconsider made and considered the same day (Rule 6.4(4))

February 27, 2018
50th day—last day for regularly scheduled committee meetings (Rule
2.9(2))

March 9, 2018
60th day—last day of Regular Session (Article III, section 3(d), Constitution)

Bamboozled: Holding 'hostage' a dead senior's money - legally

By Karin Price Mueller | NJ Advance Media for NJ.com (New Jersey)

This is a tale of someone who believes he was wronged.

He couldn't do anything to help himself, but he's on an admirable mission to help others.

His goal is to protect those who pay fees to Continuing Care Retirement Communities, or CCRCs, which include assisted living facilities, independent living communities and long-term care units.

CCRCs are attractive to some seniors because they offer a place to live without ever having to worry about moving for health reasons.

There are 25 such facilities in New Jersey housing more than 10,000 seniors, according to the Organization of Resident Associations of New Jersey (ORANJ), a group that supports CCRC residents.

When seniors move into a CCRC, they often pay a large entrance fee that can cost several hundred thousand dollars. Contracts typically say a percentage of that fee will be returned to the resident's estate, but not until the unit is reoccupied by a new resident.

That policy has made a mess for Ed Nagle of Whitehouse Station for more than six years.

His mother, Terry Nagle, became a CCRC resident in 2004. She agreed to pay a $272,821 move-in fee, expecting her estate would receive a 90 percent refund, or $245,538, when she died.

The grandmother of six and mom of four, known for her sparking blue eyes, Irish wit and love of bowling, swimming, sewing and her church, died in 2010 at the age of 84.

Ed Nagle was in charge of her estate.

When Nagle tried to get back the 90 percent refund from the CCRC, he was reminded of the contract, which said his mom's unit had to be reoccupied first.

"I was pretty patient waiting for the refund for the first two years," he said. "Following that I made very regular queries. Some communications became contentious as my patience was running out."

Nagle, who works as a salesman, said he offered several times to help find a new resident, but he was turned down. He even had a friend look at the CCRC for his own mother, but, Nagle said, his mom's unit was never offered.

In the meantime, his mother's estate filed its tax returns. Including the anticipated CCRC refund, it owed $14,820 in estate taxes, which was paid in June 2011.

Nagle continued to ask the CCRC for updates, but the unit remained empty.

Then came what Nagle called "soft extortion."

"'Would you be willing to spend $30,000 to 40,000 to renovate the unit your mom occupied but did not 'own' to help facilitate or enhance the potential to resell or reoccupy her unit?'" Nagle said he was asked multiple times.

He wouldn't have it.

Nagle staged a protest, hanging a banner on the back of his car, which he parked at the community when it held an open house.

"Thinking of moving here?" the banner said, adding "For additional perspectives, call..." and it included Nagle's phone number.

Continued on Page 6

Continued from Page 5

"The result was mayhem," Nagle said, with the CCRC trying to block his banner and calling police. Nagle moved off the CCRC property but he remained on the street outside.

"I believe this hand-to-hand combat move finally got the CCRC to try to settle," Nagle said.

By now, five years passed and the unit still wasn't reoccupied. The family reluctantly cut a deal.

Rather than take the 90 percent refund, they accepted 63 percent of the value, or $171,877 -- $73,661 less than they were supposed to get.

And if that wasn't bad enough, there was more.

The lower refund meant Terry Nagle's estate was no longer subject to estate taxes. Nagle asked the state for a refund of the overpayment, but alas.

"Surprise -- a catch-22. There is a three-year statute of limitations on refunding paid estate taxes," Nagle said. "So our family got ripped by the CCRC and then ripped by the state of New Jersey."

The estate was out the $73,661 from the CCRC refund plus the $14,820 in estate taxes that were never really due, or $88,481 in all.

A FIX TO PROTECT FAMILIES

Nagle wanted to make sure this never happened to another family, and he saw two other states had legislation on the matter.

In Connecticut, refunds must be provided within three years of a vacancy for contracts after Oct. 1, 2015. In California, as of 2017, the state requires 4 percent interest be paid on refunds not returned within 180 days after a vacancy, and 6 percent after 240 days until the full refund is granted.

Nagle reached out to Sen. Christopher "Kip" Bateman (R-Somerset).

The result was S3225, which would require CCRCs to give refunds within a year of a vacancy -- a much more reasonable time frame that would eliminate the estate tax refund issue. Sens. Bucco and Allen also signed on.

But in the last legislative session, nothing happened. It sat in committee without a hearing.

"There was always some excuse why no action was taken. 'Maybe next session,' 'Other priorities,'" Nagle said.

It was reintroduced in the current session as S182. Nagle kept nudging.

He said he got more excuses. Concerned that a political action committee or lobbyist was fighting for the other side, Nagle reached out to Bamboozled.

GETTING IT DONE

Bateman's office said it was waiting for Sen. Joseph Vitale (D-Middlesex), chair of the Health, Human Services and Senior Citizens committee, to move on a hearing.

A spokeswoman said Bateman believes this is a financial hardship, and said the office had heard from other constituents on the matter.

We reached out to Vitale, and while we waited for a response, we asked some insiders about the issue. LeadingAge is an association of not-for-profit senior care organizations.

National spokesman Stephen Magg said the group doesn't necessarily oppose a reasonable timeline on returning entrance fees.

He said these policies were instituted during the recession when the real estate market was soft, but that's no longer the climate.

"I think most of the time units turn over in a year," he said.

The New Jersey chapter of LeadingAge didn't respond to our inquiries.

ORANJ, the group that represents CCRC residents, has been working on this issue for several years. The group's president, Ron Whalin, said the state's LeadingAge chapter strongly opposes the bill.

Whalin said new legislation cannot change existing contracts, but it could help future residents.

"If new contracts are based on sound actuarial principals, the CCRC management and residents will both be happy," he said. "There are many signed contracts requiring 'sale' of the actual unit before refund of entrance fee. These contracts should not have been signed but the residents did not understand the 'fine print' in the contracts."

ORAJN said it reached out to Vitale to request a meeting, but it hadn't heard from the senator before publication. It is meeting with Bateman on March 1, it said.

We then reached out to Assemblywoman Nancy Munoz (R-Union), who serves on the Assembly's Health and Senior Services committee, to see if she's heard of this bill in her house.

When she learned nothing had been introduced, Munoz jumped on, and A4588 was born.

"It is unconscionable for a facility to keep a deposit two, three or four years; holding families hostage and preventing them, in some instances, from finalizing an estate," Munoz said in an emailed statement.

Then we heard from Vitale, in whose hands the fate of the Senate bill rests.

He said CCRC organizations contacted him, and as a courtesy, Vitale agreed to a meeting before having a hearing on the bill.

When, we asked? Why the delay?

Vitale responded with a promise.

"I will speak to them sometime in February, and we can have a hearing on the bill sometime in March," Vitale said.

Nagle is eager to have the bill heard in committee, even if it never advances.

"I hope that our state representatives will do the right thing and represent their senior citizen families by enacting and requiring a common sense and fair time limitation to repay the refundable CCRC entrance fee," Nagle said. "If New Jersey required this like other states do, my family and many other families would not be victimized by CCRC operators."

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MARK YOUR CALENDAR

2017 FLiCRA Region 7 Meeting

September 25, 2017
Freedom Plaza, Sun City Center

2017 Annual Conference & Chapter Delegates Meeting

November 9th, 2017
Estates at Carpenters, Lakeland

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Recent FLiCRA Events

Region 2 Director Ramsey Geyer speaking at LeadingAge Florida and FLiCRA Press Conference on Nursing Home PPS Plan

FLiCRA Members from Westmintser Oaks at Senate Hearing on PPS Plan

Ramsey Geyer & Joan Hodges from Westmister Woods advocating on Nursing Home PPS Plan