

**Florida Life Care Residents Association (FLiCRA) Annual Conference
“Residents, Providers, and Regulators – Collaboration Leads to Better Public
Policy”**

November 7, 2019
9:00 – 10:00 a.m.

Opening Remarks

Good morning and thank you for that kind introduction.

It is good to be here with all of you today and I look forward to sharing information about:

- the Office of Insurance Regulation (going forward...the Office);
- an overview of the Continuing Care Retirement Community market in Florida (going forward---CCRC);
- an overview financial review process;
- Some background information on new legislation passed;
- Key points of the legislation; and
- Why the CCRC legislative changes should be of interest to you, the Florida consumer

I also want to introduce Leean Chojnowski. Leean is the Deputy Director in the Life and Health Section and worked in the CCRC Section for a number of years. Although Leann no longer works directly in the CCRC section, Leean remains intricately involved in working with interested parties to develop and update rules and forms.

We have a lot of information to cover this morning, so let me start by giving you a brief overview of the 3 guiding principles we believe are necessary to effectively serve Florida insurance consumers and how they relate to the Office's mission of promoting a stable and competitive insurance market.

Our philosophy when it comes to these guiding principles is that insurance products should be:

- #1 – reliable
- #2 – available; and,
- #3 - affordable

As consumers, you are best served when you have access to a marketplace offering a variety of options for your insurance needs.

At the Office, our 200+ staff of talented professionals work diligently toward this end on a daily basis, whether it is through our form and rate filing review process, financial or market conduct examinations, or the licensure process for company applications.

The decisions that we make as regulators are critical and have far reaching impacts – both for consumers and the CCRC marketplace we oversee – and those decisions are best made after consideration of as many points of view as possible.

We are excited for the opportunity to further develop a close relationship with this organization and its 14,000 resident members in 69 Florida CCRCs.

Your insights, activism and efforts toward improving the care and experience of residents in CCRCs gives us much-needed awareness into ways we can be of assistance.

Our ultimate goal is to learn more about how we can better serve you and work toward collaborative solutions that will lead to productive remedies for addressing some of the issues you, as a resident of a CCRC, may be facing.

The Office regulates the financial solvency, residency contracts and disclosures made to residents of licensed CCRCs.

In Florida, CCRCs are considered a type of specialty insurer, and the CCRC section within Life & Health Financial Oversight oversees all aspects of CCRC regulation.

The CCRC section is comprised of 10 positions (supervisors, analysts, and examiners), devoted to ensuring the solvency and statutory compliance of all licensed Communities.

In-house analysts are assigned a group of facilities, which they consistently monitor on a monthly, quarterly, and annual basis through the review of financial reports and other supplemental filings.

The in-house analysts, along with the supervisors, have on-going dialogue with the management team of the licensed CCRCs, addressing any questions and concerns as well as receiving updates on the operations of the facilities.

Field examiners conduct statutory financial and market examinations of licensed CCRCs.

These examinations may take place on-site at the facility or remotely at the Office.

The number of licensed CCRCs in Florida has remained relatively constant over the years.

Currently, there are 69 licensed CCRCs (70 in 2018), 1 of which is in run-off (2 - 2018) and 2 with a Provisional Certificate of Authority

(3 in 2018), meaning they are new entities joining the Florida market.

Alongside the Office, the Department of Financial Services and the Agency for Healthcare Administration, each have a role in the regulation of CCRCs.

The Department of Financial Services, Division of Consumer Services handles all consumer complaints, inquiries and, if necessary, provides mediation services.

<https://www.myfloridacfo.com/Division/Consumers/contactus.htm>

1-877-693-5236

1-850-413-3089

The Agency for Healthcare Administration regulates the health care quality of a CCRC. Meaning, any issues regarding medical treatment of consumers would be overseen by them.

<https://ahca.myflorida.com/>

1-888-419-3456

The annual Governor's Continuing Care Advisory Council Meeting was held on September 19, 2019 in Tallahassee, Florida.

The Continuing Care Advisory Council (Council) acts in an advisory capacity to the Office. The Council recommends to the Office any changes in statutes and rules pertaining to Continuing Care Retirement Communities. Additionally, upon request of the Office, the Council assists with any corrective action, rehabilitation or cessation of a provider's business plan.

Some statistics provided by the Office to the Council during the recent meeting were:

- First, Florida facility size by Unit count: 54% of facilities have between 301-600 units; 23% have between 1 – 300 units; 18% have between 601 – 900 units; and 6% have more than 900 units.
- The number of Florida CCRC residents over the past 5 years has remained stable at about 27,000.
- The total number of Florida CCRC units available at year-end 2018 was 3,021 out of 34,723 for a 90.0 % occupancy rate.
- Florida CCRC Unit sales over the past 5 years average about 3,000 a year.

OIR Staff Monitoring of CCRCs

The Office monitors the financial solvency of CCRCs through various statutorily required filings.

The most common filings that CCRCs submit to the Office are monthly, quarterly, and annual financial reports, which include an annual Audited Financial Statement prepared by an independent certified public accountant.

Our analysis team reviews CCRC financial reports to ensure CCRCs are solvent and that they are able to pay financial obligations as they come due in the normal course of business.

We also look at financial and occupancy data trends during our review.

Other reporting requirements for CCRCs include submission of:

1. Financing Information
2. Escrow Agreements
3. Minimum Liquid Reserve data and
4. Disclosure Documents

Legislative Changes

House Bill 1033 was recently passed during the legislative session held in Tallahassee. Legislative action was needed to address recent CCRC bankruptcy filings that affected the ongoing housing and medical care of residents.

For example, a facility named University Village, a CCRC in Tampa, was illegally acquired by unapproved owners and managers who then failed to cooperate with the Office when it opened an examination into their activities.

Based on numerous violations of state law uncovered within weeks of opening an examination, the Office and Department of Financial Services, utilizing state law, instituted legal proceedings to place University Village into receivership.

The unapproved owners then filed for federal bankruptcy protection, which preempted state action and prevented the Department of Financial Services from being appointed as receiver.

As of February 2019, CCRC residents, former residents, and estates of former residents are still owed over \$9 million in refunds. Administrative expenses for attorneys and experts in the bankruptcy case now exceed \$5 million and, like resident refunds, are to be paid from the proceeds of the sale of the CCRC.

A potential purchaser of University Village has been identified and the application filing is under review by the Office of Insurance Regulation.

Key Adopted Legislative Changes that Enhance the Office's Capability to Foresee CCRC Financial Problems and Serve as an Early Warning System

Some of the Financial Solvency Enhancements are:

- The establishment of a framework of required regulatory actions if a provider falls below specified levels of three key indicators: occupancy, days cash on hand, and the debt service coverage ratio.
- These key indicators were selected based on their historical tendency to highlight financial problems. These key indicators serve as early warning signs and will enable regulators to intervene before financial issues get too severe and irreparable.
- If the provider's performance falls below the specified levels on any of the three key indicators, the provider is required to submit a corrective action plan to the Office.
- In response, the Office is required to perform an examination or analysis of the provider.
- Once complete, the Office is required to issue a corrective order specifying corrective actions that we determine are required.

- The definition of financially impaired was revised. Under an updated definition of "financially impaired", a provider is considered impaired if it fails to hold the minimum liquid reserve.
- 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 the debt service coverage ratio.
- Statutory language was added to clarify that the Office is not prohibited from taking other regulatory action (such as Receivership proceedings), while a corrective action plan is under review. This was a problem that surfaced during the University Village insolvency.

Management and Management Companies

- Also, the statute definition of Manager or Management Company now addresses situations that involves someone performing duties without a written contract.
- Currently, Florida Rule specifies that a Manager or Management Company agrees to administer the day-to-day activities of a facility pursuant to a written contract with the provider. However, the Rule does not address situations where a Manager or Management company does not have a written contract with the provider.
- New regulations require management contracts be in writing and if cancelled upon issuance of an order by the Office requiring removal of the Manager or Management Company, the provider will not be subject to a cancellation fee or penalty. This closed a loophole that allowed management serving under an oral contract to evade regulation.
- Also, a new statutory provision was created to allow for disapproval and removal of unqualified management if the Office finds that management is so lacking in experience, ability, and standing as so to jeopardize the reasonable promise of successful operation of the CCRC or, that management has a history of involvement with business

operations marked by manipulation of assets or accounts or by bad faith.

- This new regulatory provision allows providers to hire management when needed while requiring proper vetting of managers and management companies. The new regulation also allows the Office to institute fast-track administrative proceeding in the event a disapproved manager is not timely removed.

Legislative Enhancements to Increased Transparency to Residents

- Enhanced regulations create a number of new requirements for the provider to give notice to residents or the residents' council to help residents and prospective residents remain apprised of the status and stability of the provider and to take action to protect their interests. These changes were made in response to resident concerns and complaints and in response to a suggestion made by the Florida Life Care Residents Association.
- Under current law, the residents' council receives notice of all financing documents filed with the Office. New regulations shift the filing priority of proposed financing to Residents' Councils. A CCRC provider will be required to provide notice of any new financing or refinancing to the Residents' Council at least 30 days before the closing date of the transaction. The notice must include a general outline of the amount and terms of the transaction and the intended use of the proceeds. This

allows residents the ability to object to financing transactions that concern them.

- In addition, Florida Statute was amended to require the provider 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 Office or the Department of Financial Services, reasons for any increase in the monthly fee that exceeds the rate of inflation, notice of any change in ownership filings submitted to the Office, and any master plans approved by the provider's governing board including any plans for expansion or phased development.
- For prospective residents, Florida Statute was amended to require the CCRC provider furnish the following items, if applicable: a notice of the issuance of any Office examination reports, a notice of the initiation of any legal or administrative proceedings by the Office or the Department of Financial Services, a statement that the entrance fee is the property of the provider after the expiration of the 7-day escrow requirement, a statement that distribution of 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 CCRC is a member.
- New regulations also require the CCRC to post in a prominent place in the facility a notice that contains the Office's web site and phone number and the web site and toll-free consumer helpline for the Department of Financial Services' Division of

Consumer Services along with a statement that either may be contacted for the submission of inquiries and complaints with respect to potential violations of law.

- In addition, there is an expanded process for resident complaints against providers including a requirement that the Office 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.

Based on previous CCRC bankruptcy and corporate governance issues, the Office lacked the framework it had at its disposal to protect consumers of other non-CCRC insurance products (such as healthcare products, life insurance products), including early intervention concepts like financial impairment, a regulatory requirement to provide supplementary information to support or explain filings, and clear authority to prohibit incompetent and untrustworthy individuals from exercising control over a CCRC.

I hope you realized from my earlier remarks the extent of regulatory modernization that occurred with respect to Continuing Care Retirement Providers created by HB 1033.

The statutory linkage of consequences tied to financial reporting, management oversight, and improved transparency to residents provides the Office with the framework from which to develop early warning tools to monitor and analyze CCRC's, and, if necessary, take proactive measures to protect the wellbeing of residents.

It has been a pleasure speaking with all of you today and I hope that I have helped you to gain a better understanding of some of the challenges and opportunities faced with Florida's health

insurance marketplace, particularly Continuing Care Retirement Communities.

We look forward to a collaborative partnership to continue working towards adapting solutions that will both help us in our regulatory oversight of CCRCs and ensure residents are receiving quality care and better protections under Florida law while at the same time maintaining a robust and competitive insurance marketplace to Florida consumers.

Your input and viewpoints on these issues will be valuable during this process.

Thank you again for allowing me to speak with you today and we'll now be happy to answer any questions you may have.