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# The Resident CONNECTION

1st Quarter 2020

## President's Message

Some of you may be unaware of the firestorm of activity that consumed your fellow continuing care retirement home (CCRC) residents across the nation as this year began.

Many of you participated in the flurry of messages sent to our national representatives and senators as well as to our local state representatives and senators in response to FLiCRA's Call to Action. The primary recipient of these missives - letters, emails and phone calls – was to ask the Center for Medicare and Medicaid Services to cancel or at least reconsider their proposed ruling on provider nursing home bed taxes which would impose a financial burden on all of us.

The result has been that a bipartisan coalition of 27 members of the House of Representatives is asking the Centers for Medicare and Medicaid Services to withdraw its proposed Medicaid Fiscal Accountability Regulation.

"Under the MFAR rule, states will have to repeal the exemptions from the nursing home provider bed tax that currently applies to continuing care retirement communities (CCRCs)," the representatives said in a Jan. 30 letter to CMS Administrator Seema Verma, which was shared by LeadingAge. "CCRCs are likely to lose their exemption and be assessed additional state taxes, the costs of which could be passed on to CCRC residents, limiting access to and reducing the affordability of these communities."

Thank you to all of you who contributed to this effort.

As we look forward to the rest of the year, FLiCRA is looking at several projects. It is time to update our video that explains the purpose and function of FLiCRA. We hope that new CCRC residents and not-yet members of FLiCRA will learn about our successes and the benefits of membership, and will join. The efforts of FLiCRA over the years have resulted in a savings of about $8000 a year per resident.

In addition, we are exploring ways to engage in our activities FLiCRA members whose numbers in their communities are too small to qualify as a chapter. A registered chapter must have a minimum of 25 members. And, we are always looking to form new chapters in communities where there are no members yet.

***Diane Dalsimer, FLiCRA State Board President***

## In This Issue

# Federal Medical Expense Deduction

At the end of December 2019, a new law went into effect on the medical expense deduction.

To simplify a complicated back-and-forth of the amount over the past few years, a medical expense deduction floor of 7.5% has been extended through 2020. That is to say, the floor will not revert to 10%, as was set to happen for tax year 2019.

Specifically, this change means that this tax filing season, folks whose eligible medical expenses exceeded 7.5% of their adjusted gross income (found on your tax return) can deduct the amount of those expenses that exceeds 7.5% of that income, assuming they otherwise qualify for the deduction.

**Source**: *https://www.congress.gov/bill/116th-congress/house-bill/1865/text*

# FLiCRA & LeadingAge Florida Honor Florida Representatives at Cypress Village

Cypress Village, Jacksonville residents and associates filled Egret Hall on the morning of December 20th to celebrate and honor Florida House of Representatives Clay Yarborough of District 12 and Cyndi Stevenson of District 17. This celebration has been building for several years after HB1033 was initially filed for review and revision by Representative Cyndi Stevenson, and everyone present was excited to celebrate the successful passing of the bill in both the Florida House and Senate. The new law serves to protect residents in senior living Continuing Care Retirement Communities from a variety of financial risks and creates a statewide Continuing Care Advisory Council to make sure that residents across Florida have proper advocacy in legislation and are being taken care of in their retirement.

# MFAR Center for Medicare and Medicaid Services Update on Provider Nursing Home Bed Taxes

A bipartisan coalition of 27 members of the House of Representatives is asking the Centers for Medicare and Medicaid Services to withdraw its proposed Medicaid Fiscal Accountability Regulation.

"Under the MFAR rule, states will have to repeal the exemptions from the nursing home provider bed tax that currently applies to continuing care retirement communities (CCRCs)," the representatives said in a Jan. 30 letter to CMS Administrator Seema Verma, which was shared Wednesday by LeadingAge. "CCRCs are likely to lose their exemption and be assessed additional state taxes, the costs of which could be passed on to CCRC residents, limiting access to and reducing the affordability of these communities."

As an alternative to withdrawal, the members of Congress suggested that CMS "include language in any final rulemaking that makes clear that state provider tax exemptions and discounts for CCRCs comply with the final rule."

The House effort, led by signers Rep. Donna Shalala (D-FL) and Rep. John Rutherford (R-FL), aligns with sentiments of LeadingAge and the American Health Care Association / National Center for Assisted Living.

"Under the proposed MFAR rule, retirees across the country who plan carefully for long term care face increased out-of-pocket costs if CCRCs were to pass the cost to the consumer through heightened entrance fees or monthly fees," the letter read. "While the exact cost of the new taxes would vary by state and by community, the price for seniors living in CCRCs in our communities could be significant to people who live on fixed incomes and have carefully planned for retirement costs, possibly adding several hundred dollars to a resident's monthly expenses."

In a recent blog post, Verma said CMS had received more than 4,000 comments on the proposed regulation by the Feb. 1 deadline.

"We are reviewing them carefully, and we understand that potential changes in Medicaid financing and payment can have significant ripple effects at the local level," she wrote.

Another article of interest on this topic: *https://www.wusf.org/medicaid-chief-says-new-rule-would-be-crippling/*

**Source:** *https://www.mcknightsseniorliving.com/home/news/27-members-of-congress-urge-cms-to-withdraw-proposed-medicaid-fiscal-accountability-regulation/*

## WANT MORE FLiCRA?

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## CCRC FINANCE GUIDEBOOK

FLiCRA chapters can purchase copies of the "CCRC Finances, A Guidebook for Members of CCRC Resident Finance Committees".

The guidebook is intended to assist interested residents with achieving a basic understanding of your CCRC's financial position and performance as reflected in its financial statements and other key documents. Guidebooks are available for $14.90 each and can be ordered by contacting the FLiCRA Office at (850) 906-9314 or by email at lauren@executiveoffice.org.

# Senior Living Market Explodes During Challenging Times

The senior population continues growing at a time when the insurance market for senior living operations is under strain and both trends are expected to continue.

The population of Americans over age 80 will double, from 6 million to 12 million, in the next two decades, according to statistics from Harvard's Joint Center for Housing Studies, and by 2035, one out of three U.S. households will be headed by someone over 65.

Some of these Americans will find themselves in need of senior living facilities equipped to provide health services ranging from minor services received in independent living facilities to acute care in skilled nursing facilities.

But senior living facility operators are facing challenges when it comes to insurance. Experts working in the sector note that professional liability and general liability premiums have skyrocketed in the past year or two and there's no end in sight. Property and commercial auto rates are also seeing steady increases.

It's a rapidly hardening market for the general liability and professional liability lines of business.

A handful of carriers have left the senior living market and the industry overall is experiencing consolidation along with continued labor shortages while becoming targets of the plaintiff's bar.

To say the market is challenging is an "understatement," according to John Atkinson, managing director, Willis Towers Watson.

"It's a rapidly hardening market for the general liability and professional liability lines of business," he elaborated. "We've seen an exit from the marketplace of key carriers. We've seen profitability issues driving venue constrictions and rate. We've seen carriers reducing their excess capacity. We've seen retentions going up and the carriers really trying to focus in on what they view as a rapidly deteriorating litigation environment."

According to M. Brant Watson, senior vice president, at Heffernan Insurance Brokers, even the very best accounts with no loss history are seeing pricing increases at minimum of 12% to 15% overall. "But in the worst cases people owning and operating assisted living are looking at premiums doubled and tripled," Watson said.

It's just about every line of coverage, too. "For the four major coverage lines (general liability, professional liability, property and auto) there is a lot of pain right now," he said, adding that the only major coverage line that seems to be stable and very competitive is workers' compensation.

"We're seeing rates continue to increase, retentions and deductibles are higher," said Hoppy Stauffer, senior vice president, Worldwide Facilities.

As an example of drastic change, she cites a market that used to offer a package for senior living facilities but withdrew. Several other markets have followed in similar ways, she said, while others will only write professional liability and general liability with a minimum self-insured retention (SIR) of $100,000 or more. "That's a drastic change," she said. Previously she would find package policies for smaller facilities with deductibles as low as $5,000.

Stauffer says she is also seeing reductions in limits for sexual abuse coverage. "It's not all the time, but for some facilities they may have had $1 million/$1 million in coverage but are seeing a reduction in maximum coverage at renewals to maybe $100,000/$300,000."

She is also worried additional markets may exit the senior living space. Several agents and brokers shared their concerns with Insurance Journal about the number of carriers that have drastically reduced or altered their underwriting appetite for senior living risks in the past few years.

**Small Risks in Senior Living**

Smaller facilities are perhaps facing the biggest hurdles today, according to brokers.

Carriers prefer the larger risks that are willing and able to share more of the risk, according to Worldwide Facilities' Stauffer. They want to secure "more meat in their premium to offset the losses," she said. "That's smart business for them, but for us brokers, not every client has the ability to do that."

She said smaller senior living group homes are not typically able to secure up to $100,000 in SIR yet they are required to buy insurance. "So, it's that 'Catch 22' that we're seeing right now," she said. Dana Kocen, a 14-year veteran healthcare insurance broker, has had similar experience with smaller risks.

"When I first started with Burns & Wilcox four years ago, we had a few markets out there who specialized within the smaller facilities world. We were able to place those," she said. "But as of right now, for example, we only have maybe two markets who are looking at the smaller facilities, and it's getting very, very hard to place them."

'It's a rapidly hardening market for the general liability and professional liability lines of business.' Kocen says smaller risks with any claim activity should expect to see premiums triple or more. "The smaller risk, typically 50 beds or less, where businesses are just trying to make a living, potentially if they have one claim, markets won't even take a look at the risk, or they'll increase the premium from maybe an expiring premium of $6,000 to almost $30,000," Kocen said. "We've had a couple of those instances, due to a market completely re-underwriting their book assessment, and they're taking huge increases on the small businesses."

Brian Lindahl, executive vice president at AssuredPartners, who has been helping senior living facilities secure insurance for more than 30 years, is stunned by the market transformation.

"I haven't really seen anything change as quickly as this market since around 2000-2001 when we went into a very hard marketplace nationally, particularly for nursing homes and to some extent for assisted living as well," said Lindahl.

While the rising rates are an issue, the real challenge is that markets have exited this space, he says.

"A lot of them just feel like there's no way to make money anymore by writing this insurance so they literally pulled out," he said. In a typical year, senior living agents and brokers could count on at least a dozen or more insurance companies to go to. "I'd say right now at Assured Partners, we probably are down to maybe five companies and my guess is it'll shrink from there even more," he said. "There's just not much competition and you've kind of got to take what you get."

**Helping Operators**

What can agents and brokers do to help their senior living accounts contend with today's market and legal conditions?

"I think our job as brokers is really to help a client become more defensible," Lindahl said. "It's not necessarily to go in and help them provide better care, although we'll do that in some way, too."

For example, agents can advise nurses in skilled nursing or assisted living facilities on how to better document a patient's file, which may help them to be less of a target to the plaintiff's bar, he said.

Agents can help identify a senior living facility's weaknesses and strengths so if they do face a claim, they are prepared to defend themselves. "If we can help our clients prove that they're giving great care, we're helping them," he added.
Also agents can help facilities manage the current insurance cycle by making sure they are providing all the details when submitting accounts to market, according to Art Seifert, president, Glatfelter Program Managers.

"When you get into a hardening market like today, more information is better," he said. If an account has any large loss, that loss needs to be well-researched and explained. "You need to take the time to research those losses and to be able to tell a story about it in the most positive light possible," Seifert advised.

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# University Village, Tampa Update

Governor DeSantis signed HB 1033/SB 1070 revisions to Florida Statute 651 into Law in June, 2019, with an Effective Date of January 1, 2020. The Residents of University Village are profoundly grateful to FLiCRA for its leadership working with Leading Age, the Office of Insurance Regulation, the Governor's Continuing Care Advisory Council and the Florida legislature to pass statute revisions that now permit the OIR to actually protect Florida CCRC residents. I illustrate with our experience at University Village.

University Village had been one of Tampa's premier CCRCs. Built in stages between 1987 and 1991, UV was operated as the beta site to test whether a decade of MacArthur Foundation Research into successful aging could be applied in the real world. This experiment was so successful that this approach, called "MasterPiece Living" was developed into a business and internationally franchised. Retiring leaders from USF faculty, state and federal government, military service, the Florida Symphony, artists, writers, physicians, and corporate leaders lived at University Village which had to maintain a waiting list for vacancies.

The collapse of the subprime mortgage market and the credit crisis of 2008 led to the Great Recession. Until 2011, depressed real estate prices forced many households into a liquidity crisis and retirees lost the home equity they might use to buy CCRC Life-Care contracts.

The stock market finally recovered in 2013. But the ownership of University Village faced demands for mortgage repayment they could not meet. These financial difficulties were never revealed to Residents, the OIR, nor prospective Life-Care purchasers.

Florida Statutes 651 revisions now require CCRCs to provide more relevant and timely information about the financial performance of CCRCs. Now the statute authorizes the OIR, under certain conditions, to issue an immediate suspension order on a CCRC as well as a cease and desist order on a person that violates specified laws.

In 2013, the owners of University Village began sale negotiations with John Bartle, an unqualified buyer who sought to enter the Florida Senior Rental Housing market. The sale closed at the end of March, 2014 with new, larger loan agreements amounting to a leveraged buyout of UV assets.

The revised Florida Statutes 651 streamlines provisions of law relating to applications for licensure and acquisition of a CCRC.

In March, 2015, the OIR denied the acquisition application of the new owners, Bartle, his wife Rebecca and their partners.

The Department of Financial Services filed an injunction and notice of automatic stay for purpose of rehabilitation (a Receivership motion). This hearing was repeatedly appealed and delayed by our owners. Nevertheless, Life-Care contracts were permitted to be sold until May, 2015. The unqualified buyers brought in a management company hired under a consulting contract, allowing it to be unresponsive to OIR regulation.

In August, 2015, this new management company terminated both our Executive Director with more than 20 years' CCRC experience at UV and our Chief Financial Officer.

The revised Florida Statutes 651 codifies the definition of manager or management company, and accompanying provisions close a loophole that has allowed management serving without a written contract to evade regulation.

The inability to sell Life-Care contracts along with Ownership mismanagement resulted in insufficient cash flow, staff terminations, and further declines in facility maintenance.

We were subject to repeated failures of air conditioning and flooding due to roof leaks and breaking pipes.

In August, 2015 at a meeting of our Association, Residents voted to form a LifeCare Residents'

Protection Fund. We successfully solicited resident contributions to engage the Jennis Law Firm to protect our entry deposit refunds and health care allowances in the event of forced ownership change through sale, state receivership or federal bankruptcy.

The revised Florida Statutes 651 provides greater transparency regarding the CCRCs' performance and the OIR's activities relating to the examination and regulation of CCRCs. It requires that the provider annually submit management's calculation of the provider's debt service coverage ratio, occupancy, and days cash on hand.

During discovery permitted by the receivership process, Ownership refused OIR access to business records.

Florida Statutes 651 revisions now require that records be maintained in this state but permits cloud-based storage as long as the records are readily accessible to the OIR. The definition of records is amended and clarified to include all documents and correspondence regardless of physical form, characteristics or means of transmission. All records are to be maintained in the state unless prior written from the OIR allows for the removal.

In September, 2015, as the state was about to present testimony and evidence at a Receivership hearing, the owners filed for Chapter 11 protection in Federal Bankruptcy Court.

As Debtors-in-Possession, owners impeded our exit from Bankruptcy by trying to retain equity interests in the sale of University Village. In May, 2018, through the skill of our attorney, David Jennis and the Court-appointed Examiner, Jeffrey Warren, who blocked ownership from any financial reward and preserved the LifeCare contract rights of residents, the Judge approved our exit from Bankruptcy.

I'm pleased to announce that on February 4, 2020, in Federal Court, the Judge has approved the Final Order permitting the sale of University Village independent living to Tampa Life Plan Village, Inc., a Florida not-for-profit corporation. The sale is to be financed through the sale of taxable and exempt bonds approved by the Florida Development Finance Corp, a state-authorized issuer of industrial revenue bonds.

It has been nearly six years since March, 2014 that University Village fell into the hands of an unlawful purchaser. It will probably take another 2 years to restore the physical plant to modern standards. Our UV Community has faced challenges and overcome adversity. Thanks to the leadership of FLiCRA, other CCRC communities may be spared.

**Mel Tockman, M.D, Ph.D.**

***Senior Living Market - Continued from Page 5***

"Maybe it's that there's been a change in the director of nursing and ever since that director of nursing came on board, the last three years, the losses have been great," he said. Perhaps an old director of nursing was the culprit under past losses but that person was fired. "Whatever it might be, you need to look at all the details carefully and come up with a story that can convince underwriters that the account's worth looking at," Seifert said.

Every detail counts in today's hard senior living market because there's almost no incentive for underwriters to even look at business they're afraid of, Seifert said.

Seifert added that today's industry is challenging especially for a younger generation of agents. "A lot of agents have frankly never sold in a hard market," he said. That means learning how to have very difficult conversations with their insureds. For many years the market has been disingenuous in pricing risk, he said. "And now all of a sudden we're getting honest about where the risk needs to be priced."

**Going Forward**

All indications for 2020 point to a difficult senior living insurance market, says Matthew Wasta, vice president, APU Senior Care at AmWINS Group.

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***Senior Living Market - Continued from Page 7***

"It's a rapidly evolving market and several carriers have pulled out. Those that remain are taking a hard look at their rates, the limits they put out, and their participation in this market," he said.

Linda Stueber, vice president, middle market underwriting and business development, at Nationwide recommends that facilities also pay close attention to who they admit as residents going forward. That might help to reduce exposure to liability losses, she says.

"Some folks are reluctant to do background checks on residents, but there have been situations where communities admit a resident who is a past sex offender and that's something to think about," she said. "We're not advocating that they should deny residency or evict someone because of that but it's something that they may want to consider."

Another area that in her view could be an issue is medical marijuana. "It's a hot topic these days, especially in states where it's legal," she said. "Facilities have to look at that differently depending on the laws in the state and what the residents want."

Lastly, she recommends paying attending to "a cuity creep." That is where a resident's cognitive or physical abilities decline to the point at which facility staff becomes unable to adequately care for them. Acuity creep has the potential to lead to claims activity, she says. "Sometimes a community will stretch to keep folks in assisted living when perhaps they really need full nursing home care."

Most importantly, Wasta says agents should be cautious in such turbulent times when submitting new business. "My best advice to agents would be to put forth the highest quality submission possible with the most detailed information they can obtain," he said. "Carriers now are not giving a pass to folks that don't provide complete information. And you'll get the best terms possible with the best information."

**Source**: *https://www.insurancejournal.com/magazines/mag-coverstory/2019/11/18/548704.htm*