



The Resident CONNECTION

1st Quarter 2022

President's Message



As Bennett Napier, CAE begins his 31st year as executive director of FLiCRA, we have an opportunity to thank him and the following remarkable FLiCRA staff team at his firm Partners in Association Management,

Inc.: Lauren Asbell, CMP, Program Manager/ Meeting Planner (18 years with FLiCRA); Eric Thorn, Esq., our in-house attorney (24 years with FLiCRA); and our Legislative Representative William H. Stander. Their conscientious work on our behalf keeps us current and educated about issues that affect residents of Continuing Care Retirement Communities (CCRCs).

As you know, the mission of FLiCRA is to promote and protect the rights of residents who live in CCRCs. A significant portion of that mission is focused on legislative and regulatory advocacy at the state level, however, the association also assists members in other ways.

I am sometimes asked by a resident of a CCRC if FLiCRA can intercede on the person's behalf to resolve a personal issue with the administration. The usual path for those communications is directly with the relevant administrative personnel and through the Resident Council.

When more advice or assistance is needed outside of the legislative arena, there are some other ways that FLiCRA can help individual residents or collective groups of residents:

- Assists resident budget and finance committees to compare their operations with other similarly sized

or structured continuing care retirement communities.

- Assists residents with a public records request regarding financial information on their specific continuing care retirement communities. If it's a nonprofit CCRC, FLiCRA can also obtain the most recent federal tax returns. FLiCRA not only assists current residents with this type of request. It's also common for FLiCRA to assist prospective residents or members of their family to obtain this information as they make decisions on what Florida CCRC to move into.

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- Assists residents with specific questions or grievances related to independent living, assisted living or skilled nursing. When and/if FLiCRA cannot provide direct assistance in the resolution based on the subject matter, FLiCRA helps facilitate connection for the resident with the right authority, whether that is a state regulatory agency or, in some cases, outside legal counsel.
- Provides in-person and/or virtual training of new resident council members on their roles as outlined in Florida Statutes 651, Continuing Care Regulations in Florida.
- Provides Resident Councils recommendations on amendments to Council bylaws.
- Reviews existing resident contracts, or proposed changes to resident contracts and/or service changes.
- Assists residents with determination of, when and/if a formal complaint may be required or warranted given potential violations of Florida law primarily under Florida Statutes 400 and 651.

This is not an exclusive list, but it outlines some of the most common scenarios where members or their immediate family members/ trustees or caregivers contact FLiCRA looking for assistance.

In early February, I had the pleasure of participating in a Zoom meeting organized by Donna Kristaponis of the Washington State Continuing Care Residents Association.

Attendees were from 15 different states and included members of the National Continuing Care Residents Association (NaCCRA) Board. The purpose of the meeting was to explore challenges many CCRCs and their state organizations face trying to influence state legislation in order to improve protections for residents of their communities. I hope you are aware that Florida is a leader in this area.

With our productive relationship with the providers' association LeadingAge Florida, the oversight provided by existing legislation, and oversight by the Florida Office of Insurance Regulation (OIR), we are far along in successfully realizing our mission.

Your membership, your attention to news releases from FLiCRA, and your participation in the work yet to be done will assure the continuing success of CCRC communities here in Florida.

Diane Dalsimer, FLiCRA President

Florida Senate Bills 988, 1724 and House Bill 987 Nursing Home Visitation Rights (as of February 21, 2022)

The primary legislation on this subject is Senate Bill 988.

The bill would create new Florida Law, Florida Statutes 408.823, F.S., to establish the “No Patient Left Alone Act.”

The bill requires providers to allow clients admitted to their facilities or who are residents at their facilities to receive visitors in accordance with Agency for Health Care Administration (AHCA) rules. If a provider must restrict visitation due to health or safety concerns, the bill requires the provider to develop alternate visitation protocols that allow visitation to the greatest extent possible under the circumstances.

The bill also specifies certain situations in which visitation must be allowed by providers that admit clients to their facilities or serve clients who are residents at their facilities.

Providers are authorized to establish infection control protocols for visitors, including passing a health screening and wearing personal protective equipment (PPE), to which a visitor must adhere or the provider is authorized to refuse the visitor access. Providers are required to submit their visitation policies to the AHCA by January 1 of each year for approval.

Senate Bill 988 has one more committee stop.

FLiCRA supports Senate Bill 988.

A committee analysis of the legislation is located at <https://www.flsenate.gov/Session/Bill/2022/988/Analyses/2022s00988.hp.PDF>

Senate Bill 1724 would create provisions on defining an “essential caregiver” for visitation purposes.

House Bill 987 is similar to Senate Bill 1724.

House Bill 987 allows a resident of an intermediate care facility for the developmentally

disabled (ICFDD), nursing home, or assisted living facility (ALF), or his or her guardian or legal representative, to designate an essential caregiver.

The bill prohibits a facility from refusing visitation by the essential caregiver. An essential caregiver can be a family member, friend, guardian, or other individual. The bill requires the Agency for Health Care Administration to develop guidelines to assist facilities in establishing essential caregiver visitation policies and procedures, which must require facilities to:

- Allow a resident or client, or his or her guardian or legal representative, to designate an essential caregiver for in-person visitation in the same manner that a resident or client would designate a power of attorney;
- Establish a visitation schedule allowing the essential caregiver to visit the resident or client for at least two hours every day;
- Establish procedures to enable physical contact between the resident or client and essential caregivers;
- Establish a visitors log; and
- Obtain the signature of the essential caregiver certifying that the caregiver agrees to follow the facility’s safety protocols.

The bill allows a facility to revoke an individual’s designation as an essential caregiver if the person violates the facility’s safety protocols, which cannot be more stringent than those established for the staff of the facility.

The bill also allows a facility to suspend all essential caregiver visitation rights for up to seven days if in-person visitation poses a serious health risk to the residents of the facility.

FLiCRA supports Senate Bill 1724 and House Bill 987.

COVID-19 Liability Protections for Long-Term Care Providers Extended by Florida Legislature

A bill extending COVID-19 liability protections for long-term care and other healthcare providers is awaiting Gov. Ron DeSantis' signature after Florida Legislators passed the bill.

SB 7014, COVID-19-related Claims Against Health Care Providers, would extend the COVID-19 limitations of liability for healthcare providers, including assisted living operators, through June 1, 2023.

The liability protections for COVID-19-related claims against a healthcare provider mainly relate to claims arising from the diagnosis or treatment of a condition in someone with coronavirus, the provision of a novel or experimental treatment, transmission of the virus, and the delay or cancellation of a surgery or medical procedure due to the coronavirus.

The original bill, which the Florida Senior Living Association (FSLA) worked on with lawmakers, required plaintiffs to provide "sufficient detail" that a provider was grossly negligent or engaged in intentional misconduct that caused death or harm. The bill also provides immunity for claims related to supplies or personnel that were not readily available or not available at reasonable cost so that providers could comply with COVID-19 standards.

Operating in 'good faith'
"We are so grateful to the Florida Legislature for recognizing the importance of continuing to protect senior living communities who were operating in good faith during the pandemic," FSLA President Gail Matillo said. "We need to get through next summer and see how we fare before removing important protections for health and long-term care providers."

FSLA Vice President of Public Policy and Legal Affairs Jason Hand said that the estimated financial impact of COVID-19 on assisted living communities through the first quarter of 2021 was \$2.3 billion.

"In 2022, COVID-19 continues to create strain on

Florida's long-term care facilities are dealing with a workforce crisis, historically low occupancy, increasing operations costs and ever-increasing liability insurance costs," Hand said. "ALFs operating in good faith and following current federal and state guidance don't also need the cost and destruction of frivolous lawsuits." The FSLA is an Argentum state partner.

Florida Health Care Association (FHCA) CEO Emmett Reed said COVID-19 continues to "wreak havoc" on communities and caregivers as "pandemic burnout has worsened an already challenged workforce."

"The protections provided by SB 7014 are critical for our state's nursing centers and assisted living facilities, ensuring that our long-term care workers can remain safe from sue-and-settle lawsuit tactics while continuing to serve in a challenging pandemic environment," he said.

The FHCA is the state affiliate of the American Healthcare Association/ National Center for Assisted Living. "These liability protections reinforce support from our legislature and ensure Florida's long-term care centers have the resources needed to continue providing high-quality care to Florida's most vulnerable population," Reed added.

Florida Assisted Living Association CEO Veronica Catoe said the legislation supports providers during a critical time.

"Providers are navigating consistent change and still deliver exceptional care and services to their residents each day," Catoe told McKnight's Senior Living. "We look forward to Gov. DeSantis signing SB 7014 into law so these protections can remain in place and guarantee healthcare providers receive the same level of support as other businesses that are also protected."

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CCRCs Not Looking to Exit, but Reinvest in Skilled Nursing

Reinvesting in what they've got in order to stay competitive and offer the care that their referral partners and patients want, Rich Scanlon, senior managing director with Ziegler, has seen several CCRCs move forward with plans for reinvestment and reconfiguration.

The Florida-based Mayflower Retirement Community, which includes 220 independent living apartments, 31 private assisted living units, 15 of which are used for memory support services, and 60 nursing beds, recently secured \$80 million Series 2021 Bonds to reposition its campus.

Phase one of the project was financed in November, 2020, with over \$60 million in Series 2020A Bonds, and consisted of the construction of a new health care center consisting of 24 private memory care suites and 60 private skilled nursing rooms.

The second phase of the project will consist of constructing 50 new independent living units, a clubhouse and converting skilled nursing beds into 21 assisted living units.

Other projects he's worked on include converting Florida-based CCRC Sunnyside Villages' semi-private rooms into private rooms and helping Fleet Landing in Atlantic Beach, Fla. take some of their semi-private rooms out of service in favor of private rooms.

Scanlon said one trend he's seen on these renovation projects is that a couple of CCRC owners have elected to wait and see what happens in the market before deciding what to do with their skilled nursing wings.

"We've seen the last two not have any nursing beds in phase one to give them time to reassess the market, reassess trends and see what happens before they develop phase two," he said.

Scanlon felt that CCRCs tend to cater to the higher end of the market and having newer facilities and newer rehab helps these communities modernize to attract private pay residents and Medicare

short-term rehabs.

"They're seeing much more competition in their marketplace and much greater competition for the short-term Medicare rehab stays," he said. "Unless you have private rooms, you're probably not going to get any of the Medicare rehab stays or anybody moving in on a private pay basis."

Source: <https://skillednursingnews.com/2021/10/ccrcs-not-looking-to-exit-but-reinvest-in-skilled-nursing/>

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As McKnight's Senior Living previously reported, current law shielding Florida businesses and healthcare providers from COVID-19-related lawsuits was passed in early 2021. Although general businesses were provided indefinite immunity liability protections, healthcare provider protections in the Sunshine State are scheduled to sunset in March.

Citing data from Cognicion - a Richmond, VA-based digital legal support firm - an FHCA spokeswoman told McKnight's Senior Living that after pandemic protections were passed last year, there have been approximately five assisted living claims and 15 nursing home claims in the state since 2021.

The bill will become law immediately upon DeSantis' signature.

At the time of the printing of this issue of the Resident Connection, the bill has been presented to the Governor and is awaiting his signature.

Source: <https://www.mcknightsseniorliving.com/home/news/covid-19-liability-protections-for-long-term-care-providers-extended-by-florida-legislature/>

House Bill 1239/Senate Bill 804 Nursing Home Staffing (As of February 18, 2022)

House Bill 1239 had passed two House Subcommittees as of February 21st.

A committee analysis of the amended bill is located at: <https://www.flsenate.gov/Session/Bill/2022/1239/Analyses/h1239c.HCA.PDF>

Senate Bill 804 had passed its two committees of reference as of February 23, 2022.

One primary FLiCRA objective addressed in testimony before various House and Senate committees is if staffing ratios or formulas are modified and legislation is passed, is that newly adopted ratios would only be in place for a specific amount of time (meaning there would be a sunset provision). The rationale behind a sunset review is that any reforms would focus on current workforce shortage challenges resulting from health care workers leaving long-term care service employment due to the pandemic and that any staffing ratio changes not be permanent.

There are slight variations in the House and Senate proposals, however, in essence, the legislation defines average monthly hours of direct care per resident per day” to mean the total number of direct care service hours provided by direct care staff in a month at the facility divided by the sum of each daily resident census for that month.

Direct care staff is defined in the bills as individuals who, through interpersonal contact with residents or resident care management, provide care and services to allow residents to attain or maintain the highest practicable physical, mental, and psychosocial well-being.

The term does not include individuals whose primary duty is maintaining the physical environment of the facility, including, but not limited to, food preparation, laundry, and housekeeping.

The term includes, but is not limited to, disciplines and professions such as:

- Licensed nurses.
- Certified nursing assistants.
- Physical therapy staff.
- Occupational therapy staff.
- Speech therapy staff.
- Respiratory therapy staff.
- Activities staff.
- Social services staff.
- Mental health service workers.

The legislation requires a nursing home to demonstrate a minimum monthly average, rather than a weekly average (which is current law), of 3.6 hours of direct care per resident per day.

House Bill 539/Senate Bill 1324 Nursing Home Financial Reporting

House Bill 539 requires nursing homes and their respective home offices to annually submit audited financial experience to the Florida Agency for Health Care Administration.

Under the bill, nursing homes would provide the same level of audited financial data that hospitals must provide. Nursing home costs associated with providing the audited data are considered allowable Medicaid costs. This will enable nursing homes to include the costs associated with

providing the audited data on cost reports used to calculate Medicaid nursing home prospective rates incorporated into the General Appropriations Act.

House Bill 539 has passed the House of Representatives. House Bill 539 passed the Senate Rules Committee on February 23rd.

The legislative analysis is located at: <https://www.flsenate.gov/Session/Bill/2022/1324/Analyses/2022s01324.hp.PDF>

Presentation to the Continuing Care Advisory Council by the Florida Office of Insurance Regulation

Florida CCRCs

	2020	2021
Certificates of Authority	70	70
Operational Facilities	68	69
Provisional Certificates of Authority	1	1
Monthly Reporters	2	2
Accredited Facilities	9	4
Facilities in Run-Off	1	1

Resident Information

Level of Care	Pursuant to a Continuing Care Contract	Without a Continuing Care Contract
Independent Living	22,377	713
Assisted Living and Memory Care	2,536	1,258
Skilled Nursing	1,420	2,350
Total	26,333	4,321

- 142 individuals have contracted with a provider pursuant to a continuing care at-home contract.
- The average age of the resident population is 82.3 years.

Financial and Operating Ratios

	Days Cash on Hand	Debt Services Coverage Ratio	Occupancy
Statutory Threshold	100	1.2	80%
Median	387.19	2.34	85.9%
Range	18.71 to 2,130.95	-54.11 to 54.08	31% to 96.2%
Percentage of Facilities that Met the Statutory Threshold	97.2%	55.0%	74.6%



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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 their CCRC’s financial position and performance as reflected in its financial statements and other key documents.

Printed guidebooks are available for \$14.90 each and electronic copies are free. Orders can be placed by contacting the FLiCRA Office at (850) 906-9314 or by email at lauren@executiveoffice.org.

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