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September 26, 2023

SENT VIA EMAIL to bennett@executiveoffice.org

Bennett Napier, M.S., CAE
Florida Life Care Residents Association
325 John Knox Rd, L103
Tallahassee, FL 32303

RE: Response to your recent inquiries

Dear Mr. Bennett:

This responds to the inquiries regarding continuing care matters that you recently made by e-mails to Carolyn Morgan and at a meeting on August 25, 2023.

While the Office of Insurance Regulation (“OIR”) has authority to regulate continuing care matters pursuant to Chapter 651, Florida Statutes, please note that the OIR does not have statutory authority to render interpretations of statutes, except in rules for interpretations of general applicability or in declaratory statements for interpretation of a more limited applicability, assuming the requirements for such a statement are met. I refer you to section 120.54, Florida Statutes, for the applicable statute on rules. Further, declaratory statements are covered by section 120.565, Florida Statutes, and Florida Administrative Code (“F.A.C.”) Chapter 28-105.

First, regarding your inquiry about who is the “provider”, you may want to review section 651.011(23), Florida Statutes, and other provision of Chapter 651, Florida Statutes, defining the term and delineating the provider’s responsibilities. According to section 651.011(23), the provider is the entity that provides continuing care for a fee presumably by a contract. Pursuant to section 651.035, Florida Statutes, a provider shall maintain a minimum liquid reserve. Accordingly, the “provider”, defined by section 651.011(23), Florida Statutes, would be the entity that possesses the Certificate of Authority (“COA”).

Second, regarding the manner in which a designated resident representative is chosen, you may want to review section 651.085(2), Florida Statutes, which provides:

A residents' council formed pursuant to s. 651.081, members of which are elected by the residents, shall nominate and elect a designated resident representative to represent them before the governing body of the provider on matters specified in subsection (3). The initial designated resident representative elected under this section shall be elected to serve at least 12 months. The designated resident representative does not have to be a current member of the residents' council; however, such individual must be a resident, as defined in s. 651.011.

Accordingly, it would be contrary to section 651.085(2), Florida Statutes, for a provider or its management company to select a designated resident representative.


Third, regarding your inquiry about the responsibility of the provider to give notice to the designated resident representative and allow him or her to attend and participate in meeting of the full governing body of the provider at which increases in resident fees will be discussed, you may want to review section 651.085(3), Florida Statutes, which provides:

The designated resident representative shall be notified by a representative of the provider at least 14 days in advance of any meeting of the full governing body at which the annual budget and proposed changes or increases in resident fees or services are on the agenda or will be discussed. The designated resident representative shall be invited to attend and participate in that portion of the meeting designated for the discussion of such changes. Designated resident representatives shall perform their duties in good faith. For providers that own or operate more than one facility in the state, each facility must have its own designated resident representative.

Accordingly, whenever proposed changes or increases in resident fees or services are on the agenda or will be discussed in any meeting of the full governing body of the provider, the designated resident representative shall be notified at least 14 days in advance of the meeting and be invited to attend and participate in that portion of the meeting designated for discussion of such changes.

Please note that this response is the informal opinion of the undersigned and is based only on the information that has been provided, and it is not binding on the OIR. If you would like to request a formal opinion from the OIR, please see Section 120.565, Florida Statutes, and the applicable rules from the F.A.C. for the criteria and procedures to request a declaratory statement.

Sincerely,


William Oglo
Assistant General Counsel