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To keep you informed of legislative changes resulting from the 2011 Florida Regular Legislative Session, Carlton Fields' **Government Law and Consulting** practice group is pleased to provide you with our latest legislative news alert providing a general overview of certain legislation passed by the 2011 Florida Legislature.¹

As of this writing, the bill reported is awaiting review by the Governor and is subject to his veto authority. The reader is encouraged to check the ultimate status of any bill by visiting the Legislature's web site (www.leg.state.fl.us). Please select the "Enrolled" (ER) version of the bill.

**Committee Substitute for Committee Substitute for House Bill 1037
Continuing Care Retirement Communities**

This bill authorizes the use of continuing care at-home contracts in order to allow individuals to receive services offered by a continuing care retirement community (CCRCs) in their own homes while reserving the right to shelter to be provided by the CCRC at a later date.

The bill defines the term "continuing care at-home" to mean "pursuant to a contract other than a contract described in subsection (2) [relating to continuing care], furnishing to a resident who resides outside the facility the right to future access to shelter and nursing care or personal services, whether such services are provided in the facility or in another setting designated in the contract, by an individual not related by consanguinity or affinity to the resident, upon payment of an entrance fee."

The bill creates s. 651.057, F.S., to govern continuing care at-home (CAAH) contracts and provides requirements for providers offering CAAH contracts.

¹ This report was compiled in substantial part using public records data from the Florida Senate and the Florida House of Representatives.

Section 651.021, F.S., is amended to require written approval from the Office of Insurance Regulation (OIR) before constructing a new facility or marketing the expansion of an existing facility equivalent to the addition of at least 20 percent of existing units or 20 percent or more in the number of CCAH contracts.

The bill amends s. 651.023, F.S., to provide that if a feasibility study is prepared by an independent certified public accountant, it must contain an examination opinion for the first three years of operations and financial projections having a compilation opinion for the next three years. If the feasibility study is prepared by an independent consulting actuary, it must contain mortality and morbidity data and an actuary's signed opinion that the project as proposed is feasible and that the study has been prepared in accordance with standards adopted by the American Academy of Actuaries.

A certificate of authority may not be issued until the CCRC project has a minimum of 50 percent of the units reserved and proof is provided to OIR. The bill provides that if a provider offering CCAH contracts is applying for a certificate of authority or approval of an expansion, then the same minimum reservation requirements must be met for the continuing care and CCAH contracts, independently of each other.

The bill further provides that for an expansion of a continuing care facility or CCAH contracts, a minimum of 75 percent of the moneys paid for all or any part of an initial entrance fee for continuing care and 50 percent of the moneys paid for all or any part of the initial fee collected for CCAH shall be placed in an escrow account or on deposit with the department. Additionally, a provider is entitled to secure release of moneys held in escrow if, among other things, the consultant who prepared the feasibility study (or an approved substitute) certifies *within 12 months before the date of filing for office approval* that there has been no material adverse change in status with regard to the study.

The bill amends s. 651.055, F.S., to provide that a prospective resident, resident, or resident's estate is not entitled to interest of any kind on a deposit or entrance fee unless specifically provided for in the continuing care contract. The bill permits contracts for continuing care and CCAH to include agreements to provide care for any duration. The bill also requires a provider to file a new residency contract for approval within 30 days after receipt of a letter from OIR notifying the provider of a noncompliant residency contract. The bill provides that pending review and approval of the new residency contract, the provider may continue to use the previously approved contract.

The bill amends s. 651.118, F.S., to provide that the Agency for Health Care Administration (AHCA) does not need to approve sheltered nursing home beds for the residences of residents living outside the facility pursuant to a CCAH contract.

If approved by the Governor, these provisions take effect July 1, 2011.

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