LeadingAge Florida

Florida – First State to Create Financial Triggers as Part of Continuing Care/Life Plan Community Regulation

Florida has long been a leader in developing progressive and balanced regulation for continuing care retirement communities (CCRC) also known as life plan communities (LPC). Many states have modeled their legislation after ours. LeadingAge Florida has always been an active participant, and often the leader, in these efforts.

With the passage of CS/CS/CS/HB 1033, the Florida Legislature has once again passed legislation that goes beyond what other states have tried. The bill, which still must be acted upon by Governor DeSantis before it becomes law, creates regulatory criteria that the Office of Insurance Regulation (OIR) must use to determine if a CCRC/LPC has financial challenges serious enough to trigger a "regulatory action level event" or an "impairment." Although the bill does not take effect until January 1, 2020, providers should become familiar with the criteria for a "regulatory action level event" and an "impairment" as well as related changes in reporting so they are prepared to respond accordingly.

When revisions to Chapter 651, F.S., take effect, all CCRCs/LPCs will be required to file quarterly reports
-- including CARF accredited communities. The good news is the last quarterly report for the provider's fiscal year is not required if the provider does not have pending a regulatory action level event, impairment, or a corrective action plan.

As part of the quarterly report (s.651.0261), a provider must include three financial measures: days cash on hand (DCOH) as of the reporting date, occupancy, and debt service coverage ratio (DSCR) over the 12-month period ending on the reporting date. This is a new requirement that gives the OIR additional information to monitor providers and intervene quickly if warranted. If a provider falls below two or more of the thresholds set forth in the definition of a "regulatory action level event" (s.651.011(25)) at the end of any fiscal quarter, "the provider must submit to the office, at the same time as the quarterly report, an explanation of the circumstances and a description of the actions it will take to meet the requirements." The OIR could also use information in the quarterly report to determine if monthly reporting should be required. Calculations for DCOH, occupancy, and DSCR in a quarterly report will <u>not</u> be used to trigger a "regulatory action level event." That was the agreement reached with the bill sponsors when this change was introduced and debated in the final days of the 2019 Legislative Session. Consequently, a "regulatory action level event" can only be triggered using DSCR, DCOH and occupancy calculations included in the annual report submitted to the OIR.

A "regulatory action level event" as defined in s.651.011(25) occurs if any <u>two</u> of the following criteria are triggered:

- "The provider's DSCR is less than <u>the greater of</u> the minimum ratio specified in the provider's bond covenants or lending agreement for long-term financing or 1.20:1 as of the most recent annual report filed with the office pursuant to s. 651.026, <u>or</u>, if the provider does not have a DSCR required by its lending institution, the provider's DSCR is less than 1.20:1 as the most recent annual report filed with the office pursuant to s.651.026."

- "The provider's DCOH is less than the greater of the minimum number of DCOH specified in the provider's bond covenants or lending agreement for long-term financing or 100 days. If the provider does not have a DCOH required by its lending institution, the DCOH may not be less than 100 as of the most recent annual report filed with the office." It is important to note that the definition of DCOH (s. 651.011(10)) includes the minimum liquid reserves in the calculation.
- Occupancy is less than 80% averaged over the 12-month period immediately preceding the filing of the annual report.
- If the provider is a member of an obligated group having cross-collateralized debt, the DCOH and DSCR for the group must be used.

"Impaired," as defined in s. 651.011(15), means that either of the following has occurred: The provider fails to meet the minimum liquid reserve (MLR) requirements or

- "Beginning January 1, 2021, 1. For a provider with mortgage financing from a third-party institution or a public bond issue, the provider's DSCR is less than 1.00:1 and the provider's DCOH is less than 90; or 2. For a provider without mortgage financing from a third-party or pubic bond issue, the provider's DCOH is less than 90."
- If the provider is a member of an obligated group having cross-collateralized debt, the DCOH and DSCR for the group must be used.

A newly created s.651.034 gives the OIR some discretion from taking action when a regulatory action level event or an impairment is triggered if a community is new or expanding "until stabilized occupancy is reached or until that time projected to achieve stabilized occupancy as reported in the last feasibility study required by the office as part of an application filed under s. 651.0215, s. 651.023. s. 651.024, or s. 651.0246 has elapsed, but no longer than five years after the date of issuance of the certificate of occupancy." In addition, "The office may forgo taking action for up to 180 days after an impairment [is triggered] if the office finds there is a reasonable expectation that the impairment may be eliminated within the 180 day period." Finally, if OIR's remedial rights are subordinate to those of a lender or trustee as provided in s.651.114(11)(a), the OIR may not pursue receivership if the provider is impaired. Instead, "the impaired provider must make available to the office copies of any corrective action plan approved by the third-party lender or trustee to cure the impairment and any related required report."

The OIR's interpretation of changes made to chapter 651, F.S., as a result of CS/CS/CS HB 1033 could be different from ours which is why this article for the most part quotes or para-phrases provisions in the bill. The OIR will start the rulemaking process shortly after the bill becomes law. Susan Langston, LeadingAge Florida Vice President of Advocacy will represent the LeadingAge Florida at those meetings. At that point, we will know more about the implementation of provisions in the bill. Until then, we will attempt to provide some guidance on the main provisions in the bill so providers can begin to access their ability to comply with new regulatory provisions and plan for the future.

This article is the first in a series of articles on key provisions in CS/CS/CS HB 1033 that will be included in upcoming e-newsletters. If you have any questions or comments, please contact Mary Ellen Early, Public Policy Liaison, (386) 734-7681 or meearly@earthlink.net.