

STORAGE NAME: h1243.LTC

DATE: March 27, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
Elder Affairs & Long Term Care
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1243

RELATING TO: Continuing Care Contracts

SPONSOR(S): Representative Jacobs

STATUTE(S) AFFECTED: 651.011, 651.013, 651.015, 651.022, 651.023, 651.0235, 651.026,
651.033, 651.035, 651.051, 651.055, 651.061, 651.065, 651.071,
651.091, 651.095, 651.105, 651.106, 651.107, 651.1081,
651.111, 651.114, 651.1151, 651.118, 651.121, 651.041, F.S.

COMPANION BILL(S): SB 1592

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) Elder Affairs & Long Term Care
- (2) Finance & Taxation
- (3) General Government Appropriations
- (4)
- (5)

I. SUMMARY:

The bill makes various changes to chapter 651, F.S., related to continuing care contracts.

The major changes include:

1. Revises the fees paid by facilities to the Department of Insurance (DOI)
2. Changes the liquid reserve requirements
3. Adds grounds for suspension or revocation of a certificate, and application of certain provisions of the Insurance Code to chapter 651, F.S.
4. Repeals s. 651.041, F.S., "Use of reserves; investment purposes".

The bill has no projected fiscal impact on state agencies. The regulated industry would experience a fee increase of twenty-five dollars per year, per facility. There are seventy-two licensed facilities currently.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Continuing Care Retirement Communities (CCRC's) offer seniors an independent lifestyle, the privacy of their own home, and long-term security and a life long assurance for care. The community offers them access to coordinated social activities, dining services and health care when and if the need arises. Continuing Care Contracts are sometimes referred to as "Lifecare" because of the opportunity for a continuum of care to be provided by or within one community. Upon payment of entrance and monthly fees, continuing care contracts provide a lifetime residence and either nursing care or personal services to the resident. The one-time entrance fee may be called "a purchase price" or "annuity". Currently, the Department of Insurance regulates continuing care contracts pursuant to chapter 651, F.S.

A few CCRC's offer continuing care contracts that do not require an entrance fee and offer care assurances only on a month-to-month basis. An applicant's physical and mental health is often subject to review before a CCRC will approve a contract.

There are different types of entrance fee contracts:

- Extensive Agreement: provides residents with lifetime access to health care without an increase in the monthly service when care is provided. It requires residents to pay a higher fee initially with the assumption that they will utilize an increased level of health care in the future.
- Modified Agreement: offers the same access to health care, however residents only pay for care as it is needed. The monthly service fee increases as levels of care increase, although residents may receive a discounted rate for the care and a specified number of days of long term nursing care at no additional cost.
- Fee For Service Agreement: residents may initially pay a lower monthly service fee than with other types of contracts. However, residents are responsible for all costs of additional health care if they are needed, without the benefit of resident discounts or any free long term care days.

Monthly fees may cover provision of the following:

- Meals
- Housekeeping services
- Emergency call monitoring
- Some Utilities
- Unit maintenance
- Social activities
- Scheduled transportation
- Linen and personal laundry
- Health monitoring
- Round the clock security
- Additional services

Indexing of increases in monthly fees for services and care may be spelled out in the contract. Entry fees may be refundable on a sliding scale within a short time after move in. Generally, the refund declines to zero after some period of residency.

DOI has licensed continuing care retirement communities since 1977 under the Bureau of Specialty Insurers. There are 72 licensed facilities serving approximately 25,000 retirees.

B. EFFECT OF PROPOSED CHANGES:

The bill strengthens consumer protections, updates terms, deletes obsolete or incorrect cross references, and consolidates some existing provisions. The bill applies the Insurance Code to Continuing Care Retirement Communities and incorporates some current practices (regarding office location, official seal, rule making, conflict-of-interest for employees among others) of the Department of Insurance into this chapter. The bill establishes a renewal and replacement reserve that the CCRC can use for capital improvements. The bill deletes the requirement for an annual renewal of certification, and adds additional grounds for revoking a provider's certificate of authority. The bill provides remedies that DOI may apply to a provider that fails to fulfill its contractual obligations to its residents.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The existing authority is not modified.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A.

(2) what is the cost of such responsibility at the new level/agency?

N/A.

(3) how is the new agency accountable to the people governed?

N/A.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

Yes, the certification fee for facilities is increased by twenty-five dollars per year. The bill provides that DOI may charge a late fee not to exceed fifty dollars per day. Currently, the statute provides the late fee may be fifty per cent of the renewal fee (the fee in effect on the last renewal date), plus a fine not to exceed fifty dollars per day for each day of non-compliance.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Yes, consumers pay fees which include some of the costs of regulation.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A.

- (2) Who makes the decisions?

N/A.

- (3) Are private alternatives permitted?

N/A.

- (4) Are families required to participate in a program?

N/A.

- (5) Are families penalized for not participating in a program?

N/A.

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A.

(2) service providers?

N/A.

(3) government employees/agencies?

N/A.

D. SECTION-BY-SECTION:

This section need be completed only in the discretion of the Committee.

Section 1 amends s. 651.011, revising definitions, to change the reference from continuing care “agreement” to continuing care “contract” in this section and throughout the chapter. This reference is intended to emphasize the formal, legal nature of the contract. The reference to furnishing “food” under the contract is deleted, to eliminate the possible interpretation of the current law that a contract must provide for food in order to be regulated as a continuing care contract. A definition is added for “advertising” to include all forms of advertising, including any written, visual, or electronic information.

Section 2 amends s. 651.013, F.S., to specify those provisions of the Insurance Code that are applicable to continuing care contracts. The bill would apply the following sections of the Insurance Code to department regulation of continuing care contracts:

- ss. 624.302-624.305, F.S., related to the office and seal of the Department of Insurance, conduct of department employees related to conflict of interest and specifically prohibiting DOI employees from having financial interest in an insurer.
- ss. 624.308-624.312, F.S., related to department rule making authority, department authority to issue cease and desist orders and orders to remove certain parties; penalties for filing false or misleading financial statements or supporting documents; immunity from civil liability for providing the department with information about the condition of an insurer; requirements related to records of the department, and the reproduction and destruction of those records.
- s. 624.319(1)-(3), F.S., related to examination and investigation reports by the department (but not including subsections (4) and (5) related to publication in the newspaper of an examination report).
- ss. 624.320-624.321, F.S., requiring insurers to pay examination expenses of the department, and authorizing the Insurance Commissioner to administer oaths,

receive evidence, and subpoena witnesses and records in relation to an examination.

- s. 624.324, F.S., authorizing the department to hold hearing for any purpose within the scope of the Insurance Code.
- s. 624.34, F.S., authorizing the Department of Law Enforcement to accept fingerprints of persons applying for licenses from the Department of Insurance.

Section 3 amends s. 651.015, F.S., to increase or revise various filing fees, as follows:

- The current \$75 annual fee for renewal of a certificate of authority and for renewal of a provisional certificate of authority is replaced with a \$100 annual fee for filing the annual report required by s. 651.026.
- Currently, the statute allows a late fee (for renewal) that may be 50 percent of the renewal fee in effect on the last renewal date, plus the department may levy a fine not to exceed \$50 a day for each day of noncompliance. The bill strikes the 50% late fee, and instead provides that the department may charge a late fee not to exceed \$50 a day for each day of noncompliance.
- The bill revises the language authorizing a fee for the required investigation. When filing the original application for a certificate, the bill provides for payment of a fee to cover the actual cost of a credit report and fingerprint processing. The current statute provides for a \$100 investigation fee, per facility, at application.

Section 4 amends s. 651.022, F.S., related to an application for a provisional certificate of authority. Currently, the issuance of a provisional certificate of authority entitles the applicant to collect entrance fees and reservation deposits from prospective residents, and such fees or deposits must be placed in an escrow account pursuant to s. 651.033. Language in s. 651.022 regarding requirements for the escrow account are deleted, but this is a technical change since the language is redundant to the requirements in s. 651.033.

The bill also specifies that the department shall not approve any application for a provisional certificate of authority which includes in the plan of financing any encumbrance of the operating reserves required by this chapter.

Section 5 amends s. 651.023, F.S., related to application for a certificate of authority. The bill transfers language that is currently in paragraph (1)(c), regarding the minimum deposit that must be collected to reserve a unit, to new paragraph (2)(b).

The current law requires [in subsection (3)] that no more than 25 percent of initial entrance fees may be pledged for the construction or purchase of the facility or for any other long-term financing. Current law also requires [in paragraphs (4)(b) and (d)] that entrance fees and deposits may not be released from escrow until payment in full has been received for at least 70 percent of the units and proof that commitments have been secured for long-term financing. Current law further provides that in lieu of fulfilling these requirements, the provider may have sufficient funds in the escrow account to meet all outstanding debts on the facility and equipment. The bill retains the condition

that the department may authorize the release of such funds to retire all outstanding debts on the facility and equipment if the provider shows it will grant to initial residents and all subsequent generation residents a first mortgage on the land, buildings, and equipment that constitute the facility and that the provider satisfies the requirements of paragraphs (4)(a), (c), and (e). With regard to this first mortgage, the current law provides that it may be granted to a trust which is beneficially held by the residents. The bill, strengthens this language to provide, instead, that the first mortgage shall be granted to an independent trust which is beneficially held by all residents who reside in the facility pursuant to a continuing care contract regardless of the date of entry, and further requires that the trust document provide for an annual audit and to furnish to the department all information the department may reasonably require.

The bill further provides that the department shall not approve an application that includes in the plan of financing any encumbrance of the operating reserves required by chapter 651. The bill makes other technical and conforming changes.

Section 6 amends s. 651.0235, F.S., to eliminate the requirement for renewal of certificates of authority and provisional certificates of authority, providing instead that either certificate is valid for as long as the department determines that the provider continues to meet the requirements of the chapter. However, the bill continues to require that an annual financial report be filed, which provides the primary method for annual department oversight. (See the related changes in fees in sections 3 and 7.)

Section 7 amends s. 651.026, F.S., which currently requires licensed continuing care facilities to file an annual financial report with the department. The bill requires a \$100 filing fee for each annual report required to be filed by this section (this repeats the requirement delineated in Section 3 of the bill, which also deletes the current annual \$75 certificate renewal fee). The bill further requires that the report be prepared in conformity with generally accepted accounting principles, which is a codification of a current department requirement.

Section 8 amends s. 651.033, F.S., related to escrow accounts. The bill specifies that all funds deposited in an escrow account, if invested, must be invested as set forth in part II of chapter 625 (which is currently provided in s. 651.041), provided that such investment shall not diminish the funds held in escrow below the amount required by this chapter, and clarifies that funds may be used to pay escrow agent fees associated with administering the accounts.

The bill strikes language in subsection (2) related to the type of an investment company in which escrow accounts may be held, which has not, in practice, been used. The limitations in subsection (1) regarding where escrow accounts may be held would continue to apply.

The bill deletes a provision that currently allows funds to be withdrawn from escrow without department approval if there is notice to the department and the amount withdrawn does not exceed the amount required for the facility to bring current the past due portion of an indebtedness created by a lien on the facility pursuant to a trust indenture or mortgage.

The bill deletes language in paragraph (3)(a) which requires the escrow agreement to state that its purpose is to protect the residents, which appears to be redundant language. Language is transferred from paragraph (3)(d) to (3)(a) regarding release of funds by escrow agents.

A new provision is added in (3)(c) that provides at the request of an individual resident, the provider may hold the check for a 7-day period and shall not deposit it during this period. If the resident rescinds the contract within this period, the check must be immediately returned to the resident.

Section 9 amends s. 651.035, F.S., to revise the minimum liquid reserve requirements. The bill reduces the amount of the reserve in those situations where the provider is making interest payments only, and no principal payments, on long-term financing. In that situation the minimum liquid reserve in escrow would be reduced from an amount equal to 18 months of payments to 12 months of payment. The bill also reduces to 15 percent the amount of the reserve that is currently required to be in an amount equal to 30 percent of the total operating expenses in the annual report. However, the bill adds a new reserve requirement, requiring that each provider maintain in escrow a renewal and replacement reserve equal to 15 percent of the total accumulated depreciation based on the audited financial statement required to be filed, not to exceed 15 percent of the facility's average operating expenses for the past 3 fiscal years. If a provider is an operator of a facility, but not the owner (and no depreciation amount is included in the provider's financial statement), the renewal and replacement reserve must equal 15 percent of the total operating expenses of the provider. Providers licensed prior to October 1, 1983 must fully fund the renewal and replacement reserve by October 1, 2003, by multiplying the difference between the former escrow requirement and the new escrow requirement by the number of years the facility has been in operation after October 1, 1983.

The bill allows each provider to withdraw up to 33 percent of the total renewal and replacement reserve under certain conditions, subject to approval by the department, including a requirement that the funds be repaid to the reserve account in equal monthly payment and complete repayment within 36 months.

Section 10 amends s. 651.051, F.S., relating to maintenance of assets and records in the state, to require a provider to notify the president or chair of the facility's resident's council prior to any removal of any records or assets from Florida. Current law (unchanged by the bill) also requires department approval prior to removal.

Section 11 amends s. 651.055, F.S., relating to contracts and the right to rescind, to clarify that all continuing care contracts and every addendum must be submitted to and approved by the department prior to its use. The bill strikes the requirement that contracts describe the policy of the provider regarding reserve funding. The bill also strikes the reference to resident's funds being retained a separate escrow account during the first 7 days after executing a contract to conform to the deletion of this requirement in section 8 of the bill. The bill provides that a resident may rescind a continuing care contract within seven days after executing the contract and receive a full refund without penalty or forfeiture. The bill makes other technical and conforming changes.

Section 12 amends s. 651.061, F.S., relating to dismissal or discharge of a resident. Currently, a facility may discharge a resident for just cause, which includes, but is not limited to, a good faith determination that a resident is a danger to himself or others while remaining in the facility. The bill provides that "just cause" does not include termination of contract holders for the purpose of decertifying a facility from the chapter. Current law requires a refund within 120 days of amounts due to a resident if a contract is terminated for just cause. The bill provides that for new contracts entered into on or after October 1, 1997 that, if a contract is terminated for just cause, the provider will refund any money due upon the resident's vacating the unit. Further, the provider may withhold from the refund due to the resident a reasonable amount to cover the anticipated cost of utilities, telephone, or other obligations, if documented by the provider. If the withheld money is not used for such purposes, it must be refunded to the resident within 45 days of vacating the unit.

Section 13 amends s. 651.065, F.S., to make technical conforming changes.

Section 14 amends s. 651.071, F.S., which currently provides that contracts are preferred claims upon liquidation of a facility. The bill provides that this same preferred status for contracts would also apply in the event of "receivership" or liquidation of the facility.

Section 15 amends s. 651.091, F.S., relating to availability, distribution, and posting of reports and records, and other disclosure requirements. Current law provides for disclosure to residents of certain information, including any plans adopted by the governing body of the provider for expansion or phased development during the next 3 years, or, if a master plan for development has been adopted by the governing body, the longer period of time appropriate to such master plan. The bill strikes this disclosure requirement, and replaces it with a requirement that the provider make available for review, master plans approved by the provider's governing board and any plans for expansion or phased development, to the extent that the availability of such plans will not put at risk real estate, financing, acquisition, negotiations, or other implementation of operational plans and thus jeopardize the success of negotiations, operations, and development.

The bill adds a requirement that the facility provide a copy of the resident's rights as described in s. 651.083, F.S. The bill adds a requirement that a true and complete copy of the full disclosure document be filed with the department prior to its use.

Section 16 amends s. 651.095, F.S., relating to advertisements and department approval. The bill primarily streamlines the language of the statute. See, also, the amended definition of advertising in Section 1 of the bill. The authority of the department to disapprove advertising, and the related prohibition against its use, is made somewhat stronger by replacing the current language that prohibits deceptive or misleading advertising with language that prohibits any advertisement that is a violation of part X of chapter 626 (the Unfair Insurance Trade Practice provisions).

Section 17 amends s. 651.105, F.S., relating to examination and inspection, to make technical and conforming changes.

Section 18 amends s. 651.106, F.S., relating to grounds for discretionary refusal, suspension, or revocation of a certificate of authority, to provide additional grounds for action by the department, as follows: (1) any cause for which issuance of the license could have been refused had it then existed and been known to the department; (2) having been found guilty of, or having pleaded guilty or nolo contendere to, a felony in this state or any other state; (3) engaging in unfair methods of competition or in unfair or deceptive acts prohibited under part X of chapter 626; or (4) a pattern of bankrupt enterprises.

The bill provides that revocation of a certificate does not relieve a provider from its obligation to residents under the terms of any continuing care contract, and the provider must continue to file its annual statement and pay license fees to the department, but the provider may not issue any new continuing care contracts. The department would be authorized to seek an action in the circuit court of Leon County to enforce the department's order and the provisions of this section.

Section 19 amends s. 651.107, F.S., related to duration of suspension, to make a technical conforming change.

Section 20 creates s. 651.1081, F.S., relating to remedies available in cases of unlawful sale. The bill provides that upon a determination by the department that a provider has violated the provisions of the chapter, the department may order the provider to cease sales and make a rescission offer to the resident, without penalty to the resident, subject to certain time limits within which the resident must respond and other conditions.

Section 21 amends s. 651.111, F.S., relating to requests for inspection, to streamline the language.

Section 22 amends s. 651.114, F.S., relating to delinquency proceedings, to delete the requirement that the department notify the chair of the advisory council in instances where a provider's reserves fall below the required reserve amount. The bill also eliminates the requirement that the provider make available to the advisory council all documents requested by the council, and increases the period of time from 14 to 30 days within which the provider must make available to the advisory council a plan for obtaining compliance or solvency.

Section 23 amends s. 651.1151, F.S., relating to administrative, vendor, and management contracts, to grant the department authority to require the submission of any related-party contract which has not been previously disclosed to the department. The bill requires that any current related-party management services contract be on file and accessible to residents and resident organizations.

Section 24 amends s. 651.118, F.S., to correct an error in the current law that refers to the Agency for Health Care Administration, rather than the Department of Insurance, being appointed as receiver of a provider pursuant to the provisions of part I of chapter 631.

Section 25 amends s. 651.121, F.S., to make technical and conforming changes.

Section 26 repeals s. 651.041, F.S., relating to use of reserves. The statute provides that investments of reserves must be maintained in forms as prescribed in part II of chapter 625. This requirement is transferred by the bill to section 651.033.

Section 27 Effective date of October 1, 1997.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

No non-recurring fiscal impact is projected.

2. Recurring Effects:

DOI would receive an additional \$1,800 per year (twenty-five dollars per facility).

3. Long Run Effects Other Than Normal Growth:

None are projected.

4. Total Revenues and Expenditures:

DOI would receive an additional \$1,800 per year (twenty-five dollars per facility) in revenues. No expenditures for state agencies are projected.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None are projected.

2. Recurring Effects:

None are projected.

3. Long Run Effects Other Than Normal Growth:

None are projected.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Continuing Care Retirement Communities will have a fee increase of twenty-five dollars per year. That is an industry cost of \$1,800 per year.

2. Direct Private Sector Benefits:

The streamlining of procedures may produce time and cost savings. Under section 12, residents who are discharged for "just cause" would receive an immediate refund and an amount would be withheld to cover anticipated expenses such as utilities and telephone charges.

3. Effects on Competition, Private Enterprise and Employment Markets:

None are projected.

D. FISCAL COMMENTS:

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

V. COMMENTS:

The Continuing Care Advisory Council (authorized by 651.121, F.S.) worked on this legislation over the last two years with the DOI, the Florida Association of Homes for the Aging, The Retirement Housing Council, and the Florida Life Care Resident's Association.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

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