

By the Committee on Banking and Insurance; and Senator
Saunders

311-1895-02

1 A bill to be entitled
2 An act relating to continuing care retirement
3 communities; amending s. 651.015, F.S.;
4 authorizing the Department of Insurance to
5 accept certain documents and information
6 relating to continuing care contracts
7 electronically or by facsimile; authorizing the
8 department to adopt rules; amending s. 651.035,
9 F.S.; revising minimum liquid reserve
10 requirements for continuing care providers;
11 amending s. 651.118, F.S.; authorizing certain
12 sharing of facilities and services between
13 sheltered beds used for extended congregate
14 care and nursing home beds in a continuing care
15 facility; providing an effective date.

17 Be It Enacted by the Legislature of the State of Florida:

19 Section 1. Subsection (1) of section 651.015, Florida
20 Statutes, is amended to read:

21 651.015 Administration; forms; fees; rules;
22 fines.--The administration of this chapter is vested in the
23 department, which shall:

24 (1) Prepare and furnish all forms necessary under the
25 provisions of this chapter in relation to applications for
26 provisional certificates of authority, certificates of
27 authority or renewals thereof, statements, examinations, and
28 other required reports. The department is authorized to accept
29 any application statement, report, or information submitted
30 electronically or by facsimile to comply with requirements in
31 this chapter or rules adopted under this section. The

1 department may adopt rules to implement the provisions of this
2 subsection.

3 Section 2. Paragraph (a) of subsection (1) and
4 subsection (2) of section 651.035, Florida Statutes, are
5 amended to read:

6 651.035 Minimum liquid reserve requirements.--

7 (1) A provider shall maintain in escrow a minimum
8 liquid reserve consisting of the applicable reserves specified
9 in subsection (2).

10 (2)(1)(a) A provider shall maintain in escrow under a
11 debt service and as a minimum liquid reserve an amount equal
12 to the aggregate amount of all principal and interest payments
13 due during the fiscal year on any mortgage loan or other
14 long-term financing of the facility, including taxes and
15 insurance as recorded in the audited financial statements
16 required under s. 651.026. The amount shall include any
17 leasehold payments and all costs related to same. If
18 principal payments are not due during the fiscal year, the
19 provider shall maintain in escrow as a minimum liquid reserve
20 an amount equal to interest payments due during the next 12
21 months on any mortgage loan or other long-term financing of
22 the facility, including taxes and insurance. For the purpose
23 of this paragraph, the amount of property insurance premiums
24 used in calculating the debt service reserve shall not exceed
25 the amount paid in calendar year 1999. For providers initially
26 licensed during or after calendar year 1999, the amount of
27 property insurance premiums used in calculating the debt
28 service reserve shall not exceed the amount paid during the
29 first 12 months of facility operation. However, beginning
30 January 1, 2006, and each year thereafter, until the amount
31 maintained in escrow attributable to property insurance equals

1 100 percent of the premium, the provider shall increase the
2 amount maintained in escrow for property insurance by 10
3 percent of the premium paid that year.

4 (b) A provider which has outstanding indebtedness
5 which requires what is normally referred to as a "debt service
6 reserve" to be held in escrow pursuant to a trust indenture or
7 mortgage lien on the facility and for which the debt service
8 reserve may only be used to pay principal and interest
9 payments on the debt which the debtor is obligated to pay, and
10 which may include taxes and insurance, may include such debt
11 service reserve in its computation of its minimum liquid
12 reserve to satisfy this subsection, provided that the provider
13 furnishes to the Department of Insurance a copy of the
14 agreement under which such debt service is held, together with
15 a statement of the amount being held in escrow for the debt
16 service reserve, certified by the lender or trustee and the
17 provider to be correct. The trustee shall provide the
18 department with any information concerning the debt service
19 reserve account upon request of the provider or the
20 department.

21 (c)(2)(a) Each provider shall maintain in escrow an
22 operating reserve in an amount equal to 30 percent of the
23 total operating expenses projected in the feasibility study
24 required by s. 651.023 for the first 12 months of operation.
25 Thereafter, each provider shall maintain in escrow an
26 operating reserve in an amount equal to 15 percent of the
27 total operating expenses in the annual report filed pursuant
28 to s. 651.026. Where a provider has been in operation for
29 more than 12 months, the total annual operating expenses shall
30 be determined by averaging the total annual operating expenses
31 reported to the department by the number of annual reports

1 filed with the department within the immediate preceding
2 3-year period subject to adjustment in the event there is a
3 change in the number of facilities owned. For purposes of
4 this subsection, total annual operating expenses shall include
5 all expenses of the facility except: depreciation and
6 amortization; interest, insurance and taxes included in
7 subsection (1); extraordinary expenses which are adequately
8 explained and documented in accordance with generally accepted
9 accounting principles; liability insurance premiums in excess
10 of those paid in calendar year 1999;and changes in the
11 obligation to provide future services to current residents.
12 For providers initially licensed during or after calendar year
13 1999, liability insurance shall be included in the total
14 operating expenses in an amount not to exceed the premium paid
15 during the first 12 months of facility operation.Beginning
16 January 1, 1993, the operating reserves required under this
17 subsection shall be in an unencumbered account held in escrow
18 for the benefit of the residents. Such funds may not be
19 encumbered or subject to any liens or charges by the escrow
20 agent or judgments, garnishments, or creditors' claims against
21 the provider or facility. However, if a facility had a lien,
22 mortgage, trust indenture, or similar debt instrument in place
23 prior to January 1, 1993, which encumbered all or any part of
24 the reserves required by this subsection and such funds were
25 used to meet the requirements of this subsection, then such
26 arrangement may be continued, unless a refinancing or
27 acquisition has occurred, and the provider shall be in
28 compliance with this subsection.

29 (d)~~(b)~~ Each provider shall maintain in escrow a
30 renewal and replacement reserve in an amount equal to 15
31 percent of the total accumulated depreciation based on the

1 audited financial statement required to be filed pursuant to
2 s. 651.026, not to exceed 15 percent of the facility's average
3 operating expenses for the past 3 fiscal years based on the
4 audited financial statements for each of such years. For a
5 provider who is an operator of a facility but is not the owner
6 and depreciation is not included as part of the provider's
7 financial statement, the renewal and replacement reserve
8 required by this paragraph shall equal 15 percent of the total
9 operating expenses of the provider, as described in this
10 section. Each provider licensed prior to October 1, 1983,
11 shall be required to fully fund the renewal and replacement
12 reserve by October 1, 2003, by multiplying the difference
13 between the former escrow requirement and the present escrow
14 requirement by the number of years the facility has been in
15 operation after October 1, 1983.

16 Section 3. Subsection (8) of section 651.118, Florida
17 Statutes, is amended, and subsection (13) is added to that
18 section, to read:

19 651.118 Agency for Health Care Administration;
20 certificates of need; sheltered beds; community beds.--

21 (8) A provider may petition the Agency for Health Care
22 Administration to use a designated number of sheltered nursing
23 home beds to provide extended congregate care as defined in s.
24 400.402 if the beds are in a distinct area of the nursing home
25 which can be adapted to meet the requirements for extended
26 congregate care. The provider may subsequently use such beds
27 as sheltered beds after notifying the agency of the intended
28 change. Any sheltered beds used to provide extended congregate
29 care pursuant to this subsection may not qualify for funding
30 under the Medicaid waiver. Any sheltered beds used to provide
31 extended congregate care pursuant to this subsection may share

1 common areas, services, and staff with beds designated for
2 nursing home care, provided that all of the beds are under
3 common ownership. For the purposes of this subsection, fire
4 and life safety codes applicable to nursing home facilities
5 shall apply.

6 (13) Residents, as defined in this chapter, are not
7 considered new admissions for the purpose of s.
8 400.141(15)(d).

9 Section 4. This act shall take effect July 1, 2002.

10
11 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
12 COMMITTEE SUBSTITUTE FOR
13 Senate Bill 1246

14 Specifies that Continuing Care Retirement Communities (CCRCs)
15 utilizing sheltered beds used to provide extended congregate
16 care would not be allowed to qualify for funding under the
17 Medicaid waiver program.

18 Residents of a CCRC would not be considered "new admissions"
19 when they enter the CCRCs nursing facility for purposes of
20 section 400.141(15)(d), F.S., which provides for a
21 self-imposed moratorium for nursing homes that have failed to
22 meet the minimum staffing standards for 2 consecutive days.
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