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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. 651.033,
9 F.S.; correcting a cross reference; amending s.
10 651.035, F.S.; revising minimum liquid reserve
11 requirements for continuing care providers;
12 amending s. 651.118, F.S.; providing a funding
13 limitation on sheltered beds used to provide
14 extended congregate care in a continuing care
15 facility; authorizing certain sharing of
16 facilities and services between such sheltered
17 beds and nursing home beds in such facilities;
18 exempting continuing care facility residents
19 from certain calculations relating to
20 moratoriums on new nursing home admissions;
21 providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Subsection (1) of section 651.015, Florida
26 Statutes, is amended to read:

27 651.015 Administration; forms; fees; rules;
28 fines.--The administration of this chapter is vested in the
29 department, which shall:

30 (1) Prepare and furnish all forms necessary under the
31 provisions of this chapter in relation to applications for

1 provisional certificates of authority, certificates of
2 authority or renewals thereof, statements, examinations, and
3 other required reports. The department is authorized to accept
4 any application statement, report, or information submitted
5 electronically or by facsimile to comply with requirements in
6 this chapter or rules adopted under this section. The
7 department may adopt rules to implement the provisions of this
8 subsection.

9 Section 2. Paragraph (d) of subsection (1) of section
10 651.033, Florida Statutes, is amended to read:

11 651.033 Escrow accounts.--

12 (1) When funds are required to be deposited in an
13 escrow account pursuant to s. 651.022, s. 651.023, s. 651.035,
14 or s. 651.055:

15 (d) All funds deposited in an escrow account, if
16 invested, shall be invested as set forth in part II of chapter
17 625; however, such investment shall not diminish the funds
18 held in escrow below the amount required by this chapter. All
19 funds deposited in an escrow account shall not be subject to
20 any charges by the escrow agent except escrow agent fees
21 associated with administering the accounts, or subject to any
22 liens, judgments, garnishments, creditor's claims, or other
23 encumbrances against the provider or facility except as
24 provided in s. 651.035(2)~~(1)~~.

25 Section 3. Subsections (1) and (2) of section 651.035,
26 Florida Statutes, are amended to read:

27 651.035 Minimum liquid reserve requirements.--

28 (1) A provider shall maintain in escrow a minimum
29 liquid reserve consisting of the applicable reserves specified
30 in subsection (2).

31

1 ~~(1)~~(a) A provider shall maintain in escrow as a
2 debt service reserve ~~and as a minimum liquid reserve~~ an amount
3 equal to the aggregate amount of all principal and interest
4 payments due during the fiscal year on any mortgage loan or
5 other long-term financing of the facility, including taxes and
6 insurance as recorded in the audited financial statements
7 required under s. 651.026. The amount shall include any
8 leasehold payments and all costs related to same. If
9 principal payments are not due during the fiscal year, the
10 provider shall maintain in escrow as a minimum liquid reserve
11 an amount equal to interest payments due during the next 12
12 months on any mortgage loan or other long-term financing of
13 the facility, including taxes and insurance. For the purpose
14 of this paragraph, the amount of property insurance premiums
15 used in calculating the debt service reserve shall not exceed
16 the amount paid in calendar year 1999. For providers initially
17 licensed during or after calendar year 1999, the amount of
18 property insurance premiums used in calculating the debt
19 service reserve shall not exceed the amount paid during the
20 first 12 months of facility operation. However, beginning
21 January 1, 2006, and each year thereafter, until the amount
22 maintained in escrow attributable to property insurance equals
23 100 percent of the premium, the provider shall increase the
24 amount maintained in escrow for property insurance by 10
25 percent of the premium paid that year.

26 (b) A provider which has outstanding indebtedness
27 which requires what is normally referred to as a "debt service
28 reserve" to be held in escrow pursuant to a trust indenture or
29 mortgage lien on the facility and for which the debt service
30 reserve may only be used to pay principal and interest
31 payments on the debt which the debtor is obligated to pay, and

1 which may include taxes and insurance, may include such debt
2 service reserve in its computation of its minimum liquid
3 reserve to satisfy this subsection, provided that the provider
4 furnishes to the Department of Insurance a copy of the
5 agreement under which such debt service is held, together with
6 a statement of the amount being held in escrow for the debt
7 service reserve, certified by the lender or trustee and the
8 provider to be correct. The trustee shall provide the
9 department with any information concerning the debt service
10 reserve account upon request of the provider or the
11 department.

12 (c)~~(2)(a)~~ Each provider shall maintain in escrow an
13 operating reserve in an amount equal to 30 percent of the
14 total operating expenses projected in the feasibility study
15 required by s. 651.023 for the first 12 months of operation.
16 Thereafter, each provider shall maintain in escrow an
17 operating reserve in an amount equal to 15 percent of the
18 total operating expenses in the annual report filed pursuant
19 to s. 651.026. Where a provider has been in operation for more
20 than 12 months, the total annual operating expenses shall be
21 determined by averaging the total annual operating expenses
22 reported to the department by the number of annual reports
23 filed with the department within the immediate preceding
24 3-year period subject to adjustment in the event there is a
25 change in the number of facilities owned. For purposes of this
26 subsection, total annual operating expenses shall include all
27 expenses of the facility except: depreciation and
28 amortization; interest, insurance and taxes included in
29 subsection (1); extraordinary expenses which are adequately
30 explained and documented in accordance with generally accepted
31 accounting principles; liability insurance premiums in excess

1 of those paid in calendar year 1999;and changes in the
2 obligation to provide future services to current residents.
3 For providers initially licensed during or after calendar year
4 1999, liability insurance shall be included in the total
5 operating expenses in an amount not to exceed the premium paid
6 during the first 12 months of facility operation.Beginning
7 January 1, 1993, the operating reserves required under this
8 subsection shall be in an unencumbered account held in escrow
9 for the benefit of the residents. Such funds may not be
10 encumbered or subject to any liens or charges by the escrow
11 agent or judgments, garnishments, or creditors' claims against
12 the provider or facility. However, if a facility had a lien,
13 mortgage, trust indenture, or similar debt instrument in place
14 prior to January 1, 1993, which encumbered all or any part of
15 the reserves required by this subsection and such funds were
16 used to meet the requirements of this subsection, then such
17 arrangement may be continued, unless a refinancing or
18 acquisition has occurred, and the provider shall be in
19 compliance with this subsection.

20 (d)~~(b)~~ Each provider shall maintain in escrow a
21 renewal and replacement reserve in an amount equal to 15
22 percent of the total accumulated depreciation based on the
23 audited financial statement required to be filed pursuant to
24 s. 651.026, not to exceed 15 percent of the facility's average
25 operating expenses for the past 3 fiscal years based on the
26 audited financial statements for each of such years. For a
27 provider who is an operator of a facility but is not the owner
28 and depreciation is not included as part of the provider's
29 financial statement, the renewal and replacement reserve
30 required by this paragraph shall equal 15 percent of the total
31 operating expenses of the provider, as described in this

1 section. Each provider licensed prior to October 1, 1983,
2 shall be required to fully fund the renewal and replacement
3 reserve by October 1, 2003, by multiplying the difference
4 between the former escrow requirement and the present escrow
5 requirement by the number of years the facility has been in
6 operation after October 1, 1983.

7 Section 4. Subsection (8) of section 651.118, Florida
8 Statutes, is amended, and subsection (13) is added to said
9 section, to read:

10 651.118 Agency for Health Care Administration;
11 certificates of need; sheltered beds; community beds.--

12 (8) A provider may petition the Agency for Health Care
13 Administration to use a designated number of sheltered nursing
14 home beds to provide extended congregate care as defined in s.
15 400.402 if the beds are in a distinct area of the nursing home
16 which can be adapted to meet the requirements for extended
17 congregate care. The provider may subsequently use such beds
18 as sheltered beds after notifying the agency of the intended
19 change. Any sheltered beds used to provide extended congregate
20 care pursuant to this subsection may not qualify for funding
21 under the Medicaid waiver. Any sheltered beds used to provide
22 extended congregate care pursuant to this subsection may share
23 common areas, services, and staff with beds designated for
24 nursing home care, provided that all of the beds are under
25 common ownership. For the purposes of this subsection, fire
26 and life safety codes applicable to nursing home facilities
27 shall apply.

28 (13) Residents, as defined in this chapter, are not
29 considered new admissions for the purpose of s.
30 400.141(15)(d).

31 Section 5. This act shall take effect July 1, 2002.