

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Banking and Insurance Committee

BILL: CS/SB 1256

SPONSOR: Banking and Insurance Committee and Senator Saunders

SUBJECT: Continuing Care Facilities-Minimum Liquid Reserve Requirements

DATE: February 16, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Chapter 651, F.S., provides for the licensure and regulation of Continuing Care Retirement Communities (CCRCs) by the Office of Insurance Regulation (OIR). Currently, a CCRC must maintain in escrow a statutorily established minimum liquid reserve for the benefit of facility residents.¹ A component of the minimum liquid reserve is property insurance premiums that are used in calculating a CCRC's "debt service" reserve. For purposes of calculating this reserve, the property insurance premiums are capped at the amount paid in calendar year 1999. However, the 1999 premium cap expires on January 1, 2006. On that date, a CCRC must increase its property insurance premiums by 10 percent of the premium paid that year until attributable premium equals 100 percent of the actual premiums.

Committee Substitute for Senate Bill 1256 provides for the following:

- Restructures the treatment of property insurance premiums in the calculation of minimum liquid reserve requirements by removing such premiums from the "debt service" reserve and placing the premiums into the calculation of the "operating" reserve of a CCRC;
- Deletes the provision capping property insurance premiums at the 1999 level; and
- Deletes the January 1, 2006, provision mandating increases in reserves for property insurance premiums by 10 percent per year.

The effect of these changes will generally require that 30 percent of the property insurance premiums be reserved. This percentage is lower than the increase that would occur under current law (due to the 1999 cap expiring). But, the bill will result in gradual premium increases compared to the 1999 cap.

¹ Section 651.035, F.S.

This bill substantially amends section 651.035, Florida Statutes.

II. Present Situation:

Continuing Care Retirement Communities

Chapter 651, F.S., provides for the licensure and regulation of Continuing Care Retirement Communities (CCRCs) and the continuing care contracts they offer. A continuing care contract is a form of insurance under which an individual receives, in exchange for a substantial one-time premium or entry fee and, typically, monthly maintenance fees, the right to reside in a residential unit or nursing home at a CCRC for the rest of his or her life, together with rights to health-related services and food service. Continuing Care Retirement Communities are regulated by the Office of Insurance Regulation (OIR) and, chapter 651, F.S., includes financial requirements for licensure of a CCRC and provisions as to the content of a continuing care contract.

There are presently 29,000 residents in the 70 CCRC facilities in Florida.² Such communities offer senior citizens an independent lifestyle and long-term security as well as access to coordinated social activities, dining services and health care when and if the need arises.³ Continuing care contracts are sometimes referred to as “life care” 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 majority of CCRCs operate on a not-for-profit basis and according to the OIR, 52 of the 70 CCRCs are not-for profit. A certificate of authority (COA) from the Office is required before a CCRC may commence construction, operate, or issue continuing care contracts.⁴ Prior to applying for a COA, a CCRC must hold a provisional COA.⁵ The application for a provisional certificate requires substantial financial information about the CCRC; the persons in control of the community; copies of the continuing care contracts; advertising materials to be used by the CCRC; and a market feasibility study. Issuance of a provisional certificate allows the CCRC to collect entrance fees and reservation deposits, which must be escrowed.

Provisional COAs and COAs are subject to annual review and renewal by the Office.⁶ The Office has the same powers with respect to insolvent or potentially insolvent CCRCs as it has with respect to insolvent or potentially insolvent insurers.

Prior to enrollment at a CCRC, prospective residents are required to sign a lifetime contract with the Community specifying the senior’s service and residency elections.⁷ Although the entrance

² Office of Insurance Regulation.

³ All CCRCs offer three basic care environments which residents may elect to move among to accommodate evolving physical and social needs: (1) independent living, (2) assisted living, and (3) skilled nursing care. While seniors residing in independent living facilities at a CCRC typically are more active residents requiring less direct attention and assistance, residents desiring either short-or long-term skilled nursing care may utilize a CCRC’s Health Care Center, an on-site facility offering 24-hour nursing care.

⁴ Section 651.021, F.S. The Agency for Health Care Administration issues a Certificates of Need for CCRCs that construct nursing home beds under s. 651.118, F.S.

⁵ Section 651.022, F.S.

⁶ Section 651.026, F.S.

⁷ Section 651.055, F.S.

and monthly maintenance fees required for CCRC residency are substantial and a prohibitive barrier to such a living arrangement for many seniors, CCRCs generally offer three separate fee schedules to choose among when contracting with a resident. These schedules range from more extensive contracts (including unlimited long-term nursing care at little or no increase in monthly fees) to fee-for-service contracts (where residents pay separately for all health and medical services, and for long-term care).

Minimum Liquid Reserve Requirements

Presently, CCRCs must maintain a statutorily-prescribed minimum liquid reserve under s. 651.035, F.S. This reserve is in fact three separate reserves based on three separate calculations. The first is the “debt service reserve,” which is an amount equal to the aggregate amount of all principal and interest payments due during the fiscal year on any mortgage loan or other long term financing of the facility, including taxes and insurance. In the event of insolvency, the debt service reserve would be used by the receiver to pay mortgage principal and interest, taxes and insurance for a period of one year for any insolvent CCRC that was placed in rehabilitation and liquidation.⁸

The second is the “operating reserve,” represented as a function of a provider’s total operating expenses, (not including depreciation and amortization; property insurance, interest and taxes; extraordinary expenses if adequately explained and documented in accordance with generally-accepted accounting principles; liability insurance premiums in excess of those paid in 1999; and changes in the obligation to provide future services to current residents). Each CCRC must maintain in reserve an amount equal to 30 percent of the total projected operating expenses for the first 12 fiscal months of operation, and 15 percent thereafter. Where a provider has been in operation for more than 12 months, the total operating expenses shall be determined by averaging the total annual operating expenses reported to the Office by the number of annual reports filed with the Office within the immediate preceding 3-year period subject to adjustment in the event there is a change in the number of facilities owned by a provider.

The third is the “renewal and replacement reserve,” a figure which is equal to 15 percent of the total accumulated depreciation based on the audited financial statement of a CCRC, but not to exceed 15 percent of the facility’s average operating expenses for the past 3 fiscal years based on a CCRC’s audited financial statement for each of such years. Therefore, the “operating” and “renewal and replacement” reserves combined will generally equal 30 percent.

In 2002, the Legislature enacted ch. 2002-222, L.O.F., which capped both property and liability insurance premiums to the premium levels paid during calendar year 1999. This legislation limited the amount of property insurance premiums used in calculating a CCRC’s debt service reserve and liability insurance premiums used in calculating the operating reserve. For CCRCs licensed during or after 1999, the amount of property and liability insurance premiums used in calculating a provider’s debt and operating service reserves, respectively, were capped at the amount paid during the first 12 months of a facility’s operation. But, the legislation provided that beginning on January 1, 2006, and each year thereafter, a provider is required to increase the amount maintained in escrow for property insurance by 10 percent of the premium paid that year,

⁸ The rehabilitation and liquidation provisions are contained in chapter 631, F.S.

until the amount held in escrow attributable to property insurance equals 100 percent of the premium.

This catch-up provision did not apply to liability insurance premiums funding the operating reserve. According to the Florida Association of Homes for the Aging (FAHA), the 2002 legislation was passed in large part due to the escalation in liability and property insurance premiums for CCRCs. Community Care residents bear the cost of all increases in insurance premiums and the minimum liquid reserve requirement adds to their burden.

Representatives with the Florida Association of Homes for the Aging (FAHA) assert that this legislation is necessary because property insurance premiums have increased dramatically for CCRCs due to the hurricane activity over the past two years. The residents of the CCRCs must bear the cost of these increases.

III. Effect of Proposed Changes:

Section 1. Amends s. 651.035, F.S., by restructuring the treatment of property insurance premiums in the calculation of minimum liquid reserve requirements by removing such premiums from the “debt service” reserve and placing the premiums into the calculation of the “operating” reserve of a Continuing Care Retirement Community (CCRC).

The bill deletes the provision capping inclusion of property insurance premiums used in calculation of a CCRC’s debt service reserve requirement at the amount paid by a provider for such premiums in calendar year 1999 (or for providers initially licensed during or after 1999, the amount of property insurance premiums paid during the first 12 months of facility operation). The bill also removes the requirement that beginning January 1, 2006, and each year thereafter, CCRCs must increase the amount of property insurance premiums used in calculating the debt service reserve by 10 percent of the premium paid that year until the amount maintained in reserve attributable to property insurance equals 100 percent of the actual premium.

The effect of these changes will generally require that 30 percent of the property insurance premiums be reserved. This reserve percentage is lower than under current law because the 1999 cap is expiring. But, the bill will result in gradual premium increases compared to the 1999 cap.

Section 2. Provides that the act shall take effect on July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Due to fluctuations in property insurance premiums, there is an indeterminate economic impact on the private sector. However, the OIR did calculate the bill's impact on a sample of 7 large CCRCs. The calculation illustrated that assuming there was no increase in property insurance premiums, the total minimum liquid reserve for these CCRCs would be *below* their current minimum liquid reserve as reflected in their most recent annual report. However, assuming a 25 percent or greater increase in insurance premiums, the average minimum liquid reserve for these CCRCs would be *above* their current minimum liquid reserve.

In a recent survey of CCRCs by the Florida Association of Home for the Aging, annual property insurance premiums have increased 199 percent between 1999 and 2005 for the 23 CCRCs that responded. The residents of the CCRCs must bear the cost of these increases. A CCRC in Pensacola, for example, was informed that its insurance premium will increase from \$200,000 to \$250,000, according to the FAHA.

C. Government Sector Impact:

None.

D. Technical Deficiencies:

None.

VI. Related Issues:

None.

VII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
