

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 377

Continuing Care Provider Minimum Liquid Reserve Requirements

SPONSOR(S): Gibson

TIED BILLS:

IDEN./SIM. BILLS: SB 1256

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Elder & Long-Term Care Committee	_____	DePalma	Walsh
2) Insurance Committee	_____	_____	_____
3) Health Care Appropriations Committee	_____	_____	_____
4) Health & Families Council	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

House Bill 377 amends s. 651.035(2)(a), F.S. by deleting a provision requiring continuing care providers to increase certain minimum debt service requirements.

The bill has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty – The bill deletes certain minimum debt service reserve requirements for continuing care providers, potentially enabling these providers more financial and programmatic flexibility in conducting their affairs and directing available resources.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Continuing Care Retirement Communities

A Continuing Care Retirement Community (CCRC), also frequently referred to as a “Life Care Community,” is a senior housing arrangement specifically designed to provide its residents with both short-term independence of living and some measure of long-term security, as providers contract with residents for provision of a continuum of care as the senior’s needs and abilities change.

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.¹ 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.

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. Although the entrance and monthly maintenance fees required for CCRC residency are substantial and a prohibitive barrier to such a living arrangement for many seniors², 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).³

CCRCs are growing in popularity. Nationally, more than 2,100 CCRCs house approximately 625,000 people, and there are currently 70 CCRCs in the state.⁴ Nonprofit agencies sponsor most CCRCs, and often are established in a manner that caters to affinity groups such as religious organizations, fraternal orders, and ethnic groups.⁵

¹ For information on program features and alternatives offered within a CCRC, and a review of the various contract options available to Community residents, refer to program evaluations provided by the American Association of Retired Persons (AARP), available at: http://www.aarp.org/families/housing_choices/other_options/a2004-02-26-retirementcommunity.html, and the Florida Department of Elder Affairs (DOEA), available at: <http://elderaffairs.state.fl.us/2004CRG/sec04.html#ccr>.

² AARP reports that one-time entrance fees can range from a low of \$20,000 to a high of \$400,000, and monthly maintenance fees can range from \$200 to \$2,500, *ibid*.

³ S. 651.055(1)(b), F.S.,

⁴ Statistical data from *Long Term Care: Florida’s Challenge*, prepared by University of Florida professor Doctor Josephine Turner and available at: <http://fyics.ifas.ufl.edu/financial/unit5/u5ppts/u5ltc.ppt>.

⁵ A collection of “non-commercial information” on Continuing Care Retirement Communities can be found at: http://www.helpguide.org/elder/continuing_care_retirement_communities.htm.

Minimum Liquid Reserve Requirement

Presently, CCRCs must maintain a statutorily-prescribed minimum liquid reserve for the benefit of facility residents, the requirements of which are found in s. 651.035, F.S. 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 continuing care provider that was placed in Rehabilitation and Liquidation.

This reserve is maintained in escrow, and consists of two principal components⁶ based on two distinct calculations. The first is the “debt service reserve”,⁷ a figure representative of a provider’s property insurance⁸ premiums. Providers must maintain in escrow, as a reserve, an amount equal to the next 12 months of interest payments on any mortgage loan or other long-term financing of the facility, including taxes and insurance.

The other is the “operating reserve” based on the three-year average of total operating expenses, *less* depreciation and amortization, property insurance, interest and taxes, extraordinary expenses if adequately explained and documented, liability insurance⁹ premiums in excess of those paid in 1999, and changes in the obligation to provide future services to current residents. Each provider must maintain in reserve an amount equal to 30 percent of the total projected operating expenses¹⁰ for the fiscal 12 months of operation, and 15 percent thereafter.

In recognition of an escalation in liability and property insurance rates, the 2002 Legislature passed SB 1246 amending s. 651.035, F.S.¹¹ Under this legislation, the amount of property insurance premiums used in calculating a CCRC’s debt service reserve – and the amount of liability insurance premiums used in calculating the operating reserve – could not exceed premiums paid in calendar year 1999.¹² For CCRCs licensed during or after 1999, the amount of property insurance premiums used in calculating a provider’s debt service reserve are capped at the amount paid during the first 12 months of a facility’s operation.

Under s. 651.035, F.S., beginning on January 1, 2006 – and each year thereafter, until the amount held in escrow attributable to property insurance equals 100 percent of the premium – a provider is required to increase the amount maintained in escrow for property insurance by 10 percent of the premium paid that year. The section does not include a similar provision for making the operating reserve whole at some future time.

EFFECT OF PROPOSED CHANGES

HB 377 amends s. 651.035(2)(a), F.S. by deleting the provision added during the 2002 Legislative Session requiring providers, beginning on January 1, 2006 and continuing each year thereafter until the amount maintained in its debt service reserve attributable to property insurance equals 100 percent of

⁶ S. 651.035, F.S. also supplies the statutory requirements of providers’ “debt service reserve offset” and, as an element of the “operating reserve”, a “renewal and replacement reserve”.

⁷ S. 651.035(2)(a), F.S.; although the reserve under paragraph (b) of subsection (2) of s. 651.035, F.S. is identified as a separate “debt service reserve”, in practice it is referred to as the “debt service reserve *offset*”. Consequently, in practice the reserve in paragraph (a) is referred to as the “debt service reserve”.

⁸ Per s. 624.604, F.S., property insurance is “insurance on real or personal property of every kind and of every interest therein, whether on land, water, or in the air, against loss or damage from any and all hazard or cause, and against loss consequential upon loss or damage, other than noncontractual legal liability for any such loss or damage.”

⁹ Per s. 624.605(1)(b), F.S., liability insurance is “insurance against legal liability for the death, injury, or disability of any human being, or for damage to property, with provision for medical, hospital, and surgical benefits to the injured persons, irrespective of the legal liability of the insured, when issued as part of a liability insurance contract.”

¹⁰ This forecasting of operating expenses occurs in a feasibility study, required by s. 651.023, F.S.

¹¹ Section 3, Chapter 2002-222, L.O.F.

¹² Based on the most recently-filed annual reports, the Office of Insurance Regulation reports that CCRC reserve funds have been reduced by \$12,408,697 (\$3,946,585 in liability insurance and \$8,462,112 in property insurance) as a result of capping the insurance premium rates at their 1999 levels for calculation of provider reserves.

the premium, to increase the amount maintained in escrow for property insurance by 10 percent of the premium paid that year.

The bill provides an effective date of July 1, 2006.

C. SECTION DIRECTORY:

Section 1: Amends s. 651.035, F.S.; deletes additional minimum debt service reserve requirements for certain continuing care providers for certain years.

Section 2: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Office of Insurance Regulation (OIR)¹³ reports an indeterminate economic impact on the private sector, and points out that in the event of a provider insolvency, inadequate reserves could result in the need for assessment to all CCRCs pursuant to s. 651.119, F.S.¹⁴ According to OIR, since 1999 only one provider has become insolvent¹⁵ and filed for protection from creditors pursuant to federal bankruptcy laws.¹⁶

D. FISCAL COMMENTS:

Although the precise number of Medicaid recipients residing in CCRCs is unavailable, 33 of 70 CCRCs are dually-certified as Medicare and Medicaid facilities. Potentially, increases to resident monthly

¹³ Pursuant to s. 20.121(3)(a)1, F.S., the OIR is responsible for all activities concerning insurers and other risk bearing entities, including "licensing, rates, policy forms, market conduct, claims, issuance of certificates of authority, solvency, viatical settlements, premium financing, and administrative supervision."

¹⁴ Under this section, upon provider insolvency, the Office is allowed to seek voluntary contributions from the reserves maintained by other providers to fund resident moving expenses. Absent voluntary contributions, the Office may levy pro rata assessments on the reserves maintained by other providers up to a certain amount, but may waive or temporarily defer all or part of an assessment if such assessment would impair the financial standing of a facility or its residents.

¹⁵ S. 651.011(10), F.S.

¹⁶ In this instance, the provider was purchased out of bankruptcy, and the provisions of s. 651.119, F.S. were thus never invoked.

maintenance fees as a result of the increases to provider reserve levels¹⁷ currently required by s. 651.035(2)(a) F.S., (providers must annually increase the amount maintained in escrow attributable to property insurance by 10 percent of the premium paid that year, until this amount equals 100 percent of the premium) might result in an expenditure of Medicaid funds.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Counties and municipalities are not affected by this bill.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

¹⁷ The OIR reports an average increase per resident, per month, of \$3.45, though a 50% increase in property insurance levels would result in residents experiencing an average monthly increase of \$6.44, and a 100% increase in property insurance levels would result in an average increase of \$8.59 monthly.