

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 377 CS

Continuing Care Provider Minimum Liquid Reserve Requirements

SPONSOR(S): Gibson

TIED BILLS:

IDEN./SIM. BILLS: SB 1256

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Elder & Long-Term Care Committee</u>	<u>8 Y, 0 N, w/CS</u>	<u>DePalma</u>	<u>Walsh</u>
2) <u>Insurance Committee</u>	<u>18 Y, 0 N</u>	<u>Cooper</u>	<u>Cooper</u>
3) <u>Health Care Appropriations Committee</u>	<u>14 Y, 0 N</u>	<u>Speir</u>	<u>Massengale</u>
4) <u>Health & Families Council</u>	<u></u>	<u>DePalma</u>	<u>Moore</u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

HB 377 CS restructures the escrow requirements of subsections 651.035(2)(a) and (c), Florida Statutes, by removing property insurance premiums from the calculation of a provider's debt service reserve requirement, and by effectively incorporating such property insurance premiums into the calculation of a provider's operating reserve requirement.

Because of fluctuations in insurance premium levels, there is an indeterminate economic impact on the private sector.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty—The bill restructures the escrow 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 that residents may elect to move among to accommodate evolving physical and social needs: independent living, assisted living, and 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 use 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 seniors,² 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

Continuing Care Retirement Communities are growing in popularity. Nationally, more than 2,100 CCRCs house approximately 625,000 individuals, 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 primarily 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”, represented as a function of a provider’s total operating expenses, *less* depreciation and amortization; property insurance, interest and taxes; extraordinary expenses if adequately explained and documented in accordance with generally-accepted accounting principles; 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 first 12 fiscal months of operation, and 15 percent thereafter.¹¹ 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 three-year period subject to adjustment in the event there is a change in the number of facilities owned by a provider.

In recognition of an escalation in liability and property insurance rates, the 2002 Legislature passed Senate Bill 1246, amending s. 651.035, F.S.¹² 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 1999.¹³ 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, are capped at the amount paid during the first 12 months of a facility’s operation.

Under s. 651.035(2)(a), 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.

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 As reported in an annual report filed by providers pursuant to s. 651.026, F.S.

¹² Section 3, chapter 2002-222, L.O.F.

¹³ 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.

EFFECT OF PROPOSED CHANGES

This bill restructures the treatment of property insurance premiums in the calculation of minimum liquid reserve requirements. The bill amends subsections 651.035(2)(a) and (c), F.S., by removing property insurance premiums from calculation of a provider's debt service reserve requirement, and by deleting property insurance premiums from the list of items excluded from calculation of operating reserves—effectively including property insurance premiums into the list of “total annual operating expenses” used in calculating a provider's operating reserve requirement. Specifically, the bill does the following:

- Transfers consideration and calculation of a provider's property insurance premiums from the “debt service reserve” requirements of subsection 651.035(2)(a), F.S., to the “operating reserve” requirements of subsection 651.035(2)(c), F.S.
 - The amount to be maintained by providers in escrow as a “debt service reserve” is equal to the aggregate amount of all principal and interest due during the fiscal year on any mortgage loan or other long-term financing of the facility, including taxes.
 - For purposes of calculating a provider's operating reserve, “total operating expenses” shall include all expenses of the facility except: depreciation and amortization; interest and taxes included in section 651.035(1), F.S.; extraordinary expenses that are adequately explained and documented in accordance with generally-accepted accounting principles; liability insurance premiums in excess of those paid in calendar year 1999; and changes in the obligation to provide future services to current residents.
 - The amount to be maintained by providers in escrow as an “operating reserve” is equal to 30 percent of the total operating expenses projected in a required feasibility study for the first 12 months of operation. Thereafter, each provider must maintain in escrow an operating reserve in an amount equal to 15 percent of the total operating expenses in a required annual report. 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 three-year period subject to adjustment in the event there is a change in the number of facilities owned by a provider.

The bill deletes 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 is replenished to 100 percent of the premium, to increase the amount maintained in escrow for property insurance by 10 percent of the premium paid that year.

The bill also deletes the provision capping inclusion of property insurance premiums used in calculation of a provider's debt service reserve requirement at the amount paid by a provider for property insurance premiums in 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 effective date of the bill is July 1, 2006.

C. SECTION DIRECTORY:

Section 1. Amends s. 651.035(2)(a) and (c), F.S.; deleting property insurance premiums from debt service reserve requirements; deleting additional minimum debt service reserve requirements for certain continuing care providers for certain years; and adding property insurance premiums into operating reserve calculations.

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:

Because of fluctuations in insurance premium levels, there is an indeterminate economic impact on the private sector.

D. FISCAL COMMENTS:

Citing a 199 percent increase in providers' annual property insurance premiums between 1999 and 2005, and noting that current hurricane predictions are likely to result in increases to property insurance premiums in coming years, the Florida Association of Homes for the Aging (FAHA) and the Florida Life Care Residents Association have commented that the associations "do not believe that the investment of residents would be jeopardized if property insurance premiums were moved from the debt service reserve, where 100% of the annual premium must be escrowed, to the [operating reserve], where 30% of annual operating expenses must be escrowed. This change would provide some financial relief to residents now and in the future without jeopardizing the financial cushion that would be needed if a CCRC went into administrative supervision or receivership."¹⁴

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Counties and municipalities are not affected by this legislation.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

¹⁴ Communication on file with the Elder and Long-Term Care Committee.

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its January 25, 2006 meeting, the Committee on Elder & Long-Term Care adopted a strike-all amendment to House Bill 377. The strike-all changed the bill in the following ways:

- Transfers consideration and calculation of a provider's property insurance premiums from the "debt service reserve" requirements of section 651.035(2)(a), Florida Statutes, to the "operating reserve" requirements of section 651.035(2)(c), Florida Statutes.
- Removes a provision in section 651.035(2)(a), Florida Statutes, capping inclusion of property insurance premiums used in calculation of a provider's debt service reserve requirement at the amount paid by a provider for property insurance premiums in 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).
- Removes a provision in section 651.035(2)(a) , Florida Statutes, requiring providers, beginning January 1, 2006 and continuing each year thereafter until the amount maintained in escrow attributable to property insurance equals 100 percent of the premium, to increase the amount maintained in escrow for property insurance by 10 percent of the premium paid that year.

The Committee favorably reported a committee substitute. This analysis is drafted to the committee substitute.