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.)

BILL: CS/SB 1246

SPONSOR: Banking and Insurance Committee and Senator Saunders

SUBJECT: Continuing Care Retirement Communities

DATE: February 15, 2002 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Emrich	Deffenbaugh	BI	Favorable/CS
2.	Liem	Wilson	HC	Favorable
3.				
4.				
5.				
6.				

I. Summary:

Committee Substitute for Senate Bill 1246 would provide for the following:

- The amount of property insurance premiums used in calculating a CCRCs' debt service reserve and amount of liability insurance premiums used in calculating their operating reserve could not exceed premiums paid in calendar year 1999.
- For CCRCs licensed during or after 1999, the amount of property insurance premiums used in calculating the debt service reserve, and the amount of liability insurance used in calculating the operating reserve would be limited to the amount paid during the first 12 months of operation.
- The debt service reserve would be required to be made whole over a period of years beginning in January 2006. The bill does not include a similar provision for making the operating reserve whole at some future time.
- For CCRC nursing facilities, any sheltered beds used to provide extended congregate care may not qualify for funding under the Medicaid waiver program.
- For CCRC nursing facilities, any sheltered beds used to provide extended congregate care may share certain services, staff, and common areas with beds designated for nursing home care, provided all beds are under common ownership. Fire and life safety codes applicable to nursing home facilities would apply.
- Provides that residents, are not considered "new admissions" when they enter the CCRC's nursing facility for purposes of section 400.141(15)(d), F.S., which provides for a self-imposed moratorium for nursing homes that have failed to meet the minimum staffing standards for two consecutive days.
- Authorizes the Department of Insurance to accept required documents and information related to CCRCs electronically or by facsimile and adopt implementing rules.

The bill amends ss. 651.015, 651.035, and 651.118, F.S.

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 Department of Insurance 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 26,000 residents in the 74 CCRC facilities in Florida.[1] 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. 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 such communities operate on a not-for-profit basis and have been regulated by the state since 1953.[2] A certificate of authority (COA) from the department is required before a CCRC may commence construction, operate, or issue continuing care contracts. Prior to applying for a COA, a CCRC must hold a provisional COA. 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 Department. The Department has the same powers with respect to insolvent or potentially insolvent CCRCs as it has with respect to insolvent or potentially insolvent insurers.

Minimum Liquid Reserve Requirement

Currently, CCRCs must maintain a statutorily established minimum liquid reserve.[3] This reserve is in fact two separate reserves based on two separate calculations. One is the "debt service reserve" and CCRCs must maintain in that reserve all principal and interest expenses due during the fiscal year on any mortgage loan or long-term debt of the facility, including expenses for taxes and property insurance. The second is the "operating reserve" which is based on a 3-year average of total operating expenses, less depreciation, amortization, interest, liability insurance

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[1] Florida Association of Homes for the Aging.
[2] According to the Department of Insurance, 53 of the 74 CCRCs are not-for-profit.
[3] S. 651.035, F.S.

and taxes. Each CCRC must maintain in its operating reserve an amount equal to 30 percent of the total projected operating expenses for the first 12 months of operation and 15 percent thereafter.

According to the Florida Association of Homes for the Aging, CCRC residents bear the cost of all increases in insurance premiums and the minimum liquid reserve requirement adds to their burden. Funds are held in reserve ultimately for the benefit of the residents.

Nursing Home Sharing Space, Staff, and Services with Extended Congregate Care

Extended congregate care is a designation of a category of assisted living facility beds that permits the assisted living facility to provide nursing services that would not be included in the licensure authority of the assisted living facility. This designation is intended to permit the residents of the assisted living facility to "age in place," rather than be forced to move to another facility to receive the necessary nursing services. Continuing Care Retirement Communities may request the Agency for Health Care Administration (AHCA) to authorize the use of beds licensed as sheltered nursing home beds in a distinct part of a nursing home to be used as extended congregate care beds. The beds may be returned to the original use as sheltered nursing home beds after notice is given to AHCA.

Insurance Costs for Nursing Homes

In 2000, the Florida Legislature established a 19-member Task Force on Availability and Affordability of Long-Term Care.[4] The Task Force, chaired by Lt. Governor Brogan, was charged with studying issues related to the provision of long-term care to the elderly in nursing homes, alternatives to nursing homes, and the issues surrounding the availability and affordability of liability insurance.[5] The Task Force's final informational report was submitted to the Legislature in January of 2001.

Included in the Task Force's report was data illustrating a "rapidly worsening trend" in CCRC liability insurance premiums.[6] This information indicated an average percent increase in total premiums of 15 percent from1998 to1999 and 74 percent from 1999 to 2000. Between 1998 and 1999, 7 percent of CCRCs experienced premium increases in excess of 100 percent. Between 1999 and 2000, premiums more than doubled for 42 percent of CCRCs, and 12 percent had increases in excess of 1,000 percent.

The final report included these comments on the issue of insurance costs in conjunction with minimum liquid reserve requirements:

> "CCRCs are particularly vulnerable in a deteriorated insurance market and are adversely impacted by soaring insurance premiums for several reasons. Most properties are owned by organizations that do not have a national base to spread the liability risk and lack the leverage of large numbers to negotiate lower premiums…Further, all Florida CCRCs are

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[4] Ch. 2000-190, L.O.F.
[5] The Florida Policy Exchange Center on Aging at the University of South Florida provided research and staff support to the Task Force.
[6] Survey by the Department of Insurance of CCRCs liability insurance premiums (on page 628 of the Task Force report).

required by law to maintain liquid reserves equal to 15% of operating expenses (after a start up year rate of 30% and based on a three year average), which includes the cost of insurance. CCRCs must try to pay not only the vastly increased premiums, but also set aside additional sums of cash to comply with reserve requirements (that have escalated along with the liability premiums). This double-hit adversely impacts debt ratios and places many not-for-profit providers out of the eligibility parameters to borrow new money or meet the requirements of their existing bond issues."[7]

The Medicaid Program

Medicaid is a medical assistance program that pays for health care for the poor and disabled. The federal government, the state, and the counties jointly fund the program. The federal government, through law and regulations, has established extensive requirements for the Medicaid Program. The Agency for Health Care Administration (AHCA) is the single state agency responsible for the Florida Medicaid Program. The Department of Children and Family Services is responsible for determining Medicaid eligibility and managing Medicaid eligibility policy, with approval of any changes by AHCA.

The statutory provisions for the Medicaid Program appear in ss. 409.901 through 409.9205, F.S. Section 409.903, F.S., specifies categories of individuals who are required by federal law to be covered, if determined eligible, by the Medicaid Program (mandatory coverage groups). Section 409.904, F.S., specifies categories of individuals who the federal government gives state Medicaid programs the choice of covering (optional coverage groups). Sections 409.905 and 409.906, F.S., specify the medical and other services the state may provide under the state Medicaid plan.

Section 1902 (a) (23) of the Social Security Act requires that Medicaid recipients must be allowed to receive services ("assistance") from any institution, agency or person qualified to perform the service who undertakes to provide the service. According to the Centers for Medicaid and Medicare Services, in the instance of Medicaid waivers, the state is allowed to determine its own provider standards, so long as such standards are reasonably related to the provider's ability to render care to recipients, and is negotiated in advance

The Assisted Living Medicaid Waiver

The Assisted Living Medicaid Wavier provides additional funding to assisted living facilities to reimburse additional supportive care required by individuals who are at risk of nursing home placement. The program is operated by the Department of Elderly Affairs under an interagency agreement with AHCA. Participants must meet the same eligibility criteria as Medicaid-funded nursing home residents, plus additional functional disability criteria. The assisted living waiver serves approximately 2,700 individuals annually at a cost of $21.5 million. The annul per person cost of care in the program is about $10,000. Under the federally-approved waiver, the provider standard for participation in the assisted living waiver is that the facility hold either an Extended Congregate Care or Limited Nursing Services license, and be free of class I or II deficiencies.

[7] Page 628 of Task Force report.

Staffing Standards in Nursing Homes

The 2001 Legislature passed CS/CS/CS/SB 1202 which modified regulatory provisions and standards for long-term care facilities and made changes to provisions regarding civil actions to enforce nursing home and assisted living facility residents' rights and to seek damages in negligence actions. The bill requires 2.3 hours of direct care per resident per day by certified nursing assistants beginning January 1, 2002, increasing to 2.6 hours beginning January 1, 2003, and up to 2.9 hours beginning January 1, 2004, with a minimum, at all times, of one CNA per 20 residents. The bill requires 1 hour of direct care per resident per day by licensed nurses, with a minimum, at all times, of one licensed nurse per 40 residents. The bill requires nursing homes to report, at least twice a year, information regarding staff-to-resident ratios, staff turnover, staff stability and vacant beds. The bill requires a nursing home to cease admissions when staffing is below minimums for 2 consecutive days. New admissions may be resumed when the facility has achieved minimum staffing for a period of 6 consecutive days. Failure to self-impose this moratorium on new admissions constitutes a class II deficiency.

III. Effect of Proposed Changes:

The bill authorizes the Department of Insurance to accept from CCRCs certain documents and information electronically or by facsimile in relation to applications for provisional certificates of authority and other required reports. The department may adopt implementing rules pursuant to this authorization.

The bill also revises the minimum liquid reserve requirements as to CCRCs. Specifically, the amount of property insurance premiums used in calculating a CCRCs "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. For CCRCs licensed during or after calendar year 1999, the amount of property insurance premiums used in calculating the debt service reserve, and the amount of liability insurance premiums used in calculating the operating reserve, would be limited to the amount paid during the first 12 months of facility operation. However, the bill would include a provision for making the debt service reserve whole over a period of years beginning January 1, 2006, and each year thereafter. This would be achieved by requiring CCRCs to increase the amount of property insurance premiums used in calculating the debt service reserve by 10 percent of the premium paid that year until attributable premium equals 100 percent of the actual premium. The bill does not include a similar provision for making the operating reserve whole at some future time.

The bill specifies that CCRC nursing homes providing sheltered beds used to provide extended congregate care may not qualify for funding under the Medicaid waiver program and provides that sheltered beds used to provide extended congregate care would be permitted to share certain services, staff, and common areas with beds designated for nursing home care, provided that all of the beds are under common ownership. Fire and life safety codes applicable to nursing homes would apply.

The bill provides that residents of CCRCs are not considered "new admissions" for the purposes of s. 400.141(15)(d), F.S., thus exempting CCRCs from the requirement to halt new admissions

when facility staffing falls below statutory minimums for 2 or more consecutive days, until the facility has achieved the minimum staffing requirements for 6 consecutive days.

The effective date of the bill is July 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, s. 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that the reserve requirements will shield CCRCs and their members from the full weight of liability and property insurance increases being included in the total calculation of the required reserves, the residents may realize some savings. However, reduced reserve amounts will mean fewer dollars are available to the Department of Insurance to operate a facility if a provider becomes insolvent and unable to continue to operate the facility.

If liability insurance premiums for CCRCs continue to increase, the operating reserve will continue to decline relative to the actual expenses of the CCRC. The bill does not require that the 1999 premiums ever be made “trued up” as it does for the property insurance premiums used to calculate the debt reserve.

Nursing facilities will benefit because they can utilize sheltered beds (used to provide extended congregate care) to now share common areas, services, and staff with beds designated for nursing home care.

C. Government Sector Impact:

Rulemaking authority is provided to the Department related to accepting certain documents electronically or by facsimile. This impact is expected to be minor.

VI. Technical Deficiencies:

The bill provides that sheltered beds a CCRC is using to provide extended congregate care may not qualify for funding under the Medicaid wavier. This restriction will require a change to the federally-approved Medicaid waiver, since these beds are not currently restricted from use by waiver participants.

VII. Related Issues:

None.

VIII. Amendments:

None.

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