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HOUSE OF REPRESENTATIVES
COMMITTEE ON
ELDER & LONG TERM CARE
ANALYSIS

BILL #: HB 781

RELATING TO: Continuing Care Retirement Communities

SPONSOR(S): Representative(s) Green & Others

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

(1) ELDER & LONG TERM CARE
(2) INSURANCE
(3) COUNCIL FOR HEALTHY COMMUNITIES
(4)
(5)

I. SUMMARY:

HB 781 authorizes the Department of Insurance (DOI) to accept certain documents and information related to Continuing Care Retirement Communities (CCRCs) by electronic transmission or by facsimile. DOI is authorized to adopt rules related to these new forms of submission.

The bill also revises the minimum liquid reserve requirements currently in the statute for CCRCs. In addition, the bill authorizes certain sharing of facilities and services between "sheltered" nursing home beds and those used for extended congregate care services in the assisted living component of a CCRC.

The bill takes effect July 1, 2002.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes []	No []	N/A [x]
2.	Lower Taxes	Yes []	No []	N/A [x]
3.	Individual Freedom	Yes []	No []	N/A [x]
4.	Personal Responsibility	Yes []	No []	N/A [x]
5.	Family Empowerment	Yes []	No []	N/A [x]

For any principle that received a “no” above, please explain:

B. PRESENT SITUATION:

Continuing Care Retirement Communities (CCRC's) offer seniors an independent lifestyle, the privacy of their own home, and long-term security and a life long assurance for care. The community offers them 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. Currently, the Department of Insurance regulates continuing care contracts pursuant to chapter 651, F.S.

Minimum Liquid Reserve Requirement

Currently, CCRCs must maintain a statutorily established minimum liquid reserve. This reserve is, operationally, two separate reserves based on two distinct calculations. The debt service portion of the reserve is based on all principle and interest expenses due during the fiscal year on any mortgage loan or long-term debt of the facility, including taxes and property insurance.

Operating Reserve

The operating portion of the reserve is based on three-year average of total operating expenses less depreciation and amortization and includes interest, property insurance and taxes included in section 651.035(1).

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 resident 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 are currently permitted to request that the Agency for Health Care Administration (the “Agency”) 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 beds. The beds may be returned to the original use as sheltered nursing home beds after notice is given to the Agency. The existing authorization for the option of this use of sheltered nursing home beds was provided in 1994 in Section 1, Chapter 94-206, Laws of Florida.

Insurance Costs for Nursing Homes

House Bill 1993 (2000 Legislature) established a 19-member “Task Force on Availability and Affordability of Long-Term Care.” The Task Force, chaired by Lt. Governor Brogan, was charged with studying the 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. The Florida Policy Exchange Center on Aging (FPECA) at the University of South Florida provided research and staff support to the Task Force. The Task Force’s final informational report was submitted in January of 2001.

In their final report, FPECA included information from a DOI survey on liability insurance premiums from CCRCs. The DOI data documented a rapidly worsening trend. The DOI data indicated an average percent increase in total premiums of 15.3% from 1998 to 1999 and 73.4% from 1999 to 2000. Note, however, that half of the respondents were unable to report what their premium renewal rate would be, having not reached their 2000 renewal date; thus, those facilities’ experience was excluded from this calculation.

Between 1998 and 1999, 6.8% of the CCRCs experienced premium increases in excess of 100%. Between 1999 and 2000, 42% had premiums that more than doubled, and 12% had increases in excess of 1,000%.

The final report included this information on the issue of insurance costs

> 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. Church sponsored properties are in a precarious position when operating expenses exceed revenues, as churches have competing demands on financial resources and may be unable to commit the subsidy they would need to pay to continue as long-term care providers when this is not their primary mission. Further, all Florida CCRCs are 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. The Task Force has received testimony and letters from providers who have experienced enormous increases in insurance premiums for greatly reduced liability coverage (see Appendix 7 for a summary).
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> The many accounts of the rapid deterioration in the insurance market are substantiated in a written statement from Clayton Deen, Vice President of Brown & Brown, Inc., Florida's largest insurance brokerage firm and the seventh largest in the nation. Regarding the changes in pricing of professional and general liability insurance from late 1999 to March 2000, Mr. Deen wrote: *Our "best price" available to non-profit nursing clients in October 1999 was $372.00 per nursing bed for $1,000,000/$3,000,000 limits.*
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> Pricing for nursing facilities, even non-profits with no losses as of March 2000 start at a bed rate of $1,000 and higher. Even this level of pricing will generally require retention of $50,000 to $100,000 per claim with no annual aggregate stop loss. If a facility has losses the bed rate can jump to $2,000 and as much as $5,000 or more, according to the severity of the claims. Retentions above the $100,000 level are common requirements for homes with adverse losses. Few clients with losses are in a position to pay this amount of premium and retain losses with no annual stop

> loss cover. Their alternative is to "go bare" and wait out the inevitable. There are no remaining admitted markets and the excess and surplus markets do not remain committed when losses threaten to penetrate into their coverage. [1]

C. EFFECT OF PROPOSED CHANGES:

DOI is authorized to accept any application, report, or other information submitted to the department electronically or by facsimile.

CCRCs are allowed to base the property insurance expense portion of the calculation on the property insurance premium paid for the calendar year 1999. CCRCs not operating in 1999 are allowed to base the property insurance expense portion of the calculation on the property insurance premium for the first twelve months of operation until January 1, 2006. At that time, the CCRCs not operating in 1999 are required to bring the expense back to current levels by increasing the level each year by ten percent of the property insurance premium paid that year.

CCRCs are allowed to base the non-property insurance expense portion of the three-year average of total operating expenses for the first twelve months of operation. Unlike the property insurance portion of the calculation, there is no provision to make this reserve whole at some future time.

AHCA is permitted to allow CCRC nursing homes that have ECC beds to share common areas, services, and staff with the nursing home. It requires that fire and life safety codes of the nursing home apply to these common or shared areas.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 amends section 651.015 related to administration to authorize the department to accept applications, reports or other information submitted electronically or by facsimile. The department is authorized to adopt rules to implement the provisions of this section.

Section 2 amends section 651.035 related to minimum liquid reserve requirements.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

No new revenues are created in this bill.

2. Expenditures:

The affected agencies did not identify any fiscal impact on state government.

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[1] Florida Policy Exchange Center. **Informational Report of the Task Force on Availability and Affordability of Long-Term Care for the Florida Legislature in Response to House Bill 1993.** Pages 638-640.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that the reserve requirements will shield CCRCs and their members from the full weight of liability insurance increases being included in the total calculation of the required reserves, the residents will realize a savings.

D. FISCAL COMMENTS:

There is a technical correction needed to page 3, line 20. The word “property” should be removed. The costs of property insurance are not included in the calculation of the operating reserve and, therefore, cannot be deducted as the current language directs. An amendment is available to make this change.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

Rule making authority is provided to DOI related to accepting certain documents electronically or by facsimile.

C. OTHER COMMENTS:

The Florida Life Care Resident’s Association (FLiCRA) has filed a letter of support for this legislation with DOI.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON ELDER & LONG TERM CARE:

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