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HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
INSURANCE
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 YEAS 10 NAYS 0
(2) INSURANCE YEAS 15 NAYS 0
(3) COUNCIL FOR HEALTHY COMMUNITIES
(4)
(5)

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

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. Each CCRC is required to maintain a minimum liquid reserve for the benefit of facility residents, consisting primarily of both a debt service reserve and operating reserve. As their costs increase, CCRC’s must place additional funds in reserve.

The bill would authorize the Department of Insurance to accept certain documents and information related to CCRCs electronically or by facsimile and adopt implementing rules. Also, the amount of property insurance premiums used in calculating a CCRC’s debt service reserve and amount of property and liability insurance premiums used in calculating the operating reserve could not exceed premiums paid in calendar year 1999. For CCRC’s 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. However, the bill would include a provision for making the debt service reserve whole over a period of years beginning in 2006, but not for making the operating reserve whole.

Finally, CCRC nursing homes with extended congregate care beds would be permitted to share certain services, staff, and common areas with the nursing home. Fire and life safety codes applicable to nursing homes would apply.

On January 24, 2002, the Committee on Elder & Long Term Care approved the bill with three amendments. The amendments are traveling with the bill. On February 6, 2002, the Committee on Insurance adopted a “remove everything” amendment that incorporates the 3 previous amendments, in addition to making other technical drafting changes. Please see Section VI of this analysis for a detailed explanation of these traveling amendments.

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 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 maintained in escrow and consists of two principal components[1] based on two distinct calculations.

One is the "debt service reserve." [2] 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.

A second is the "operating reserve" based on the three-year average of total operating expenses, less depreciation and amortization, and includes interest, property insurance and taxes. Each provider must maintain in reserve an amount equal to 30 percent of the total projected operating expenses for the fiscal 12 months of operation and 15 percent thereafter.

Funds are held in reserve ultimately for the benefit of the residents.

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

[1] There also is a "debt service reserve offset" and, as a component of the "operating reserve," a "renewal and replacement reserve."
[2] Although the reserve under paragraph (b) of subsection (1) of s. 651.035, F.S., is identified as the "debt service reserve," in practice it is referred to as the debt service reserve *offset*." In practice, paragraph (a) is referred to as the "debt service reserve."

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 may request the Agency for Health Care Administration (the "Agency") 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 beds.[3] The beds may be returned to the original use as sheltered nursing home beds after notice is given to the Agency.

Insurance Costs for Nursing Homes

In House Bill 1993 (2000 Legislature), the 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 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 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. It included data from a Department survey of CCRC liability insurance premiums showing a rapidly worsening trend. Department data indicated an average increase in total premiums of 15 percent in 1998 and 1999 and 74 percent in 2000.[4] 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.[5]

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 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.[6]

C. EFFECT OF PROPOSED CHANGES:

The Department of Insurance would be authorized to accept certain documents and information related to CCRCs electronically or by facsimile and adopt implementing rules.

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[3] The Legislature authorized this option for the use of sheltered nursing home beds in 1994 in Section 1, Chapter 94-206, Laws of Florida.
[4] Informational Report of the Task Force on Availability and Affordability of long-Term Care, Vol. 2, page 628.
[5] Id.
[6] Id.

Also, the amount of property insurance premiums used in calculating a CCRC's debt service reserve, and the amount of property and liability insurance premiums used in calculating the operating reserve, could not exceed premiums paid in calendar year 1999. For CCRC's licensed during or after 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 operation. However, the bill would include a provision for making the debt service reserve whole over a period of years beginning in 2006.This would be achieved by requiring CCRC's 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.

Finally, CCRC nursing homes with extended congregate care beds would be permitted to share certain services, staff, and common areas with the nursing home. Fire and life safety codes applicable to nursing homes would apply.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. <u>FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT</u>:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. <u>Revenues</u>:

No new revenues are created in this bill.

2. <u>Expenditures</u>:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. <u>Revenues</u>:

None.

2. <u>Expenditures</u>:

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 and property insurance increases being included in the total calculation of the required reserves, the residents may realize a savings. Reduced reserve amounts will mean fewer dollars are available to the Department to operate a facility when a provider becomes insolvent and unable to continue to operate the facility.

D. FISCAL COMMENTS:

None

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 the Department related to accepting certain documents electronically or by facsimile.

C. OTHER COMMENTS:

The "remove everything" amendment adopted by the Committee on Insurance includes a reference to a debt service reserve "offset" on page 3, lines 1 and 14. "Offset" should be stricken to reflect the appropriate terminology.

A technical correction needed to page 3, line 20, was made in Amendment 2 by the Committee on Elder & Long Term Care. The word "property" was 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. This same correction included in the "remove everything" amendment adopted by the Committee on Insurance.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On January 24, 2002, the Committee on Elder & Long Term Care adopted the following three amendments that are traveling with the bill:

Amendment 1 by the Committee on Elder & Long Term Care (page 4, between lines 26 and 27): Residents of a CCRC would not be considered "new admissions" when they enter the CCRC's nursing facility for purposes of section 400.141(15)(d) that provides for a self-imposed moratorium for nursing homes that have failed to meet the minimum staffing standards for two consecutive days.

Amendment 2 by the Committee on Elder & Long Term Care (page 3, line 20): This amendment would remove the reference to property insurance premiums from the expenses proposed to be excluded from the calculation of the operating reserve.

Amendment 3 by the Committee on Elder & Long Term Care (page 4, line 20): This amendment would expressly permit CCRCs to use their sheltered nursing home beds to provide extended congregate care services only to residents.

On February 6, 2002, the Committee on Insurance adopted the following amendment:

Amendment 1 by Representative Green ("remove everything"): This amendment would incorporate the substance of the three traveling amendments and make additional technical drafting changes to section 2 of the bill. These additional changes are not intended to change the substance of the bill. See V.C. of this analysis.

VII. SIGNATURES:

COMMITTEE ON ELDER & LONG TERM CARE:

Prepared by:	Staff Director:
Melanie Meyer	Tom Batchelor, Ph.D.

AS REVISED BY THE COMMITTEE ON INSURANCE:

Prepared by:	Staff Director:
Stephen T. Hogge	Stephen T. Hogge