CHAPTER 2002-222

Committee Substitute for Senate Bill No. 1246

An act relating to continuing care retirement communities; amending s. 651.015, F.S.; authorizing the Department of Insurance to accept certain documents and information relating to continuing care contracts electronically or by facsimile; authorizing the department to adopt rules; amending s. 651.033, F.S.; correcting a cross reference; amending s. 651.035, F.S.; revising minimum liquid reserve requirements for continuing care providers; amending s. 651.118, F.S.; providing a funding limitation on sheltered beds used to provide extended congregate care in a continuing care facility; authorizing certain sharing of facilities and services between such sheltered beds and nursing home beds in such facilities; exempting continuing care facility residents from certain calculations relating to moratoriums on new nursing home admissions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 651.015, Florida Statutes, is amended to read:

651.015 Administration; forms; fees; rules; fines.—The administration of this chapter is vested in the department, which shall:

(1) Prepare and furnish all forms necessary under the provisions of this chapter in relation to applications for provisional certificates of authority, certificates of authority or renewals thereof, statements, examinations, and other required reports. The department is authorized to accept any application statement, report, or information submitted electronically or by facsimile to comply with requirements in this chapter or rules adopted under this section. The department may adopt rules to implement the provisions of this subsection.

Section 2. Paragraph (d) of subsection (1) of section 651.033, Florida Statutes, is amended to read:

651.033 Escrow accounts.—

(1) When funds are required to be deposited in an escrow account pursuant to s. 651.022, s. 651.023, s. 651.035, or s. 651.055:

(d) All funds deposited in an escrow account, if invested, shall be invested as set forth in part II of chapter 625; however, such investment shall not diminish the funds held in escrow below the amount required by this chapter. All funds deposited in an escrow account shall not be subject to any charges by the escrow agent except escrow agent fees associated with administering the accounts, or subject to any liens, judgments, garnishments, creditor's claims, or other encumbrances against the provider or facility except as provided in s. 651.035(2)~~(1)~~.

Section 3. Subsections (1) and (2) of section 651.035, Florida Statutes, are amended to read:

651.035 Minimum liquid reserve requirements.—

(1) A provider shall maintain in escrow a minimum liquid reserve consisting of the applicable reserves specified in subsection (2).

(2)~~(1)~~(a) A provider shall maintain in escrow as a debt service reserve ~~and as a minimum liquid reserve~~ an amount equal to the aggregate amount of all principal and interest payments due during the fiscal year on any mortgage loan or other long-term financing of the facility, including taxes and insurance as recorded in the audited financial statements required under s. 651.026. The amount shall include any leasehold payments and all costs related to same. If principal payments are not due during the fiscal year, the provider shall maintain in escrow as a minimum liquid reserve an amount equal to interest payments due during the next 12 months on any mortgage loan or other long-term financing of the facility, including taxes and insurance. For the purpose of this paragraph, the amount of property insurance premiums used in calculating the debt service reserve shall not exceed the amount paid in calendar year 1999. For providers initially licensed during or after calendar year 1999, the amount of property insurance premiums used in calculating the debt service reserve shall not exceed the amount paid during the first 12 months of facility operation. However, beginning January 1, 2006, and each year thereafter, until the amount maintained in escrow attributable to property insurance equals 100 percent of the premium, the provider shall increase the amount maintained in escrow for property insurance by 10 percent of the premium paid that year.

(b) A provider which has outstanding indebtedness which requires what is normally referred to as a "debt service reserve" to be held in escrow pursuant to a trust indenture or mortgage lien on the facility and for which the debt service reserve may only be used to pay principal and interest payments on the debt which the debtor is obligated to pay, and which may include taxes and insurance, may include such debt service reserve in its computation of its minimum liquid reserve to satisfy this subsection, provided that the provider furnishes to the Department of Insurance a copy of the agreement under which such debt service is held, together with a statement of the amount being held in escrow for the debt service reserve, certified by the lender or trustee and the provider to be correct. The trustee shall provide the department with any information concerning the debt service reserve account upon request of the provider or the department.

(c)~~(2)(a)~~ Each provider shall maintain in escrow an operating reserve in an amount equal to 30 percent of the total operating expenses projected in the feasibility study required by s. 651.023 for the first 12 months of operation. Thereafter, each provider shall maintain in escrow an operating reserve in an amount equal to 15 percent of the total operating expenses in the annual report filed pursuant to s. 651.026. Where a provider has been in operation for more than 12 months, the total annual operating expenses shall be determined by averaging the total annual operating expenses reported to the department by the number of annual reports filed with the

department within the immediate preceding 3-year period subject to adjustment in the event there is a change in the number of facilities owned. For purposes of this subsection, total annual operating expenses shall include all expenses of the facility except: depreciation and amortization; interest, insurance and taxes included in subsection (1); extraordinary expenses which 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. For providers initially licensed during or after calendar year 1999, liability insurance shall be included in the total operating expenses in an amount not to exceed the premium paid during the first 12 months of facility operation. Beginning January 1, 1993, the operating reserves required under this subsection shall be in an unencumbered account held in escrow for the benefit of the residents. Such funds may not be encumbered or subject to any liens or charges by the escrow agent or judgments, garnishments, or creditors' claims against the provider or facility. However, if a facility had a lien, mortgage, trust indenture, or similar debt instrument in place prior to January 1, 1993, which encumbered all or any part of the reserves required by this subsection and such funds were used to meet the requirements of this subsection, then such arrangement may be continued, unless a refinancing or acquisition has occurred, and the provider shall be in compliance with this subsection.

(d)~~(b)~~ Each provider shall maintain in escrow a renewal and replacement reserve in an amount equal to 15 percent of the total accumulated depreciation based on the audited financial statement required to be filed pursuant to s. 651.026, not to exceed 15 percent of the facility's average operating expenses for the past 3 fiscal years based on the audited financial statements for each of such years. For a provider who is an operator of a facility but is not the owner and depreciation is not included as part of the provider's financial statement, the renewal and replacement reserve required by this paragraph shall equal 15 percent of the total operating expenses of the provider, as described in this section. Each provider licensed prior to October 1, 1983, shall be required to fully fund the renewal and replacement reserve by October 1, 2003, by multiplying the difference between the former escrow requirement and the present escrow requirement by the number of years the facility has been in operation after October 1, 1983.

Section 4. Subsection (8) of section 651.118, Florida Statutes, is amended, and subsection (13) is added to said section, to read:

651.118 Agency for Health Care Administration; certificates of need; sheltered beds; community beds.—

(8) A provider may petition the Agency for Health Care Administration to use a designated number of sheltered nursing home beds to provide extended congregate care as defined in s. 400.402 if the beds are in a distinct area of the nursing home which can be adapted to meet the requirements for extended congregate care. The provider may subsequently use such beds as sheltered beds after notifying the agency of the intended change. Any sheltered beds used to provide extended congregate care pursuant to this subsection may not qualify for funding under the Medicaid waiver. Any

sheltered beds used to provide extended congregate care pursuant to this subsection may share common areas, services, and staff with beds designated for nursing home care, provided that all of the beds are under common ownership. For the purposes of this subsection, fire and life safety codes applicable to nursing home facilities shall apply.

(13) Residents, as defined in this chapter, are not considered new admissions for the purpose of s. 400.141(15)(d).

Section 5. This act shall take effect July 1, 2002.

Approved by the Governor May 1, 2002.

Filed in Office Secretary of State May 1, 2002.