1989

Session Law 89-363

Florida Senate & House of Representatives

Florida Information Associates
Florida Legislature
Staff Analyses
1989 Sessions

89-363

S 1252 GENERAL BILL/CS/1ST ENG by Insurance; Deratany (Similar CS/H 1635, Compare H 37, CS/H 41, H 260, S 34)

Continuing Care Contracts: (SEE ALSO: CS/CS/H 1002) revises requirements for application for provisional certificate of authority; requires escrow agreement; revises requirements & procedures for issuance of certificate of authority; revises conditions & procedures for releasing certain moneys held in escrow; repeals provision which provides that entrance fees for such contracts are subject to insurance premium tax, etc. Amends 651.021-.023,.026,.035,.095; repeals 651.027. Effective Date: 07/06/89 except as otherwise provided.

BILL HISTORY

04/10/89	SENATE	Filed
04/14/89	SENATE	Introduced, referred to Insurance -SJ 165
04/28/89	SENATE	Extension of time granted Committee Insurance
05/11/89	SENATE	On Committee agenda—Insurance, 05/15/89, 2:00 pm, Room-A-(LL-37)
05/12/89	SENATE	Extension of time granted Committee Insurance
05/15/89	SENATE	Comm. Report: CS by Insurance, placed on Calendar -SJ 381
05/18/89	SENATE	CS read first time -SJ 384
05/25/89	SENATE	Placed on Special Order Calendar -SJ 450; CS passed; YEAS 38 NAYS 0 -SJ 466; Immediately certified -SJ 466
05/25/89	HOUSE	In Messages
06/01/89	HOUSE	Received, placed on Calendar; Read second time; Read third time; CS passed; YEAS 113 NAYS 0 -HJ 1072; Reconsidered; Amendments adopted; CS passed as amended; YEAS 113 NAYS 0 -HJ 1073
06/01/89	SENATE	In Messages
06/02/89	SENATE	Was taken up -SJ 913; Amendments to House amendments adopted; Concurred in House amendments as amended; Requested House to concur; CS passed as amended; YEAS 37 NAYS 0 -SJ 914
06/02/89	HOUSE	In Messages
06/02/89	SENATE	Requested House to return -SJ 1213
06/03/89	HOUSE	Returned -HJ 1550
06/03/89	SENATE	In Messages; Reconsidered; Concurred; CS passed as amended; YEAS 37 NAYS 0 -SJ 1405
06/03/89		Ordered engrossed, then enrolled -SJ 1405
06/20/89		Signed by Officers and presented to Governor
07/06/89		Became Law without Governor's Signature; Chapter No. 89-363

NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

89-363

REVISED: _____ BILL NO. CS/SB 1252

DATE: May 15, 1989 Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Andrews	Fort	INS	Fav/CS
2.				
3.				
4.				

SUBJECT: Continuing Care Contracts

BILL NO. AND SPONSOR: CS/SB 1252 by Insurance and Senator Deratany

I. SUMMARY:

A. Present Situation:

Chapter 651, F.S., governs continuing care contracts. A continuing care facility, as defined in s. 651.011(2), F.S., is a facility which furnishes shelter, food and nursing care or personal services to elderly individuals pursuant to an agreement. The administration of ch. 651, F.S., is vested in the Department of Insurance, who is responsible for monitoring the financial arrangements of life care facilities.

No person may provide continuing care unless they obtain a certificate of authority (COA) from the department. Before a COA is granted, a provisional COA must be applied for.

The issuance of a provisional COA entitles the applicant to collect entrance fees and reservation deposits from prospective residents which must be placed in an escrow account or on deposit with the department. After an applicant is granted a provisional COA, the department will grant a COA if, among other requirements, the applicant shows that a minimum of 50 percent of its units are reserved. A unit is considered reserved if the provider has collected at least 10 percent of the entrance fee for the unit. The applicant must also assure the department of the project's financial stability.

B. Effect of Proposed Changes:

For ease of understanding, a section-by-section analysis follows:

Section 1: Section 651.021(2), F.S., is amended to correct statutory cross-references.

Section 2: Section 651.022, F.S., is amended to modify the application procedure for a provisional COA. The committee substitute provides that, among other things, such an application must include a statement describing required procedures relating to the release of escrowed entrance fees, and other information which the department may reasonably require with respect to the provider or facility to assist in determining the financial viability of the project and the management capabilities of its managers and owners. A feasibility study must also be submitted by the applicant for a provisional COA to the department which is prepared by an independent consultant to the department. Information to be presented in the feasibility study would be modified to include the study's assumed inflation factor, financial forecasts prepared in accordance with certain specified standards, and the forms of the continuing care reservation and escrow agreements proposed to be used by the provider in the furnishing of care.

The department will have 30 days after receipt of an application to review the provisional COA information for completeness and to notify the applicant requesting any necessary additional information. If the department determines the application is substantially incomplete, it may return such application to the applicant with a written notice that the application is incomplete and unacceptable for filing without further action required by the department.

Within 15 days after receipt of all requested additional information, the department must notify the applicant that all such requested information has been received and that the application is deemed to be complete as of the date of the notice.

Within 45 days from the date an application is deemed to be complete,the department must complete its review and issue a provisional COA to the applicant based on certain requirements. If the application is denied, the department shall notify the applicant in writing, citing specific failures to comply with ch. 651, F.S. The applicant would then be entitled to a hearing pursuant to ch. 120, F.S.

The issuance of a provisional COA entitles the applicant to collect entrance fees and reservation deposits from prospective residents which must be placed in an escrow account or on deposit with the department, pursuant to s. 651.033, F.S., until a COA is issued by the department. This legislation provides that an escrow agreement must be entered into between the bank, savings and loan association, or trust company and the applicant. The agreement must state its purpose is to protect residents and that it is subject to approval by the department. All such funds will not be subject to any liens or charges by the escrow agent or to any judgments against the applicant or facility, with certain exceptions.

Section 3: Section 651.023, F.S., is amended to modify the application procedure for a COA. This legislation provides that the department must issue a COA to the holder of a provisional COA, but no COA will be issued until the holder of a provisional COA provides the department with certain information. Such information must include, among other things, certification by the consultant who prepared the original feasibility study that there has been no material adverse change in status regarding the feasibility study.

In addition, the provider may submit an application for a COA upon submission of proof that the project has a minimum of 30 percent, rather than the current 50 percent, of the units reserved for which an entrance fee is charged.

Complete audited financial statements of the applicant prepared in accordance with certain requirements must be submitted and certain information would no longer be required.

Within 30 days of receipt of such information the department must examine it and request any additional information necessary. Within 15 days after receipt of all additional requested information, the department must notify the provider that the application is deemed to be complete.

Within 45 days after an application is deemed complete, and upon completion of the remaining requirements of this section, the department must complete its review and issue or deny the COA to the holder of the provisional COA. If denied, the holder of the provisional COA would be entitled to an administrative hearing, pursuant to ch. 120, F.S.

The department must issue a COA upon its determination that the applicant meets certain requirements. Notwithstanding satisfaction of the 30 percent minimum reservation requirement

of s.651.023,(1)(c), F.S., no COA will be issued until the project has a minimum of 50 percent of the units reserved for which an entrance fee is charged and proof is provided to the department.

The provider will be entitled to secure release of moneys held in escrow within 7 days after receipt by the department of an affidavit from the provider and notification to the escrow agent by certified mail that certain conditions have been satisfied.

Such conditions include certification by the consultant who prepared the feasibility study that there has been no material adverse change in status regarding the feasibility study, proof commitments have been secured or a documented plan adopted by the applicant has been approved by the department for long-term financing, and proof that the provider has sufficient funds which may include funds deposited in the initial entrance fee account.

In lieu of fulfilling requirements in s.651.023(3) and (4)(b) and (d), F.S., the provider may have sufficient funds in escrow to meet all outstanding debts on the facility and equipment. The provider may apply to have the department authorize release of such funds to retire outstanding debts on the facility and equipment upon satisfaction of certain requirements. Requirements include proof that the provider will grant to the residents a first mortgage on the land, buildings, and equipment constituting the facility. Granting of the mortgage is subject to certain requirements, which are modified by this legislation.

Section 4: Section 651.026,(5), F.S., is amended to provide that, with regard to annual statements, a provider may declare at the time of application a fiscal year other than the calendar year and use that fiscal year for its accounting period. A provider may subsequently adopt a fiscal year after providing the department with a copy of the Internal Revenue Service approval of such change.

Section 5: Section 651.035, F.S., is amended to provide that a provider may satisfy the minimum liquid reserve requirements of this section by acquiring a clean, unconditional irrevocable letter of credit in an amount equal to requirements, from a financial institution, meeting certain standards. The committee substitute provides for minimum requirements which the letter of credit must meet.

Section 6: Section 651.095, F.S., is amended to provide that it will be considered an unfair insurance trade practice for any person, other than a provider licensed pursuant to ch. 651, F.S., to advertise or market to the general public any product similar to continuing care, through the use of terms such as "life care," "continuing care," or "guaranteed care for life," or similar terms, words, or phrases.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

This committee substitute would significantly simplify and speed up the application process for obtaining a COA and would be less costly for the applicant than current procedures. Such decrease in the application cost could be passed on to consumers.

Quickening the release of escrow funds and allowing a letter of credit to satisfy the minimum liquid reserve requirements would also reduce cost to the entity, which savings could be passed on to consumers.

B. Government:

None.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.

CS/SB 1252

COMMITTEE SUBSTITUTE FOR SENATE BILL 1252 (CHAPTER 89-) revises requirements and procedures for continuing care COA and provisional COA applications to engage in the business of providing continuing care.

Information to be presented in the required feasibility study is modified to include the study's assumed inflation factor, financial forecasts prepared in accordance with certain specified standards, and the forms of the continuing care reservation and escrow agreements proposed to be used by the provider in the furnishing of care.

The department will have 30 days after receipt of an application to review the provisional COA information for completeness and to notify the applicant requesting any necessary additional information. If the department determines the application is substantially incomplete, it may return such application to the applicant with a written notice that the application is incomplete and unacceptable for filing without further action required by the department.

Within 15 days after receipt of all requested additional information, the department must notify the applicant that all such requested information has been received and that the application is deemed to be complete as of the date of the notice.

Within 45 days from the date an application is deemed to be complete, the department must complete its review and issue a provisional COA to the applicant based on certain requirements. If the application is denied, the department shall notify the applicant in writing, citing specific

failures to comply with ch. 651, F.S. The applicant would then be entitled to a hearing pursuant to ch. 120, F.S.

The issuance of a provisional COA entitles the applicant to collect entrance fees and reservation deposits from prospective residents which must be placed in an escrow account or on deposit with the department, pursuant to s. 651.033, F.S., until a COA is issued by the department. This legislation provides that an escrow agreement must be entered into between the bank, savings and loan association, or trust company and the applicant. The agreement must state its purpose is to protect residents and that it is subject to approval by the department. All such funds will not be subject to any liens or charges by the escrow agent or to any judgments against the applicant or facility, with certain exceptions.

The committee substitute provides that the department must issue a COA to the holder of a provisional COA, but no COA will be issued until the holder of a provisional COA provides the department with certain information. Such information must include, among other things, certification by the consultant who prepared the original feasibility study that there has been no material adverse change in status regarding the feasibility study. In addition, complete audited financial statements of the applicant prepared in accordance with certain requirements must be submitted and certain information would no longer be required.

The department must issue a COA upon its determination that the applicant meets certain requirements. Notwithstanding satisfaction of the 30 percent minimum reservation requirement of s. 651.023(1)(c), F.S., no COA will be issued

until the project has a minimum of 50 percent of the units reserved.

The committee substitute provides that a provider may satisfy the minimum liquid reserve requirements of this section by acquiring a clean, unconditional irrevocable letter of credit in an amount equal to requirements, from a financial institution, meeting certain standards. The committee substitute provides for minimum requirements which the letter of credit must meet.

The committee substitute provides that it will be considered an unfair insurance trade practice for any person, other than a provider licensed pursuant to ch. 651, F.S., to advertise or market to the general public any product similar to continuing care, through the use of terms such as "life care," "continuing care," or "guaranteed care for life," or similar terms, words, or phrases.

The committee substitute also provides that, effective July 1, 1989, s. 651.027, F.S., 1988 Supplement, is repealed.

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AS PASSED BY THE 1989 LEGISLATURE

STORAGE NAME: s1252-f.inj
DATE: July 7, 1989

HOUSE OF REPRESENTATIVES
INSURANCE COMMITTEE
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: CS/SB 1252

RELATING TO: Continuing Care Contracts

SPONSOR(S): Committee on Insurance & Senator Deratany

EFFECTIVE DATE: Upon becoming law

DATE BECAME LAW: July 6, 1989

CHAPTER #: 89-363, Laws of Florida

COMPANION BILL(S): CS/HB 1635

OTHER COMMITTEES OF REFERENCE: (1) None

(2)

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I. SUMMARY:

This bill revises the requirements and procedures for application for and issuance of provisional certificates of authority (PCOA) and certificates of authority (COA) to engage in the business of providing continuing care. It also repeals the law requiring the payment of premium taxes for entrance fees received by the provider.

A. PRESENT SITUATION:

Under present law, no person or entity may engage in the business of providing continuing care in Florida (including the issuance of continuing care agreements or the construction of a facility for the purpose of providing continuing care) without first obtaining a COA from the Department of Insurance (Department). Continuing care means furnishing shelter, food, and either nursing care or personal services to an individual who is not related to the provider, pursuant to an agreement whereby the person to be cared for pays an entrance fee.

Providers of continuing care facilities are regulated by the Department and must comply with all requirements set forth in Chapter 651.

Pursuant to legislation passed in 1988, providers are required to pay a 2 percent premium tax for entrance fees received by a provider in payment for a continuing care contract.

B. EFFECT OF PROPOSED CHANGES:

This bill revises requirements and procedures for continuing care

PCOA and COA applications. It specifies the time period and procedures for the issuance of authority and revises provisions relating to the release of monies held in escrow. An alternate method of satisfying the minimum reserve requirements is also provided. The bill also repeals the law requiring the payment of premium taxes on entrance fees received by the provider.

C. SECTION-BY-SECTION ANALYSIS:

Section 1 amends s. 651.021 to make a technical change and to clarify that a full feasibility study must be provided prior to issuance of a COA.

Section 2 amends s. 651.022 and clarifies and expands the information which must be submitted for a PCOA and requires the applicant to submit a full feasibility study prepared by an independent consultant. It also requires that the applicant submit continuing care reservation and escrow agreements which the provider proposes to use. The Department is required to examine the application within 30 days, notify the applicant of any problems and request any additional information necessary for completion of the application. The Department must notify the applicant that all information has been received within 15 days after receipt of the additional information requested. If the Department fails to so notify the applicant, the application shall be deemed complete for the purposes of beginning the review. The Department must issue a PCOA to the applicant within 45 days after:

- the Department has received any additional information requested,
- all corrections have been made, and
- the Department has determined, based upon its review, that the feasibility study was based on sufficient data and that the applicant will be able to meet all legally required obligations for the operation of a continuing care facility.

If the Department denies the application, the applicant has a right to a Chapter 120 hearing.

When an applicant receives a PCOA he is entitled to collect entrance fees and reservation deposits from prospective residents. The monies collected must be placed in escrow or placed on deposit with the Department. Section 2 requires the applicant to enter into an approved escrow agreement with a bank, savings and loan institution, or trust company which must state that it is for the purpose of protecting the prospective residents. The monies deposited in the escrow account will not be subject to any judgments, garnishments, or creditor's claims against the applicant except in limited circumstances.

Section 3 amends s. 651.023 and requires the Department to issue a COA after it has reviewed the information required and has

found it to meet statutory requirements.

One of the requirements of current law for qualifying for a COA is that the applicant prove the project has a minimum of 50 percent of the units reserved. This bill will allow an applicant to submit an application for a COA by providing proof that 30 percent of the units are reserved. However, the 50 percent requirement will still have to be met prior to issuance of the COA.

Prior to such issuance, the applicant also must provide certification by the consultant who prepared the original feasibility study that there have been no material adverse changes since the original feasibility study was submitted. If a change has occurred, the applicant must submit information which remedies the adverse condition.

Another current requirement is that the applicant prove that commitments have been secured for construction and long-term financing. This bill would allow an applicant to prove that either a commitment has been secured or a documented plan has been adopted for the financing.

The bill would apply the same time periods stated above for PCOA applications to COA applications.

Current law requires a minimum of 75 percent of the monies paid for all or part of the initial entrance fee be placed in an escrow account or on deposit with the Department. The escrow money is not released until a certificate of occupancy has been issued and full payment has been received for at least 70 percent of the total units. The provider must also submit proof that it is financially sound. If the provider has met all of the above requirements, the Department may authorize release of the escrow, except at least 10 percent of all initial entrance fees collected must remain in escrow for a period of six months from the issuance of the certificate of occupancy.

This bill would provide for release of escrow funds within 7 days after the applicant has: (1) received a certificate of occupancy; (2) notified the Department of compliance with all requirements; (3) provided a certification by the person who prepared the final feasibility study that there has been no material adverse change; and (4) provided proof that commitments have been secured for long-term financing or that the department has approved a documented plan of financing adopted by the applicant. This bill deletes the requirement that 10 percent of the fund remain in escrow.

Section 4 amends s. 651.026 and allows a provider to declare a fiscal year other than the calendar year for its accounting period.

Section 5 creates s. 651.035(7) to allow an applicant to reduce its escrow requirement by providing the Department with an unconditional irrevocable letter of credit naming the Department

as beneficiary in an amount equal to the current minimum reserve requirements. The issuer of the letter of credit must have department approval and must be a financial institution participating in the State of Florida Treasury Certificate of Deposit Program. The letter of credit must provide the Department and the provider with 90 days notice of the financial institution's intent to cancel the letter. The financial institution which issues a letter of credit must deposit such credit funds in an account designated by the Department no later than 30 days prior to the expiration of the letter of credit and no later than 4 days following receipt of a certification from the Department that the Department has determined that funding of the minimum liquid reserve is needed. The financial institution issuing the letter of credit must be rated in one of the top three long-term debt rating categories by either Moody's Investors Service, Standard & Poor's Corporation or a recognized securities rating agency acceptable to the Department. Any provider that utilizes the letter of credit in accordance with this section, must have and maintain in escrow an operating cash reserve equal to 2 months operating expenses. If the financial institution no longer participates in the State of Florida Treasury Certificate of Deposit Program, the financial institution must deposit as collateral with the State Treasury eligible securities having a market value equal to or greater than 100% of the stated amount of the letter or credit.

Section 6 amends s. 651.095 and provides that it is an unfair trade practice for any person, other than a provider licensed pursuant to Chapter 651 to advertise or market any product similar to continuing care through the use of such terms as "life care," "continuing care," "guaranteed care for life," or other similar terms, words or phrases.

Section 7 repeals s. 651.027 which required providers to pay a 2% premium tax for entrance fees received by a provider in payment for a continuing care contract.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS (provided by Department of Insurance):

1. Non-recurring or First Year Start-Up Effects:

   None

2. Recurring or Annualized Continuation Effects:

   None

3. Long Run Effects Other Than Normal Growth:

   None

4. Appropriations Consequences:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

None

3. Effects on Competition, Private Enterprise, and Employment Markets:

The bill would remove some of the regulatory impediments to developing continuing care facilities by amending current laws relating to filing applications, escrow and minimum reserve requirements.

D. FISCAL COMMENTS:

None

III. LONG RANGE CONSEQUENCES:

This bill does not directly relate to and is not inconsistent with the goals and policies specified in the State Comprehensive Plan.

IV. COMMENTS:

The mission of the Insurance Committee is to construct insurance laws which will require payment of claims when due, promote the availability of affordable insurance, stabilize insurance rates, protect the solvency of insurance institutions, and expand the ability of companies to profit from wise investments. This bill does not directly relate to the specific mission of the Committee.

V. SIGNATURES:

SUBSTANTIVE COMMITTEE:
Prepared by:

Sharon N. Jacobs

Sharon N. Jacobs

Staff Director:

John Guthrie

John Guthrie

SECOND COMMITTEE OF REFERENCE:
Prepared by:

Staff Director:

APPROPRIATIONS:
Prepared by:

Staff Director: