



MLR Changes Included in HB 1033

When HB 1033 takes effect on January 1, 2020, an “impairment” will be triggered if “a provider has failed to maintain its minimum liquid reserve (MLR) as required under s. 651.035, unless the provider has received prior approval from the office {of Insurance Regulation} for a withdrawal pursuant to s. 651.035(6) and is compliant with the approved payment schedule.” Therefore, it is very important for providers to pay close attention to MLR regulatory requirements, particularly those that are new.

Excess funds greater than the minimum requirement may be withdrawn at any time without the Office of Insurance Regulation’s (OIR) consent if the withdrawal does not affect compliance with s. 651.035, F.S. All other withdrawals require OIR notification and approval.

Section 651.035(6), F.S., gives a provider the authority to withdraw up to 33% of the total renewal and replacement reserve annually with prior approval from the OIR. The withdrawal must be used for capital items or major repairs. Within 30 days of the withdrawal of the funds, the provider must begin refunding the reserve account in equal monthly installments over the next 36 months. In order for OIR to approve the request, the provider must submit proof that it has met all funding requirements for the operating, debt service, and renewal and replacement reserves computed for the previous fiscal year. This provision has been in effect for many years but has rarely been used.

In addition, s. 651.033(2), F.S., specifies “in the event of an emergency, and upon petition by the provider, the office {of Insurance Regulation} may allow a withdrawal of up to 10% of the required minimum liquid reserve.” The OIR has three working days to deny the petition. Otherwise, the petition is deemed to have been granted. This provision is similar to current law, but it is important to note that the law specifically requires OIR approval and not just escrow agent notification to the OIR.

HB 1033 contains two provisions that LeadingAge Florida successfully pursued to give providers an opportunity to fully fund the MLR if it falls below the required amount.

- The bill codifies into law a provision in rule specifying that any increases in the MLR requirement identified in the annual report calculation must be funded no later than 61 days after the calculation is due to be filed with the OIR.
- If the MLR reserve falls below the minimum requirement at the end of any fiscal quarter due to a change in the market value of invested funds, the provider has 10 business days to fund the shortfall. It should be noted that providers are required to include in annual, quarterly and monthly reports to OIR a detailed list of assets maintained in the MLR.

The MLR may be transferred into the custody of the Department of Financial Services if the provider is insolvent or impaired. However, s. 651.035 (1)(b), F.S., provides for an exception for debt service reserves required pursuant to a trust indenture or mortgage lien. LeadingAge Florida advocated for the exemption to address the concerns of a bond attorney and investors in tax exempt bonds.

Finally, s. 651.035 (1)(a), F.S., changes the MLR calculation for property taxes for providers without a mortgage loan or other financing on the facility to a monthly deposit equal to 1/12 of the annual property tax liability as indicated in the most recent tax notice. Such providers will not be required to place the entire amount for property taxes in escrow at one time. Otherwise, the required calculations in law for the operating, debt service, and renewal and replacement reserves have not changed.

This article is the seventh in a series of articles on key provisions in HB 1033 that will be included in upcoming e-newsletters. If you have any questions or comments, please contact Mary Ellen Early, Public Policy Liaison via phone (386) 734-7681 or email meeearly@earthlink.net. You may also contact Susan Langston, Vice President of Advocacy via phone (850) 702-0318 or email slangston@LeadingAgeFlorida.org. To view the first six articles visit www.LeadinAgeFlorida.org.