

## CHAPTER 2010-202

### Committee Substitute for House Bill No. 1253

An act relating to continuing care facilities; amending s. 651.011, F.S.; revising definitions relating to ch. 651, F.S.; amending s. 651.012, F.S.; conforming cross-references; amending s. 651.022, F.S.; increasing the threshold amount for businesses that must be identified in an application for a provisional certificate of authority; adding wait-list contracts to the forms that must be submitted with the application; amending s. 651.0235, F.S.; conforming provisions to changes made by the act; amending s. 651.026, F.S.; revising the financial information that must be submitted annually for each certified facility; requiring the annual report to reflect any changes in accounting principle terminology; amending s. 651.033, F.S.; authorizing a provider to assess a separate, nonrefundable fee for processing an application for continuing care; amending s. 651.035, F.S.; clarifying that the amounts maintained in escrow relating to taxes refer to property taxes; deleting an obsolete provision; amending s. 651.055, F.S.; providing that a resident is deemed to be occupying a unit upon the payment of certain fees; providing a timeframe for rescinding a contract; increasing the application processing fee; conforming provisions to changes made by the act; amending s. 651.081, F.S.; renaming residents' organizations as residents' councils; requiring the provider to provide a newly elected chair of a council with a copy of ch. 651, F.S., and related rules; amending s. 651.083, F.S.; clarifying that a resident has a right to receive residents' council memos and announcements; prohibiting a provider from restricting a resident's access to the council; amending s. 651.085, F.S.; requiring the provider to provide the reasons for increasing the maintenance fee to the chair of the residents' council; allowing a designated representative to represent the provider at meetings; amending s. 651.091, F.S.; specifying that a management company or operator is an agent of the provider for the purposes of disclosing certain information to residents; expanding the list of items that must be provided to the chair of the residents' council; requiring the provider to provide a copy of s. 651.071, F.S., relating to receivership or liquidation, to all prospective residents; amending s. 651.105, F.S.; increasing the required time period for examinations for certain providers; requiring the office to determine if all disclosures have been made to the chair of the residents' council; amending ss. 651.114 and 651.1151, F.S.; conforming provisions to changes made by the act; amending s. 651.121, F.S.; conforming provisions to changes made by the act; requiring the chair of the Continuing Care Advisory Council to report the council's findings and recommendations to the Governor and the Commissioner of Insurance Regulation; requiring the office to provide certain information to the council; repealing s. 651.133, F.S., relating to provisional certificates under prior law; amending s. 628.4615, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Section 651.011, Florida Statutes, is reordered and amended to read:

651.011 Definitions.—For the purposes of this chapter, the term:

(3)(1) “Continuing Care Advisory Council” or “advisory council” means the Continuing Care Advisory council established in ~~by~~ s. 651.121.

(2) “Continuing care” or “care” means, ~~furnishing~~ furnishing pursuant to a contract, furnishing shelter and either nursing care or personal services as defined in s. 429.02, whether such nursing care or personal services are provided in the facility or in another setting designated by the contract for continuing care, to an individual not related by consanguinity or affinity to the provider furnishing such care, upon payment of an entrance fee. Other personal services provided must ~~shall~~ be designated in the continuing care contract. Contracts to provide continuing care include agreements to provide care for any duration, including contracts that are terminable by either party.

(4)(3) “Entrance fee” means an initial or deferred payment of a sum of money or property made as full or partial payment to assure the resident a place in a facility. An accommodation fee, admission fee, or other fee of similar form and application are ~~shall~~ be considered to be an entrance fee.

(5)(4) “Facility” means a place that provides ~~in which it is undertaken to provide~~ continuing care.

(8)(5) “Licensed” means that the provider has obtained a certificate of authority from the department.

(9)(6) “Provider” means the owner or operator, whether a natural person, partnership or other unincorporated association, however organized, trust, or corporation, of an institution, building, residence, or other place, whether operated for profit or not, which owner or operator provides ~~undertakes to provide~~ continuing care for a fixed or variable fee, or for any other remuneration of any type, whether fixed or variable, for the period of care, payable in a lump sum or lump sum and monthly maintenance charges or in installments, but does not mean an ~~any~~ entity that has existed and continuously operated a facility located on at least ~~no less than~~ 63 acres in this state providing residential lodging to members and their spouses for at least 66 years on or before July 1, 1989, and ~~such~~ facility has the residential capacity of 500 persons, is directly or indirectly owned or operated by a nationally recognized fraternal organization, is not open to the public, and accepts only its members and their spouses as residents ~~at such a facility~~.

(10)(7) “Records” means the permanent financial, directory, and personnel information and data maintained by a provider pursuant to this chapter.

~~(11)(8)~~ “Resident” means a purchaser of, ~~or~~ a nominee of, or a subscriber to; a continuing care agreement. Such ~~an~~ agreement does ~~may not be construed to~~ give the resident a part ownership of the facility in which the resident is to reside, unless expressly provided for in the agreement.

~~(6)(9)~~ “Generally accepted accounting principles” means those accounting principles and practices adopted by the Financial Accounting Standards Board and the American Institute of Certified Public Accountants, including Statement of Position 90-8 with respect to any full year to which the statement applies.

~~(7)(10)~~ “Insolvency” means the condition in which the provider is unable to pay its obligations as they come due in the normal course of business.

~~(1)(11)~~ “Advertising” means the dissemination of ~~any~~ written, visual, or electronic information by a provider, or any person affiliated with or controlled by a provider, to potential residents or their representatives for the purpose of inducing such persons to subscribe to or enter into a contract to reside in a continuing care community that is subject to this chapter covered by this act.

Section 2. Section 651.012, Florida Statutes, is amended to read:

651.012 Exempted facility; written disclosure of exemption.—Any facility exempted under ss. 632.637(1)(e) and ~~651.011(9)~~ ~~651.011(6)~~ must provide written disclosure of such exemption to each person admitted to the facility after October 1, 1996. This disclosure must be written using language likely to be understood by the person and must briefly explain the exemption provisions of ss. 632.637(1)(e) and 651.011(6).

Section 3. Paragraph (b) of subsection (2) of section 651.022, Florida Statutes, is amended, paragraph (g) is added to that subsection, and paragraphs (i) and (j) of subsection (3) of that section are amended, to read:

651.022 Provisional certificate of authority; application.—

(2) The application for a provisional certificate of authority shall be on a form prescribed by the commission and shall contain the following information:

(b) The full names, residences, and business addresses of:

1. The proprietor, if the applicant or provider is an individual.

2. Every partner or member, if the applicant or provider is a partnership or other unincorporated association, however organized, having fewer than 50 partners or members, together with the business name and address of the partnership or other organization.

3. The principal partners or members, if the applicant or provider is a partnership or other unincorporated association, however organized, having

50 or more partners or members, together with the business name and business address of the partnership or other organization. If such unincorporated organization has officers and a board of directors, the full name and business address of each officer and director may be set forth in lieu of the full name and business address of its principal members.

4. The corporation and each officer and director thereof, if the applicant or provider is a corporation.

5. Every trustee and officer, if the applicant or provider is a trust.

6. The manager, whether an individual, corporation, partnership, or association.

7. Any stockholder holding at least a 10 percent ~~10 percent~~ interest in the operations of the facility in which the care is to be offered.

8. Any person whose name is required to be provided in the application under ~~the provisions of this paragraph~~ and who owns any interest in or receives any remuneration from, ~~either~~ directly or indirectly, any professional service firm, association, trust, partnership, or corporation providing goods, leases, or services to the facility for which the application is made, with a real or anticipated value of \$10,000 ~~\$500~~ or more, and the name and address of the professional service firm, association, trust, partnership, or corporation in which such interest is held. The applicant shall describe such goods, leases, or services and the probable cost to the facility or provider and shall describe why such goods, leases, or services should not be purchased from an independent entity.

9. Any person, corporation, partnership, association, or trust owning land or property leased to the facility, along with a copy of the lease agreement.

10. Any affiliated parent or subsidiary corporation or partnership.

(g) The forms of the continuing care residency contracts, reservation contracts, escrow agreements, and wait list contracts, if applicable, which are proposed to be used by the provider in the furnishing of care. If the office finds that the continuing care contracts and escrow agreements comply with ss. 651.023(1)(c), 651.033, and 651.055, it shall approve them. Thereafter, no other form of contract or agreement may be used by the provider until it has been submitted to the office and approved.

(3) In addition to the information required in subsection (2), an applicant for a provisional certificate of authority shall submit a market feasibility study. The market feasibility study shall include at least the following information:

~~(i) The application for a provisional certificate of authority shall be accompanied by the forms of the continuing care residency and reservation contracts and escrow agreements proposed to be used by the provider in the furnishing of care. If the office finds that the continuing care contracts and~~

~~escrow agreements comply with ss. 651.023(1)(c), 651.033, and 651.055, it shall approve them. Thereafter, no other form of contract or agreement may be used by the provider until it has been submitted to the office and approved.~~

(i)(j) The name of the person who prepared the feasibility study and the experience of such person in preparing similar studies or otherwise consulting in the field of continuing care.

Section 4. Subsection (2) of section 651.0235, Florida Statutes, is amended to read:

651.0235 Validity of provisional certificates of authority and certificates of authority.—

(2) If the provider fails to meet the requirements of this chapter for a provisional certificate of authority or a certificate of authority, the office may notify the provider of any deficiencies and require the provider to correct such deficiencies within a period to be determined by the office. If such deficiencies are not corrected within 20 days after the notice to the provider, or within less time at the discretion of the office, the office shall notify the Continuing Care Advisory Council, which may assist the facility in formulating a remedial plan to be submitted to the office within no later than 60 days after ~~from~~ the date of notification. The time period for correcting the granted to ~~correct~~ deficiencies may be extended upon submission of a plan for corrective action approved by the office. If such deficiencies have not been cleared by the expiration of such time period, as extended, the office shall petition for a delinquency proceeding or pursue such other relief as is provided ~~for~~ under this chapter, as the circumstances may require.

Section 5. Subsection (2) of section 651.026, Florida Statutes, is amended to read:

651.026 Annual reports.—

(2) The annual report shall be in such form as the commission prescribes and shall contain at least the following:

(a) Any change in status with respect to the information required to be filed under s. 651.022(2).

(b) Financial statements audited by an independent certified public accountant, which must ~~shall~~ contain, for two or more periods if the facility has been in existence that long, all of the following:

1. An accountant’s opinion and, in accordance with generally accepted accounting principles:

- a. A balance sheet;
- b. A statement of income and expenses;

- c. A statement of equity or fund balances; and
- d. A statement of changes in cash flows;~~;~~ and

2. Notes to the financial statements considered customary or necessary ~~for~~ to full disclosure or adequate understanding of the financial statements, financial condition, and operation.

(c) The following financial information:

1. A detailed listing of the assets maintained in the liquid reserve as required under ~~in~~ s. 651.035 and in accordance with part II of chapter 625;

2. A schedule giving additional information relating to property, plant, and equipment having an original cost of at least \$25,000, so as to show in reasonable detail with respect to each separate facility original costs, accumulated depreciation, net book value, appraised value or insurable value and date thereof, insurance coverage, encumbrances, and net equity of appraised or insured value over encumbrances. Any property not used in continuing care must ~~shall~~ be shown separately from property used in continuing care;

3. The level of participation in Medicare or Medicaid programs, or both;

4. A statement of all fees required of residents, including, but not limited to, a statement of the entrance fee charged, the monthly service charges, the proposed application of the proceeds of the entrance fee by the provider, and the plan by which the amount of the entrance fee is determined if the entrance fee is not the same in all cases; and

5. Any change or increase in fees if ~~when~~ the provider changes either the scope of, or the rates for, care or services, regardless of whether the change involves the basic rate or only those services available at additional costs to the resident.

6.a. ~~If the provider has more than one certificated facility, or has operations that are not licensed under this chapter, it shall submit a balance sheet, statement of income and expenses, statement of equity or fund balances, and statement of cash flows statement of operations for each facility licensed under this chapter as supplemental information to the audited financial statements required under paragraph (b) as part of the annual report.~~

~~b. If the provider has operations that are not Florida certificated facilities, the provider shall also submit as supplemental information to the audited financial statements, balance sheets, statements of changes in equity, and statements of cash flows for each Florida certificated facility.~~

(d) Such other reasonable data, financial statements, and pertinent information as the commission or office may require with respect to the provider or the facility, or its directors, trustees, members, branches,

subsidiaries, or affiliates, to determine the financial status of the facility and the management capabilities of its managers and owners.

(e) Each facility shall file with the office annually, together with the annual report required by this section, a computation of its minimum liquid reserve calculated in accordance with s. 651.035 on a form prescribed by the commission.

(f) If, due to a change in generally accepted accounting principles, the balance sheet, statement of income and expenses, statement of equity or fund balances, or statement of cash flows is known by any other name or title, the annual report must contain financial statements using the changed names or titles that most closely correspond to a balance sheet, statement of income and expenses, statement of equity or fund balances, and statement of changes in cash flows.

Section 6. Paragraph (d) of subsection (1) of section 651.033, Florida Statutes, is amended, and paragraph (d) is added to subsection (3) of that section, 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 ~~may shall~~ not diminish the funds held in escrow below the amount required by this chapter. ~~All Funds~~ deposited in an escrow account ~~are 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(1) 651.035(2)~~.

(3) In addition, when entrance fees are required to be deposited in an escrow account pursuant to s. 651.022, s. 651.023, or s. 651.055:

(d) A provider may assess a nonrefundable fee, which is separate from the entrance fee, for processing a prospective resident’s application for continuing care.

Section 7. Section 651.035, Florida Statutes, is amended to read:

651.035 Minimum liquid reserve requirements.—

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

~~(2)(a) Each~~ A provider shall maintain in escrow as a debt service 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 property taxes as recorded in the audited financial statements required under s. 651.026. The amount must shall include any leasehold payments and all costs related to such payments. 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 property taxes.

(b) A provider ~~that which~~ has outstanding indebtedness ~~that 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 ~~that which~~ the debtor is obligated to pay, and which may include property taxes and insurance, may include such debt service reserve in computing ~~the its computation of its~~ minimum liquid reserve needed to satisfy this subsection ~~if, provided that~~ the provider furnishes to the office 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 office with any information concerning the debt service reserve account upon request of the provider or the office.

(c) 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. ~~If~~ 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 office by the number of annual reports filed with the office within the ~~immediate~~ preceding 3-year period subject to adjustment ~~if 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 and property taxes included in paragraph (a) subsection (1); extraordinary expenses ~~that 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 ~~before~~ 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) 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 ~~those~~ 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 ~~must~~ shall equal 15 percent of the total operating expenses of the provider, as described in this section. Each provider licensed ~~before~~ 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.

~~(3) In lieu of fulfilling the escrow requirements provided in subsections (1) and (2), each facility licensed prior to October 1, 1983, shall be required to maintain in escrow the minimum liquid reserve that would have been required under this section as it existed on October 1, 1982, plus 5 percent of the difference between the former escrow requirement and the present escrow requirement multiplied by the number of years the facility has been in operation after October 1, 1983. Beginning October 1, 2003, the escrow requirements provided in subsections (1) and (2) shall apply in full to facilities licensed before October 1, 1983.~~

~~(2)(4)(a)~~ In facilities where not all residents are under continuing care contracts, the reserve requirements of subsection ~~(1)~~ (2) shall be computed only with respect to the proportional share of operating expenses which are ~~that is~~ applicable to residents as defined in s. 651.011. For purposes of this calculation, the proportional share shall be based upon the ratio of residents under continuing care contracts to those residents who do not hold such contracts.

(b) In facilities ~~that~~ which have voluntarily and permanently discontinued marketing continuing care contracts, the office may allow a reduced debt service reserve as required in subsection (1) based upon the ratio of residents under continuing care contracts to those residents who do not hold such contracts if the office finds that such reduction is not inconsistent with the security protections intended by this chapter. In making this determination, the office may consider such factors as the financial condition of the facility, the provisions of the outstanding continuing care contracts, the ratio of residents under continuing care agreements to those residents who do not hold a continuing care contract, current occupancy rates, previous sales and

marketing efforts, life expectancy of the remaining contract holders, and the written policies of the board of directors of the provider or a similar board.

~~(3)~~(5) ~~If~~ When principal and interest payments are paid to a trust ~~that~~ which is beneficially held by the residents as described in s. 651.023(5), the office may waive all or any portion of the escrow requirements for mortgage principal and interest contained in subsection (1) if the office finds that such waiver is not inconsistent with the security protections intended by this chapter.

~~(4)~~(6) The office, upon approval of a plan for fulfilling the requirements of this section and upon demonstration by the facility of an annual increase in liquid reserves, may extend the time for compliance.

~~(5)~~(7)(a) A provider may satisfy the minimum liquid reserve requirements of this section by acquiring from a financial institution, as specified in paragraph (b), a clean, unconditional irrevocable letter of credit ~~in an amount~~ equal to the requirements of this section.

(a) The letter of credit ~~must shall~~ be issued by a financial institution participating in the State of Florida Treasury Certificate of Deposit Program, and ~~must be approved by the letter of credit shall be subject to the approval of the office before prior to~~ issuance and ~~before prior to~~ any renewal or modification thereof. At a minimum, the letter of credit ~~must shall~~ provide for:

1. Ninety days' prior written notice to both the provider and the office of the financial institution's determination not to renew or extend the term of the letter of credit.

2. Unless otherwise arranged by the provider to the satisfaction of the office, deposit by the financial institution of ~~such~~ letter of credit funds in an account designated by the office no later than 30 days ~~before prior to~~ the expiration of the letter of credit.

3. Deposit by the financial institution of ~~such~~ letter of credit funds in an account designated by the office ~~within no later than~~ 4 business days following written instructions from the office that, in the sole judgment of the office, funding of the minimum liquid reserve is required.

(b) The terms of ~~the such~~ letter of credit ~~must shall~~ be approved by the office and the long-term debt of the financial institution providing such letter of credit ~~must shall~~ be rated in one of their 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 office.

(c) The letter of credit ~~must shall~~ name the office as beneficiary.

(d) Notwithstanding any other provision of this section, a provider ~~using~~ utilizing a letter of credit pursuant to this subsection shall, at all times, have

and maintain in escrow an operating cash reserve equal to 2 months' operating expenses as determined pursuant to s. 651.026.

(e) ~~If In the event~~ the issuing financial institution no longer participates in the State of Florida Treasury Certificate of Deposit Program, such financial institution shall deposit as collateral with the department eligible securities, as prescribed by s. 625.52, having a market value equal to or greater than 100 percent of the stated amount of the letter of credit.

~~(6)(8)(a)~~ Each fiscal year, a provider may withdraw up to 33 percent of the total renewal and replacement reserve available. The reserve available is equal to the market value of the invested reserves at the end of the provider's prior fiscal year. The withdrawal must ~~is to~~ be used for capital items or major repairs, ~~and~~

(a) Before any funds are eligible for withdrawal, the provider must obtain written permission from the office by submitting the following information:

1. The amount of the withdrawal and the intended use of the proceeds.
2. A board resolution and sworn affidavit signed by two officers or general partners of the provider which indicates approval of the withdrawal and use of the funds.
3. Proof that the provider has met all funding requirements for the operating, debt service, and renewal and replacement reserves computed for the previous fiscal year.
4. Anticipated payment schedule for refunding the renewal and replacement reserve fund.

(b) ~~Within 30 days after the withdrawal of funds from the renewal and replacement reserve fund,~~ the provider must begin refunding the reserve account in equal monthly payments ~~that which~~ allow for a complete funding of ~~the such~~ withdrawal within 36 months. If the payment schedule required under subparagraph (a)4. has changed, the provider must update the office with the new payment schedule. If the provider fails to make a required monthly payment or the payment is late, the provider must notify the office within 5 days after the due date of the payment. No additional withdrawals from the renewal and replacement reserve will be allowed until all scheduled payments are current.

Section 8. Paragraphs (d) and (g) of subsection (1) and subsections (2) and (5) of section 651.055, Florida Statutes, are amended to read:

651.055 Contracts; right to rescind.—

(1) Each continuing care contract and each addendum to such contract shall be submitted to and approved by the office prior to its use in this state. Thereafter, no other form of contract shall be used by the provider unless it has been submitted to and approved by the office. Each contract shall:

(d) Describe the health and financial conditions required for a person to be accepted as a resident and to continue as a resident, once accepted, including the effect of any change in the health or financial condition of the a person between the date of submitting an application for admission to the facility and entering into a continuing care contract and the date of taking occupancy in a unit. If a prospective resident signs a contract but postpones moving into the facility, the individual is deemed to be occupying a unit at the facility when he or she pays the entrance fee or any portion of the fee, other than a reservation deposit, and begins making monthly maintenance fee payments. Such resident may rescind the contract and receive a full refund of any funds paid, without penalty or forfeiture, within 7 days after executing the contract as specified in subsection (2).

(g) Provide that the contract may be canceled ~~by upon the giving at least 30 days' of written notice of cancellation of at least 30 days~~ by the provider, the resident, or the person who provided the transfer of property or funds for the care of such resident; however, if a contract is canceled because there has been a good faith determination that a resident is a danger to himself or herself or others, only such notice as is reasonable under the circumstances is shall be required.

1. The contract must also shall further provide in clear and understandable language, in print no smaller than the largest type used in the body of the contract, the terms governing the refund of any portion of the entrance fee.

2. For a resident whose contract with the facility provides that the resident does not receive a transferable membership or ownership right in the facility, and who has occupied his or her unit, the refund shall be calculated on a pro rata basis with the facility retaining up to no more than 2 percent per month of occupancy by the resident and up to a 5 percent no more than a 4 percent fee for processing fee. Such refund must shall be paid within no later than 120 days after the giving the of notice of intention to cancel.

3. In addition to a processing fee, if the contract provides for the facility to retain up to no more than 1 percent per month of occupancy by the resident, it may provide that such refund will be paid from the proceeds of the next entrance fees received by the provider for units for which there are no prior claims by any resident until paid in full or, if the provider has discontinued marketing continuing care contracts, within 200 days after the date of notice.

4. Unless ~~the provisions of~~ subsection (5) applies apply, for any prospective resident, regardless of whether or not such a resident receives a transferable membership or ownership right in the facility, who cancels the contract before prior to occupancy of the unit, the refund shall be the entire amount paid toward the entrance fee shall be refunded, less a processing fee of up to 5 percent not to exceed 4 percent of the entire entrance fee; however, the but in no event shall such processing fee may not exceed the amount paid by the prospective resident. Such refund must shall be paid within no later than 60 days after the giving the of notice of intention to cancel. For a

resident who has occupied his or her unit and who has received a transferable membership or ownership right in the facility, the foregoing refund provisions do shall not apply but are shall be deemed satisfied by the acquisition or receipt of a transferable membership or an ownership right in the facility. The provider may shall not charge any fee for the transfer of membership or sale of an ownership right.

(2) A resident has the right to rescind a continuing care contract and receive a full refund of any funds paid, without penalty or forfeiture, within 7 days after executing the contract. A resident may shall not be required to move into the facility designated in the contract before the expiration of the 7-day period. During the 7-day period, the resident's funds must be held in an escrow account unless otherwise requested by the resident pursuant to s. 651.033(3)(c).

(5) Except for a resident who postpones moving into the facility but is deemed to have occupied a unit as described in paragraph (1)(d), if a prospective resident dies before occupying the facility or, through illness, injury, or incapacity, is precluded from becoming a resident under the terms of the continuing care contract, the contract is automatically canceled, and the prospective resident or his or her the resident's legal representative shall receive a full refund of all moneys paid to the facility, except those costs specifically incurred by the facility at the request of the prospective resident and set forth in writing in a separate addendum, signed by both parties, to the contract.

Section 9. Section 651.081, Florida Statutes, is amended to read:

651.081 ~~Continuing care facilities Residents' council organizations.—~~

(1) Residents living in a facility holding a valid certificate of authority under this chapter have the right of self-organization, the right to be represented by an individual of their own choosing, and the right to engage in concerted activities for the purpose of keeping informed on the operation of the facility ~~that which~~ is caring for them or for the purpose of other mutual aid or protection.

(2) A residents' ~~council organization~~ created for the purpose of representing residents on matters set forth in s. 651.085 may be established through an election in which the residents, as defined in ~~s. 651.011 this chapter~~, vote by ballot, ~~either~~ physically or by proxy. If the election is to be held during a meeting, a notice of the organizational meeting must be provided to all residents of the community at least 10 business days before the meeting. Notice may be given through internal mailboxes, communitywide newsletters, bulletin boards, in-house television stations, and other similar means of communication. An election ~~for creating a residents' council organization~~ is valid if at least 40 percent of the total resident population participates in the election and a majority of the participants vote affirmatively for the ~~council organization~~. The initial residents' ~~council organization~~ created under this section is valid for at least 12 months. ~~A residents' organization formalized by~~

~~If the facility has a residents' association, residents' council, or similarly organized body with bylaws and elected officials, such organization must be recognized as the residents' council organization under this section and s. 651.085. Within 30 days after the election of a newly elected president or chair of the residents' council, the provider shall give the president or chair a copy of this chapter and rules adopted thereunder, or direct him or her to the appropriate public website to obtain this information. ~~There shall be Only one residents' council may organization to represent residents before the governing body of the provider as described in s. 651.085(2).~~~~

Section 10. Paragraphs (c) and (f) of subsection (1) of section 651.083, Florida Statutes, are amended, present subsection (5) of that section is redesignated as subsection (6), and a new subsection (5) is added to that section, to read:

651.083 Residents' rights.—

(1) No resident of any facility shall be deprived of any civil or legal rights, benefits, or privileges guaranteed by law, by the State Constitution, or by the United States Constitution solely by reason of status as a resident of a facility. Each resident of a facility has the right to:

(c) Unrestricted private communication, including receiving and sending unopened correspondence. This includes the right to receive memos or announcements from or approved for distribution by the residents' council.

(f) Present grievances and recommend changes in policies, procedures, and services to the staff of the facility, governing officials, or any other person without restraint, interference, coercion, discrimination, or reprisal. This right includes access to ombudsman volunteers and advocates and the right to be a member of, and active in, and to associate with, advocacy or special interest groups or associations.

(5) The provider may not restrict a resident's access to the residents' council.

Section 11. Subsections (1) and (2) of section 651.085, Florida Statutes, are amended to read:

651.085 Quarterly meetings between residents and the governing body of the provider; resident representation before the governing body of the provider.—

(1) The governing body of a provider, or the designated representative of the provider, shall hold quarterly meetings with the residents of the continuing care facility for the purpose of free discussion of subjects including, but not limited to, income, expenditures, and financial trends and problems as they apply to the facility, as well as a discussion on proposed changes in policies, programs, and services. At quarterly meetings where monthly maintenance fee increases are discussed, a summary of the reasons for raising the fee as specified in subsection (4) must be provided in writing to

the president or chair of the residents' council. Upon request of the residents' council organization, a member of the governing body of the provider, such as a board member, a general partner, ~~or a principal owner, or designated representative~~ shall attend such meetings. Residents ~~are~~ shall be entitled to at least 7 days' advance notice of each quarterly meeting. An agenda and any materials that will be distributed by the governing body or representative of the provider shall be posted in a conspicuous place at the facility and shall be available upon request to residents of the facility. The office shall request verification from a facility that quarterly meetings are held and open to all residents ~~if when~~ it receives a complaint from the residents' council that a facility is not in compliance with ~~the provisions of~~ this subsection. In addition, a facility shall report to the office in the annual report required under s. 651.026 the dates on which quarterly meetings were held during the reporting period.

(2) A residents' council organization formed pursuant to s. 651.081, members of which are elected by the residents, may designate a resident to represent them before the governing body of the provider or organize a meeting or ballot election of the residents of the facility to determine whether to elect a resident to represent them before the governing body of the provider. If a residents' council organization ~~as described in s. 651.081~~ does not exist, any resident may organize a meeting or ballot election of the residents of the facility to determine whether to elect a resident to represent them before the governing body and, if applicable, elect the representative. The residents' council organization, or the resident that organizes a meeting or ballot election to elect a representative, shall give all residents of the ~~facility~~ notice at least 10 business days before the meeting or election. Notice may be given through internal mailboxes, communitywide newsletters, bulletin boards, in-house television stations, and other similar means of communication. An election of the representative is valid if at least 40 percent of the total resident population participates in the election and a majority of the participants vote affirmatively for the representative. The initial designated representative elected under this section shall be elected to serve ~~for a period of~~ at least 12 months.

Section 12. Section 651.091, Florida Statutes, is amended to read:

651.091 Availability, distribution, and posting of reports and records; requirement of full disclosure.—

(1) Each continuing care facility shall maintain as public information, available upon request, records of all cost and inspection reports pertaining to that facility which ~~that~~ have been filed with or issued by any governmental agency. A copy of each ~~such~~ report shall be retained ~~in such records for at least not less than~~ 5 years ~~after from~~ the date the report is filed or issued. Each facility shall also maintain as public information, available upon request, all annual statements that have been filed with the office. For purposes of this section, a management company or operator is considered an agent of the provider.

(2) Every continuing care facility shall:

(a) Display the certificate of authority in a conspicuous place inside the facility.

(b) Post in a prominent position in the facility ~~which is so as to be~~ accessible to all residents and to the general public a concise summary of the last examination report issued by the office, with references to the page numbers of the full report noting any deficiencies found by the office, and the actions taken by the provider to rectify such deficiencies, indicating in such summary where the full report may be inspected in the facility.

(c) Post in a prominent position in the facility ~~which is so as to be~~ accessible to all residents and to the general public a summary of the latest annual statement, indicating in the summary where the full annual statement may be inspected in the facility. A listing of any proposed changes in policies, programs, and services ~~must shall~~ also be posted.

(d) Distribute a copy of the full annual statement to the president or chair of the residents' council within 30 days after ~~the~~ filing of the annual report with the office, and designate a staff person to provide explanation thereof.

(e) Notify the residents' council of any plans filed with the office to obtain new financing, additional financing, or refinancing for the facility and of any applications to the office for any expansion of the facility.

(f) Deliver to the president or chair of the residents' council a summary of entrance fees collected and refunds made during the time period covered in the annual report and the refund balances due at the end of the report period.

(g) Deliver to the president or chair of the residents' council a copy of each quarterly statement within 30 days after the quarterly statement is filed with the office if the facility is required to file quarterly.

(h) Upon request, deliver to the president or chair of the residents' council a copy of any newly approved continuing care contract within 30 days after approval by the office.

(3) Before entering into a contract to furnish continuing care, the provider undertaking to furnish the care, or the agent of the provider, shall make full disclosure, and provide copies of the disclosure documents to the prospective resident or his or her legal representative, of the following information:

(a) The contract to furnish continuing care.

(b) The summary listed in paragraph (2)(b).

(c) All ownership interests and lease agreements, including information specified in s. 651.022(2)(b)8.



(d) In keeping with the intent of this subsection relating to disclosure, the provider shall make available for review, master plans approved by the provider's governing board and any plans for expansion or phased development, to the extent that the availability of such plans will not put at risk real estate, financing, acquisition, negotiations, or other implementation of operational plans and thus jeopardize the success of negotiations, operations, and development.

(e) Copies of the rules and regulations of the facility and an explanation of the responsibilities of the resident.

(f) The policy of the facility with respect to admission to and discharge from the various levels of health care offered by the facility.

(g) The amount and location of any reserve funds required by this chapter, and the name of the person or entity having a claim to such funds in the event of a bankruptcy, foreclosure, or rehabilitation proceeding.

(h) A copy of s. 651.071.

(i)(h) A copy of the resident's rights as described in s. 651.083.

(4) A true and complete copy of the full disclosure document to be used ~~must shall~~ be filed with the office ~~before prior to~~ its use. A resident or prospective resident or his or her legal representative ~~may shall be permitted to~~ inspect the full reports referred to in paragraph (2)(b); the charter or other agreement or instrument required to be filed with the office pursuant to s. 651.022(2), together with all amendments thereto; and the bylaws of the corporation or association, if any. Upon request, copies of the reports and information shall be provided to the individual requesting them if the individual agrees to pay a reasonable charge to cover copying costs.

Section 13. Subsection (1) of section 651.105, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

651.105 Examination and inspections.—

(1) The office may at any time, and shall at least once every 3 years, examine the business of any applicant for a certificate of authority and any provider engaged in the execution of care contracts or engaged in the performance of obligations under such contracts, in the same manner as is provided for the examination of insurance companies pursuant to s. 624.316. For a provider as defined in s. 651.028, such examinations shall take place at least once every 5 years. Such examinations shall be made by a representative or examiner designated by the office, whose compensation will be fixed by the office pursuant to s. 624.320. Routine examinations may be made by having the necessary documents submitted to the office; and, for this purpose, financial documents and records conforming to commonly accepted accounting principles and practices, as required under s. 651.026, ~~are will be~~ deemed adequate. The final written report of each ~~such~~ examination ~~must shall~~ be filed with the office and, when so filed, ~~constitutes will constitute~~ a

public record. Any provider being examined shall, upon request, give reasonable and timely access to all of its records. The representative or examiner designated by the office may at any time examine the records and affairs and inspect the physical property of any provider, whether in connection with a formal examination or not.

(5) At the time of the routine examination, the office shall determine if all disclosures required under this chapter have been made to the president or chair of the residents' council.

Section 14. Subsections (1) through (4) of section 651.114, Florida Statutes, are amended to read:

651.114 Delinquency proceedings; remedial rights.—

(1) Upon determination by the office that a provider is not in compliance with this chapter, the office may notify the chair of the Continuing Care Advisory Council, who may assist the office in formulating a corrective action plan.

(2) A provider shall make available to the advisory council, within ~~no later than~~ 30 days after being requested to do so by the ~~advisory~~ council, a plan for obtaining compliance or solvency.

(3) Within ~~The council shall, no later than~~ 30 days after notification, the advisory council shall:

(a) Consider and evaluate the plan submitted by the provider.

(b) Discuss the problem and solutions with the provider.

(c) Conduct such other business as is necessary.

(d) Report its findings and recommendations to the office, which may require additional modification of the plan.

(4)(a) After receiving ~~Upon~~ approval of a plan by the office, the provider shall submit ~~monthly~~ a progress report monthly to the advisory council or the office, or both, in a manner prescribed by the office.

~~(b)~~ After a period of 3 months, or at any earlier time deemed necessary, the council shall evaluate the progress by the provider and shall advise the office of its findings.

Section 15. Subsection (3) of section 651.1151, Florida Statutes, is amended to read:

651.1151 Administrative, vendor, and management contracts.—

(3) Any contract with an affiliate, an entity controlled by the provider, or an entity controlled by an affiliate of the provider for administrative, vendor, or management services entered into or renewed after October 1, 1991, must

~~include shall contain~~ a provision that the contract ~~will~~ shall be canceled upon issuance of an order by the office pursuant to this section. A copy of the current management services contract, pursuant to this section, if any, must be on file in the marketing office or other area accessible area to residents and the appropriate residents' council ~~resident organizations~~.

Section 16. Section 651.121, Florida Statutes, is amended to read:

651.121 Continuing Care Advisory Council.—

(1) The Continuing Care Advisory Council to the office is created to consist of 10 members who are residents of this state appointed by the Governor and geographically representative of this state. Three members shall be administrators of facilities that ~~which~~ hold valid certificates of authority under this chapter and shall have been actively engaged in the offering of continuing care agreements in this state for 5 years before appointment. The remaining members ~~shall~~ include:

(a) A representative of the business community whose expertise is in the area of management.

(b) A representative of the financial community who is not a facility owner or administrator.

(c) A certified public accountant.

(d) An attorney.

(e) Three residents who hold continuing care agreements with a facility certified in this state.

(2) The term of office for each member shall be 3 years, or until the member's successor has been appointed and qualifies.

(3) The council members shall serve without pay, but shall be reimbursed for per diem and travel expenses by the office in accordance with s. 112.061.

(4) Each prospective council member shall submit to the appointing officer a statement detailing any financial interest of 10 percent or more in one or more continuing care facilities, including, but not limited to, ownership interest in a facility, property leased to a facility, and ownership in any company providing goods or services to a facility. This statement shall include the name and address of each facility involved and the extent and character of the financial interest of the applicant. Upon appointment of the council member, this statement shall become a public document.

(5) The council shall:

(a) Meet at least once a year and, at such annual meeting, elect a chair from their number and elect or appoint a vice chair ~~secretary~~, each of whom

shall hold office for 1 year and thereafter until a successor is elected and qualified.

(b) Hold other meetings at such times and places as the office or the chair of the council may direct.

(c) Keep a record of its proceedings. The books and records of the council shall be prima facie evidence of all matters reported therein and, except for proceedings conducted under s. 651.018, shall be open to inspection at all times.

(d) Act in an advisory capacity to the office on matters pertaining to the operation and regulation of continuing care facilities.

(e) Recommend to the office needed changes in statutes and rules.

(f) Upon the request of the office, assist, with any corrective action, rehabilitation or cessation of business plan of a provider.

(6) A provider shall furnish to the council, no later than 14 business days after being requested to do so by the council, all documents and information reasonably requested by the council.

(7) The council chair shall report annually the council’s findings and recommendations concerning continuing care facilities to the Executive Office of the Governor and the Commissioner of Insurance Regulation.

(8) At the council’s annual meeting, the office shall provide members with a summary and comparison of data on continuing care facilities submitted in the most recent two annual reports and a summary of the number, type, and status of complaints related to continuing care facilities which were filed with the Division of Consumer Services in the Department of Financial Services during the preceding fiscal year.

(9) The office shall notify the council by written memorandum or electronic means of proposed rule changes and scheduled rule workshops and hearings related to the administration of this chapter.

Section 17. Section 651.133, Florida Statutes, is repealed.

Section 18. Subsection (1) of section 628.4615, Florida Statutes, is amended to read:

628.4615 Specialty insurers; acquisition of controlling stock, ownership interest, assets, or control; merger or consolidation.—

(1) For the purposes of this section, the term “specialty insurer” means any person holding a license or certificate of authority as:

(a) A motor vehicle service agreement company authorized to issue motor vehicle service agreements as those terms are defined in s. 634.011;

(b) A home warranty association authorized to issue “home warranties” as those terms are defined in s. 634.301(3) and (4);

(c) A service warranty association authorized to issue “service warranties” as those terms are defined in s. 634.401(13) and (14);

(d) A prepaid limited health service organization authorized to issue prepaid limited health service contracts, as those terms are defined in chapter 636;

(e) An authorized health maintenance organization operating pursuant to s. 641.21;

(f) An authorized prepaid health clinic operating pursuant to s. 641.405;

(g) A legal expense insurance corporation authorized to engage in a legal expense insurance business pursuant to s. 642.021;

(h) A provider ~~that~~ which is licensed to operate a facility ~~that~~ which undertakes to provide continuing care as those terms are defined in s. 651.011(2), (4), (5), and (6);

(i) A multiple-employer welfare arrangement operating pursuant to ss. 624.436-624.446;

(j) A premium finance company authorized to finance insurance premiums pursuant to s. 627.828; or

(k) A corporation authorized to accept donor annuity agreements pursuant to s. 627.481.

Section 19. This act shall take effect July 1, 2010.

Approved by the Governor June 3, 2010.

Filed in Office Secretary of State June 3, 2010.