

## CHAPTER 2011-193

### Committee Substitute for Committee Substitute for House Bill No. 1037

An act relating to continuing care retirement communities; providing for the provision of continuing care at-home; amending s. 651.011, F.S.; revising definitions; defining “continuing care at-home,” “nursing care,” “personal services,” and “shelter”; amending s. 651.012, F.S.; conforming a cross-reference; amending s. 651.013, F.S.; conforming provisions to changes made by the act; amending s. 651.021, F.S., relating to the requirement for certificates of authority; requiring that a person in the business of issuing continuing care at-home contracts obtain a certificate of authority from the Office of Insurance Regulation; requiring written approval from the Office of Insurance Regulation for a 20 percent or more expansion in the number of continuing care at-home contracts; providing that an actuarial study may be substituted for a feasibility study in specified circumstances; amending s. 651.022, F.S., relating to provisional certificates of authority; conforming provisions to changes made by the act; amending s. 651.023, F.S., relating to an application for a certificate of authority; specifying the content of the feasibility study that is included in the application for a certificate; requiring the same minimum reservation requirements for continuing care at-home contracts as continuing care contracts; requiring that a certain amount of the entrance fee collected for contracts resulting from an expansion be placed in an escrow account or on deposit with the department; amending ss. 651.033, 651.035, and 651.055, F.S.; requiring a facility to provide proof of compliance with a residency contract; conforming provisions to changes made by the act; providing application relating to the entitlement of a prospective resident, resident, or resident’s estate to interest on a deposit or entrance fee; creating s. 651.057, F.S.; providing additional requirements for continuing care at-home contracts; requiring that a provider who wishes to offer continuing care at-home contracts submit certain additional documents to the office; requiring that the provider comply with certain requirements; limiting the number of continuing care and continuing care at-home contracts at a facility based on the types of units at the facility; amending ss. 651.071, 651.091, 651.106, 651.114, 651.118, 651.121, and 651.125, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

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

651.011 Definitions.—As used in ~~For the purposes of~~ this chapter, the term:

(1) “Advertising” means the dissemination of 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 for continuing care or continuing care at-home to reside in a continuing care community that is subject to this chapter.

(2) “Continuing care” or “care” means, pursuant to a contract, furnishing shelter and nursing care or personal services to a resident who resides in a facility ~~as defined in s. 429.02~~, whether such nursing care or personal services are provided in the facility or in another setting designated in by the contract for continuing care, ~~by~~ to an individual not related by consanguinity or affinity to the resident provider furnishing such care, upon payment of an entrance fee. ~~Other personal services provided must 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.~~

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

(4) “Continuing care at-home” means, pursuant to a contract other than a contract described in subsection (2), furnishing to a resident who resides outside the facility the right to future access to shelter and nursing care or personal services, whether such services are provided in the facility or in another setting designated in the contract, by an individual not related by consanguinity or affinity to the resident, upon payment of an entrance fee.

(5)(4) “Entrance fee” means an initial or deferred payment of a sum of money or property made as full or partial payment for continuing care or continuing care at-home to assure the resident a place in a facility. An accommodation fee, admission fee, member fee, or other fee of similar form and application are considered to be an entrance fee.

(6)(5) “Facility” means a place where that provides continuing care is furnished and may include one or more physical plants on a primary or contiguous site or an immediately accessible site. As used in this subsection, the term “immediately accessible site” means a parcel of real property separated by a reasonable distance from the facility as measured along public thoroughfares, and the term “primary or contiguous site” means the real property contemplated in the feasibility study required by this chapter.

(7)(6) “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.

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

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

(10) “Nursing care” means those services or acts rendered to a resident by an individual licensed or certified pursuant to chapter 464.

(11) “Personal services” has the same meaning as in s. 429.02.

~~(12)(9)~~ “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 continuing care or continuing care at-home 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. ~~The term,~~ but does not ~~apply to mean~~ an entity that has existed and continuously operated a facility located on at least 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 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.

~~(13)(10)~~ “Records” means the permanent financial, directory, and personnel information and data maintained by a provider pursuant to this chapter.

~~(14)(11)~~ “Resident” means a purchaser of, a nominee of, or a subscriber to a continuing care or continuing care at-home contract agreement. Such contract agreement does not give the resident a part ownership of the facility in which the resident is to reside, unless expressly provided ~~for~~ in the contract agreement.

(15) “Shelter” means an independent living unit, room, apartment, cottage, villa, personal care unit, nursing bed, or other living area within a facility set aside for the exclusive use of one or more identified residents.

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~~(12)(9)~~ 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.

Section 3. Section 651.013, Florida Statutes, is amended to read:

651.013 Chapter exclusive; applicability of other laws.—

(1) Except as herein provided, providers of continuing care and continuing care at-home are shall be governed by the provisions of this chapter and are shall be exempt from all other provisions of the Florida Insurance Code.

(2) In addition to other applicable provisions cited in this chapter, the office has the authority granted under ss. 624.302 and 624.303, 624.308-624.312, 624.319(1)-(3), 624.320-624.321, 624.324, and 624.34 of the Florida Insurance Code to regulate providers of continuing care and continuing care at-home.

Section 4. Section 651.021, Florida Statutes, is amended to read:

651.021 Certificate of authority required.—

(1) No person may engage in the business of providing continuing care, ~~or issuing contracts for continuing care or continuing care at-home, or constructing agreements or construct~~ a facility for the purpose of providing continuing care in this state without a certificate of authority ~~therefor~~ obtained from the office as provided in this chapter. This subsection does shall not be construed to prohibit the preparation of a the construction site or construction of a model residence unit for marketing purposes, or both. The office may allow the purchase of an existing building for the purpose of providing continuing care if the office determines that the purchase is not being made to circumvent for the purpose of circumventing the prohibitions contained in this section.

(2)(a) Written approval must be obtained from the office before commencing commencement of construction or marketing for an any expansion of a certificated facility equivalent to the addition of at least 20 percent of existing units or 20 percent or more in the number of continuing care at-home contracts, written approval must be obtained from the office. This provision does not apply to construction for which a certificate of need from the Agency for Health Care Administration is required.

(a) For providers that offer both continuing care and continuing care at-home, the 20 percent is based on the total of both existing units and existing contracts for continuing care at-home. For purposes of this subsection, an expansion includes increases in the number of constructed units or continuing care at-home contracts or a combination of both.

(b) The application for such approval shall be on forms adopted by the commission and provided by the office. The application must shall include the feasibility study required by s. 651.022(3) or s. 651.023(1)(b) and such other information as required by s. 651.023. If the expansion is only for continuing care at-home contracts, an actuarial study prepared by an independent actuary in accordance with standards adopted by the American Academy of Actuaries which presents the financial impact of the expansion may be substituted for the feasibility study.

(c) In determining whether an expansion should be approved, the office shall use utilize the criteria provided in ss. 651.022(6) and 651.023(4)(2).

Section 5. Paragraphs (d) and (g) of subsection (2) and subsections (4) and (6) of section 651.022, Florida Statutes, 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:

(d) The contracts ~~agreements~~ for continuing care and continuing care at-home to be entered into between the provider and residents which meet the minimum requirements of s. 651.055 or s. 651.057 and which include a statement describing the procedures required by law relating to the release of escrowed entrance fees. Such statement may be furnished through an addendum.

(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 shall approve finds that the continuing care contracts and escrow agreements that comply with ss. 651.023(1)(c), 651.033, and 651.055, and 651.057 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.

(4) If an applicant has or proposes to have more than one facility offering continuing care or continuing care at-home, a separate provisional certificate of authority and a separate certificate of authority must ~~shall~~ be obtained for each facility.

(6) Within 45 days after from the date an application is deemed to be complete, as set forth in paragraph (5)(b), the office shall complete its review and ~~shall~~ issue a provisional certificate of authority to the applicant based upon its review and a determination that the application meets all requirements of law, ~~and~~ that the feasibility study was based on sufficient data and reasonable assumptions, and that the applicant will be able to provide continuing care or continuing care at-home as proposed and meet all financial obligations related to its operations, including the financial requirements of this chapter ~~to provide continuing care as proposed~~. If the application is denied, the office shall notify the applicant in writing, citing the specific failures to meet the provisions of this chapter. Such denial ~~entitles shall entitle~~ the applicant to a hearing pursuant to ~~the provisions of~~ chapter 120.

Section 6. Section 651.023, Florida Statutes, is amended to read:

651.023 Certificate of authority; application.—

(1) After issuance of a provisional certificate of authority, the office shall issue to the holder of such provisional certificate of authority a certificate of authority ~~if, provided, however, that no certificate of authority shall be issued until the holder of the~~ such provisional certificate of authority provides the office with the following information:

(a) Any material change in status with respect to the information required to be filed under s. 651.022(2) in the application for the a provisional certificate of authority.

(b) A feasibility study prepared by an independent consultant which contains all of the information required by s. 651.022(3) and ~~contains~~ financial forecasts or projections prepared in accordance with standards adopted promulgated by the American Institute of Certified Public Accountants or financial forecasts or projections prepared in accordance with standards for feasibility studies or continuing care retirement communities adopted promulgated by the Actuarial Standards Board.

1. The study must also contain an independent evaluation and examination opinion, or a comparable opinion acceptable to the office, by the consultant who prepared the study, of the underlying assumptions used as a basis for the forecasts or projections in the study and that the assumptions are reasonable and proper and ~~that~~ the project as proposed is feasible.

2. The study ~~must~~ shall take into account project costs, actual marketing results to date and marketing projections, resident fees and charges, competition, resident contract provisions, and any other factors which affect the feasibility of operating the facility.

3. If the study is prepared by an independent certified public accountant, it must contain an examination opinion for the first 3 years of operations and financial projections having a compilation opinion for the next 3 years. If the study is prepared by an independent consulting actuary, it must contain mortality and morbidity data and an actuary's signed opinion that the project as proposed is feasible and that the study has been prepared in accordance with standards adopted by the American Academy of Actuaries.

(c) ~~Subject to the requirements of subsection (4) (2), a provider may submit an application for a certificate of authority and any required exhibits upon submission of proof that the project has a minimum of 30 percent of the units reserved for which the provider is charging an entrance fee.; however, This does provision shall not apply to an application for a certificate of authority for the acquisition of a facility for which a certificate of authority was issued before prior to October 1, 1983, to a provider who subsequently becomes a debtor in a case under the United States Bankruptcy Code, 11 U.S.C. ss. 101 et seq., or to a provider for which the department has been appointed receiver pursuant to the provisions of part II of chapter 631.~~

(d) Proof that commitments have been secured for both construction financing and long-term financing or a documented plan acceptable to the office has been adopted by the applicant for long-term financing.

(e) Proof that all conditions of the lender have been satisfied to activate the commitment to disburse funds other than the obtaining of the certificate of authority, the completion of construction, or the closing of the purchase of realty or buildings for the facility.

(f) Proof that the aggregate amount of entrance fees received by or pledged to the applicant, plus anticipated proceeds from any long-term financing commitment, plus funds from all other sources in the actual possession of the applicant, equal at least ~~not less than~~ 100 percent of the aggregate cost of constructing or purchasing, equipping, and furnishing the facility plus 100 percent of the anticipated startup losses of the facility.

(g) Complete audited financial statements of the applicant, prepared by an independent certified public accountant in accordance with generally accepted accounting principles, as of the date the applicant commenced business operations or for the fiscal year that ended immediately preceding the date of application, whichever is later, and complete unaudited quarterly financial statements attested to by the applicant after ~~subsequent to~~ the date of the last audit.

(h) Proof that the applicant has complied with the escrow requirements of subsection (5) ~~(3)~~ or subsection (7) ~~(5)~~ and will be able to comply with s. 651.035.

(i) Such other reasonable data, financial statements, and pertinent information as the commission or office may require with respect to the applicant or the facility, to determine the financial status of the facility and the management capabilities of its managers and owners.

(2)(j) ~~(2)(j)~~ Within 30 days after ~~of the~~ receipt of the information required under subsection (1) ~~paragraphs (a)-(h)~~, the office shall examine such information and shall notify the provider in writing, specifically requesting any additional information the office is permitted by law to require. Within 15 days after receipt of all of the requested additional information, the office shall notify the provider in writing that all of the requested information has been received and the application is deemed to be complete as of the date of the notice. Failure to ~~so~~ notify the applicant in writing within the 15-day period constitutes ~~shall constitute~~ acknowledgment by the office that it has received all requested additional information, and the application shall be deemed ~~to be~~ complete for purposes of review on ~~upon~~ the date of the filing of all of the required additional information.

(3)(k) ~~(3)(k)~~ Within 45 days after an application is deemed complete as set forth in subsection (2) ~~paragraph (j)~~, and upon completion of the remaining requirements of this section, the office shall complete its review and shall issue, or deny a certificate of authority, ~~a certificate of authority~~ to the holder of a provisional certificate of authority ~~a certificate of authority~~. If a certificate of authority is denied, the office must ~~shall~~ notify the holder of the provisional certificate of ~~authority~~ in writing, citing the specific failures to satisfy the provisions of this chapter. If denied, the holder of the provisional certificate is of authority ~~shall be~~ entitled to an administrative hearing pursuant to chapter 120.

(4)(2)(a) ~~(4)(2)(a)~~ The office shall issue a certificate of authority upon determining ~~its determination~~ that the applicant meets all requirements of law and has submitted all of the information required by this section, that all escrow

requirements have been satisfied, and that the fees prescribed in s. 651.015(2) have been paid.

(a) Notwithstanding satisfaction of the 30-percent minimum reservation requirement of paragraph (1)(c), no certificate of authority shall be issued until the project has a minimum of 50 percent of the units reserved for which the provider is charging an entrance fee, and proof thereof is provided to the office. If a provider offering continuing care at-home is applying for a certificate of authority or approval of an expansion pursuant to s. 651.021(2), the same minimum reservation requirements must be met for the continuing care and continuing care at-home contracts, independently of each other.

(b) In order for a unit to be considered reserved under this section, the provider must collect a minimum deposit of 10 percent of the then-current entrance fee for that unit, and must assess a forfeiture penalty of 2 percent of the entrance fee due to termination of the reservation contract after 30 days for any reason other than the death or serious illness of the resident, the failure of the provider to meet its obligations under the reservation contract, or other circumstances beyond the control of the resident that equitably entitle the resident to a refund of the resident's deposit. The reservation contract must shall state the cancellation policy and the terms of the continuing care or continuing care at-home contract to be entered into.

~~(5)(3)~~ Up to No more than 25 percent of the moneys paid for all or any part of an initial entrance fee may be included or pledged for the construction or purchase of the facility, or included or pledged as security for long-term financing. The term "initial entrance fee" means the total entrance fee charged by the facility to the first occupant of a unit.

(a) A minimum of 75 percent of the moneys paid for all or any part of an initial entrance fee collected for continuing care or continuing care at-home shall be placed in an escrow account or on deposit with the department as prescribed in s. 651.033.

(b) For an expansion as provided in s. 651.021(2), a minimum of 75 percent of the moneys paid for all or any part of an initial entrance fee collected for continuing care and 50 percent of the moneys paid for all or any part of an initial fee collected for continuing care at-home shall be placed in an escrow account or on deposit with the department as prescribed in s. 651.033.

~~(6)(4)~~ The provider is shall be entitled to secure release of the moneys held in escrow within 7 days after receipt by the office of an affidavit from the provider, along with appropriate copies to verify, and notification to the escrow agent by certified mail, that the following conditions have been satisfied:

(a) A certificate of occupancy has been issued.

(b) Payment in full has been received for at least no less than 70 percent of the total units of a phase or of the total of the combined phases constructed. If a provider offering continuing care at-home is applying for a release of escrowed entrance fees, the same minimum requirement must be met for the continuing care and continuing care at-home contracts, independently of each other.

(c) The consultant who prepared the feasibility study required by this section or a substitute approved by the office certifies within 12 months before the date of filing for office approval that there has been no material adverse change in status with regard to the feasibility study, ~~with such statement dated not more than 12 months from the date of filing for office approval.~~ If a material adverse change exists ~~should exist~~ at the time of submission, ~~then~~ sufficient information acceptable to the office and the feasibility consultant must ~~shall~~ be submitted which remedies the adverse condition.

(d) Proof that commitments have been secured or a documented plan adopted by the applicant has been approved by the office for long-term financing.

(e) Proof that the provider has sufficient funds to meet the requirements of s. 651.035, which may include funds deposited in the initial entrance fee account.

(f) Proof as to the intended application of the proceeds upon release and proof that the entrance fees when released will be applied as represented to the office.

Notwithstanding ~~any provision of~~ chapter 120, no person, other than the provider, the escrow agent, and the office, may ~~shall~~ have a substantial interest in any office decision regarding release of escrow funds in any proceedings under chapter 120 or this chapter regarding release of escrow funds.

~~(7)(5)~~ In lieu of the provider fulfilling the requirements in subsection ~~(5)~~ ~~(3)~~ and paragraphs ~~(6)(4)(b)~~ and (d), the office may authorize the release of escrowed funds to retire all outstanding debts on the facility and equipment upon application of the provider and upon the provider's showing that the provider will grant to the residents a first mortgage on the land, buildings, and equipment that constitute the facility, and that the provider has satisfied ~~satisfies the requirements of~~ paragraphs ~~(6)(4)(a)~~, (c), and (e). Such mortgage shall secure the refund of the entrance fee in the amount required by this chapter. The granting of such mortgage is ~~shall be~~ subject to the following:

(a) The first mortgage is ~~shall be~~ granted to an independent trust that ~~which~~ is beneficially held by the residents. The document creating the trust must include ~~shall contain~~ a provision that it agrees to an annual audit and will furnish to the office all information the office may reasonably require.

The mortgage may secure payment on bonds issued to the residents or trustee. Such bonds ~~are shall~~ be redeemable after termination of the residency contract in the amount and manner required by this chapter for the refund of an entrance fee.

(b) Before granting a first mortgage to the residents, all construction ~~must shall~~ be substantially completed and substantially all equipment ~~must shall~~ be purchased. No part of the entrance fees may be pledged as security for a construction loan or otherwise used for construction expenses before the completion of construction.

(c) If the provider is leasing the land or buildings used by the facility, the leasehold interest ~~must shall~~ be for a term of at least 30 years.

~~(8)(6)~~ The timeframes provided under s. 651.022(5) and (6) apply to applications submitted under s. 651.021(2). The office may not issue a certificate of authority ~~under this chapter to a any facility that which~~ does not have a component ~~that which~~ is to be licensed pursuant to part II of chapter 400 or to part I of chapter 429 or ~~that does which will~~ not offer personal services or nursing services through written contractual agreement. ~~A Any~~ written contractual agreement must be disclosed in the ~~continuing care contract for continuing care or continuing care at-home~~ and is subject to the provisions of s. 651.1151, relating to administrative, vendor, and management contracts.

~~(9)(7)~~ The office ~~may shall~~ not approve an application ~~that which~~ includes in the plan of financing any encumbrance of the operating reserves required by this chapter.

Section 7. Paragraphs (a) and (d) of subsection (3) of section 651.033, Florida Statutes, are amended to read:

651.033 Escrow accounts.—

(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:

(a) The provider shall deliver to the resident a written receipt. The receipt ~~must shall~~ show the payor's name and address, the date, the price of the care contract, and the amount of money paid. A copy of each receipt, together with the funds, shall be deposited with the escrow agent or as provided in paragraph (c). The escrow agent shall release such funds to the provider ~~upon the expiration of 7 days after the date of receipt of the funds by the escrow agent if the provider, operating under a certificate of authority issued by the office, has met the requirements of s. 651.023(6)(4).~~ However, if the resident rescinds the contract within the 7-day period, the escrow agent shall release the escrowed fees to the resident.

(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 ~~or continuing care at-home~~.

Section 8. Subsections (2) and (3) of section 651.035, Florida Statutes, are amended to read:

651.035 Minimum liquid reserve requirements.—

(2)(a) In facilities where not all residents are under continuing care or continuing care at-home contracts, the reserve requirements of subsection (1) shall be computed only with respect to the proportional share of operating expenses ~~that which~~ are 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 or continuing care at-home contracts to those residents who do not hold such contracts.

(b) In facilities that have voluntarily and permanently discontinued marketing continuing care and continuing care at-home contracts, the office may allow a reduced debt service reserve as required in subsection (1) based upon the ratio of residents under continuing care or continuing care at-home 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 and continuing care at-home contracts, the ratio of residents under continuing care or continuing care at-home contracts agreements to those residents who do not hold such contracts ~~a continuing care contract~~, the current occupancy rates, the previous sales and marketing efforts, the life expectancy of the remaining residents ~~contract holders~~, and the written policies of the board of directors of the provider or a similar board.

(3) If principal and interest payments are paid to a trust that is beneficially held by the residents as described in s. 651.023(7)(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.

Section 9. Section 651.055, Florida Statutes, is amended to read:

651.055 Continuing care contracts; right to rescind.—

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

(a) Provide for the continuing care of only one resident, or for two persons occupying space designed for double occupancy, under appropriate regulations established by the provider, and must ~~shall~~ list all properties transferred and their market value at the time of transfer, including

donations, subscriptions, fees, and any other amounts paid or payable by, or on behalf of, the resident or residents.

(b) Specify all services ~~that which~~ are to be provided by the provider to each resident, including, in detail, all items ~~that which~~ each resident will receive, whether the items will be provided for a designated time period or for life, and whether the services will be available on the premises or at another specified location. The provider shall indicate which services or items are included in the contract for continuing care and which services or items are made available at or by the facility at extra charge. Such items ~~shall~~ include, but are not limited to, food, shelter, personal services or nursing care, drugs, burial, and incidentals.

(c) Describe the terms and conditions under which a contract for continuing care may be canceled by the provider or by a resident and the conditions, if any, under which all or any portion of the entrance fee will be refunded in the event of cancellation of the contract by the provider or by the resident, including the effect of any change in the health or financial condition of a person between the date of entering a contract for continuing care and the date of initial occupancy of a living unit by that person.

(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 person between the date of submitting an application for admission to the facility and entering into a continuing care contract. 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).

(e) Describe the circumstances under which the resident will be permitted to remain in the facility in the event of financial difficulties of the resident. The stated policy may not be less than the terms stated in s. 651.061.

(f) State the fees that will be charged if the resident marries while at the designated facility, the terms concerning the entry of a spouse to the facility, and the consequences if the spouse does not meet the requirements for entry.

(g) Provide that the contract may be canceled by giving at least 30 days' written notice of cancellation 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 required.

1. The contract must also 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 2 percent per month of occupancy by the resident and up to a 5 percent ~~5-percent~~ processing fee. Such refund must be paid within 120 days after giving the notice of intention to cancel.

3. In addition to a processing fee, if the contract provides for the facility to retain up to 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 subsection (5) applies, 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 occupancy of the unit, the entire amount paid toward the entrance fee shall be refunded, less a processing fee of up to 5 percent of the entire entrance fee; however, the processing fee may not exceed the amount paid by the prospective resident. Such refund must be paid within 60 days after giving the 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 not apply but are deemed satisfied by the acquisition or receipt of a transferable membership or an ownership right in the facility. The provider may not charge any fee for the transfer of membership or sale of an ownership right.

(h) State the terms under which a contract is canceled by the death of the resident. These terms may contain a provision that, upon the death of a resident, the entrance fee of such resident ~~is shall be~~ considered earned and ~~becomes shall become~~ the property of the provider. ~~If~~ ~~When~~ the unit is shared, the conditions with respect to the effect of the death or removal of one of the residents must ~~shall~~ be included in the contract.

(i) Describe the policies ~~that which~~ may lead to changes in monthly recurring and nonrecurring charges or fees for goods and services received. The contract must ~~shall~~ provide for advance notice to the resident, of at least ~~not less than~~ 60 days, before any change in fees or charges or the scope of care or services ~~is may be~~ effective, except for changes required by state or federal assistance programs.

(j) Provide that charges for care paid in one lump sum may ~~shall~~ not be increased or changed during the duration of the agreed upon care, except for changes required by state or federal assistance programs.

(k) Specify whether ~~or not~~ the facility is, or is affiliated with, a religious, nonprofit, or proprietary organization or management entity; the extent to which the affiliate organization will be responsible for the financial and contractual obligations of the provider; and the provisions of the federal Internal Revenue Code, if any, under which the provider or affiliate is exempt from the payment of federal income tax.

(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 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).

(3) The contract must ~~shall~~ include or ~~shall~~ be accompanied by a statement, printed in boldfaced type, which reads: "This facility and all other continuing care facilities in the State of Florida are regulated by chapter 651, Florida Statutes. A copy of the law is on file in this facility. The law gives you or your legal representative the right to inspect our most recent financial statement and inspection report before signing the contract."

(4) Before the transfer of any money or other property to a provider by or on behalf of a prospective resident, the provider shall present a typewritten or printed copy of the contract to the prospective resident and all other parties to the contract. The provider shall secure a signed, dated statement from each party to the contract certifying that a copy of the contract with the specified attachment, as required pursuant to this chapter, was received.

(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 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.

(6) In order to comply with this section, a provider may furnish information not contained in his or her continuing care contract through an addendum.

(7) Contracts to provide continuing care, including contracts that are terminable by either party, may include agreements to provide care for any duration.

~~(8)~~<sup>(7)</sup> Those contracts entered into after ~~subsequent to~~ July 1, 1977, and before the issuance of a certificate of authority to the provider are valid and binding upon both parties in accordance with their terms. Within 30 days

after receipt of a letter from the office notifying the provider of a noncompliant residency contract, the provider shall file a new residency contract for approval that complies with Florida law. Pending review and approval of the new residency contract, the provider may continue to use the previously approved contract.

(9) A prospective resident, resident, or resident’s estate is not entitled to interest of any type on a deposit or entrance fee unless interest is specified in the continuing care contract. This subsection is remedial in nature and clarifies existing law.

~~(10)(8)~~ The provisions of this section shall control over any conflicting provisions contained in part II of chapter 400 or in part I of chapter 429.

Section 10. Section 651.057, Florida Statutes, is created to read:

651.057 Continuing care at-home contracts.—

(1) In addition to the requirements of s. 651.055, a provider offering contracts for continuing care at-home must:

(a) Disclose the following in the continuing care at-home contract:

1. Whether transportation will be provided to residents when traveling to and from the facility for services;

2. That the provider has no liability for residents residing outside the facility beyond the delivery of services specified in the contract and future access to nursing care or personal services at the facility or in another setting designated in the contract;

3. The mechanism for monitoring residents who live outside the facility;

4. The process that will be followed to establish priority if a resident wishes to exercise his or her right to move into the facility; and

5. The policy that will be followed if a resident living outside the facility relocates to a different residence and no longer avails himself or herself of services provided by the facility.

(b) Ensure that persons employed by or under contract with the provider who assist in the delivery of services to residents residing outside the facility are appropriately licensed or certified as required by law.

(c) Include operating expenses for continuing care at-home contracts in the calculation of the operating reserve required by s. 651.035(1)(c).

(d) Include the operating activities for continuing care at-home contracts in the total operation of the facility when submitting financial reports to the office as required by s. 651.026.

(2) A provider that holds a certificate of authority and wishes to offer continuing care at-home must also:

(a) Submit a business plan to the office with the following information:

1. A description of the continuing care at-home services that will be provided, the market to be served, and the fees to be charged;

2. A copy of the proposed continuing care at-home contract;

3. An actuarial study prepared by an independent actuary in accordance with the standards adopted by the American Academy of Actuaries which presents the impact of providing continuing care at-home on the overall operation of the facility; and

4. A market feasibility study that meets the requirements of s. 651.022(3) and documents that there is sufficient interest in continuing care at-home contracts to support such a program;

(b) Demonstrate to the office that the proposal to offer continuing care at-home contracts to individuals who do not immediately move into the facility will not place the provider in an unsound financial condition;

(c) Comply with the requirements of s. 651.021(2), except that an actuarial study may be substituted for the feasibility study; and

(d) Comply with the requirements of this chapter.

(3) Contracts to provide continuing care at-home, including contracts that are terminable by either party, may include agreements to provide care for any duration.

(4) A provider offering continuing care at-home contracts must, at a minimum, have a facility that is licensed under this chapter and has accommodations for independent living which are primarily intended for residents who do not require staff supervision. The facility need not offer assisted living units licensed under part I of chapter 429 or nursing home units licensed under part II of chapter 400 in order to be able to offer continuing care at-home contracts.

(a) The combined number of outstanding continuing care (CCRC) and continuing care at-home (CCAH) contracts allowed at the facility may be the greater of:

1. One and one-half times the combined number of independent living units (ILU), assisted living units (ALF) that are licensed under part I of chapter 429, and nursing home units licensed under part II of chapter 400 at the facility; or

2. Four times the combined number of assisted living units (ALF) that are licensed under part I of chapter 429 and nursing home units that are licensed under part II of chapter 400 at that facility.

(b) The number of independent living units at the facility must be equal to or greater than 10 percent of the initial 100 continuing care (CCRC) and continuing care at-home (CCAH) contracts and 5 percent of the combined number of outstanding continuing care (CCRC) and continuing care at-home (CCAH) contracts in excess of 100 issued by that facility.

Section 11. Subsection (1) of section 651.071, Florida Statutes, is amended to read:

651.071 Contracts as preferred claims on liquidation or receivership.—

(1) In the event of receivership or liquidation proceedings against a provider, all continuing care and continuing care at-home contracts executed by a provider shall be deemed preferred claims against all assets owned by the provider; however, such claims ~~are shall be~~ subordinate to those priority claims set forth in s. 631.271 and any secured claim ~~as defined in s. 631.011.~~

Section 12. Paragraph (h) of subsection (2) and subsection (3) of section 651.091, Florida Statutes, are amended to read:

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

(2) Every continuing care facility shall:

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

(3) Before entering into a contract to furnish continuing care or continuing care at-home, 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 or continuing care at-home.

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

Section 13. Section 651.106, Florida Statutes, is amended to read:

651.106 Grounds for discretionary refusal, suspension, or revocation of certificate of authority.—The office, ~~in its discretion,~~ may deny, suspend, or revoke the provisional certificate of authority or the certificate of authority of any applicant or provider if it finds that any one or more of the following grounds applicable to the applicant or provider exist:

(1) Failure by the provider to continue to meet the requirements for the authority originally granted.

(2) Failure by the provider to meet one or more of the qualifications for the authority specified by this chapter.

(3) Material misstatement, misrepresentation, or fraud in obtaining the authority, or in attempting to obtain the same.

(4) Demonstrated lack of fitness or trustworthiness.

(5) Fraudulent or dishonest practices of management in the conduct of business.

(6) Misappropriation, conversion, or withholding of moneys.

(7) Failure to comply with, or violation of, any proper order or rule of the office or commission or violation of any provision of this chapter.

(8) The insolvent condition of the provider or the provider's being in such condition or using such methods and practices in the conduct of its business as to render its further transactions in this state hazardous or injurious to the public.

(9) Refusal by the provider to be examined or to produce its accounts, records, and files for examination, or refusal by any of its officers to give

information with respect to its affairs or to perform any other legal obligation under this chapter when required by the office.

(10) Failure by the provider to comply with the requirements of s. 651.026 or s. 651.033.

(11) Failure by the provider to maintain escrow accounts or funds as required by this chapter.

(12) Failure by the provider to meet the requirements of this chapter for disclosure of information to residents concerning the facility, its ownership, its management, its development, or its financial condition or failure to honor its continuing care or continuing care at-home contracts.

(13) Any cause for which issuance of the license could have been refused had it then existed and been known to the office.

(14) Having been found guilty of, or having pleaded guilty or nolo contendere to, a felony in this state or any other state, without regard to whether a judgment or conviction has been entered by the court having jurisdiction of such cases.

(15) In the conduct of business under the license, engaging in unfair methods of competition or in unfair or deceptive acts or practices prohibited under part IX of chapter 626.

(16) A pattern of bankrupt enterprises.

Revocation of a certificate of authority under this section does not relieve a provider from the provider’s obligation to residents under the terms and conditions of any continuing care or continuing care at-home contract between the provider and residents or the provisions of this chapter. The provider shall continue to file its annual statement and pay license fees to the office as required under this chapter as if the certificate of authority had continued in full force, but the provider shall not issue any new ~~continuing care~~ contracts. The office may seek an action in the circuit court of Leon County to enforce the office’s order and the provisions of this section.

Section 14. Subsection (8) of section 651.114, Florida Statutes, is amended to read:

651.114 Delinquency proceedings; remedial rights.—

(8)(a) The rights of the office described in this section are ~~shall be~~ subordinate to the rights of a trustee or lender pursuant to the terms of a resolution, ordinance, loan agreement, indenture of trust, mortgage, lease, security agreement, or other instrument creating or securing bonds or notes issued to finance a facility, and the office, subject to the provisions of paragraph (c), shall not exercise its remedial rights provided under this section and ss. 651.018, 651.106, 651.108, and 651.116 with respect to a facility that is subject to a lien, mortgage, lease, or other encumbrance or

trust indenture securing bonds or notes issued in connection with the financing of the facility, if the trustee or lender, by inclusion or by amendment to the loan documents or by a separate contract with the office, agrees that the rights of residents under a continuing care or continuing care at-home contract will be honored and will not be disturbed by a foreclosure or conveyance in lieu thereof as long as the resident:

1. Is current in the payment of all monetary obligations required by the ~~continuing care~~ contract;

2. Is in compliance and continues to comply with all provisions of the ~~resident's continuing care~~ contract; and

3. Has asserted no claim inconsistent with the rights of the trustee or lender.

(b) ~~Nothing in~~ This subsection does not require ~~requires~~ a trustee or lender to:

1. Continue to engage in the marketing or resale of new continuing care or continuing care at-home contracts;

2. Pay any rebate of entrance fees as may be required by a resident's continuing care or continuing care at-home contract as of the date of acquisition of the facility by the trustee or lender and until expiration of the period described in paragraph (d);

3. Be responsible for any act or omission of any owner or operator of the facility arising before ~~prior to~~ the acquisition of the facility by the trustee or lender; or

4. Provide services to the residents to the extent that the trustee or lender would be required to advance or expend funds that have not been designated or set aside for such purposes.

(c) Should the office determine, at any time during the suspension of its remedial rights as provided in paragraph (a), that the trustee or lender is not in compliance with ~~the provisions of~~ paragraph (a), or that a lender or trustee has assigned or has agreed to assign all or a portion of a delinquent or defaulted loan to a third party without the office's written consent, the office shall notify the trustee or lender in writing of its determination, setting forth the reasons giving rise to the determination and specifying those remedial rights afforded to the office which the office shall then reinstate.

(d) Upon acquisition of a facility by a trustee or lender and evidence satisfactory to the office that the requirements of paragraph (a) have been met, the office shall issue a 90-day temporary certificate of authority granting the trustee or lender the authority to engage in the business of providing continuing care or continuing care at-home and to issue continuing care or continuing care at-home contracts subject to the office's right to immediately suspend or revoke the temporary certificate of authority if the

office determines that any of the grounds described in s. 651.106 apply to the trustee or lender or that the terms of the contract agreement used as the basis for the issuance of the temporary certificate of authority by the office have not been or are not being met by the trustee or lender since the date of acquisition.

Section 15. Subsections (4), (7), (9), and (11) of section 651.118, Florida Statutes, are amended to read:

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

(4) Not including the residences of residents residing outside the facility pursuant to a continuing care at-home contract, the Agency for Health Care Administration shall approve one sheltered nursing home bed for every four proposed residential units, including those that are licensed under part I of chapter 429, in the continuing care facility unless the provider demonstrates the need for a lesser number of sheltered nursing home beds based on proposed utilization by prospective residents or demonstrates the need for additional sheltered nursing home beds based on actual utilization and demand by current residents.

(7) ~~Notwithstanding the provisions of subsection (2), at the discretion of the continuing care provider, sheltered nursing home beds may be used for persons who are not residents of the continuing care facility and who are not parties to a continuing care contract for a period of up to 5 years after the date of issuance of the initial nursing home license. A provider whose 5-year period has expired or is expiring may request an extension from the Agency for Health Care Administration for an extension, not to exceed 30 percent of the total sheltered nursing home beds or 30 sheltered beds, whichever is greater, if the utilization by residents of the nursing home facility in the sheltered beds will not generate sufficient income to cover nursing home facility expenses, as evidenced by one of the following:~~

(a) The nursing home facility has a net loss for the most recent fiscal year as determined under generally accepted accounting principles, excluding the effects of extraordinary or unusual items, as demonstrated in the most recently audited financial statement,~~;~~ ~~or~~

(b) The nursing home facility would have had a pro forma loss for the most recent fiscal year, excluding the effects of extraordinary or unusual items, if revenues were reduced by the amount of revenues from persons in sheltered beds who were not residents, as reported ~~on~~ by a certified public accountant.

~~The Agency for Health Care Administration may~~ shall be authorized to grant an extension to the provider based on the evidence required in this subsection. ~~The Agency for Health Care Administration may request a continuing care facility to use up to 25 percent of the patient days generated by new admissions of nonresidents during the extension period to serve~~

Medicaid recipients for those beds authorized for extended use if there is a demonstrated need in the respective service area and if funds are available. A provider who obtains an extension is prohibited from applying for additional sheltered beds under ~~the provision of subsection (2)~~, unless additional residential units are built or the provider can demonstrate need by continuing care facility residents to the Agency for Health Care Administration. The 5-year limit does not apply to up to five sheltered beds designated for inpatient hospice care as part of a contractual arrangement with a hospice licensed under part IV of chapter 400. A continuing care facility that uses such beds after the 5-year period shall report such use to the Agency for Health Care Administration. For purposes of this subsection, "resident" means a person who, upon admission to the continuing care facility, initially resides in a part of the continuing care facility not licensed under part II of chapter 400, or who contracts for continuing care at-home.

(9) This section does not preclude a ~~continuing care~~ provider from applying to the Agency for Health Care Administration for a certificate of need for community nursing home beds or a combination of community and sheltered nursing home beds. Any nursing home bed located in a continuing care facility which that is or has been issued for nonrestrictive use retains shall retain its legal status as a community nursing home bed unless the provider requests a change in status. Any nursing home bed located in a continuing care facility and not issued as a sheltered nursing home bed before prior to 1979 must be classified as a community bed. The Agency for Health Care Administration may require continuing care facilities to submit bed utilization reports for the purpose of determining community and sheltered nursing home bed inventories based on historical utilization by residents and nonresidents.

(11) For a provider issued a provisional certificate of authority after July 1, 1986, to operate a facility not previously regulated under this chapter, the following criteria must shall be met in order to obtain a certificate of need for sheltered beds pursuant to subsections (2), (3), (4), (5), (6), and (7):

(a) Seventy percent or more of the current residents hold continuing care or continuing care at-home contracts ~~agreements pursuant to s. 651.011(2)~~ or, if the facility is not occupied, 70 percent or more of the prospective residents will hold such contracts ~~continuing care agreements pursuant to s. 651.011(2)~~ as projected in the feasibility study and demonstrated by the provider's marketing practices; and

(b) The continuing care or continuing care at-home contracts ~~agreements~~ entered into or to be entered into by 70 percent or more of the current residents or prospective residents must ~~pursuant to s. 651.011(2)~~ shall provide nursing home care for a minimum of 360 cumulative days, and such residents ~~the holders of the continuing care agreements~~ shall be charged at rates that which are 80 percent or less than the rates charged by the provider to persons receiving nursing home care who have not entered into such contracts ~~continuing care agreements pursuant to s. 651.011(2)~~.

Section 16. Subsection (1) of 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 ~~consisting 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 hold valid certificates of authority under this chapter and shall have been actively engaged in the offering of continuing care contracts ~~agreements~~ in this state for 5 years before appointment. The remaining members 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 or continuing care at-home contracts ~~agreements~~ with a facility certified in this state.

Section 17. Subsection (1) of section 651.125, Florida Statutes, is amended to read:

651.125 Criminal penalties; injunctive relief.—

(1) Any person who maintains, enters into, or, as manager or officer or in any other administrative capacity, assists in entering into, maintaining, or performing any continuing care or continuing care at-home contract agreement subject to this chapter without doing so in pursuance of a valid certificate of authority or renewal thereof, as contemplated by or provided in this chapter, or who otherwise violates any provision of this chapter or rule adopted in pursuance of this chapter, commits ~~is guilty of~~ a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083. Each violation of this chapter constitutes a separate offense.

Section 18. This act shall take effect July 1, 2011.

Approved by the Governor June 21, 2011.

Filed in Office Secretary of State June 21, 2011.