

1 A bill to be entitled  
2 An act relating to continuing care retirement communities;  
3 providing for the provision of continuing care at-home;  
4 amending s. 651.011, F.S.; revising definitions; defining  
5 "continuing care at-home," "nursing care," "personal  
6 services," and "shelter"; amending s. 651.012, F.S.;  
7 conforming a cross-reference; amending s. 651.013, F.S.;  
8 conforming provisions to changes made by the act; amending  
9 s. 651.021, F.S., relating to the requirement for  
10 certificates of authority; requiring that a person in the  
11 business of issuing continuing care at-home contracts  
12 obtain a certificate of authority from the Office of  
13 Financial Regulation; requiring written approval from the  
14 Office of Financial Regulation for a 20 percent or more  
15 expansion in the number of continuing care at-home  
16 contracts; providing that an actuarial study may be  
17 substituted for a feasibility study in specified  
18 circumstances; amending s. 651.022, F.S., relating to  
19 provisional certificates of authority; conforming  
20 provisions to changes made by the act; amending s.  
21 651.023, F.S., relating to an application for a  
22 certificate of authority; specifying the content of the  
23 feasibility study that is included in the application for  
24 a certificate; requiring the same minimum reservation  
25 requirements for continuing care at-home contracts as  
26 continuing care contracts; requiring that a certain amount  
27 of the entrance fee collected for contracts resulting from  
28 an expansion be placed in an escrow account or on deposit

29 with the department; amending ss. 651.033, 651.035, and  
 30 651.055, F.S.; requiring a facility to provide proof of  
 31 compliance with a residency contract; conforming  
 32 provisions to changes made by the act; creating s.  
 33 651.057, F.S.; providing additional requirements for  
 34 continuing care at-home contracts; requiring that a  
 35 provider who wishes to offer continuing care at-home  
 36 contracts submit certain additional documents to the  
 37 office; requiring that the provider comply with certain  
 38 requirements; limiting the number of continuing care and  
 39 continuing care at-home contracts at a facility based on  
 40 the types of units at the facility; amending ss. 651.071,  
 41 651.091, 651.106, 651.114, 651.118, 651.121, and 651.125,  
 42 F.S.; conforming provisions to changes made by the act;  
 43 providing an effective date.

44  
 45 Be It Enacted by the Legislature of the State of Florida:

46  
 47 Section 1. Section 651.011, Florida Statutes, is amended  
 48 to read:

49 651.011 Definitions.—As used in ~~For the purposes of~~ this  
 50 chapter, the term:

51 (1) "Advertising" means the dissemination of written,  
 52 visual, or electronic information by a provider, or any person  
 53 affiliated with or controlled by a provider, to potential  
 54 residents or their representatives for the purpose of inducing  
 55 such persons to subscribe to or enter into a contract for  
 56 continuing care or continuing care at-home ~~to reside in a~~

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57 ~~continuing care community that is subject to this chapter.~~

58 (2) "Continuing care" or "care" means, pursuant to a  
59 contract, furnishing to a resident who resides in a facility  
60 shelter and nursing care or personal services ~~as defined in s.~~  
61 ~~429.02~~, whether such nursing care or personal services are  
62 provided in the facility or in another setting designated in ~~by~~  
63 the contract for continuing care, by ~~to~~ an individual not  
64 related by consanguinity or affinity to the resident ~~provider~~  
65 ~~furnishing such care~~, upon payment of an entrance fee. ~~Other~~  
66 ~~personal services provided must be designated in the continuing~~  
67 ~~care contract. Contracts to provide continuing care include~~  
68 ~~agreements to provide care for any duration, including contracts~~  
69 ~~that are terminable by either party.~~

70 (3) "Continuing Care Advisory Council" or "advisory  
71 council" means the council established in s. 651.121.

72 (4) "Continuing care at-home" means, pursuant to a  
73 contract, furnishing to a resident who resides outside the  
74 facility the right to future access to shelter and nursing care  
75 or personal services, whether such services are provided in the  
76 facility or in another setting designated in the contract, by an  
77 individual not related by consanguinity or affinity to the  
78 resident, upon payment of an entrance fee.

79 ~~(5)-(4)~~ "Entrance fee" means an initial or deferred payment  
80 of a sum of money or property made as full or partial payment  
81 for continuing care or continuing care at-home ~~to assure the~~  
82 ~~resident a place in a facility~~. An accommodation fee, admission  
83 fee, member fee, or other fee of similar form and application  
84 are considered to be an entrance fee.

85           ~~(6)-(5)~~ "Facility" means a place where that provides  
 86 continuing care is furnished and may include one or more  
 87 physical plants on a primary or contiguous site or an  
 88 immediately accessible site. As used in this subsection, the  
 89 term "immediately accessible site" means a parcel of real  
 90 property separated by a reasonable distance from the facility as  
 91 measured along public thoroughfares, and "primary or contiguous  
 92 site" means the real property contemplated in the feasibility  
 93 study required by this chapter.

94           ~~(7)-(6)~~ "Generally accepted accounting principles" means  
 95 those accounting principles and practices adopted by the  
 96 Financial Accounting Standards Board and the American Institute  
 97 of Certified Public Accountants, including Statement of Position  
 98 90-8 with respect to any full year to which the statement  
 99 applies.

100           ~~(8)-(7)~~ "Insolvency" means the condition in which the  
 101 provider is unable to pay its obligations as they come due in  
 102 the normal course of business.

103           ~~(9)-(8)~~ "Licensed" means that the provider has obtained a  
 104 certificate of authority from the department.

105           (10) "Nursing care" means those services or acts rendered  
 106 to a resident by an individual licensed or certified pursuant to  
 107 chapter 464.

108           (11) "Personal services" has the same meaning as in s.  
 109 429.02.

110           ~~(12)-(9)~~ "Provider" means the owner or operator, whether a  
 111 natural person, partnership or other unincorporated association,  
 112 however organized, trust, or corporation, of an institution,

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113 building, residence, or other place, whether operated for profit  
 114 or not, which owner or operator provides continuing care or  
 115 continuing care at-home for a fixed or variable fee, or for any  
 116 other remuneration of any type, whether fixed or variable, for  
 117 the period of care, payable in a lump sum or lump sum and  
 118 monthly maintenance charges or in installments. The term, ~~but~~  
 119 does not apply to ~~mean~~ an entity that has existed and  
 120 continuously operated a facility located on at least 63 acres in  
 121 this state providing residential lodging to members and their  
 122 spouses for at least 66 years on or before July 1, 1989, and has  
 123 the residential capacity of 500 persons, is directly or  
 124 indirectly owned or operated by a nationally recognized  
 125 fraternal organization, is not open to the public, and accepts  
 126 only its members and their spouses as residents.

127 (13) ~~(10)~~ "Records" means the permanent financial,  
 128 directory, and personnel information and data maintained by a  
 129 provider pursuant to this chapter.

130 (14) ~~(11)~~ "Resident" means a purchaser of, a nominee of, or  
 131 a subscriber to a continuing care or continuing care at-home  
 132 contract agreement. Such contract agreement does not give the  
 133 resident a part ownership of the facility in which the resident  
 134 is to reside, unless expressly provided ~~for~~ in the contract  
 135 agreement.

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

140 Section 2. Section 651.012, Florida Statutes, is amended

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141 to read:

142 651.012 Exempted facility; written disclosure of  
 143 exemption.—Any facility exempted under ss. 632.637(1)(e) and  
 144 651.011(12) ~~651.011(9)~~ must provide written disclosure of such  
 145 exemption to each person admitted to the facility after October  
 146 1, 1996. This disclosure must be written using language likely  
 147 to be understood by the person and must briefly explain the  
 148 exemption.

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

151 651.013 Chapter exclusive; applicability of other laws.—

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

156 (2) In addition to other applicable provisions cited in  
 157 this chapter, the office has the authority granted under ss.  
 158 624.302 and 624.303, 624.308-624.312, 624.319(1)-(3), 624.320-  
 159 624.321, 624.324, and 624.34 of the Florida Insurance Code to  
 160 regulate providers of continuing care and continuing care at-  
 161 home.

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

164 651.021 Certificate of authority required.—

165 (1) No person may engage in the business of providing  
 166 continuing care, ~~or~~ issuing contracts for continuing care or  
 167 continuing care at-home, or constructing agreements or construct  
 168 a facility for the purpose of providing continuing care in this

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169 state without a certificate of authority ~~therefor~~ obtained from  
170 the office as provided in this chapter. This subsection does  
171 ~~shall not be construed to~~ prohibit the preparation of a ~~the~~  
172 construction site or construction of a model residence unit for  
173 marketing purposes, or both. The office may allow the purchase  
174 of an existing building for the purpose of providing continuing  
175 care if the office determines that the purchase is not being  
176 made to circumvent ~~for the purpose of circumventing~~ the  
177 prohibitions ~~contained~~ in this section.

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

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

193 (b) The application for such approval shall be on forms  
194 adopted by the commission and provided by the office. The  
195 application must ~~shall~~ include the feasibility study required by  
196 s. 651.022(3) or s. 651.023(1)(b) and such other information as

197 | required by s. 651.023. If the expansion is only for continuing  
 198 | care at-home contracts, an actuarial study prepared by an  
 199 | independent actuary in accordance with standards adopted by the  
 200 | American Academy of Actuaries which presents the financial  
 201 | impact of the expansion may be substituted for the feasibility  
 202 | study.

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

206 | Section 5. Paragraphs (d) and (g) of subsection (2) and  
 207 | subsections (4) and (6) of section 651.022, Florida Statutes,  
 208 | are amended to read:

209 | 651.022 Provisional certificate of authority;  
 210 | application.—

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

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

221 | (g) The forms of the ~~continuing care~~ residency contracts,  
 222 | reservation contracts, escrow agreements, and wait list  
 223 | contracts, if applicable, which are proposed to be used by the  
 224 | provider in the furnishing of care. ~~If~~ The office shall approve



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225 ~~finds that the continuing care~~ contracts and escrow agreements  
 226 that comply with ss. 651.023(1)(c), 651.033, ~~and~~ 651.055, and  
 227 651.057 ~~it shall approve them~~. Thereafter, no other form of  
 228 contract or agreement may be used by the provider until it has  
 229 been submitted to the office and approved.

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

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

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

252 651.023 Certificate of authority; application.-

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

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

262 (b) A feasibility study prepared by an independent  
 263 consultant which contains all of the information required by s.  
 264 651.022(3) and ~~contains~~ financial forecasts or projections  
 265 prepared in accordance with standards adopted ~~promulgated~~ by the  
 266 American Institute of Certified Public Accountants or ~~financial~~  
 267 ~~forecasts or projections prepared~~ in accordance with standards  
 268 for feasibility studies or continuing care retirement  
 269 communities adopted ~~promulgated~~ by the Actuarial Standards  
 270 Board.

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

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

281 of operating the facility.

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

291 (c) Subject to ~~the requirements of~~ subsection (4) ~~(2)~~, a  
 292 provider may submit an application for a certificate of  
 293 authority and any required exhibits upon submission of proof  
 294 that the project has a minimum of 30 percent of the units  
 295 reserved for which the provider is charging an entrance fee. ~~†~~  
 296 ~~however, This does provision shall~~ not apply to an application  
 297 for a certificate of authority for the acquisition of a facility  
 298 for which a certificate of authority was issued before ~~prior to~~  
 299 October 1, 1983, to a provider who subsequently becomes a debtor  
 300 in a case under the United States Bankruptcy Code, 11 U.S.C. ss.  
 301 101 et seq., or to a provider for which the department has been  
 302 appointed receiver pursuant to ~~the provisions of~~ part II of  
 303 chapter 631.

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

308 (e) Proof that all conditions of the lender have been

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309 satisfied to activate the commitment to disburse funds other  
310 than the obtaining of the certificate of authority, the  
311 completion of construction, or the closing of the purchase of  
312 realty or buildings for the facility.

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

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

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

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

337        (2)~~(j)~~ Within 30 days after ~~of the~~ receipt of the  
 338 information required under subsection (1) ~~paragraphs (a)–(h)~~,  
 339 the office shall examine such information and ~~shall~~ notify the  
 340 provider in writing, specifically requesting any additional  
 341 information the office is permitted by law to require. Within 15  
 342 days after receipt of all of the requested additional  
 343 information, the office shall notify the provider in writing  
 344 that all of the requested information has been received and the  
 345 application is deemed to be complete as of the date of the  
 346 notice. Failure to ~~se~~ notify the applicant in writing within the  
 347 15-day period constitutes ~~shall constitute~~ acknowledgment by the  
 348 office that it has received all requested additional  
 349 information, and the application shall be deemed ~~to be~~ complete  
 350 for purposes of review on ~~upon~~ the date of ~~the~~ filing ~~of~~ all of  
 351 the required additional information.

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

364        (4)~~(2)(a)~~ The office shall issue a certificate of

365 authority upon determining ~~its determination~~ that the applicant  
 366 meets all requirements of law and has submitted all of the  
 367 information required by this section, that all escrow  
 368 requirements have been satisfied, and that the fees prescribed  
 369 in s. 651.015(2) have been paid.

370 (a) Notwithstanding satisfaction of the 30-percent minimum  
 371 reservation requirement of paragraph (1)(c), a ~~no~~ certificate of  
 372 authority may not ~~shall~~ be issued until the project has a  
 373 minimum of 50 percent of the units reserved for which the  
 374 provider is charging an entrance fee, and proof ~~thereof~~ is  
 375 provided to the office. If a provider offering continuing care  
 376 at-home is applying for a certificate of authority or approval  
 377 of an expansion pursuant to s. 651.021(2), the same minimum  
 378 reservation requirements must be met for the continuing care and  
 379 continuing care at-home contracts, independently of each other.

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

392 (5)-(3) Up to ~~No more than~~ 25 percent of the moneys paid

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393 for all or any part of an initial entrance fee may be included  
 394 or pledged for the construction or purchase of the facility, or  
 395 ~~included or pledged~~ as security for long-term financing. The  
 396 term "initial entrance fee" means the total entrance fee charged  
 397 by the facility to the first occupant of a unit.

398 (a) A minimum of 75 percent of the moneys paid for all or  
 399 any part of an initial entrance fee collected for continuing  
 400 care or continuing care at-home shall be placed in an escrow  
 401 account or on deposit with the department as prescribed in s.  
 402 651.033.

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

410 ~~(6)(4)~~ The provider is ~~shall be~~ entitled to secure release  
 411 of the moneys held in escrow within 7 days after receipt by the  
 412 office of an affidavit from the provider, along with appropriate  
 413 copies to verify, and notification to the escrow agent by  
 414 certified mail, that the following conditions have been  
 415 satisfied:

416 (a) A certificate of occupancy has been issued.

417 (b) Payment in full has been received for at least ~~no less~~  
 418 ~~than~~ 70 percent of the total units of a phase or of the total of  
 419 the combined phases constructed. If a provider offering  
 420 continuing care at-home is applying for a release of escrowed

421 entrance fees, the same minimum requirement must be met for the  
 422 continuing care and continuing care at-home contracts,  
 423 independently of each other.

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

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

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

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

443  
 444 Notwithstanding ~~any provision of~~ chapter 120, no person, other  
 445 than the provider, the escrow agent, and the office, may ~~shall~~  
 446 have a substantial interest in any office decision regarding  
 447 release of escrow funds in any proceedings under chapter 120 or  
 448 this chapter regarding release of escrow funds.



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449        (7)~~(5)~~ In lieu of the provider fulfilling the requirements  
450 in subsection (5) ~~(3)~~ and paragraphs (6) (b) ~~(4) (b)~~ and (d), the  
451 office may authorize the release of escrowed funds to retire all  
452 outstanding debts on the facility and equipment upon application  
453 of the provider and upon the provider's showing that the  
454 provider will grant to the residents a first mortgage on the  
455 land, buildings, and equipment that constitute the facility, and  
456 that the provider has satisfied ~~satisfies the requirements of~~  
457 paragraphs (6) (a) ~~(4) (a)~~, (c), and (e). Such mortgage shall  
458 secure the refund of the entrance fee in the amount required by  
459 this chapter. The granting of such mortgage is ~~shall be~~ subject  
460 to the following:

461        (a) The first mortgage is ~~shall be~~ granted to an  
462 independent trust that ~~which~~ is beneficially held by the  
463 residents. The document creating the trust must include ~~shall~~  
464 ~~contain~~ a provision that ~~it~~ agrees to an annual audit and will  
465 furnish to the office all information the office may reasonably  
466 require. The mortgage may secure payment on bonds issued to the  
467 residents or trustee. Such bonds are ~~shall be~~ redeemable after  
468 termination of the residency contract in the amount and manner  
469 required by this chapter for the refund of an entrance fee.

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

476        (c) If the provider is leasing the land or buildings used

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477 by the facility, the leasehold interest must ~~shall~~ be for a term  
 478 of at least 30 years.

479 (8)~~(6)~~ The timeframes provided under s. 651.022(5) and (6)  
 480 apply to applications submitted under s. 651.021(2). The office  
 481 may not issue a certificate of authority ~~under this chapter~~ to a  
 482 ~~any~~ facility that ~~which~~ does not have a component that ~~which~~ is  
 483 to be licensed pursuant to part II of chapter 400 or to part I  
 484 of chapter 429 or that does ~~which will~~ not offer personal  
 485 services or nursing services through written contractual  
 486 agreement. A ~~Any~~ written contractual agreement must be disclosed  
 487 in the ~~continuing care~~ contract for continuing care or  
 488 continuing care at-home and is subject to the provisions of s.  
 489 651.1151, relating to administrative, vendor, and management  
 490 contracts.

491 (9)~~(7)~~ The office may ~~shall~~ not approve an application  
 492 that ~~which~~ includes in the plan of financing any encumbrance of  
 493 the operating reserves required by this chapter.

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

496 651.033 Escrow accounts.—

497 (3) In addition, when entrance fees are required to be  
 498 deposited in an escrow account pursuant to s. 651.022, s.  
 499 651.023, or s. 651.055:

500 (a) The provider shall deliver to the resident a written  
 501 receipt. The receipt must ~~shall~~ show the payor's name and  
 502 address, the date, the price of the care contract, and the  
 503 amount of money paid. A copy of each receipt, together with the  
 504 funds, shall be deposited with the escrow agent or as provided

505 in paragraph (c). The escrow agent shall release such funds to  
 506 the provider ~~upon the expiration of~~ 7 days after the date of  
 507 receipt of the funds by the escrow agent if the provider,  
 508 operating under a certificate of authority issued by the office,  
 509 has met the requirements of s. 651.023(6) ~~651.023(4)~~. However,  
 510 if the resident rescinds the contract within the 7-day period,  
 511 the escrow agent shall release the escrowed fees to the  
 512 resident.

513 (d) A provider may assess a nonrefundable fee, which is  
 514 separate from the entrance fee, for processing a prospective  
 515 resident's application for continuing care or continuing care  
 516 at-home.

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

519 651.035 Minimum liquid reserve requirements.—

520 (2) (a) In facilities where not all residents are under  
 521 continuing care or continuing care at-home contracts, the  
 522 reserve requirements of subsection (1) shall be computed only  
 523 with respect to the proportional share of operating expenses  
 524 that ~~which~~ are applicable to residents ~~as defined in s. 651.011~~.  
 525 For purposes of this calculation, the proportional share shall  
 526 be based upon the ratio of residents under continuing care or  
 527 continuing care at-home contracts to those residents who do not  
 528 hold such contracts.

529 (b) In facilities that have voluntarily and permanently  
 530 discontinued marketing continuing care and continuing care at-  
 531 home contracts, the office may allow a reduced debt service  
 532 reserve as required in subsection (1) based upon the ratio of

533 residents under continuing care or continuing care at-home  
 534 contracts to those residents who do not hold such contracts if  
 535 the office finds that such reduction is not inconsistent with  
 536 the security protections intended by this chapter. In making  
 537 this determination, the office may consider such factors as the  
 538 financial condition of the facility, the provisions of ~~the~~  
 539 outstanding continuing care and continuing care at-home  
 540 contracts, the ratio of residents under continuing care or  
 541 continuing care at-home contracts ~~agreements~~ to those residents  
 542 who do not hold such contracts ~~a continuing care contract~~, the  
 543 current occupancy rates, the previous sales and marketing  
 544 efforts, the life expectancy of the remaining residents ~~contract~~  
 545 ~~holders~~, and the written policies of the board of directors of  
 546 the provider or a similar board.

547 (3) If principal and interest payments are paid to a trust  
 548 that is beneficially held by the residents as described in s.  
 549 651.023(7) ~~651.023(5)~~, the office may waive all or any portion  
 550 of the escrow requirements for mortgage principal and interest  
 551 contained in subsection (1) if the office finds that such waiver  
 552 is not inconsistent with the security protections intended by  
 553 this chapter.

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

556 651.055 Continuing care contracts; right to rescind.—

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

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561 | been submitted to and approved by the office. Each contract must  
562 | ~~shall~~:

563 |       (a) Provide for the continuing care of only one resident,  
564 | or for two persons occupying space designed for double  
565 | occupancy, under appropriate regulations established by the  
566 | provider, and must ~~shall~~ list all properties transferred and  
567 | their market value at the time of transfer, including donations,  
568 | subscriptions, fees, and any other amounts paid or payable by,  
569 | or on behalf of, the resident or residents.

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

581 |       (c) Describe the terms and conditions under which a  
582 | contract for continuing care may be canceled by the provider or  
583 | by a resident and the conditions, if any, under which all or any  
584 | portion of the entrance fee will be refunded in the event of  
585 | cancellation of the contract by the provider or by the resident,  
586 | including the effect of any change in the health or financial  
587 | condition of a person between the date of entering a contract  
588 | for continuing care and the date of initial occupancy of a

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589 living unit by that person.

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

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

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

612 (g) Provide that the contract may be canceled by giving at  
613 least 30 days' written notice of cancellation by the provider,  
614 the resident, or the person who provided the transfer of  
615 property or funds for the care of such resident. ~~+~~ However, if a  
616 contract is canceled because there has been a good faith

617 determination that a resident is a danger to himself or herself  
 618 or others, only such notice as is reasonable under the  
 619 circumstances is required.

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

624 2. For a resident whose contract with the facility  
 625 provides that the resident does not receive a transferable  
 626 membership or ownership right in the facility, and who has  
 627 occupied his or her unit, the refund shall be calculated on a  
 628 pro rata basis with the facility retaining up to 2 percent per  
 629 month of occupancy by the resident and up to a 5 percent ~~5-~~  
 630 ~~percent~~ processing fee. Such refund must be paid within 120 days  
 631 after giving the notice of intention to cancel.

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

640 4. Unless subsection (5) applies, for any prospective  
 641 resident, regardless of whether or not such a resident receives  
 642 a transferable membership or ownership right in the facility,  
 643 who cancels the contract before occupancy of the unit, the  
 644 entire amount paid toward the entrance fee shall be refunded,

645 less a processing fee of up to 5 percent of the entire entrance  
 646 fee; however, the processing fee may not exceed the amount paid  
 647 by the prospective resident. Such refund must be paid within 60  
 648 days after giving ~~the~~ notice of intention to cancel. For a  
 649 resident who has occupied his or her unit and who has received a  
 650 transferable membership or ownership right in the facility, the  
 651 foregoing refund provisions do not apply but are deemed  
 652 satisfied by the acquisition or receipt of a transferable  
 653 membership or an ownership right in the facility. The provider  
 654 may not charge any fee for the transfer of membership or sale of  
 655 an ownership right.

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

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

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



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673 federal assistance programs.

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

682 (2) A resident has the right to rescind a continuing care  
683 contract and receive a full refund of any funds paid, without  
684 penalty or forfeiture, within 7 days after executing the  
685 contract. A resident may not be required to move into the  
686 facility designated in the contract before the expiration of the  
687 7-day period. During the 7-day period, the resident's funds must  
688 be held in an escrow account unless otherwise requested by the  
689 resident pursuant to s. 651.033(3)(c).

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

698 (4) Before the transfer of any money or other property to  
699 a provider by or on behalf of a prospective resident, the  
700 provider shall present a typewritten or printed copy of the

701 contract to the prospective resident and all other parties to  
 702 the contract. The provider shall secure a signed, dated  
 703 statement from each party to the contract certifying that a copy  
 704 of the contract with the specified attachment, as required  
 705 pursuant to this chapter, was received.

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

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

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

724 (8) ~~(7)~~ Those contracts entered into after ~~subsequent to~~  
 725 July 1, 1977, and before the issuance of a certificate of  
 726 authority to the provider are valid and binding upon both  
 727 parties in accordance with their terms. Within 90 days after  
 728 receipt of a letter from the office, the facility must submit

729 proof to the office of compliance with an approved residency  
 730 contract. All current contracts remain in force until resolved  
 731 by the office and the facility.

732 (9)~~(8)~~ The provisions of this section ~~shall~~ control over  
 733 any conflicting provisions contained in part II of chapter 400  
 734 or in part I of chapter 429.

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

737 651.057 Continuing care at-home contracts.-

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

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

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

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

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

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

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

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757 facility.

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

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

765 (d) Include the operating activities for continuing care  
766 at-home contracts in the total operation of the facility when  
767 submitting financial reports to the office as required by s.  
768 651.026.

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

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

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

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

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

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

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785 and

786 5. A feasibility study prepared by an independent  
787 certified public accountant which includes an examination  
788 opinion for the first 3 years operations and financial  
789 projections having a compilation opinion for the next 3 years.  
790 In lieu of a feasibility study, a provider may submit the  
791 actuarial study referenced in subparagraph 3., along with a  
792 statement from the actuary who prepared the actuarial study,  
793 dated within 12 months after the date of filing for office  
794 approval, indicating that there will be no material adverse  
795 change in the facility's status as a result of offering in-home  
796 contracts. If a material adverse change exists at the time of  
797 submission, sufficient information acceptable to the office and  
798 the actuary which remedies the adverse condition must be  
799 submitted;

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

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

807 (d) Comply with the requirements of this chapter.

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

811 (4) A provider offering continuing care at-home contracts  
812 must, at a minimum, have a facility that is licensed under this

813 chapter and has accommodations for independent living which are  
 814 primarily intended for residents who do not require staff  
 815 supervision. The facility need not offer assisted living units  
 816 licensed under part I of chapter 429 or nursing home units  
 817 licensed under part II of chapter 400 in order to be able to  
 818 offer continuing care at-home contracts.

819 (a) The combined total of outstanding continuing care and  
 820 continuing care at-home contracts allowed at a facility may be  
 821 up to 1.5 times the combined total of independent living units,  
 822 assisted living units, and nursing home units licensed under  
 823 part II of chapter 400 at the facility, unless the facility's  
 824 provisional certificate of authority was issued on December 21,  
 825 2005; and

826 (b) The number of independent living units at the facility  
 827 must be equal to or greater than 10 percent of the combined  
 828 total of outstanding continuing care and continuing care at-home  
 829 contracts issued by that facility.

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

832 651.071 Contracts as preferred claims on liquidation or  
 833 receivership.—

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

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

843 651.091 Availability, distribution, and posting of reports  
844 and records; requirement of full disclosure.—

845 (2) Every continuing care facility shall:

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

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

856 (a) The contract to furnish continuing care or continuing  
857 care at-home.

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

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

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

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

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

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

878 (h) A copy of s. 651.071.

879 (i) A copy of the resident's rights as described in s.  
 880 651.083.

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

883 651.106 Grounds for discretionary refusal, suspension, or  
 884 revocation of certificate of authority.—The office, ~~in its~~  
 885 ~~discretion,~~ may deny, suspend, or revoke the provisional  
 886 certificate of authority or the certificate of authority of any  
 887 applicant or provider if it finds that any one or more of the  
 888 following grounds applicable to the applicant or provider exist:

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

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

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

895 (4) Demonstrated lack of fitness or trustworthiness.

896 (5) Fraudulent or dishonest practices of management in the



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897 | conduct of business.

898 |       (6) Misappropriation, conversion, or withholding of  
899 | moneys.

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

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

908 |       (9) Refusal by the provider to be examined or to produce  
909 | its accounts, records, and files for examination, or refusal by  
910 | any of its officers to give information with respect to its  
911 | affairs or to perform any other legal obligation under this  
912 | chapter when required by the office.

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

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

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

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

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

929 (15) In the conduct of business under the license,  
 930 engaging in unfair methods of competition or in unfair or  
 931 deceptive acts or practices prohibited under part IX of chapter  
 932 626.

933 (16) A pattern of bankrupt enterprises.

934  
 935 Revocation of a certificate of authority under this section does  
 936 not relieve a provider from the provider's obligation to  
 937 residents under the terms and conditions of any continuing care  
 938 or continuing care at-home contract between the provider and  
 939 residents or the provisions of this chapter. The provider shall  
 940 continue to file its annual statement and pay license fees to  
 941 the office as required under this chapter as if the certificate  
 942 of authority had continued in full force, but the provider may  
 943 ~~shall~~ not issue any new ~~continuing care~~ contracts. The office  
 944 may seek an action in the circuit court of Leon County to  
 945 enforce the office's order and the provisions of this section.

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

948 651.114 Delinquency proceedings; remedial rights.—

949 (8) (a) The rights of the office described in this section  
 950 are ~~shall be~~ subordinate to the rights of a trustee or lender  
 951 pursuant to the terms of a resolution, ordinance, loan  
 952 agreement, indenture of trust, mortgage, lease, security

953 agreement, or other instrument creating or securing bonds or  
 954 notes issued to finance a facility, and the office, subject to  
 955 the provisions of paragraph (c), may ~~shall~~ not exercise its  
 956 remedial rights provided under this section and ss. 651.018,  
 957 651.106, 651.108, and 651.116 with respect to a facility that is  
 958 subject to a lien, mortgage, lease, or other encumbrance or  
 959 trust indenture securing bonds or notes issued in connection  
 960 with the financing of the facility, if the trustee or lender, by  
 961 inclusion or by amendment to the loan documents or by a separate  
 962 contract with the office, agrees that the rights of residents  
 963 under a continuing care or continuing care at-home contract will  
 964 be honored and will not be disturbed by a foreclosure or  
 965 conveyance in lieu thereof as long as the resident:

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

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

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

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

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

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

980 (d);

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

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

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

999           (d) Upon acquisition of a facility by a trustee or lender  
1000 and evidence satisfactory to the office that the requirements of  
1001 paragraph (a) have been met, the office shall issue a 90-day  
1002 temporary certificate of authority granting the trustee or  
1003 lender the authority to engage in the business of providing  
1004 continuing care or continuing care at-home and to issue  
1005 continuing care or continuing care at-home contracts subject to  
1006 the office's right to immediately suspend or revoke the  
1007 temporary certificate of authority if the office determines that  
1008 any of the grounds described in s. 651.106 apply to the trustee

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1009 or lender or that the terms of the contract ~~agreement~~ used as  
 1010 the basis for the issuance of the temporary certificate of  
 1011 authority by the office have not been or are not being met by  
 1012 the trustee or lender since the date of acquisition.

1013 Section 15. Subsections (4), (7), (9), and (11) of section  
 1014 651.118, Florida Statutes, are amended to read:

1015 651.118 Agency for Health Care Administration;  
 1016 certificates of need; sheltered beds; community beds.-

1017 (4) Not including the residences of residents residing  
 1018 outside the facility pursuant to a continuing care at-home  
 1019 contract, the Agency for Health Care Administration shall  
 1020 approve one sheltered nursing home bed for every four proposed  
 1021 residential units, including those that are licensed under part  
 1022 I of chapter 429, in the continuing care facility unless the  
 1023 provider demonstrates the need for a lesser number of sheltered  
 1024 nursing home beds based on proposed utilization by prospective  
 1025 residents or demonstrates the need for additional sheltered  
 1026 nursing home beds based on actual utilization and demand by  
 1027 current residents.

1028 (7) Notwithstanding ~~the provisions of~~ subsection (2), at  
 1029 the discretion of the ~~continuing care~~ provider, sheltered  
 1030 nursing home beds may be used for persons who are not residents  
 1031 of the continuing care facility and who are not parties to a  
 1032 continuing care contract for ~~a period of~~ up to 5 years after the  
 1033 date of issuance of the initial nursing home license. A provider  
 1034 whose 5-year period has expired or is expiring may request an  
 1035 extension from the Agency for Health Care Administration ~~for an~~  
 1036 ~~extension~~, not to exceed 30 percent of the total sheltered

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1037 nursing home beds or 30 sheltered beds, whichever is greater, if  
 1038 the utilization by residents of the nursing home facility in the  
 1039 sheltered beds will not generate sufficient income to cover  
 1040 nursing home facility expenses, as evidenced by one of the  
 1041 following:

1042 (a) The nursing home facility has a net loss for the most  
 1043 recent fiscal year as determined under generally accepted  
 1044 accounting principles, excluding the effects of extraordinary or  
 1045 unusual items, as demonstrated in the most recently audited  
 1046 financial statement. ~~;~~ ~~or~~

1047 (b) The nursing home facility would have had a pro forma  
 1048 loss for the most recent fiscal year, excluding the effects of  
 1049 extraordinary or unusual items, if revenues were reduced by the  
 1050 amount of revenues from persons in sheltered beds who were not  
 1051 residents, as reported ~~on~~ by a certified public accountant.

1052  
 1053 The agency may ~~shall be authorized to~~ grant an extension to the  
 1054 provider based on the evidence required in this subsection. The  
 1055 agency may request a continuing care facility to use up to 25  
 1056 percent of the patient days generated by new admissions of  
 1057 nonresidents during the extension period to serve Medicaid  
 1058 recipients for those beds authorized for extended use if there  
 1059 is a demonstrated need in the respective service area and if  
 1060 funds are available. A provider who obtains an extension is  
 1061 prohibited from applying for additional sheltered beds under ~~the~~  
 1062 ~~provision of~~ subsection (2), unless additional residential units  
 1063 are built or the provider can demonstrate need by continuing  
 1064 care facility residents to the agency ~~for Health Care~~

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1065 ~~Administration~~. The 5-year limit does not apply to up to five  
 1066 sheltered beds designated for inpatient hospice care as part of  
 1067 a contractual arrangement with a hospice licensed under part IV  
 1068 of chapter 400. A continuing care facility that uses such beds  
 1069 after the 5-year period shall report such use to the agency ~~for~~  
 1070 ~~Health Care Administration~~. For purposes of this subsection,  
 1071 "resident" means a person who, upon admission to the continuing  
 1072 care facility, initially resides in a part of the continuing  
 1073 care facility not licensed under part II of chapter 400, or who  
 1074 contracts for continuing care at-home.

1075 (9) This section does not preclude a ~~continuing care~~  
 1076 provider from applying to the Agency for Health Care  
 1077 Administration for a certificate of need for community nursing  
 1078 home beds or a combination of community and sheltered nursing  
 1079 home beds. Any nursing home bed located in a continuing care  
 1080 facility which that is or has been issued for nonrestrictive use  
 1081 retains shall retain its legal status as a community nursing  
 1082 home bed unless the provider requests a change in status. Any  
 1083 nursing home bed located in a continuing care facility and not  
 1084 issued as a sheltered nursing home bed before ~~prior to~~ 1979 must  
 1085 be classified as a community bed. The agency ~~for Health Care~~  
 1086 ~~Administration~~ may require continuing care facilities to submit  
 1087 bed utilization reports for the purpose of determining community  
 1088 and sheltered nursing home bed inventories based on historical  
 1089 utilization by residents and nonresidents.

1090 (11) For a provider issued a provisional certificate of  
 1091 authority after July 1, 1986, to operate a facility not  
 1092 previously regulated under this chapter, the following criteria

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1093 must ~~shall~~ be met in order to obtain a certificate of need for  
 1094 sheltered beds pursuant to subsections (2), (3), (4), (5), (6),  
 1095 and (7):

1096 (a) Seventy percent or more of the current residents hold  
 1097 continuing care or continuing care at-home contracts ~~agreements~~  
 1098 ~~pursuant to s. 651.011(2)~~ or, if the facility is not occupied,  
 1099 70 percent or more of the prospective residents will hold such  
 1100 contracts ~~continuing care agreements pursuant to s. 651.011(2)~~  
 1101 as projected in the feasibility study and demonstrated by the  
 1102 provider's marketing practices; and

1103 (b) The continuing care or continuing care at-home  
 1104 contracts ~~agreements~~ entered into or to be entered into by 70  
 1105 percent or more of the current residents or prospective  
 1106 residents must ~~pursuant to s. 651.011(2)~~ ~~shall~~ provide nursing  
 1107 home care for a minimum of 360 cumulative days, and such  
 1108 residents ~~the holders of the continuing care agreements~~ shall be  
 1109 charged at rates that ~~which~~ are 80 percent or less than the  
 1110 rates charged by the provider to persons receiving nursing home  
 1111 care who have not entered into such contracts ~~continuing care~~  
 1112 ~~agreements pursuant to s. 651.011(2)~~.

1113 Section 16. Subsection (1) of section 651.121, Florida  
 1114 Statutes, is amended to read:

1115 651.121 Continuing Care Advisory Council.—

1116 (1) The Continuing Care Advisory Council to the office is  
 1117 created consisting ~~to consist~~ of 10 members who are residents of  
 1118 this state appointed by the Governor and geographically  
 1119 representative of this state. Three members shall be  
 1120 administrators of facilities that hold valid certificates of



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1121 authority under this chapter and shall have been actively  
 1122 engaged in the offering of continuing care contracts ~~agreements~~  
 1123 in this state for 5 years before appointment. The remaining  
 1124 members include:

1125 (a) A representative of the business community whose  
 1126 expertise is in the area of management.

1127 (b) A representative of the financial community who is not  
 1128 a facility owner or administrator.

1129 (c) A certified public accountant.

1130 (d) An attorney.

1131 (e) Three residents who hold continuing care or continuing  
 1132 care at-home contracts ~~agreements~~ with a facility certified in  
 1133 this state.

1134 Section 17. Subsection (1) of section 651.125, Florida  
 1135 Statutes, is amended to read:

1136 651.125 Criminal penalties; injunctive relief.-

1137 (1) Any person who maintains, enters into, or, as manager  
 1138 or officer or in any other administrative capacity, assists in  
 1139 entering into, maintaining, or performing any continuing care or  
 1140 continuing care at-home contract ~~agreement~~ subject to this  
 1141 chapter without doing so in pursuance of a valid certificate of  
 1142 authority or renewal thereof, as contemplated by or provided in  
 1143 this chapter, or who otherwise violates any provision of this  
 1144 chapter or rule adopted in pursuance of this chapter, is guilty  
 1145 of a felony of the third degree, punishable as provided in s.  
 1146 775.082 or s. 775.083. Each violation of this chapter  
 1147 constitutes a separate offense.

1148 Section 18. This act shall take effect July 1, 2011.