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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/13/2011	.	
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The Committee on Children, Families, and Elder Affairs (Hays) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

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



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13 such persons to subscribe to or enter into a contract for  
14 continuing care or continuing care at-home ~~to reside in a~~  
15 ~~continuing care community that is subject to this chapter.~~

16 (2) "Continuing care" or "care" means, pursuant to a  
17 contract, furnishing shelter and nursing care or personal  
18 services to a resident who resides in a facility ~~as defined in~~  
19 ~~s. 429.02~~, whether such nursing care or personal services are  
20 provided in the facility or in another setting designated in ~~by~~  
21 the contract for continuing care, by ~~to~~ an individual not  
22 related by consanguinity or affinity to the resident ~~provider~~  
23 ~~furnishing such care~~, upon payment of an entrance fee. ~~Other~~  
24 ~~personal services provided must be designated in the continuing~~  
25 ~~care contract. Contracts to provide continuing care include~~  
26 ~~agreements to provide care for any duration, including contracts~~  
27 ~~that are terminable by either party.~~

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

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

38 (5) ~~(4)~~ "Entrance fee" means an initial or deferred payment  
39 of a sum of money or property made as full or partial payment  
40 for continuing care or continuing care at-home ~~to assure the~~  
41 ~~resident a place in a facility~~. An accommodation fee, admission



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42 fee, member fee, or other fee of similar form and application  
43 are considered to be an entrance fee.

44 (6)~~(5)~~ "Facility" means a place where that provides  
45 continuing care is furnished and may include one or more  
46 physical plants on a primary or contiguous site or an  
47 immediately accessible site. As used in this subsection, the  
48 term "immediately accessible site" means a parcel of real  
49 property separated by a reasonable distance from the facility as  
50 measured along public thoroughfares, and "primary or contiguous  
51 site" means the real property contemplated in the feasibility  
52 study required by this chapter.

53 (7)~~(6)~~ "Generally accepted accounting principles" means  
54 those accounting principles and practices adopted by the  
55 Financial Accounting Standards Board and the American Institute  
56 of Certified Public Accountants, including Statement of Position  
57 90-8 with respect to any full year to which the statement  
58 applies.

59 (8)~~(7)~~ "Insolvency" means the condition in which the  
60 provider is unable to pay its obligations as they come due in  
61 the normal course of business.

62 (9)~~(8)~~ "Licensed" means that the provider has obtained a  
63 certificate of authority from the department.

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

67 (11) "Personal services" has the same meaning as in s.  
68 429.02.

69 (12)~~(9)~~ "Provider" means the owner or operator, whether a  
70 natural person, partnership or other unincorporated association,



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71 however organized, trust, or corporation, of an institution,  
72 building, residence, or other place, whether operated for profit  
73 or not, which owner or operator provides continuing care or  
74 continuing care at-home for a fixed or variable fee, or for any  
75 other remuneration of any type, whether fixed or variable, for  
76 the period of care, payable in a lump sum or lump sum and  
77 monthly maintenance charges or in installments. The term, ~~but~~  
78 does not apply to ~~mean~~ an entity that has existed and  
79 continuously operated a facility located on at least 63 acres in  
80 this state providing residential lodging to members and their  
81 spouses for at least 66 years on or before July 1, 1989, and has  
82 the residential capacity of 500 persons, is directly or  
83 indirectly owned or operated by a nationally recognized  
84 fraternal organization, is not open to the public, and accepts  
85 only its members and their spouses as residents.

86 (13) ~~(10)~~ "Records" means the permanent financial,  
87 directory, and personnel information and data maintained by a  
88 provider pursuant to this chapter.

89 (14) ~~(11)~~ "Resident" means a purchaser of, a nominee of, or  
90 a subscriber to a continuing care or continuing care at-home  
91 contract agreement. Such contract agreement does not give the  
92 resident a part ownership of the facility in which the resident  
93 is to reside, unless expressly provided ~~for~~ in the contract  
94 agreement.

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

99 Section 2. Section 651.012, Florida Statutes, is amended to



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100 read:

101 651.012 Exempted facility; written disclosure of  
102 exemption.—Any facility exempted under ss. 632.637(1)(e) and  
103 651.011(12)(9) must provide written disclosure of such exemption  
104 to each person admitted to the facility after October 1, 1996.  
105 This disclosure must be written using language likely to be  
106 understood by the person and must briefly explain the exemption.

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

109 651.013 Chapter exclusive; applicability of other laws.—

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

114 (2) In addition to other applicable provisions cited in  
115 this chapter, the office has the authority granted under ss.  
116 624.302 and 624.303, 624.308-624.312, 624.319(1)-(3), 624.320-  
117 624.321, 624.324, and 624.34 of the Florida Insurance Code to  
118 regulate providers of continuing care and continuing care at-  
119 home.

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

122 651.021 Certificate of authority required.—

123 (1) No person may engage in the business of providing  
124 continuing care, ~~or~~ issuing contracts for continuing care or  
125 continuing care at-home, or constructing agreements or construct  
126 a facility for the purpose of providing continuing care in this  
127 state without a certificate of authority ~~therefor~~ obtained from  
128 the office as provided in this chapter. This subsection does



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129 ~~shall not be construed to prohibit the~~ preparation of a the  
130 construction site or construction of a model residence unit for  
131 marketing purposes, or both. The office may allow the purchase  
132 of an existing building for the purpose of providing continuing  
133 care if the office determines that the purchase is not being  
134 made to circumvent for the purpose of circumventing the  
135 prohibitions ~~contained~~ in this section.

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

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

151 (b) The application for such approval shall be on forms  
152 adopted by the commission and provided by the office. The  
153 application must ~~shall~~ include the feasibility study required by  
154 s. 651.022(3) or s. 651.023(1)(b) and such other information as  
155 required by s. 651.023. If the expansion is only for continuing  
156 care at-home contracts, an actuarial study prepared by an  
157 independent actuary in accordance with standards adopted by the



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158 American Academy of Actuaries which presents the financial  
159 impact of the expansion may be substituted for the feasibility  
160 study.

161 (c) In determining whether an expansion should be approved,  
162 the office shall use ~~utilize~~ the criteria provided in ss.  
163 651.022(6) and 651.023 (4) ~~(2)~~.

164 Section 5. Paragraphs (d) and (g) of subsection (2) and  
165 subsections (4) and (6) of section 651.022, Florida Statutes,  
166 are amended to read:

167 651.022 Provisional certificate of authority; application.-

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

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

178 (g) The forms of the ~~continuing care~~ residency contracts,  
179 reservation contracts, escrow agreements, and wait list  
180 contracts, if applicable, which are proposed to be used by the  
181 provider in the furnishing of care. ~~If~~ The office shall approve  
182 ~~finds that the continuing care~~ contracts and escrow agreements  
183 that comply with ss. 651.023(1)(c), 651.033, ~~and~~ 651.055, and  
184 651.057 ~~it shall approve them~~. Thereafter, no other form of  
185 contract or agreement may be used by the provider until it has  
186 been submitted to the office and approved.



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

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

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

209 651.023 Certificate of authority; application.—

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





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

219 (b) A feasibility study prepared by an independent  
220 consultant which contains all of the information required by s.  
221 651.022(3) and ~~contains~~ financial forecasts or projections  
222 prepared in accordance with standards adopted ~~promulgated~~ by the  
223 American Institute of Certified Public Accountants or ~~financial~~  
224 ~~forecasts or projections prepared~~ in accordance with standards  
225 for feasibility studies or continuing care retirement  
226 communities adopted ~~promulgated~~ by the Actuarial Standards  
227 Board.

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

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

239 3. If the study is prepared by an independent certified  
240 public accountant, it must contain an examination opinion for  
241 the first 3 years of operations and financial projections having  
242 a compilation opinion for the next 3 years. If the study is  
243 prepared by an independent consulting actuary, it must contain  
244 mortality and morbidity data and an actuary's signed opinion



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245 that the project as proposed is feasible and that the study has  
246 been prepared in accordance with standards adopted by the  
247 American Academy of Actuaries.

248 (c) Subject to ~~the requirements of~~ subsection (4) ~~(2)~~, a  
249 provider may submit an application for a certificate of  
250 authority and any required exhibits upon submission of proof  
251 that the project has a minimum of 30 percent of the units  
252 reserved for which the provider is charging an entrance fee. ~~†~~  
253 ~~however,~~ This does ~~provision shall~~ not apply to an application  
254 for a certificate of authority for the acquisition of a facility  
255 for which a certificate of authority was issued before ~~prior to~~  
256 October 1, 1983, to a provider who subsequently becomes a debtor  
257 in a case under the United States Bankruptcy Code, 11 U.S.C. ss.  
258 101 et seq., or to a provider for which the department has been  
259 appointed receiver pursuant to ~~the provisions of~~ part II of  
260 chapter 631.

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

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

270 (f) Proof that the aggregate amount of entrance fees  
271 received by or pledged to the applicant, plus anticipated  
272 proceeds from any long-term financing commitment, plus funds  
273 from all other sources in the actual possession of the



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274 applicant, equal at least ~~not less than~~ 100 percent of the  
275 aggregate cost of constructing or purchasing, equipping, and  
276 furnishing the facility plus 100 percent of the anticipated  
277 startup losses of the facility.

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

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

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

294 (2) ~~(j)~~ Within 30 days after ~~of the~~ receipt of the  
295 information required under subsection (1) ~~paragraphs (a) - (h)~~,  
296 the office shall examine such information and ~~shall~~ notify the  
297 provider in writing, specifically requesting any additional  
298 information the office is permitted by law to require. Within 15  
299 days after receipt of all of the requested additional  
300 information, the office shall notify the provider in writing  
301 that all of the requested information has been received and the  
302 application is deemed to be complete as of the date of the



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303 notice. Failure to ~~so~~ notify the applicant in writing within the  
304 15-day period constitutes ~~shall constitute~~ acknowledgment by the  
305 office that it has received all requested additional  
306 information, and the application shall be deemed ~~to be~~ complete  
307 for purposes of review on ~~upon~~ the date of ~~the~~ filing ~~of~~ all of  
308 the required additional information.

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

321 (4) ~~(2)~~ ~~(a)~~ The office shall issue a certificate of authority  
322 upon determining ~~its determination~~ that the applicant meets all  
323 requirements of law and has submitted all of the information  
324 required by this section, that all escrow requirements have been  
325 satisfied, and that the fees prescribed in s. 651.015(2) have  
326 been paid.

327 (a) Notwithstanding satisfaction of the 30-percent minimum  
328 reservation requirement of paragraph (1)(c), no certificate of  
329 authority shall be issued until the project has a minimum of 50  
330 percent of the units reserved for which the provider is charging  
331 an entrance fee, and proof ~~thereof~~ is provided to the office. If



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332 a provider offering continuing care at-home is applying for a  
333 certificate of authority or approval of an expansion pursuant to  
334 s. 651.021(2), the same minimum reservation requirements must be  
335 met for the continuing care and continuing care at-home  
336 contracts, independently of each other.

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

349 ~~(5)-(3)~~ Up to ~~No more than~~ 25 percent of the moneys paid for  
350 all or any part of an initial entrance fee may be included or  
351 pledged for the construction or purchase of the facility, ~~or~~  
352 ~~included or pledged~~ as security for long-term financing. The  
353 term "initial entrance fee" means the total entrance fee charged  
354 by the facility to the first occupant of a unit.

355 (a) A minimum of 75 percent of the moneys paid for all or  
356 any part of an initial entrance fee collected for continuing  
357 care or continuing care at-home shall be placed in an escrow  
358 account or on deposit with the department as prescribed in s.  
359 651.033.

360 (b) For an expansion as provided in s. 651.021(2), a



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361 minimum of 75 percent of the moneys paid for all or any part of  
362 an initial entrance fee collected for continuing care and 50  
363 percent of the moneys paid for all or any part of an initial fee  
364 collected for continuing care at-home shall be placed in an  
365 escrow account or on deposit with the department as prescribed  
366 in s. 651.033.

367 (6)-(4) The provider is shall be entitled to secure release  
368 of the moneys held in escrow within 7 days after receipt by the  
369 office of an affidavit from the provider, along with appropriate  
370 copies to verify, and notification to the escrow agent by  
371 certified mail, that the following conditions have been  
372 satisfied:

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

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

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



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390 submitted which remedies the adverse condition.

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

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

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

400

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

406 ~~(7)(5)~~ In lieu of the provider fulfilling the requirements  
407 in subsection ~~(5) (3)~~ and paragraphs ~~(6)(b) (4)(b)~~ and (d), the  
408 office may authorize the release of escrowed funds to retire all  
409 outstanding debts on the facility and equipment upon application  
410 of the provider and upon the provider's showing that the  
411 provider will grant to the residents a first mortgage on the  
412 land, buildings, and equipment that constitute the facility, and  
413 that the provider has satisfied ~~satisfies the requirements of~~  
414 paragraphs ~~(6)(a) (4)(a)~~, (c), and (e). Such mortgage shall  
415 secure the refund of the entrance fee in the amount required by  
416 this chapter. The granting of such mortgage is ~~shall be~~ subject  
417 to the following:

418 (a) The first mortgage is ~~shall be~~ granted to an



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419 independent trust that ~~which~~ is beneficially held by the  
420 residents. The document creating the trust must include ~~shall~~  
421 ~~contain~~ a provision that ~~it~~ agrees to an annual audit and will  
422 furnish to the office all information the office may reasonably  
423 require. The mortgage may secure payment on bonds issued to the  
424 residents or trustee. Such bonds are ~~shall be~~ redeemable after  
425 termination of the residency contract in the amount and manner  
426 required by this chapter for the refund of an entrance fee.

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

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

436 ~~(8)-(6)~~ The timeframes provided under s. 651.022(5) and (6)  
437 apply to applications submitted under s. 651.021(2). The office  
438 may not issue a certificate of authority ~~under this chapter~~ to a  
439 ~~any~~ facility that ~~which~~ does not have a component that ~~which~~ is  
440 to be licensed pursuant to part II of chapter 400 or to part I  
441 of chapter 429 or that does ~~which will~~ not offer personal  
442 services or nursing services through written contractual  
443 agreement. A ~~Any~~ written contractual agreement must be disclosed  
444 in the ~~continuing care~~ contract for continuing care or  
445 continuing care at-home and is subject to the provisions of s.  
446 651.1151, relating to administrative, vendor, and management  
447 contracts.





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448           (9)~~(7)~~ The office may ~~shall~~ not approve an application that  
449 ~~which~~ includes in the plan of financing any encumbrance of the  
450 operating reserves required by this chapter.

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

453           651.033 Escrow accounts.—

454           (3) In addition, when entrance fees are required to be  
455 deposited in an escrow account pursuant to s. 651.022, s.  
456 651.023, or s. 651.055:

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

469           (d) A provider may assess a nonrefundable fee, which is  
470 separate from the entrance fee, for processing a prospective  
471 resident's application for continuing care or continuing care  
472 at-home.

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

475           651.035 Minimum liquid reserve requirements.—

476           (2) (a) In facilities where not all residents are under



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477 continuing care or continuing care at-home contracts, the  
478 reserve requirements of subsection (1) shall be computed only  
479 with respect to the proportional share of operating expenses  
480 that ~~which~~ are applicable to residents ~~as defined in s. 651.011.~~  
481 For purposes of this calculation, the proportional share shall  
482 be based upon the ratio of residents under continuing care or  
483 continuing care at-home contracts to those residents who do not  
484 hold such contracts.

485 (b) In facilities that have voluntarily and permanently  
486 discontinued marketing continuing care and continuing care at-  
487 home contracts, the office may allow a reduced debt service  
488 reserve as required in subsection (1) based upon the ratio of  
489 residents under continuing care or continuing care at-home  
490 contracts to those residents who do not hold such contracts if  
491 the office finds that such reduction is not inconsistent with  
492 the security protections intended by this chapter. In making  
493 this determination, the office may consider such factors as the  
494 financial condition of the facility, the provisions of ~~the~~  
495 outstanding continuing care and continuing care at-home  
496 contracts, the ratio of residents under continuing care or  
497 continuing care at-home contracts ~~agreements~~ to those residents  
498 who do not hold such contracts ~~a continuing care contract~~, the  
499 current occupancy rates, the previous sales and marketing  
500 efforts, the life expectancy of the remaining residents ~~contract~~  
501 ~~holders~~, and the written policies of the board of directors of  
502 the provider or a similar board.

503 (3) If principal and interest payments are paid to a trust  
504 that is beneficially held by the residents as described in s.  
505 651.023(7)(~~5~~), the office may waive all or any portion of the



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506 escrow requirements for mortgage principal and interest  
507 contained in subsection (1) if the office finds that such waiver  
508 is not inconsistent with the security protections intended by  
509 this chapter.

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

512 651.055 Continuing care contracts; right to rescind.-

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

519 (a) Provide for the continuing care of only one resident,  
520 or for two persons occupying space designed for double  
521 occupancy, under appropriate regulations established by the  
522 provider, and must ~~shall~~ list all properties transferred and  
523 their market value at the time of transfer, including donations,  
524 subscriptions, fees, and any other amounts paid or payable by,  
525 or on behalf of, the resident or residents.

526 (b) Specify all services that ~~which~~ are to be provided by  
527 the provider to each resident, including, in detail, all items  
528 that ~~which~~ each resident will receive, whether the items will be  
529 provided for a designated time period or for life, and whether  
530 the services will be available on the premises or at another  
531 specified location. The provider shall indicate which services  
532 or items are included in the contract for continuing care and  
533 which services or items are made available at or by the facility  
534 at extra charge. Such items ~~shall~~ include, but are not limited



535 to, food, shelter, personal services or nursing care, drugs,  
536 burial, and incidentals.

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

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

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



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

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

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

580 2. For a resident whose contract with the facility provides  
581 that the resident does not receive a transferable membership or  
582 ownership right in the facility, and who has occupied his or her  
583 unit, the refund shall be calculated on a pro rata basis with  
584 the facility retaining up to 2 percent per month of occupancy by  
585 the resident and up to a 5 percent ~~5-percent~~ processing fee.  
586 Such refund must be paid within 120 days after giving the notice  
587 of intention to cancel.

588 3. In addition to a processing fee, if the contract  
589 provides for the facility to retain up to 1 percent per month of  
590 occupancy by the resident, it may provide that such refund will  
591 be paid from the proceeds of the next entrance fees received by  
592 the provider for units for which there are no prior claims by



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593 any resident until paid in full or, if the provider has  
594 discontinued marketing continuing care contracts, within 200  
595 days after the date of notice.

596 4. Unless subsection (5) applies, for any prospective  
597 resident, regardless of whether or not such a resident receives  
598 a transferable membership or ownership right in the facility,  
599 who cancels the contract before occupancy of the unit, the  
600 entire amount paid toward the entrance fee shall be refunded,  
601 less a processing fee of up to 5 percent of the entire entrance  
602 fee; however, the processing fee may not exceed the amount paid  
603 by the prospective resident. Such refund must be paid within 60  
604 days after giving ~~the~~ notice of intention to cancel. For a  
605 resident who has occupied his or her unit and who has received a  
606 transferable membership or ownership right in the facility, the  
607 foregoing refund provisions do not apply but are deemed  
608 satisfied by the acquisition or receipt of a transferable  
609 membership or an ownership right in the facility. The provider  
610 may not charge any fee for the transfer of membership or sale of  
611 an ownership right. A prospective resident, resident, or  
612 resident's estate is not entitled to interest of any type on a  
613 deposit or entrance fee unless it is specified in the continuing  
614 care contract.

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



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

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

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

641 (2) A resident has the right to rescind a continuing care  
642 contract and receive a full refund of any funds paid, without  
643 penalty or forfeiture, within 7 days after executing the  
644 contract. A resident may not be required to move into the  
645 facility designated in the contract before the expiration of the  
646 7-day period. During the 7-day period, the resident's funds must  
647 be held in an escrow account unless otherwise requested by the  
648 resident pursuant to s. 651.033(3)(c).

649 (3) The contract must ~~shall~~ include or ~~shall~~ be accompanied  
650 by a statement, printed in boldfaced type, which reads: "This



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651 facility and all other continuing care facilities in the State  
652 of Florida are regulated by chapter 651, Florida Statutes. A  
653 copy of the law is on file in this facility. The law gives you  
654 or your legal representative the right to inspect our most  
655 recent financial statement and inspection report before signing  
656 the contract.”

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

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

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





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

683           (8)-(7) Those contracts entered into after subsequent to  
684 July 1, 1977, and before the issuance of a certificate of  
685 authority to the provider are valid and binding upon both  
686 parties in accordance with their terms. Within 30 days after  
687 receipt of a letter from the office notifying the provider of a  
688 noncompliant residency contract, the provider shall file a new  
689 residency contract for approval which complies with Florida law.  
690 Pending review and approval of the new residency contract, the  
691 provider may continue to use the previously approved contract.

692           (9)-(8) The provisions of this section shall control over  
693 any conflicting provisions contained in part II of chapter 400  
694 or in part I of chapter 429.

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

697           651.057 Continuing care at-home contracts.-

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

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

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

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



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

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

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

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

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

725           (d) Include the operating activities for continuing care  
726 at-home contracts in the total operation of the facility when  
727 submitting financial reports to the office as required by s.  
728 651.026.

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

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

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

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

737           3. An actuarial study prepared by an independent actuary in



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738 accordance with the standards adopted by the American Academy of  
739 Actuaries which presents the impact of providing continuing care  
740 at-home on the overall operation of the facility;

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

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

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

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

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

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

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



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

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

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

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

783           651.071 Contracts as preferred claims on liquidation or  
784 receivership.—

785           (1) In the event of receivership or liquidation proceedings  
786 against a provider, all continuing care and continuing care at-  
787 home contracts executed by a provider shall be deemed preferred  
788 claims against all assets owned by the provider; however, such  
789 claims are ~~shall be~~ subordinate to those priority claims set  
790 forth in s. 631.271 and any secured claim ~~as defined in s.~~  
791 ~~631.011.~~

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

794           651.091 Availability, distribution, and posting of reports  
795 and records; requirement of full disclosure.—



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796 (2) Every continuing care facility shall:

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

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

807 (a) The contract to furnish continuing care or continuing  
808 care at-home.

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

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

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

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

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



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

829 (h) A copy of s. 651.071.

830 (i) A copy of the resident's rights as described in s.  
831 651.083.

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

834 651.106 Grounds for discretionary refusal, suspension, or  
835 revocation of certificate of authority.—The office, ~~in its~~  
836 ~~discretion~~, may deny, suspend, or revoke the provisional  
837 certificate of authority or the certificate of authority of any  
838 applicant or provider if it finds that any one or more of the  
839 following grounds applicable to the applicant or provider exist:

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

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

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

846 (4) Demonstrated lack of fitness or trustworthiness.

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

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

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

853 (8) The insolvent condition of the provider or the



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854 provider's being in such condition or using such methods and  
855 practices in the conduct of its business as to render its  
856 further transactions in this state hazardous or injurious to the  
857 public.

858 (9) Refusal by the provider to be examined or to produce  
859 its accounts, records, and files for examination, or refusal by  
860 any of its officers to give information with respect to its  
861 affairs or to perform any other legal obligation under this  
862 chapter when required by the office.

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

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

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

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

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

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

881 (16) A pattern of bankrupt enterprises.  
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883 Revocation of a certificate of authority under this section does  
884 not relieve a provider from the provider's obligation to  
885 residents under the terms and conditions of any continuing care  
886 or continuing care at-home contract between the provider and  
887 residents or the provisions of this chapter. The provider shall  
888 continue to file its annual statement and pay license fees to  
889 the office as required under this chapter as if the certificate  
890 of authority had continued in full force, but the provider shall  
891 not issue any new ~~continuing care~~ contracts. The office may seek  
892 an action in the circuit court of Leon County to enforce the  
893 office's order and the provisions of this section.

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

896 651.114 Delinquency proceedings; remedial rights.—

897 (8) (a) The rights of the office described in this section  
898 are ~~shall be~~ subordinate to the rights of a trustee or lender  
899 pursuant to the terms of a resolution, ordinance, loan  
900 agreement, indenture of trust, mortgage, lease, security  
901 agreement, or other instrument creating or securing bonds or  
902 notes issued to finance a facility, and the office, subject to  
903 the provisions of paragraph (c), shall not exercise its remedial  
904 rights provided under this section and ss. 651.018, 651.106,  
905 651.108, and 651.116 with respect to a facility that is subject  
906 to a lien, mortgage, lease, or other encumbrance or trust  
907 indenture securing bonds or notes issued in connection with the  
908 financing of the facility, if the trustee or lender, by  
909 inclusion or by amendment to the loan documents or by a separate  
910 contract with the office, agrees that the rights of residents  
911 under a continuing care or continuing care at-home contract will





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912 be honored and will not be disturbed by a foreclosure or  
913 conveyance in lieu thereof as long as the resident:  
914 1. Is current in the payment of all monetary obligations  
915 required by the ~~continuing care~~ contract;  
916 2. Is in compliance and continues to comply with all  
917 provisions of the ~~resident's continuing care~~ contract; and  
918 3. Has asserted no claim inconsistent with the rights of  
919 the trustee or lender.  
920 (b) ~~Nothing in~~ This subsection does not require ~~requires~~ a  
921 trustee or lender to:  
922 1. Continue to engage in the marketing or resale of new  
923 continuing care or continuing care at-home contracts;  
924 2. Pay any rebate of entrance fees as may be required by a  
925 resident's continuing care or continuing care at-home contract  
926 as of the date of acquisition of the facility by the trustee or  
927 lender and until expiration of the period described in paragraph  
928 (d);  
929 3. Be responsible for any act or omission of any owner or  
930 operator of the facility arising before ~~prior to~~ the acquisition  
931 of the facility by the trustee or lender; or  
932 4. Provide services to the residents to the extent that the  
933 trustee or lender would be required to advance or expend funds  
934 that have not been designated or set aside for such purposes.  
935 (c) Should the office determine, at any time during the  
936 suspension of its remedial rights as provided in paragraph (a),  
937 that the trustee or lender is not in compliance with ~~the~~  
938 ~~provisions of~~ paragraph (a), or that a lender or trustee has  
939 assigned or has agreed to assign all or a portion of a  
940 delinquent or defaulted loan to a third party without the



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941 office's written consent, the office shall notify the trustee or  
942 lender in writing of its determination, setting forth the  
943 reasons giving rise to the determination and specifying those  
944 remedial rights afforded to the office which the office shall  
945 then reinstate.

946 (d) Upon acquisition of a facility by a trustee or lender  
947 and evidence satisfactory to the office that the requirements of  
948 paragraph (a) have been met, the office shall issue a 90-day  
949 temporary certificate of authority granting the trustee or  
950 lender the authority to engage in the business of providing  
951 continuing care or continuing care at-home and to issue  
952 continuing care or continuing care at-home contracts subject to  
953 the office's right to immediately suspend or revoke the  
954 temporary certificate of authority if the office determines that  
955 any of the grounds described in s. 651.106 apply to the trustee  
956 or lender or that the terms of the contract ~~agreement~~ used as  
957 the basis for the issuance of the temporary certificate of  
958 authority by the office have not been or are not being met by  
959 the trustee or lender since the date of acquisition.

960 Section 15. Subsections (4), (7), (9), and (11) of section  
961 651.118, Florida Statutes, are amended to read:

962 651.118 Agency for Health Care Administration; certificates  
963 of need; sheltered beds; community beds.—

964 (4) Not including the residences of residents residing  
965 outside the facility pursuant to a continuing care at-home  
966 contract, the Agency for Health Care Administration shall  
967 approve one sheltered nursing home bed for every four proposed  
968 residential units, including those that are licensed under part  
969 I of chapter 429, in the continuing care facility unless the



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970 provider demonstrates the need for a lesser number of sheltered  
971 nursing home beds based on proposed utilization by prospective  
972 residents or demonstrates the need for additional sheltered  
973 nursing home beds based on actual utilization and demand by  
974 current residents.

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

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

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



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999  
1000 The Agency for Health Care Administration may ~~shall be~~  
1001 ~~authorized to~~ grant an extension to the provider based on the  
1002 evidence required in this subsection. The Agency for Health Care  
1003 Administration may request a continuing care facility to use up  
1004 to 25 percent of the patient days generated by new admissions of  
1005 nonresidents during the extension period to serve Medicaid  
1006 recipients for those beds authorized for extended use if there  
1007 is a demonstrated need in the respective service area and if  
1008 funds are available. A provider who obtains an extension is  
1009 prohibited from applying for additional sheltered beds under ~~the~~  
1010 ~~provision of~~ subsection (2), unless additional residential units  
1011 are built or the provider can demonstrate need by continuing  
1012 care facility residents to the Agency for Health Care  
1013 Administration. The 5-year limit does not apply to up to five  
1014 sheltered beds designated for inpatient hospice care as part of  
1015 a contractual arrangement with a hospice licensed under part IV  
1016 of chapter 400. A continuing care facility that uses such beds  
1017 after the 5-year period shall report such use to the Agency for  
1018 Health Care Administration. For purposes of this subsection,  
1019 "resident" means a person who, upon admission to the continuing  
1020 care facility, initially resides in a part of the continuing  
1021 care facility not licensed under part II of chapter 400, or who  
1022 contracts for continuing care at-home.

1023 (9) This section does not preclude a ~~continuing care~~  
1024 provider from applying to the Agency for Health Care  
1025 Administration for a certificate of need for community nursing  
1026 home beds or a combination of community and sheltered nursing  
1027 home beds. Any nursing home bed located in a continuing care



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1028 facility which ~~that~~ is or has been issued for nonrestrictive use  
1029 retains ~~shall retain~~ its legal status as a community nursing  
1030 home bed unless the provider requests a change in status. Any  
1031 nursing home bed located in a continuing care facility and not  
1032 issued as a sheltered nursing home bed before ~~prior to~~ 1979 must  
1033 be classified as a community bed. The Agency for Health Care  
1034 Administration may require continuing care facilities to submit  
1035 bed utilization reports for the purpose of determining community  
1036 and sheltered nursing home bed inventories based on historical  
1037 utilization by residents and nonresidents.

1038 (11) For a provider issued a provisional certificate of  
1039 authority after July 1, 1986, to operate a facility not  
1040 previously regulated under this chapter, the following criteria  
1041 must ~~shall~~ be met in order to obtain a certificate of need for  
1042 sheltered beds pursuant to subsections (2), (3), (4), (5), (6),  
1043 and (7):

1044 (a) Seventy percent or more of the current residents hold  
1045 continuing care or continuing care at-home contracts ~~agreements~~  
1046 ~~pursuant to s. 651.011(2)~~ or, if the facility is not occupied,  
1047 70 percent or more of the prospective residents will hold such  
1048 contracts ~~continuing care agreements pursuant to s. 651.011(2)~~  
1049 as projected in the feasibility study and demonstrated by the  
1050 provider's marketing practices; and

1051 (b) The continuing care or continuing care at-home  
1052 contracts ~~agreements~~ entered into or to be entered into by 70  
1053 percent or more of the current residents or prospective  
1054 residents must ~~pursuant to s. 651.011(2)~~ shall provide nursing  
1055 home care for a minimum of 360 cumulative days, and such  
1056 residents ~~the holders of the continuing care agreements~~ shall be



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1057 charged at rates that ~~which~~ are 80 percent or less than the  
1058 rates charged by the provider to persons receiving nursing home  
1059 care who have not entered into such contracts ~~continuing care~~  
1060 ~~agreements pursuant to s. 651.011(2).~~

1061 Section 16. Subsection (1) of section 651.121, Florida  
1062 Statutes, is amended to read:

1063 651.121 Continuing Care Advisory Council.—

1064 (1) The Continuing Care Advisory Council to the office is  
1065 created consisting ~~to consist~~ of 10 members who are residents of  
1066 this state appointed by the Governor and geographically  
1067 representative of this state. Three members shall be  
1068 administrators of facilities that hold valid certificates of  
1069 authority under this chapter and shall have been actively  
1070 engaged in the offering of continuing care contracts ~~agreements~~  
1071 in this state for 5 years before appointment. The remaining  
1072 members include:

1073 (a) A representative of the business community whose  
1074 expertise is in the area of management.

1075 (b) A representative of the financial community who is not  
1076 a facility owner or administrator.

1077 (c) A certified public accountant.

1078 (d) An attorney.

1079 (e) Three residents who hold continuing care or continuing  
1080 care at-home contracts ~~agreements~~ with a facility certified in  
1081 this state.

1082 Section 17. Subsection (1) of section 651.125, Florida  
1083 Statutes, is amended to read:

1084 651.125 Criminal penalties; injunctive relief.—

1085 (1) Any person who maintains, enters into, or, as manager



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1086 or officer or in any other administrative capacity, assists in  
1087 entering into, maintaining, or performing any continuing care or  
1088 continuing care at-home contract agreement subject to this  
1089 chapter without doing so in pursuance of a valid certificate of  
1090 authority or renewal thereof, as contemplated by or provided in  
1091 this chapter, or who otherwise violates any provision of this  
1092 chapter or rule adopted in pursuance of this chapter, is guilty  
1093 of a felony of the third degree, punishable as provided in s.  
1094 775.082 or s. 775.083. Each violation of this chapter  
1095 constitutes a separate offense.

1096 Section 18. This act shall take effect July 1, 2011.

1097  
1098 ===== T I T L E A M E N D M E N T =====

1099 And the title is amended as follows:

1100 Delete everything before the enacting clause  
1101 and insert:

1102 A bill to be entitled  
1103 An act relating to continuing care retirement  
1104 communities; providing for the provision of continuing  
1105 care at-home; amending s. 651.011, F.S.; revising  
1106 definitions; defining "continuing care at-home,"  
1107 "nursing care," "personal services," and "shelter";  
1108 amending s. 651.012, F.S.; conforming a cross-  
1109 reference; amending s. 651.013, F.S.; conforming  
1110 provisions to changes made by the act; amending s.  
1111 651.021, F.S., relating to the requirement for  
1112 certificates of authority; requiring that a person in  
1113 the business of issuing continuing care at-home  
1114 contracts obtain a certificate of authority from the



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1115 Office of Insurance Regulation; requiring written  
1116 approval from the Office of Insurance Regulation for a  
1117 20 percent or more expansion in the number of  
1118 continuing care at-home contracts; providing that an  
1119 actuarial study may be substituted for a feasibility  
1120 study in specified circumstances; amending s. 651.022,  
1121 F.S., relating to provisional certificates of  
1122 authority; conforming provisions to changes made by  
1123 the act; amending s. 651.023, F.S., relating to an  
1124 application for a certificate of authority; specifying  
1125 the content of the feasibility study that is included  
1126 in the application for a certificate; requiring the  
1127 same minimum reservation requirements for continuing  
1128 care at-home contracts as continuing care contracts;  
1129 requiring that a certain amount of the entrance fee  
1130 collected for contracts resulting from an expansion be  
1131 placed in an escrow account or on deposit with the  
1132 department; amending ss. 651.033, 651.035, and  
1133 651.055, F.S.; requiring a facility to provide proof  
1134 of compliance with a residency contract; conforming  
1135 provisions to changes made by the act; creating s.  
1136 651.057, F.S.; providing additional requirements for  
1137 continuing care at-home contracts; requiring that a  
1138 provider who wishes to offer continuing care at-home  
1139 contracts submit certain additional documents to the  
1140 office; requiring that the provider comply with  
1141 certain requirements; limiting the number of  
1142 continuing care and continuing care at-home contracts  
1143 at a facility based on the types of units at the





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1144 facility; amending ss. 651.071, 651.091, 651.106,  
1145 651.114, 651.118, 651.121, and 651.125, F.S. ;  
1146 conforming provisions to changes made by the act;  
1147 providing an effective date.