

By Senator Bogdanoff

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

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30 placed in an escrow account or on deposit with the
31 department; amending ss. 651.033, 651.035, and
32 651.055, F.S.; requiring a facility to provide proof
33 of compliance with a residency contract; conforming
34 provisions to changes made by the act; creating s.
35 651.057, F.S.; providing additional requirements for
36 continuing care at-home contracts; requiring that a
37 provider who wishes to offer continuing care at-home
38 contracts submit certain additional documents to the
39 office; requiring that the provider comply with
40 certain requirements; limiting the number of
41 continuing care and continuing care at-home contracts
42 at a facility based on the types of units at the
43 facility; amending ss. 651.071, 651.091, 651.106,
44 651.114, 651.118, 651.121, and 651.125, F.S.;
45 conforming provisions to changes made by the act;
46 providing an effective date.

47
48 Be It Enacted by the Legislature of the State of Florida:

49
50 Section 1. Section 651.011, Florida Statutes, is amended to
51 read:

52 651.011 Definitions.—As used in ~~For the purposes of~~ this
53 chapter, the term:

54 (1) "Advertising" means the dissemination of written,
55 visual, or electronic information by a provider, or any person
56 affiliated with or controlled by a provider, to potential
57 residents or their representatives for the purpose of inducing
58 such persons to subscribe to or enter into a contract for

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59 continuing care or continuing care at-home ~~to reside in a~~
60 ~~continuing care community that is subject to this chapter.~~

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

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

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

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

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

97 (7)~~(6)~~ "Generally accepted accounting principles" means
98 those accounting principles and practices adopted by the
99 Financial Accounting Standards Board and the American Institute
100 of Certified Public Accountants, including Statement of Position
101 90-8 with respect to any full year to which the statement
102 applies.

103 (8)~~(7)~~ "Insolvency" means the condition in which the
104 provider is unable to pay its obligations as they come due in
105 the normal course of business.

106 (9)~~(8)~~ "Licensed" means that the provider has obtained a
107 certificate of authority from the department.

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

111 (11) "Personal services" has the same meaning as in s.
112 429.02.

113 (12)~~(9)~~ "Provider" means the owner or operator, whether a
114 natural person, partnership or other unincorporated association,
115 however organized, trust, or corporation, of an institution,
116 building, residence, or other place, whether operated for profit

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

130 ~~(13)-(10)~~ "Records" means the permanent financial,
131 directory, and personnel information and data maintained by a
132 provider pursuant to this chapter.

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

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

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

145 651.012 Exempted facility; written disclosure of

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146 exemption.—Any facility exempted under ss. 632.637(1)(e) and
 147 651.011(12) ~~651.011(9)~~ must provide written disclosure of such
 148 exemption to each person admitted to the facility after October
 149 1, 1996. This disclosure must be written using language likely
 150 to be understood by the person and must briefly explain the
 151 exemption.

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

154 651.013 Chapter exclusive; applicability of other laws.—

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

159 (2) In addition to other applicable provisions cited in
 160 this chapter, the office has the authority granted under ss.
 161 624.302 and 624.303, 624.308-624.312, 624.319(1)-(3), 624.320-
 162 624.321, 624.324, and 624.34 of the Florida Insurance Code to
 163 regulate providers of continuing care and continuing care at-
 164 home.

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

167 651.021 Certificate of authority required.—

168 (1) No person may engage in the business of providing
 169 continuing care, ~~or~~ issuing contracts for continuing care or
 170 continuing care at-home, or constructing agreements or construct
 171 a facility for the purpose of providing continuing care in this
 172 state without a certificate of authority ~~therefor~~ obtained from
 173 the office as provided in this chapter. This subsection does
 174 ~~shall not be construed to prohibit~~ the preparation of a ~~the~~

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175 construction site or construction of a model residence unit for
176 marketing purposes, or both. The office may allow the purchase
177 of an existing building for the purpose of providing continuing
178 care if the office determines that the purchase is not being
179 made to circumvent ~~for the purpose of circumventing~~ the
180 prohibitions ~~contained~~ in this section.

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

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

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

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204 impact of the expansion may be substituted for the feasibility
205 study.

206 (c) In determining whether an expansion should be approved,
207 the office shall use ~~utilize~~ the criteria provided in ss.
208 651.022(6) and 651.023(4) ~~651.023(2)~~.

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

212 651.022 Provisional certificate of authority; application.-

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

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

223 (g) The forms of the ~~continuing care~~ residency contracts,
224 reservation contracts, escrow agreements, and wait list
225 contracts, if applicable, which are proposed to be used by the
226 provider in the furnishing of care. ~~If~~ The office shall approve
227 ~~finds that the continuing care~~ contracts and escrow agreements
228 that comply with ss. 651.023(1)(c), 651.033, ~~and~~ 651.055, and
229 651.057 ~~it shall approve them~~. Thereafter, no other form of
230 contract or agreement may be used by the provider until it has
231 been submitted to the office and approved.

232 (4) If an applicant has or proposes to have more than one

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233 facility offering continuing care or continuing care at-home, a
234 separate provisional certificate of authority and a separate
235 certificate of authority must ~~shall~~ be obtained for each
236 facility.

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

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

254 651.023 Certificate of authority; application.-

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

261 (a) Any material change in status with respect to the

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262 information required to be filed under s. 651.022(2) in the
263 application for the ~~a~~ provisional certificate ~~of authority~~.

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

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

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

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

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291 been prepared in accordance with standards adopted by the
292 American Academy of Actuaries.

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

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

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

315 (f) Proof that the aggregate amount of entrance fees
316 received by or pledged to the applicant, plus anticipated
317 proceeds from any long-term financing commitment, plus funds
318 from all other sources in the actual possession of the
319 applicant, equal at least ~~not less than~~ 100 percent of the

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320 aggregate cost of constructing or purchasing, equipping, and
321 furnishing the facility plus 100 percent of the anticipated
322 startup losses of the facility.

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

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

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

339 (2) ~~(j)~~ Within 30 days after ~~of the~~ receipt of the
340 information required under subsection (1) ~~paragraphs (a)-(h)~~,
341 the office shall examine such information and ~~shall~~ notify the
342 provider in writing, specifically requesting any additional
343 information the office is permitted by law to require. Within 15
344 days after receipt of all of the requested additional
345 information, the office shall notify the provider in writing
346 that all of the requested information has been received and the
347 application is deemed to be complete as of the date of the
348 notice. Failure to ~~so~~ notify the applicant in writing within the

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349 15-day period constitutes ~~shall constitute~~ acknowledgment by the
350 office that it has received all requested additional
351 information, and the application shall be deemed ~~to be~~ complete
352 for purposes of review on ~~upon~~ the date of ~~the~~ filing ~~of~~ all of
353 the required additional information.

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

366 (4) ~~(2) (a)~~ The office shall issue a certificate of authority
367 upon determining ~~its determination~~ that the applicant meets all
368 requirements of law and has submitted all of the information
369 required by this section, that all escrow requirements have been
370 satisfied, and that the fees prescribed in s. 651.015(2) have
371 been paid.

372 (a) Notwithstanding satisfaction of the 30-percent minimum
373 reservation requirement of paragraph (1) (c), a ~~no~~ certificate of
374 authority may not ~~shall~~ be issued until the project has a
375 minimum of 50 percent of the units reserved for which the
376 provider is charging an entrance fee, and proof ~~thereof~~ is
377 provided to the office. If a provider offering continuing care

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378 at-home is applying for a certificate of authority or approval
379 of an expansion pursuant to s. 651.021(2), the same minimum
380 reservation requirements must be met for the continuing care and
381 continuing care at-home contracts, independently of each other.

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

394 ~~(5)(3)~~ Up to ~~No more than~~ 25 percent of the moneys paid for
395 all or any part of an initial entrance fee may be included or
396 pledged for the construction or purchase of the facility, ~~or~~
397 ~~included or pledged~~ as security for long-term financing. The
398 term "initial entrance fee" means the total entrance fee charged
399 by the facility to the first occupant of a unit.

400 (a) A minimum of 75 percent of the moneys paid for all or
401 any part of an initial entrance fee collected for continuing
402 care or continuing care at-home shall be placed in an escrow
403 account or on deposit with the department as prescribed in s.
404 651.033.

405 (b) For an expansion as provided in s. 651.021(2), a
406 minimum of 75 percent of the moneys paid for all or any part of

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407 an initial entrance fee collected for continuing care and 50
408 percent of the moneys paid for all or any part of an initial fee
409 collected for continuing care at-home shall be placed in an
410 escrow account or on deposit with the department as prescribed
411 in s. 651.033.

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

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

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

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

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

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

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

445

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

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

463 (a) The first mortgage is ~~shall be~~ granted to an
464 independent trust that ~~which~~ is beneficially held by the

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

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

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

481 (8) ~~(6)~~ The timeframes provided under s. 651.022(5) and (6)
482 apply to applications submitted under s. 651.021(2). The office
483 may not issue a certificate of authority ~~under this chapter~~ to a
484 any facility that ~~which~~ does not have a component that ~~which~~ is
485 to be licensed pursuant to part II of chapter 400 or to part I
486 of chapter 429 or that does ~~which will~~ not offer personal
487 services or nursing services through written contractual
488 agreement. A ~~Any~~ written contractual agreement must be disclosed
489 in the ~~continuing care~~ contract for continuing care or
490 continuing care at-home and is subject to the provisions of s.
491 651.1151, relating to administrative, vendor, and management
492 contracts.

493 (9) ~~(7)~~ The office may ~~shall~~ not approve an application that

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494 ~~which~~ includes in the plan of financing any encumbrance of the
495 operating reserves required by this chapter.

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

498 651.033 Escrow accounts.—

499 (3) In addition, when entrance fees are required to be
500 deposited in an escrow account pursuant to s. 651.022, s.
501 651.023, or s. 651.055:

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

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

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

521 651.035 Minimum liquid reserve requirements.—

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

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

531 (b) In facilities that have voluntarily and permanently
532 discontinued marketing continuing care and continuing care at-
533 home contracts, the office may allow a reduced debt service
534 reserve as required in subsection (1) based upon the ratio of
535 residents under continuing care or continuing care at-home
536 contracts to those residents who do not hold such contracts if
537 the office finds that such reduction is not inconsistent with
538 the security protections intended by this chapter. In making
539 this determination, the office may consider such factors as the
540 financial condition of the facility, the provisions of ~~the~~
541 outstanding continuing care and continuing care at-home
542 contracts, the ratio of residents under continuing care or
543 continuing care at-home contracts ~~agreements~~ to those residents
544 who do not hold such contracts ~~a continuing care contract~~, the
545 current occupancy rates, the previous sales and marketing
546 efforts, the life expectancy of the remaining residents ~~contract~~
547 ~~holders~~, and the written policies of the board of directors of
548 the provider or a similar board.

549 (3) If principal and interest payments are paid to a trust
550 that is beneficially held by the residents as described in s.
551 651.023(7) ~~651.023(5)~~, the office may waive all or any portion

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552 of the escrow requirements for mortgage principal and interest
553 contained in subsection (1) if the office finds that such waiver
554 is not inconsistent with the security protections intended by
555 this chapter.

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

558 651.055 Continuing care contracts; right to rescind.-

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

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

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

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581 to, food, shelter, personal services or nursing care, drugs,
582 burial, and incidentals.

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

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

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

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

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

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

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

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

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

642 4. Unless subsection (5) applies, for any prospective
643 resident, regardless of whether or not such a resident receives
644 a transferable membership or ownership right in the facility,
645 who cancels the contract before occupancy of the unit, the
646 entire amount paid toward the entrance fee shall be refunded,
647 less a processing fee of up to 5 percent of the entire entrance
648 fee; however, the processing fee may not exceed the amount paid
649 by the prospective resident. Such refund must be paid within 60
650 days after giving ~~the~~ notice of intention to cancel. For a
651 resident who has occupied his or her unit and who has received a
652 transferable membership or ownership right in the facility, the
653 foregoing refund provisions do not apply but are deemed
654 satisfied by the acquisition or receipt of a transferable
655 membership or an ownership right in the facility. The provider
656 may not charge any fee for the transfer of membership or sale of
657 an ownership right.

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

665 (i) Describe the policies that ~~which~~ may lead to changes in
666 monthly recurring and nonrecurring charges or fees for goods and
667 services received. The contract must ~~shall~~ provide for advance

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668 notice to the resident, of at least ~~not less than~~ 60 days,
669 before any change in fees or charges or the scope of care or
670 services is ~~may be~~ effective, except for changes required by
671 state or federal assistance programs.

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

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

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

692 (3) The contract must ~~shall~~ include or ~~shall~~ be accompanied
693 by a statement, printed in boldfaced type, which reads: "This
694 facility and all other continuing care facilities in the State
695 of Florida are regulated by chapter 651, Florida Statutes. A
696 copy of the law is on file in this facility. The law gives you

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697 or your legal representative the right to inspect our most
698 recent financial statement and inspection report before signing
699 the contract.”

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

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

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

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

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726 (8)~~(7)~~ Those contracts entered into after ~~subsequent to~~
727 July 1, 1977, and before the issuance of a certificate of
728 authority to the provider are valid and binding upon both
729 parties in accordance with their terms. Within 90 days after
730 receipt of a letter from the office, the facility must submit
731 proof to the office of compliance with an approved residency
732 contract. All current contracts remain in force until resolved
733 by the office and the facility.

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

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

739 651.057 Continuing care at-home contracts.-

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

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

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

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

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

753 4. The process that will be followed to establish priority
754 if a resident wishes to exercise his or her right to move into

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755 the facility; and

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

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

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

767 (d) Include the operating activities for continuing care
768 at-home contracts in the total operation of the facility when
769 submitting financial reports to the office as required by s.
770 651.026.

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

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

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

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

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

783 4. A market feasibility study that meets the requirements

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784 of s. 651.022(3) and documents that there is sufficient interest
785 in continuing care at-home contracts to support such a program;
786 and

787 5. A feasibility study prepared by an independent certified
788 public accountant which includes an examination opinion for the
789 first 3 years operations and financial projections having a
790 compilation opinion for the next 3 years. In lieu of a
791 feasibility study, a provider may submit the actuarial study
792 referenced in subparagraph 3., along with a statement from the
793 actuary who prepared the actuarial study, dated within 12 months
794 after the date of filing for office approval, indicating that
795 there will be no material adverse change in the facility's
796 status as a result of offering in-home contracts. If a material
797 adverse change exists at the time of submission, sufficient
798 information acceptable to the office and the actuary which
799 remedies the adverse condition must be 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, including
809 contracts that are terminable by either party, may include
810 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

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

841 Section 12. Paragraph (h) of subsection (2) and subsection

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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, including
860 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 and
870 an explanation of the responsibilities of the resident.

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

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

899 (7) Failure to comply with, or violation of, any proper

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900 order or rule of the office or commission or violation of any
901 provision of this chapter.

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

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

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

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

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

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

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

927 (15) In the conduct of business under the license, engaging
928 in unfair methods of competition or in unfair or deceptive acts

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929 or practices prohibited under part IX of chapter 626.

930 (16) A pattern of bankrupt enterprises.

931

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

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

945 651.114 Delinquency proceedings; remedial rights.—

946 (8) (a) The rights of the office described in this section
947 are ~~shall be~~ subordinate to the rights of a trustee or lender
948 pursuant to the terms of a resolution, ordinance, loan
949 agreement, indenture of trust, mortgage, lease, security
950 agreement, or other instrument creating or securing bonds or
951 notes issued to finance a facility, and the office, subject to
952 the provisions of paragraph (c), may ~~shall~~ not exercise its
953 remedial rights provided under this section and ss. 651.018,
954 651.106, 651.108, and 651.116 with respect to a facility that is
955 subject to a lien, mortgage, lease, or other encumbrance or
956 trust indenture securing bonds or notes issued in connection
957 with the financing of the facility, if the trustee or lender, by

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958 inclusion or by amendment to the loan documents or by a separate
959 contract with the office, agrees that the rights of residents
960 under a continuing care or continuing care at-home contract will
961 be honored and will not be disturbed by a foreclosure or
962 conveyance in lieu thereof as long as the resident:

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

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

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

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

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

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

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

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

984 (c) Should the office determine, at any time during the
985 suspension of its remedial rights as provided in paragraph (a),
986 that the trustee or lender is not in compliance with ~~the~~

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987 ~~provisions of~~ paragraph (a), or that a lender or trustee has
988 assigned or has agreed to assign all or a portion of a
989 delinquent or defaulted loan to a third party without the
990 office's written consent, the office shall notify the trustee or
991 lender in writing of its determination, setting forth the
992 reasons giving rise to the determination and specifying those
993 remedial rights afforded to the office which the office shall
994 then reinstate.

995 (d) Upon acquisition of a facility by a trustee or lender
996 and evidence satisfactory to the office that the requirements of
997 paragraph (a) have been met, the office shall issue a 90-day
998 temporary certificate of authority granting the trustee or
999 lender the authority to engage in the business of providing
1000 continuing care or continuing care at-home and to issue
1001 continuing care or continuing care at-home contracts subject to
1002 the office's right to immediately suspend or revoke the
1003 temporary certificate of authority if the office determines that
1004 any of the grounds described in s. 651.106 apply to the trustee
1005 or lender or that the terms of the contract ~~agreement~~ used as
1006 the basis for the issuance of the temporary certificate of
1007 authority by the office have not been or are not being met by
1008 the trustee or lender since the date of acquisition.

1009 Section 15. Subsections (4), (7), (9), and (11) of section
1010 651.118, Florida Statutes, are amended to read:

1011 651.118 Agency for Health Care Administration; certificates
1012 of need; sheltered beds; community beds.—

1013 (4) Not including the residences of residents residing
1014 outside the facility pursuant to a continuing care at-home
1015 contract, the Agency for Health Care Administration shall

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1016 approve one sheltered nursing home bed for every four proposed
1017 residential units, including those that are licensed under part
1018 I of chapter 429, in the continuing care facility unless the
1019 provider demonstrates the need for a lesser number of sheltered
1020 nursing home beds based on proposed utilization by prospective
1021 residents or demonstrates the need for additional sheltered
1022 nursing home beds based on actual utilization and demand by
1023 current residents.

1024 (7) Notwithstanding ~~the provisions of~~ subsection (2), at
1025 the discretion of the ~~continuing care~~ provider, sheltered
1026 nursing home beds may be used for persons who are not residents
1027 of the continuing care facility and who are not parties to a
1028 continuing care contract for ~~a period of~~ up to 5 years after the
1029 date of issuance of the initial nursing home license. A provider
1030 whose 5-year period has expired or is expiring may request an
1031 extension from the Agency for Health Care Administration ~~for an~~
1032 ~~extension~~, not to exceed 30 percent of the total sheltered
1033 nursing home beds or 30 sheltered beds, whichever is greater, if
1034 the utilization by residents of the nursing home facility in the
1035 sheltered beds will not generate sufficient income to cover
1036 nursing home facility expenses, as evidenced by one of the
1037 following:

1038 (a) The nursing home facility has a net loss for the most
1039 recent fiscal year as determined under generally accepted
1040 accounting principles, excluding the effects of extraordinary or
1041 unusual items, as demonstrated in the most recently audited
1042 financial statement. ~~;~~ ~~or~~

1043 (b) The nursing home facility would have had a pro forma
1044 loss for the most recent fiscal year, excluding the effects of

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1045 extraordinary or unusual items, if revenues were reduced by the
1046 amount of revenues from persons in sheltered beds who were not
1047 residents, as reported ~~on~~ by a certified public accountant.

1048
1049 The agency may ~~shall be authorized to~~ grant an extension to the
1050 provider based on the evidence required in this subsection. The
1051 agency may request a continuing care facility to use up to 25
1052 percent of the patient days generated by new admissions of
1053 nonresidents during the extension period to serve Medicaid
1054 recipients for those beds authorized for extended use if there
1055 is a demonstrated need in the respective service area and if
1056 funds are available. A provider who obtains an extension is
1057 prohibited from applying for additional sheltered beds under ~~the~~
1058 ~~provision of~~ subsection (2), unless additional residential units
1059 are built or the provider can demonstrate need by continuing
1060 care facility residents to the agency ~~for Health Care~~
1061 ~~Administration~~. The 5-year limit does not apply to up to five
1062 sheltered beds designated for inpatient hospice care as part of
1063 a contractual arrangement with a hospice licensed under part IV
1064 of chapter 400. A continuing care facility that uses such beds
1065 after the 5-year period shall report such use to the agency ~~for~~
1066 ~~Health Care Administration~~. For purposes of this subsection,
1067 "resident" means a person who, upon admission to the continuing
1068 care facility, initially resides in a part of the continuing
1069 care facility not licensed under part II of chapter 400, or who
1070 contracts for continuing care at-home.

1071 (9) This section does not preclude a ~~continuing care~~
1072 provider from applying to the Agency for Health Care
1073 Administration for a certificate of need for community nursing

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1074 home beds or a combination of community and sheltered nursing
 1075 home beds. Any nursing home bed located in a continuing care
 1076 facility which ~~that~~ is or has been issued for nonrestrictive use
 1077 retains ~~shall retain~~ its legal status as a community nursing
 1078 home bed unless the provider requests a change in status. Any
 1079 nursing home bed located in a continuing care facility and not
 1080 issued as a sheltered nursing home bed before ~~prior to~~ 1979 must
 1081 be classified as a community bed. The agency ~~for Health Care~~
 1082 ~~Administration~~ may require continuing care facilities to submit
 1083 bed utilization reports for the purpose of determining community
 1084 and sheltered nursing home bed inventories based on historical
 1085 utilization by residents and nonresidents.

1086 (11) For a provider issued a provisional certificate of
 1087 authority after July 1, 1986, to operate a facility not
 1088 previously regulated under this chapter, the following criteria
 1089 must ~~shall~~ be met in order to obtain a certificate of need for
 1090 sheltered beds pursuant to subsections (2), (3), (4), (5), (6),
 1091 and (7):

1092 (a) Seventy percent or more of the current residents hold
 1093 continuing care or continuing care at-home contracts ~~agreements~~
 1094 ~~pursuant to s. 651.011(2)~~ or, if the facility is not occupied,
 1095 70 percent or more of the prospective residents will hold such
 1096 contracts ~~continuing care agreements pursuant to s. 651.011(2)~~
 1097 as projected in the feasibility study and demonstrated by the
 1098 provider's marketing practices; and

1099 (b) The continuing care or continuing care at-home
 1100 contracts ~~agreements~~ entered into or to be entered into by 70
 1101 percent or more of the current residents or prospective
 1102 residents must ~~pursuant to s. 651.011(2)~~ ~~shall~~ provide nursing

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

1109 Section 16. Subsection (1) of section 651.121, Florida
1110 Statutes, is amended to read:

1111 651.121 Continuing Care Advisory Council.—

1112 (1) The Continuing Care Advisory Council to the office is
1113 created consisting ~~to consist~~ of 10 members who are residents of
1114 this state appointed by the Governor and geographically
1115 representative of this state. Three members shall be
1116 administrators of facilities that hold valid certificates of
1117 authority under this chapter and shall have been actively
1118 engaged in the offering of continuing care contracts ~~agreements~~
1119 in this state for 5 years before appointment. The remaining
1120 members include:

1121 (a) A representative of the business community whose
1122 expertise is in the area of management.

1123 (b) A representative of the financial community who is not
1124 a facility owner or administrator.

1125 (c) A certified public accountant.

1126 (d) An attorney.

1127 (e) Three residents who hold continuing care or continuing
1128 care at-home contracts ~~agreements~~ with a facility certified in
1129 this state.

1130 Section 17. Subsection (1) of section 651.125, Florida
1131 Statutes, is amended to read:

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1132 651.125 Criminal penalties; injunctive relief.—

1133 (1) Any person who maintains, enters into, or, as manager
1134 or officer or in any other administrative capacity, assists in
1135 entering into, maintaining, or performing any continuing care or
1136 continuing care at-home contract ~~agreement~~ subject to this
1137 chapter without doing so in pursuance of a valid certificate of
1138 authority or renewal thereof, as contemplated by or provided in
1139 this chapter, or who otherwise violates any provision of this
1140 chapter or rule adopted in pursuance of this chapter, is guilty
1141 of a felony of the third degree, punishable as provided in s.
1142 775.082 or s. 775.083. Each violation of this chapter
1143 constitutes a separate offense.

1144 Section 18. This act shall take effect July 1, 2011.