

By the Committee on Children, Families, and Elder Affairs; and
Senator Bogdanoff

586-04432-11

20111340c1

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 Insurance Regulation; requiring written
15 approval from the Office of Insurance 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 to 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

586-04432-11

20111340c1

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

586-04432-11

20111340c1

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 shelter and nursing care or personal
63 services to a resident who resides in a facility ~~as defined in~~
64 ~~s. 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 contract
76 other than a contract described in subsection (2), furnishing to
77 a resident who resides outside the facility the right to future
78 access to shelter and nursing care or personal services, whether
79 such services are provided in the facility or in another setting
80 designated in the contract, by an individual not related by
81 consanguinity or affinity to the resident, upon payment of an
82 entrance fee.

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

586-04432-11

20111340c1

88 are considered to be an entrance fee.

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

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

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

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

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

112 (11) "Personal services" has the same meaning as in s.
113 429.02.

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

586-04432-11

20111340c1

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

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

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

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

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

586-04432-11

20111340c1

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

586-04432-11

20111340c1

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

586-04432-11

20111340c1

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) ~~(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

586-04432-11

20111340c1

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

586-04432-11

20111340c1

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

586-04432-11

20111340c1

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

586-04432-11

20111340c1

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

586-04432-11

20111340c1

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) ~~(k)~~ 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), no certificate of
374 authority shall be issued until the project has a minimum of 50
375 percent of the units reserved for which the provider is charging
376 an entrance fee, and proof ~~thereof~~ is provided to the office. If
377 a provider offering continuing care at-home is applying for a

586-04432-11

20111340c1

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

586-04432-11

20111340c1

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.

586-04432-11

20111340c1

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

586-04432-11

20111340c1

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

586-04432-11

20111340c1

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)~~(4)~~. However, if the
512 resident rescinds the contract within the 7-day period, the
513 escrow agent shall release the escrowed fees to the resident.

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

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

520 651.035 Minimum liquid reserve requirements.—

521 (2) (a) In facilities where not all residents are under
522 continuing care or continuing care at-home contracts, the

586-04432-11

20111340c1

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

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

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

586-04432-11

20111340c1

552 contained in subsection (1) if the office finds that such waiver
553 is not inconsistent with the security protections intended by
554 this chapter.

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

557 651.055 Continuing care contracts; right to rescind.—

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

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

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

586-04432-11

20111340c1

581 burial, and incidentals.

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

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

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

609 (f) State the fees that will be charged if the resident

586-04432-11

20111340c1

610 marries while at the designated facility, the terms concerning
611 the entry of a spouse to the facility, and the consequences if
612 the spouse does not meet the requirements for entry.

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

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

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

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

586-04432-11

20111340c1

639 discontinued marketing continuing care contracts, within 200
640 days after the date of notice.

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

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

667 (i) Describe the policies that ~~which~~ may lead to changes in

586-04432-11

20111340c1

668 monthly recurring and nonrecurring charges or fees for goods and
669 services received. The contract must ~~shall~~ provide for advance
670 notice to the resident, of at least ~~not less than~~ 60 days,
671 before any change in fees or charges or the scope of care or
672 services is ~~may be~~ effective, except for changes required by
673 state or federal assistance programs.

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

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

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

694 (3) The contract must ~~shall~~ include or ~~shall~~ be accompanied
695 by a statement, printed in boldfaced type, which reads: "This
696 facility and all other continuing care facilities in the State

586-04432-11

20111340c1

697 of Florida are regulated by chapter 651, Florida Statutes. A
698 copy of the law is on file in this facility. The law gives you
699 or your legal representative the right to inspect our most
700 recent financial statement and inspection report before signing
701 the contract.”

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

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

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

725 (7) Contracts to provide continuing care, including

586-04432-11

20111340c1

726 contracts that are terminable by either party, may include
727 agreements to provide care for any duration.

728 (8) ~~(7)~~ Those contracts entered into after ~~subsequent to~~
729 July 1, 1977, and before the issuance of a certificate of
730 authority to the provider are valid and binding upon both
731 parties in accordance with their terms. Within 30 days after
732 receipt of a letter from the office notifying the provider of a
733 noncompliant residency contract, the provider shall file a new
734 residency contract for approval which complies with Florida law.
735 Pending review and approval of the new residency contract, the
736 provider may continue to use the previously approved contract.

737 (9) ~~(8)~~ The provisions of this section shall control over
738 any conflicting provisions contained in part II of chapter 400
739 or in part I of chapter 429.

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

742 651.057 Continuing care at-home contracts.-

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

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

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

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

754 3. The mechanism for monitoring residents who live outside

586-04432-11

20111340c1

755 the facility;

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

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

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

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

770 (d) Include the operating activities for continuing care
771 at-home contracts in the total operation of the facility when
772 submitting financial reports to the office as required by s.
773 651.026.

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

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

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

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

782 3. An actuarial study prepared by an independent actuary in
783 accordance with the standards adopted by the American Academy of

586-04432-11

20111340c1

784 Actuaries which presents the impact of providing continuing care
785 at-home on the overall operation of the facility;

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

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

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

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

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

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

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

812 1. One and one-half times the combined number of

586-04432-11

20111340c1

813 independent living units (ILU), assisted living units (ALF) that
814 are licensed under part I of chapter 429, and nursing home units
815 licensed under part II of chapter 400 at the facility; or

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

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

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

828 651.071 Contracts as preferred claims on liquidation or
829 receivership.—

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

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

839 651.091 Availability, distribution, and posting of reports
840 and records; requirement of full disclosure.—

841 (2) Every continuing care facility shall:

586-04432-11

20111340c1

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

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

852 (a) The contract to furnish continuing care or continuing
853 care at-home.

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

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

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

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

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

870 (g) The amount and location of any reserve funds required

586-04432-11

20111340c1

871 by this chapter, and the name of the person or entity having a
872 claim to such funds in the event of a bankruptcy, foreclosure,
873 or rehabilitation proceeding.

874 (h) A copy of s. 651.071.

875 (i) A copy of the resident's rights as described in s.
876 651.083.

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

879 651.106 Grounds for discretionary refusal, suspension, or
880 revocation of certificate of authority.—The office, ~~in its~~
881 ~~discretion,~~ may deny, suspend, or revoke the provisional
882 certificate of authority or the certificate of authority of any
883 applicant or provider if it finds that any one or more of the
884 following grounds applicable to the applicant or provider exist:

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

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

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

891 (4) Demonstrated lack of fitness or trustworthiness.

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

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

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

898 (8) The insolvent condition of the provider or the
899 provider's being in such condition or using such methods and

586-04432-11

20111340c1

900 practices in the conduct of its business as to render its
901 further transactions in this state hazardous or injurious to the
902 public.

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

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

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

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

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

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

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

926 (16) A pattern of bankrupt enterprises.

927
928 Revocation of a certificate of authority under this section does

586-04432-11

20111340c1

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

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

941 651.114 Delinquency proceedings; remedial rights.—

942 (8) (a) The rights of the office described in this section
943 are shall be subordinate to the rights of a trustee or lender
944 pursuant to the terms of a resolution, ordinance, loan
945 agreement, indenture of trust, mortgage, lease, security
946 agreement, or other instrument creating or securing bonds or
947 notes issued to finance a facility, and the office, subject to
948 the provisions of paragraph (c), shall not exercise its remedial
949 rights provided under this section and ss. 651.018, 651.106,
950 651.108, and 651.116 with respect to a facility that is subject
951 to a lien, mortgage, lease, or other encumbrance or trust
952 indenture securing bonds or notes issued in connection with the
953 financing of the facility, if the trustee or lender, by
954 inclusion or by amendment to the loan documents or by a separate
955 contract with the office, agrees that the rights of residents
956 under a continuing care or continuing care at-home contract will
957 be honored and will not be disturbed by a foreclosure or

586-04432-11

20111340c1

958 conveyance in lieu thereof as long as the resident:

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

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

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

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

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

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

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

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

980 (c) Should the office determine, at any time during the
981 suspension of its remedial rights as provided in paragraph (a),
982 that the trustee or lender is not in compliance with ~~the~~
983 ~~provisions of~~ paragraph (a), or that a lender or trustee has
984 assigned or has agreed to assign all or a portion of a
985 delinquent or defaulted loan to a third party without the
986 office's written consent, the office shall notify the trustee or

586-04432-11

20111340c1

987 lender in writing of its determination, setting forth the
988 reasons giving rise to the determination and specifying those
989 remedial rights afforded to the office which the office shall
990 then reinstate.

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

1005 Section 15. Subsections (4), (7), (9), and (11) of section
1006 651.118, Florida Statutes, are amended to read:

1007 651.118 Agency for Health Care Administration; certificates
1008 of need; sheltered beds; community beds.—

1009 (4) Not including the residences of residents residing
1010 outside the facility pursuant to a continuing care at-home
1011 contract, the Agency for Health Care Administration shall
1012 approve one sheltered nursing home bed for every four proposed
1013 residential units, including those that are licensed under part
1014 I of chapter 429, in the continuing care facility unless the
1015 provider demonstrates the need for a lesser number of sheltered

586-04432-11

20111340c1

1016 nursing home beds based on proposed utilization by prospective
1017 residents or demonstrates the need for additional sheltered
1018 nursing home beds based on actual utilization and demand by
1019 current residents.

1020 (7) Notwithstanding ~~the provisions of~~ subsection (2), at
1021 the discretion of the ~~continuing care~~ provider, sheltered
1022 nursing home beds may be used for persons who are not residents
1023 of the continuing care facility and who are not parties to a
1024 continuing care contract for ~~a period of~~ up to 5 years after the
1025 date of issuance of the initial nursing home license. A provider
1026 whose 5-year period has expired or is expiring may request an
1027 extension from the Agency for Health Care Administration ~~for an~~
1028 ~~extension~~, not to exceed 30 percent of the total sheltered
1029 nursing home beds or 30 sheltered beds, whichever is greater, if
1030 the utilization by residents of the nursing home facility in the
1031 sheltered beds will not generate sufficient income to cover
1032 nursing home facility expenses, as evidenced by one of the
1033 following:

1034 (a) The nursing home facility has a net loss for the most
1035 recent fiscal year as determined under generally accepted
1036 accounting principles, excluding the effects of extraordinary or
1037 unusual items, as demonstrated in the most recently audited
1038 financial statement. ~~;~~ ~~or~~

1039 (b) The nursing home facility would have had a pro forma
1040 loss for the most recent fiscal year, excluding the effects of
1041 extraordinary or unusual items, if revenues were reduced by the
1042 amount of revenues from persons in sheltered beds who were not
1043 residents, as reported ~~on~~ by a certified public accountant.

1044

586-04432-11

20111340c1

1045 The Agency for Health Care Administration may ~~shall be~~
1046 ~~authorized to~~ grant an extension to the provider based on the
1047 evidence required in this subsection. The Agency for Health Care
1048 Administration may request a continuing care facility to use up
1049 to 25 percent of the patient days generated by new admissions of
1050 nonresidents during the extension period to serve Medicaid
1051 recipients for those beds authorized for extended use if there
1052 is a demonstrated need in the respective service area and if
1053 funds are available. A provider who obtains an extension is
1054 prohibited from applying for additional sheltered beds under ~~the~~
1055 ~~provision of~~ subsection (2), unless additional residential units
1056 are built or the provider can demonstrate need by continuing
1057 care facility residents to the Agency for Health Care
1058 Administration. The 5-year limit does not apply to up to five
1059 sheltered beds designated for inpatient hospice care as part of
1060 a contractual arrangement with a hospice licensed under part IV
1061 of chapter 400. A continuing care facility that uses such beds
1062 after the 5-year period shall report such use to the Agency for
1063 Health Care Administration. For purposes of this subsection,
1064 "resident" means a person who, upon admission to the continuing
1065 care facility, initially resides in a part of the continuing
1066 care facility not licensed under part II of chapter 400, or who
1067 contracts for continuing care at-home.

1068 (9) This section does not preclude a ~~continuing care~~
1069 provider from applying to the Agency for Health Care
1070 Administration for a certificate of need for community nursing
1071 home beds or a combination of community and sheltered nursing
1072 home beds. Any nursing home bed located in a continuing care
1073 facility which ~~that~~ is or has been issued for nonrestrictive use

586-04432-11

20111340c1

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

1083 (11) For a provider issued a provisional certificate of
1084 authority after July 1, 1986, to operate a facility not
1085 previously regulated under this chapter, the following criteria
1086 must ~~shall~~ be met in order to obtain a certificate of need for
1087 sheltered beds pursuant to subsections (2), (3), (4), (5), (6),
1088 and (7):

1089 (a) Seventy percent or more of the current residents hold
1090 continuing care or continuing care at-home contracts ~~agreements~~
1091 ~~pursuant to s. 651.011(2)~~ or, if the facility is not occupied,
1092 70 percent or more of the prospective residents will hold such
1093 contracts ~~continuing care agreements pursuant to s. 651.011(2)~~
1094 as projected in the feasibility study and demonstrated by the
1095 provider's marketing practices; and

1096 (b) The continuing care or continuing care at-home
1097 contracts ~~agreements~~ entered into or to be entered into by 70
1098 percent or more of the current residents or prospective
1099 residents must ~~pursuant to s. 651.011(2)~~ ~~shall~~ provide nursing
1100 home care for a minimum of 360 cumulative days, and such
1101 residents ~~the holders of the continuing care agreements~~ shall be
1102 charged at rates that ~~which~~ are 80 percent or less than the

586-04432-11

20111340c1

1103 rates charged by the provider to persons receiving nursing home
1104 care who have not entered into such contracts ~~continuing care~~
1105 ~~agreements pursuant to s. 651.011(2)~~.

1106 Section 16. Subsection (1) of section 651.121, Florida
1107 Statutes, is amended to read:

1108 651.121 Continuing Care Advisory Council.—

1109 (1) The Continuing Care Advisory Council to the office is
1110 created consisting ~~to consist~~ of 10 members who are residents of
1111 this state appointed by the Governor and geographically
1112 representative of this state. Three members shall be
1113 administrators of facilities that hold valid certificates of
1114 authority under this chapter and shall have been actively
1115 engaged in the offering of continuing care contracts ~~agreements~~
1116 in this state for 5 years before appointment. The remaining
1117 members include:

1118 (a) A representative of the business community whose
1119 expertise is in the area of management.

1120 (b) A representative of the financial community who is not
1121 a facility owner or administrator.

1122 (c) A certified public accountant.

1123 (d) An attorney.

1124 (e) Three residents who hold continuing care or continuing
1125 care at-home contracts ~~agreements~~ with a facility certified in
1126 this state.

1127 Section 17. Subsection (1) of section 651.125, Florida
1128 Statutes, is amended to read:

1129 651.125 Criminal penalties; injunctive relief.—

1130 (1) Any person who maintains, enters into, or, as manager
1131 or officer or in any other administrative capacity, assists in

586-04432-11

20111340c1

1132 entering into, maintaining, or performing any continuing care or
1133 continuing care at-home contract agreement ~~agreement~~ subject to this
1134 chapter without doing so in pursuance of a valid certificate of
1135 authority or renewal thereof, as contemplated by or provided in
1136 this chapter, or who otherwise violates any provision of this
1137 chapter or rule adopted in pursuance of this chapter, is guilty
1138 of a felony of the third degree, punishable as provided in s.
1139 775.082 or s. 775.083. Each violation of this chapter
1140 constitutes a separate offense.

1141 Section 18. This act shall take effect July 1, 2011.