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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/10/2015	.	
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The Committee on Banking and Insurance (Richter) recommended the following:

**Senate Amendment**

Delete lines 66 - 272  
and insert:  
provide that such refund will be paid from one of the following  
sources of proceeds:

a. The proceeds of the next entrance fees received by the  
provider for units for which there are no prior claims by any  
resident until paid in full;

b. The proceeds of the next entrance fee received by the



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11 provider for a like or similar unit as specified in the  
12 residency or reservation contract signed by the resident for  
13 which there are no prior claims by any resident until paid in  
14 full; or

15 c. The proceeds of the next entrance fee received by the  
16 provider for the unit that is vacated if the contract is  
17 approved by the office before October 1, 2015. A provider may  
18 not use this refund option after October 1, 2016, and must  
19 submit a new or amended contract with an alternative refund  
20 provision to the office for approval by August 2, 2016, if the  
21 provider has discontinued marketing continuing care contracts,  
22 within 200 days after the date of notice.

23 3. For contracts entered into on or after January 1, 2016,  
24 that provide for a refund in accordance with sub-subparagraph  
25 2.b., the following provisions apply:

26 a. Any refund that is due upon the resident's death or  
27 relocation of the resident to another level of care that results  
28 in the termination of the contract must be paid by the earlier  
29 of:

30 (I) Thirty days after receipt by the provider of the next  
31 entrance fee received for a like or similar unit for which there  
32 is no prior claim by any resident until paid in full; or

33 (II) Within a specified maximum number of months or years,  
34 determined by the provider and specified in the contract, after  
35 the contract is terminated and the unit is vacated.

36 b. Any refund that is due to a resident who vacates the  
37 unit and voluntarily terminates a contract after the 7-day  
38 rescission period required in subsection (2) must be paid within  
39 30 days after receipt by the provider of the next entrance fee



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40 for a like or similar unit for which there are no prior claims  
41 by any resident until paid in full and is not subject to the  
42 provisions in sub-subparagraph a. A contract is voluntarily  
43 terminated when a resident provides written notice of intent to  
44 leave and moves out of the continuing care facility after the 7-  
45 day rescission period.

46 4. For purposes of this paragraph, the term "like or  
47 similar unit" means a residential dwelling categorized into a  
48 group of units which have similar characteristics, such as  
49 comparable square footage, number of bedrooms, location, age of  
50 construction, or a combination of one or more of these features  
51 as specified in the residency or reservation contract. Each  
52 category must consist of at least 5 percent of the total number  
53 of residential units designated for independent living or 10  
54 residential units designated for independent living, whichever  
55 is less. However, a group of units consisting of single family  
56 homes may contain fewer than 10 units.

57 5. If the provider has discontinued marketing continuing  
58 care contracts, any refund due a resident must be paid within  
59 200 days after the contract is terminated and the unit is  
60 vacated.

61 6.4. Unless subsection (5) applies, for any prospective  
62 resident, regardless of whether or not such a resident receives  
63 a transferable membership or ownership right in the facility,  
64 who cancels the contract before occupancy of the unit, the  
65 entire amount paid toward the entrance fee shall be refunded,  
66 less a processing fee of up to 5 percent of the entire entrance  
67 fee; however, the processing fee may not exceed the amount paid  
68 by the prospective resident. Such refund must be paid within 60



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69 days after the resident gives ~~giving~~ notice of intention to  
70 cancel. For a resident who has occupied his or her unit and who  
71 has received a transferable membership or ownership right in the  
72 facility, the foregoing refund provisions do not apply but are  
73 deemed satisfied by the acquisition or receipt of a transferable  
74 membership or an ownership right in the facility. The provider  
75 may not charge any fee for the transfer of membership or sale of  
76 an ownership right.

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

84 (j) ~~(i)~~ Describe the policies that may lead to changes in  
85 monthly recurring and nonrecurring charges or fees for goods and  
86 services received. The contract must provide for advance notice  
87 to the resident, of at least 60 days, before any change in fees  
88 or charges or the scope of care or services is effective, except  
89 for changes required by state or federal assistance programs.

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

94 (l) ~~(k)~~ Specify whether the facility is, or is affiliated  
95 with, a religious, nonprofit, or proprietary organization or  
96 management entity; the extent to which the affiliate  
97 organization will be responsible for the financial and



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98 contractual obligations of the provider; and the provisions of  
99 the federal Internal Revenue Code, if any, under which the  
100 provider or affiliate is exempt from the payment of federal  
101 income tax.

102 Section 2. Section 651.028, Florida Statutes, is amended to  
103 read:

104 651.028 Accredited facilities.—If a provider is accredited  
105 without stipulations or conditions by a process found by the  
106 office to be acceptable and substantially equivalent to the  
107 provisions of this chapter, the office may, pursuant to rule of  
108 the commission, waive any requirements of this chapter with  
109 respect to the provider if the office finds that such waivers  
110 are not inconsistent with the security protections intended by  
111 this chapter.

112 Section 3. Subsection (1) of section 651.071, Florida  
113 Statutes, is amended to read:

114 651.071 Contracts as preferred claims on liquidation or  
115 receivership.—

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

122 Section 4. Subsections (4) and (5) of section 651.105,  
123 Florida Statutes, are amended, and subsection (6) is added to  
124 that section, to read:

125 651.105 Examination and inspections.—

126 (4) The office shall notify the provider and the executive



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127 officer of the governing body of the provider in writing of all  
128 deficiencies in its compliance with the provisions of this  
129 chapter and the rules adopted pursuant to this chapter and shall  
130 set a reasonable length of time for compliance by the provider.  
131 In addition, the office shall require corrective action or  
132 request a corrective action plan from the provider which plan  
133 demonstrates a good faith attempt to remedy the deficiencies by  
134 a specified date. If the provider fails to comply within the  
135 established length of time, the office may initiate action  
136 against the provider in accordance with the provisions of this  
137 chapter.

138 (5) At the time of the routine examination, the office  
139 shall determine if all disclosures required under this chapter  
140 have been made to the president or chair of the residents'  
141 council and the executive officer of the governing body of the  
142 provider.

143 (6) A representative of the provider must give a copy of  
144 the final examination report and corrective action plan, if one  
145 is required by the office, to the executive officer of the  
146 governing body of the provider within 60 days after issuance of  
147 the report.

148 Section 5. Section 651.081, Florida Statutes, is amended to  
149 read:

150 651.081 Residents' council.-

151 (1) Residents living in a facility holding a valid  
152 certificate of authority under this chapter have the right of  
153 self-organization, the right to be represented by an individual  
154 of their own choosing, and the right to engage in concerted  
155 activities for the purpose of keeping informed on the operation



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156 of the facility that is caring for them or for the purpose of  
157 other mutual aid or protection.

158 (2)(a) Each facility shall establish a residents' council  
159 created for the purpose of representing residents on matters set  
160 forth in s. 651.085. The residents' council shall ~~may~~ be  
161 established through an election in which the residents, as  
162 defined in s. 651.011, vote by ballot, physically or by proxy.  
163 If the election is to be held during a meeting, a notice of the  
164 organizational meeting must be provided to all residents of the  
165 community at least 10 business days before the meeting. Notice  
166 may be given through internal mailboxes, communitywide  
167 newsletters, bulletin boards, in-house television stations, and  
168 other similar means of communication. An election creating a  
169 residents' council is valid if at least 40 percent of the total  
170 resident population participates in the election and a majority  
171 of the participants vote affirmatively for the council. The  
172 initial residents' council created under this section is valid  
173 for at least 12 months. A residents' organization formalized by  
174 bylaws and elected officials must be recognized as the  
175 residents' council under this section and s. 651.085. Within 30  
176 days after the election of a newly elected president or chair of  
177 the residents' council, the provider shall give the president or  
178 chair a copy of this chapter and rules adopted thereunder, or  
179 direct him or her to the appropriate public website to obtain  
180 this information. Only one residents' council may represent  
181 residents before the governing body of the provider as described  
182 in s. 651.085(2).

183 (b) In addition to those matters provided in s. 651.085, a  
184 residents' council shall provide a forum in which a resident may



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185 submit issues or make inquiries related to, but not limited to,  
186 subjects that impact the general residential quality of life and  
187 cultural environment. The residents' council shall serve as a  
188 formal liaison to provide input related to such matters to the  
189 appropriate representative of the provider.

190 (c) The activities of a residents' council are independent  
191 of the provider. The provider is not responsible for ensuring,  
192 or for the associated costs of, compliance of the residents'  
193 council with the provisions of this section with respect to the  
194 operation of a residents' council.

195 (d) A residents' council shall adopt its own bylaws and  
196 governance documents. The residents' council shall provide for  
197 open meetings when appropriate. The governing documents shall  
198 define the manner in which residents may submit an issue to the  
199 council and define a reasonable timeframe in which the  
200 residents' council shall respond to a resident submission or  
201 inquiry. A residents' council may include term limits in its  
202 governing documents to ensure consistent integration of new  
203 leaders. If a licensed facility files for bankruptcy under  
204 chapter 11 of the United States Bankruptcy Code, 11 U.S.C.  
205 chapter 11, the facility, in its required filing of the 20  
206 largest unsecured creditors with the United States Trustee,  
207 shall include the name and contact information of a designated  
208 resident selected by the residents' council and a statement  
209 explaining that the designated resident was chosen by the  
210 residents' council to serve as a representative of the  
211 residents' interest on the creditors' committee.