

By Senator Altman

16-00687-15

20151126__

1 A bill to be entitled
2 An act relating to continuing care communities;
3 amending s. 651.055, F.S.; revising requirements for
4 continuing care contracts; amending s. 651.028, F.S.;
5 revising authority of the Office of Insurance
6 Regulation to waive requirements for accredited
7 facilities; amending s. 651.071, F.S.; providing that
8 continuing care and continuing care at-home contracts
9 are preferred claims in the event of bankruptcy
10 proceedings against a provider; revising subordination
11 of claims; amending s. 651.105, F.S.; revising notice
12 requirements; revising duties of the office; requiring
13 an agent of a provider to provide a copy of an
14 examination report and corrective action plan under
15 certain conditions; amending s. 651.081, F.S.;
16 requiring a residents' council to provide a forum for
17 certain purposes; requiring a residents' council to
18 adopt its own bylaws and governance documents;
19 amending s. 651.085, F.S.; revising provisions
20 relating to quarterly meetings between residents and
21 the governing body of the provider; revising powers of
22 the residents' council; amending s. 651.091, F.S.;
23 revising continuing care facility reporting
24 requirements; providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:
27

28 Section 1. Paragraphs (g) through (k) of subsection (1) of
29 section 651.055, Florida Statutes, are amended to read:

16-00687-15

20151126__

30 651.055 Continuing care contracts; right to rescind.-

31 (1) Each continuing care contract and each addendum to such
32 contract shall be submitted to and approved by the office before
33 its use in this state. Thereafter, no other form of contract
34 shall be used by the provider until it has been submitted to and
35 approved by the office. Each contract must:

36 (g) Provide that the contract may be canceled by giving at
37 least 30 days' written notice of cancellation by the provider,
38 the resident, or the person who provided the transfer of
39 property or funds for the care of such resident. However, if a
40 contract is canceled because there has been a good faith
41 determination that a resident is a danger to himself or herself
42 or others, only such notice as is reasonable under the
43 circumstances is required.

44 (h)1. ~~Describe~~ ~~The contract must also provide~~ in clear and
45 understandable language, in print no smaller than the largest
46 type used in the body of the contract, the terms governing the
47 refund of any portion of the entrance fee.

48 1.2. ~~For a resident whose contract with the facility~~
49 ~~provides that the resident does not receive a transferable~~
50 ~~membership or ownership right in the facility, and who has~~
51 ~~occupied his or her unit, the refund shall be calculated on a~~
52 ~~pro rata basis with the facility retaining up to 2 percent per~~
53 ~~month of occupancy by the resident and up to a 5 percent~~
54 ~~processing fee. Such refund must be paid within 120 days after~~
55 ~~giving the notice of intention to cancel. For contracts entered~~
56 ~~into on or after January 1, 2016, refunds must be made within 90~~
57 ~~days after the contract is terminated and the unit is vacated. A~~
58 ~~resident who enters into a contract before January 1, 2016, may~~

16-00687-15

20151126__

59 voluntarily sign a contract addendum approved by the office that
60 provides for a revised refund requirement.

61 2.3. In addition to a processing fee not to exceed 5
62 percent, if the contract provides for the facility to retain no
63 more than ~~up to~~ 1 percent per month of occupancy by the resident
64 and the resident does not receive a transferable membership or
65 ownership right in the facility, the contract shall, ~~it may~~
66 provide that such refund will be paid from:

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

70 b. The proceeds of the next entrance fee received by the
71 provider for a like or similar unit as specified in the
72 residency or reservation contract signed by the resident for
73 which there are no prior claims by any resident until paid in
74 full; or

75 c. Effective October 1, 2016, the proceeds of the next
76 entrance fee received by the provider for the unit that is
77 vacated if the contract is approved by the office before October
78 1, 2015. In order to use the refund option in this sub-
79 subparagraph, the provider must submit a new or amended contract
80 with an alternative refund provision to the office for approval
81 by August 2, 2016, ~~if the provider has discontinued marketing~~
82 ~~continuing care contracts, within 200 days after the date of~~
83 notice.

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

87 a. Any refund that is due upon the resident's death or

16-00687-15

20151126__

88 relocation of the resident to another level of care that results
89 in the termination of the contract must be paid by the earlier
90 of:

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

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

97 b. Any refund that is due to a resident who vacates the
98 unit and voluntarily terminates a contract after the 7-day
99 rescission period required in subsection (2) must be paid within
100 30 days after receipt by the provider of the next entrance fee
101 for a like or similar unit for which there are no prior claims
102 by any resident until paid in full and is not subject to the
103 provisions in sub-subparagraph a. A contract is voluntarily
104 terminated when a resident provides written notice of intent to
105 leave and moves out of the continuing care facility after the 7-
106 day rescission period.

107 4. For purposes of this paragraph, the term "like or
108 similar unit" means a residential dwelling categorized into a
109 group of units which have similar characteristics, including
110 comparable square footage, number of bedrooms, location, age of
111 construction, or a combination of one or more of these features
112 as specified in the residency or reservation contract. Each
113 category must consist of at least 5 percent of the total number
114 of residential units designed for independent living or 10
115 residential units designated for independent living, whichever
116 is less. However, a group of units consisting of single family

16-00687-15

20151126__

117 homes may contain fewer than 10 units.

118 5. If the provider has discontinued marketing continuing
119 care contracts, any refund due a resident must be paid within
120 200 days after the contract is terminated and the unit is
121 vacated.

122 6.4. Unless subsection (5) applies, for any prospective
123 resident, regardless of whether or not such a resident receives
124 a transferable membership or ownership right in the facility,
125 who cancels the contract before occupancy of the unit, the
126 entire amount paid toward the entrance fee shall be refunded,
127 less a processing fee of up to 5 percent of the entire entrance
128 fee; however, the processing fee may not exceed the amount paid
129 by the prospective resident. Such refund must be paid within 60
130 days after the resident gives ~~giving~~ notice of intention to
131 cancel. For a resident who has occupied his or her unit and who
132 has received a transferable membership or ownership right in the
133 facility, the foregoing refund provisions do not apply but are
134 deemed satisfied by the acquisition or receipt of a transferable
135 membership or an ownership right in the facility. The provider
136 may not charge any fee for the transfer of membership or sale of
137 an ownership right.

138 (i) ~~(h)~~ State the terms under which a contract is canceled
139 by the death of the resident. These terms may contain a
140 provision that, upon the death of a resident, the entrance fee
141 of such resident is considered earned and becomes the property
142 of the provider. If the unit is shared, the conditions with
143 respect to the effect of the death or removal of one of the
144 residents must be included in the contract.

145 (j) ~~(i)~~ Describe the policies that may lead to changes in

16-00687-15

20151126__

146 monthly recurring and nonrecurring charges or fees for goods and
147 services received. The contract must provide for advance notice
148 to the resident, of at least 60 days, before any change in fees
149 or charges or the scope of care or services is effective, except
150 for changes required by state or federal assistance programs.

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

155 (l)~~(k)~~ Specify whether the facility is, or is affiliated
156 with, a religious, nonprofit, or proprietary organization or
157 management entity; the extent to which the affiliate
158 organization will be responsible for the financial and
159 contractual obligations of the provider; and the provisions of
160 the federal Internal Revenue Code, if any, under which the
161 provider or affiliate is exempt from the payment of federal
162 income tax.

163 Section 2. Section 651.028, Florida Statutes, is amended to
164 read:

165 651.028 Accredited facilities.—If a provider is accredited
166 without stipulations or conditions by a process found by the
167 office to be acceptable and substantially equivalent to the
168 provisions of this chapter, the office may, pursuant to rule of
169 the commission, waive any requirements of this chapter with
170 respect to the provider if the office finds that such waivers
171 are not inconsistent with the security protections intended by
172 this chapter.

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

16-00687-15

20151126__

175 651.071 Contracts as preferred claims on liquidation or
176 receivership.-

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

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

186 651.105 Examination and inspections.-

187 (4) The office shall notify the provider and the executive
188 officer of the governing body of the provider in writing of all
189 deficiencies in its compliance with the provisions of this
190 chapter and the rules adopted pursuant to this chapter and shall
191 set a reasonable length of time for compliance by the provider.
192 In addition, the office shall require corrective action or
193 request a corrective action plan from the provider which plan
194 demonstrates a good faith attempt to remedy the deficiencies by
195 a specified date. If the provider fails to comply within the
196 established length of time, the office may initiate action
197 against the provider in accordance with the provisions of this
198 chapter.

199 (5) At the time of the routine examination, the office
200 shall determine if all disclosures required under this chapter
201 have been made to the president or chair of the residents'
202 council and the executive officer of the governing body of the
203 provider.

16-00687-15

20151126__

204 (6) A representative of the provider must give a copy of
205 the final examination report and corrective action plan, if one
206 is required by the office, to the lead officer of the governing
207 body of the provider within 60 days after issuance of the
208 report.

209 Section 5. Section 651.081, Florida Statutes, is amended to
210 read:

211 651.081 Residents' council.—

212 (1) Residents living in a facility holding a valid
213 certificate of authority under this chapter have the right of
214 self-organization, the right to be represented by an individual
215 of their own choosing, and the right to engage in concerted
216 activities for the purpose of keeping informed on the operation
217 of the facility that is caring for them or for the purpose of
218 other mutual aid or protection.

219 (2) (a) Each facility shall establish a residents' council
220 created for the purpose of representing residents on matters set
221 forth in s. 651.085. The residents' council shall ~~may~~ be
222 established through an election in which the residents, as
223 defined in s. 651.011, vote by ballot, physically or by proxy.
224 If the election is to be held during a meeting, a notice of the
225 organizational meeting must be provided to all residents of the
226 community at least 10 business days before the meeting. Notice
227 may be given through internal mailboxes, communitywide
228 newsletters, bulletin boards, in-house television stations, and
229 other similar means of communication. An election creating a
230 residents' council is valid if at least 40 percent of the total
231 resident population participates in the election and a majority
232 of the participants vote affirmatively for the council. The

16-00687-15

20151126__

233 initial residents' council created under this section is valid
234 for at least 12 months. A residents' organization formalized by
235 bylaws and elected officials must be recognized as the
236 residents' council under this section and s. 651.085. Within 30
237 days after the election of a newly elected president or chair of
238 the residents' council, the provider shall give the president or
239 chair a copy of this chapter and rules adopted thereunder, or
240 direct him or her to the appropriate public website to obtain
241 this information. Only one residents' council may represent
242 residents before the governing body of the provider as described
243 in s. 651.085(2).

244 (b) In addition to those matters provided in s. 651.085, a
245 residents' council shall provide a forum in which a resident may
246 submit issues or make inquiries related to, but not limited to,
247 subjects that impact the general residential quality of life and
248 cultural environment. The residents' council shall serve as a
249 formal liaison to provide input related to such matters to the
250 appropriate representative of the provider.

251 (c) The activities of a residents' council are independent
252 of the provider. The provider is not responsible for ensuring,
253 or for the associated costs of, compliance of the residents'
254 council with the provisions of this section with respect to the
255 operation of a residents' council.

256 (d) A residents' council shall adopt its own bylaws and
257 governance documents. The residents' council shall provide for
258 open meetings when appropriate. The governing documents shall
259 define the manner in which residents may submit an issue to the
260 council and define a reasonable timeframe in which the
261 residents' council shall respond to a resident submission or

16-00687-15

20151126__

262 inquiry. A residents' council may include term limits in its
263 governing documents to ensure consistent integration of new
264 leaders. If a licensed facility files for bankruptcy under
265 chapter 11 of the United States Bankruptcy Code, 11 U.S.C.
266 chapter 11, the facility, in its required filing with the United
267 States Trustee, shall include the 20 largest unsecured
268 creditors, the name and contact information of a designated
269 resident selected by the residents' council, and a statement
270 explaining why the designated resident was chosen by the
271 residents' council to serve as a representative of the
272 residents' interest on the creditors' committee, if appropriate.

273 Section 6. Section 651.085, Florida Statutes, is amended to
274 read:

275 651.085 Quarterly meetings between residents and the
276 governing body of the provider; resident representation before
277 the governing body of the provider.—

278 (1) The governing body of a provider, or the designated
279 representative of the provider, shall hold quarterly meetings
280 with the residents of the continuing care facility for the
281 purpose of free discussion of subjects including, but not
282 limited to, income, expenditures, and financial trends and
283 problems as they apply to the facility, as well as a discussion
284 on proposed changes in policies, programs, and services. At
285 quarterly meetings where monthly maintenance fee increases are
286 discussed, a summary of the reasons for raising the fee as
287 specified in subsection (4) must be provided in writing to the
288 president or chair of the residents' council. Upon request of
289 the residents' council, a member of the governing body of the
290 provider, such as a board member, general partner, principal

16-00687-15

20151126__

291 owner, or designated representative shall attend such meetings.
292 Residents are entitled to at least 7 days' advance notice of
293 each quarterly meeting. An agenda and any materials that will be
294 distributed by the governing body or representative of the
295 provider shall be posted in a conspicuous place at the facility
296 and shall be available upon request to residents of the
297 facility. The office shall request verification from a facility
298 that quarterly meetings are held and open to all residents ~~if it~~
299 ~~receives a complaint from the residents' council that a facility~~
300 ~~is not in compliance with this subsection.~~ In addition, a
301 facility shall report to the office in the annual report
302 required under s. 651.026 the dates on which quarterly meetings
303 were held during the reporting period.

304 (2) A residents' council formed pursuant to s. 651.081,
305 members of which are elected by the residents, shall ~~may~~
306 designate a resident to represent them before the governing body
307 of the provider ~~or organize a meeting or ballot election of the~~
308 ~~residents to determine whether to elect a resident to represent~~
309 ~~them before the governing body of the provider. If a residents'~~
310 ~~council does not exist, any resident may organize a meeting or~~
311 ~~ballot election of the residents of the facility to determine~~
312 ~~whether to elect a resident to represent them before the~~
313 ~~governing body and, if applicable, elect the representative. The~~
314 ~~residents' council, or the resident that organizes a meeting or~~
315 ~~ballot election to elect a representative, shall give all~~
316 ~~residents notice at least 10 business days before the meeting or~~
317 ~~election. Notice may be given through internal mailboxes,~~
318 ~~communitywide newsletters, bulletin boards, in-house television~~
319 ~~stations, and other similar means of communication. An election~~

16-00687-15

20151126__

320 ~~of the representative is valid if at least 40 percent of the~~
321 ~~total resident population participates in the election and a~~
322 ~~majority of the participants vote affirmatively for the~~
323 ~~representative.~~ The initial designated representative elected
324 under this section shall be elected to serve at least 12 months.

325 (3) The designated representative shall be notified at
326 least 14 days in advance of any meeting of the full governing
327 body at which proposed changes in resident fees or services will
328 be discussed. The representative shall be invited to attend and
329 participate in that portion of the meeting designated for the
330 discussion of such changes.

331 (4) At a quarterly meeting prior to the implementation of
332 any increase in the monthly maintenance fee, the designated
333 representative of the provider must provide the reasons, by
334 department cost centers, for any increase in the fee that
335 exceeds the most recently published Consumer Price Index for All
336 Urban Consumers, all items, Class A Areas of the Southern
337 Region. Nothing in this subsection shall be construed as placing
338 a cap or limitation on the amount of any increase in the monthly
339 maintenance fee, establishing a presumption of the
340 appropriateness of the Consumer Price Index as the basis for any
341 increase in the monthly maintenance fee, or limiting or
342 restricting the right of a provider to establish or set monthly
343 maintenance fee increases.

344 (5) The board of directors or governing board of a licensed
345 provider may at its sole discretion allow a resident of the
346 facility to be a voting member of the board or governing body of
347 the facility. The board of directors or governing board of a
348 licensed provider may establish specific criteria for the

16-00687-15

20151126__

349 nomination, selection, and term of a resident as a member of the
350 board or governing body. If the board or governing body of a
351 licensed provider operates more than one licensed facility,
352 regardless of whether the facility is in-state or out-of-state,
353 the board or governing body may select at its sole discretion
354 one resident from among its facilities to serve on the board of
355 directors or governing body on a rotating basis.

356 Section 7. Paragraph (d) of subsection (2) of section
357 651.091, Florida Statutes, is amended to read:

358 651.091 Availability, distribution, and posting of reports
359 and records; requirement of full disclosure.—

360 (2) Every continuing care facility shall:

361 (d) Distribute a copy of the full annual statement and a
362 copy of the most recent third-party financial audit filed with
363 the annual report to the president or chair of the residents'
364 council within 30 days after filing the annual report with the
365 office, and designate a staff person to provide explanation
366 thereof.

367 Section 8. This act shall take effect October 1, 2015.