

HB 749

2015

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:

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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27  
28 Section 1. Paragraphs (g) through (k) of subsection (1) of  
29 section 651.055, Florida Statutes, are amended to read:

30 651.055 Continuing care contracts; right to rescind.—

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

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. The proceeds of the next entrance fee received by the  
 76 provider for the unit that is vacated if the contract is  
 77 approved by the office before October 1, 2015. Providers may not  
 78 use this refund option after October 1, 2016, and must submit a

79 new or amended contract with an alternative refund provision to  
80 the office for approval by August 2, 2016, ~~if the provider has~~  
81 ~~discontinued marketing continuing care contracts, within 200~~  
82 ~~days after the date of notice.~~

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

86 a. Any refund that is due upon the resident's death or  
87 relocation of the resident to another level of care that results  
88 in the termination of the contract must be paid the earlier of:

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

92 (II) No later than a specified maximum number of months or  
93 years, determined by the provider and specified in the contract,  
94 after the contract is terminated and the unit is vacated.

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

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

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

120        ~~6.4.~~ Unless subsection (5) applies, for any prospective  
121 resident, regardless of whether or not such a resident receives  
122 a transferable membership or ownership right in the facility,  
123 who cancels the contract before occupancy of the unit, the  
124 entire amount paid toward the entrance fee shall be refunded,  
125 less a processing fee of up to 5 percent of the entire entrance  
126 fee; however, the processing fee may not exceed the amount paid  
127 by the prospective resident. Such refund must be paid within 60  
128 days after the resident gives ~~giving~~ notice of intention to  
129 cancel. For a resident who has occupied his or her unit and who  
130 has received a transferable membership or ownership right in the

131 facility, the foregoing refund provisions do not apply but are  
132 deemed satisfied by the acquisition or receipt of a transferable  
133 membership or an ownership right in the facility. The provider  
134 may not charge any fee for the transfer of membership or sale of  
135 an ownership right.

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

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

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

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

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157 contractual obligations of the provider; and the provisions of  
158 the federal Internal Revenue Code, if any, under which the  
159 provider or affiliate is exempt from the payment of federal  
160 income tax.

161 Section 2. Section 651.028, Florida Statutes, is amended  
162 to read:

163 651.028 Accredited facilities.—If a provider is accredited  
164 without stipulations or conditions by a process found by the  
165 office to be acceptable and substantially equivalent to the  
166 provisions of this chapter, the office may, pursuant to rule of  
167 the commission, waive any requirements of this chapter with  
168 respect to the provider if the office finds that such waivers  
169 are not inconsistent with the security protections intended by  
170 this chapter.

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

173 651.071 Contracts as preferred claims on liquidation or  
174 receivership.—

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

181 Section 4. Subsections (4) and (5) of section 651.105,  
182 Florida Statutes, are amended, and subsection (6) is added to

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183 that section, to read:

184 651.105 Examination and inspections.—

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

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

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

207 Section 5. Section 651.081, Florida Statutes, is amended  
208 to read:



209 651.081 Residents' council.—

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

217 (2) (a) Each facility shall establish a residents' council  
218 created for the purpose of representing residents on matters set  
219 forth in s. 651.085. The residents' council shall ~~may~~ be  
220 established through an election in which the residents, as  
221 defined in s. 651.011, vote by ballot, physically or by proxy.  
222 If the election is to be held during a meeting, a notice of the  
223 organizational meeting must be provided to all residents of the  
224 community at least 10 business days before the meeting. Notice  
225 may be given through internal mailboxes, communitywide  
226 newsletters, bulletin boards, in-house television stations, and  
227 other similar means of communication. An election creating a  
228 residents' council is valid if at least 40 percent of the total  
229 resident population participates in the election and a majority  
230 of the participants vote affirmatively for the council. The  
231 initial residents' council created under this section is valid  
232 for at least 12 months. A residents' organization formalized by  
233 bylaws and elected officials must be recognized as the  
234 residents' council under this section and s. 651.085. Within 30

235 days after the election of a newly elected president or chair of  
236 the residents' council, the provider shall give the president or  
237 chair a copy of this chapter and rules adopted thereunder, or  
238 direct him or her to the appropriate public website to obtain  
239 this information. Only one residents' council may represent  
240 residents before the governing body of the provider as described  
241 in s. 651.085(2).

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

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

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

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

271 Section 6. Section 651.085, Florida Statutes, is amended  
272 to read:

273 651.085 Quarterly meetings between residents and the  
274 governing body of the provider; resident representation before  
275 the governing body of the provider.—

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

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

302 (2) A residents' council formed pursuant to s. 651.081,  
303 members of which are elected by the residents, shall ~~may~~  
304 designate a resident to represent them before the governing body  
305 of the provider ~~or organize a meeting or ballot election of the~~  
306 ~~residents to determine whether to elect a resident to represent~~  
307 ~~them before the governing body of the provider. If a residents'~~  
308 ~~council does not exist, any resident may organize a meeting or~~  
309 ~~ballot election of the residents of the facility to determine~~  
310 ~~whether to elect a resident to represent them before the~~  
311 ~~governing body and, if applicable, elect the representative. The~~  
312 ~~residents' council, or the resident that organizes a meeting or~~

313 ~~ballot election to elect a representative, shall give all~~  
314 ~~residents notice at least 10 business days before the meeting or~~  
315 ~~election. Notice may be given through internal mailboxes,~~  
316 ~~communitywide newsletters, bulletin boards, in-house television~~  
317 ~~stations, and other similar means of communication. An election~~  
318 ~~of the representative is valid if at least 40 percent of the~~  
319 ~~total resident population participates in the election and a~~  
320 ~~majority of the participants vote affirmatively for the~~  
321 ~~representative. The initial designated representative elected~~  
322 under this section shall be elected to serve at least 12 months.

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

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

339 increase in the monthly maintenance fee, or limiting or  
340 restricting the right of a provider to establish or set monthly  
341 maintenance fee increases.

342 (5) The board of directors or governing board of a  
343 licensed provider may at its sole discretion allow a resident of  
344 the facility to be a voting member of the board or governing  
345 body of the facility. The board of directors or governing board  
346 of a licensed provider may establish specific criteria for the  
347 nomination, selection, and term of a resident as a member of the  
348 board or governing body. If the board or governing body of a  
349 licensed provider operates more than one licensed facility,  
350 regardless of whether the facility is in-state or out-of-state,  
351 the board or governing body may select at its sole discretion  
352 one resident from among its facilities to serve on the board of  
353 directors or governing body on a rotating basis.

354 Section 7. Paragraph (d) of subsection (2) of section  
355 651.091, Florida Statutes, is amended to read:

356 651.091 Availability, distribution, and posting of reports  
357 and records; requirement of full disclosure.—

358 (2) Every continuing care facility shall:

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

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