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CS/HB 749

2015 Legislature

1
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 subject to a secured claim in the
10 event of liquidation or receivership proceedings
11 against a provider; revising subordination of claims;
12 amending s. 651.105, F.S.; revising notice
13 requirements; revising duties of the office; requiring
14 an agent of a provider to provide a copy of an
15 examination report and corrective action plan under
16 certain conditions; amending s. 651.081, F.S.;
17 requiring a residents' council to provide a forum for
18 certain purposes; requiring a residents' council to
19 adopt its own bylaws and governance documents under
20 certain conditions; amending s. 651.085, F.S.;
21 revising provisions relating to quarterly meetings
22 between residents and the governing body of the
23 provider; revising powers of the residents' council;
24 amending s. 651.091, F.S.; revising continuing care
25 facility reporting requirements; providing an
26 effective date.

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

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

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

651.055 Continuing care contracts; right to rescind.—

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

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

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

1.2. For a resident whose contract with the facility provides that the resident does not receive a transferable membership or ownership right in the facility, and who has

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53 occupied his or her unit, the refund shall be calculated on a
 54 pro rata basis with the facility retaining up to 2 percent per
 55 month of occupancy by the resident and up to a 5 percent
 56 processing fee. Such refund must be paid within 120 days after
 57 giving the notice of intention to cancel. For contracts entered
 58 into on or after January 1, 2016, refunds must be made within 90
 59 days after the contract is terminated and the unit is vacated. A
 60 resident who enters into a contract before January 1, 2016, may
 61 voluntarily sign a contract addendum approved by the office that
 62 provides for such revised refund requirement.

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

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

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

77 c. The proceeds of the next entrance fee received by the
 78 provider for the unit that is vacated if the contract is

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79 approved by the office before October 1, 2015. Providers may not
80 use this refund option after October 1, 2016, and must submit a
81 new or amended contract with an alternative refund provision to
82 the office for approval by August 2, 2016, ~~if the provider has~~
83 ~~discontinued marketing continuing care contracts, within 200~~
84 ~~days after the date of notice.~~

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

88 a. Any refund that is due upon the resident's death or
89 relocation of the resident to another level of care that results
90 in the termination of the contract must be paid the earlier 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) No later than a specified maximum number of months or
95 years, determined by the provider and specified in the contract,
96 after 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

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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 such as
 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 designated 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
 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

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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
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

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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
 164 to 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:

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

177 (1) In the event of receivership or liquidation
 178 proceedings against a provider, all continuing care and
 179 continuing care at-home contracts executed by a provider shall
 180 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.

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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.

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 executive officer of the
207 governing body of the provider within 60 days after issuance of
208 the report.

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209 Section 5. Section 651.081, Florida Statutes, is amended
210 to 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
233 initial residents' council created under this section is valid
234 for at least 12 months. A residents' organization formalized by

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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 resident's council.

256 (d) A residents' council shall adopt its own bylaws and
257 governance documents subject to the vote and approval of the
258 residents. The residents' council shall provide for open
259 meetings when appropriate. The governing documents shall define
260 the manner in which residents may submit an issue to the council

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

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

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

279 (1) The governing body of a provider, or the designated
 280 representative of the provider, shall hold quarterly meetings
 281 with the residents of the continuing care facility for the
 282 purpose of free discussion of subjects including, but not
 283 limited to, income, expenditures, and financial trends and
 284 problems as they apply to the facility, as well as a discussion
 285 on proposed changes in policies, programs, and services. At
 286 quarterly meetings where monthly maintenance fee increases are

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287 discussed, a summary of the reasons for raising the fee as
288 specified in subsection (4) must be provided in writing to the
289 president or chair of the residents' council. Upon request of
290 the residents' council, a member of the governing body of the
291 provider, such as a board member, general partner, principal
292 owner, or designated representative shall attend such meetings.
293 Residents are entitled to at least 7 days' advance notice of
294 each quarterly meeting. An agenda and any materials that will be
295 distributed by the governing body or representative of the
296 provider shall be posted in a conspicuous place at the facility
297 and shall be available upon request to residents of the
298 facility. The office shall request verification from a facility
299 that quarterly meetings are held and open to all residents ~~if it~~
300 ~~receives a complaint from the residents' council that a facility~~
301 ~~is not in compliance with this subsection.~~ In addition, a
302 facility shall report to the office in the annual report
303 required under s. 651.026 the dates on which quarterly meetings
304 were held during the reporting period.

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

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

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

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

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339 a cap or limitation on the amount of any increase in the monthly
 340 maintenance fee, establishing a presumption of the
 341 appropriateness of the Consumer Price Index as the basis for any
 342 increase in the monthly maintenance fee, or limiting or
 343 restricting the right of a provider to establish or set monthly
 344 maintenance fee increases.

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

357 Section 7. Paragraph (d) of subsection (2) of section
 358 651.091, Florida Statutes, is amended to read:

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

361 (2) Every continuing care facility shall:

362 (d) Distribute a copy of the full annual statement and a
 363 copy of the most recent third party financial audit filed with
 364 the annual report to the president or chair of the residents'

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365 | council within 30 days after filing the annual report with the
366 | office, and designate a staff person to provide explanation
367 | thereof.

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