An act relating to continuing care communities;
amending s. 651.055, F.S.; revising requirements for
continuing care contracts; amending s. 651.028, F.S.;
revising authority of the Office of Insurance
Regulation to waive requirements for accredited
facilities; amending s. 651.071, F.S.; providing that
continuing care and continuing care at-home contracts
are preferred claims subject to a secured claim in the
event of liquidation or receivership proceedings
against a provider; revising subordination of claims;
amending s. 651.105, F.S.; revising notice
requirements; revising duties of the office; requiring
an agent of a provider to provide a copy of an
examination report and corrective action plan under
certain conditions; amending s. 651.081, F.S.;
requiring a residents' council to provide a forum for
certain purposes; requiring a residents' council to
adopt its own bylaws and governance documents under
certain conditions; amending s. 651.085, F.S.;
revising provisions relating to quarterly meetings
between residents and the governing body of the
provider; revising powers of the residents' council;
amending s. 651.091, F.S.; revising continuing care
facility reporting requirements; providing an
effective date.
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
occupied his or her unit, the refund shall be calculated on a pro rata basis with the facility retaining up to 2 percent per month of occupancy by the resident and up to a 5 percent processing fee. Such refund must be paid within 120 days after giving the notice of intention to cancel. For contracts entered into on or after January 1, 2016, refunds must be made within 90 days after the contract is terminated and the unit is vacated. A resident who enters into a contract before January 1, 2016, may voluntarily sign a contract addendum approved by the office that provides for such revised refund requirement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

651.071 Contracts as preferred claims on liquidation or receivership.—

(1) In the event of receivership or liquidation proceedings against a provider, all continuing care and continuing care at-home contracts executed by a provider shall be deemed preferred claims against all assets owned by the provider; however, such claims are subordinate to those priority claims set forth in s. 631.271 and any secured claim.
Section 4. Subsections (4) and (5) of section 651.105, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

651.105 Examination and inspections.—

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

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

(6) A representative of the provider must give a copy of the final examination report and corrective action plan, if one is required by the office, to the executive officer of the governing body of the provider within 60 days after issuance of the report.
Section 5. Section 651.081, Florida Statutes, is amended to read:

651.081 Residents' council.—

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

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

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

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

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

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

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

(1) The governing body of a provider, or the designated representative of the provider, shall hold quarterly meetings with the residents of the continuing care facility for the purpose of free discussion of subjects including, but not limited to, income, expenditures, and financial trends and problems as they apply to the facility, as well as a discussion on proposed changes in policies, programs, and services. At quarterly meetings where monthly maintenance fee increases are
discussed, a summary of the reasons for raising the fee as specified in subsection (4) must be provided in writing to the president or chair of the residents' council. Upon request of the residents' council, a member of the governing body of the provider, such as a board member, general partner, principal owner, or designated representative shall attend such meetings. Residents are entitled to at least 7 days' advance notice of each quarterly meeting. An agenda and any materials that will be distributed by the governing body or representative of the provider shall be posted in a conspicuous place at the facility and shall be available upon request to residents of the facility. The office shall request verification from a facility that quarterly meetings are held and open to all residents if it receives a complaint from the residents' council that a facility is not in compliance with this subsection. In addition, a facility shall report to the office in the annual report required under s. 651.026 the dates on which quarterly meetings were held during the reporting period.

(2) A residents' council formed pursuant to s. 651.081, members of which are elected by the residents, shall may designate a resident to represent them before the governing body of the provider or organize a meeting or ballot election of the residents to determine whether to elect a resident to represent them before the governing body of the provider. If a residents' council does not exist, any resident may organize a meeting or ballot election of the residents of the facility to determine
whether to elect a resident to represent them before the
governing body and, if applicable, elect the representative. The
residents' council, or the resident that organizes a meeting or
ballot election to elect a representative, shall give all residents notice at least 10 business days before the meeting or
election. Notice may be given through internal mailboxes,
communitywide newsletters, bulletin boards, in-house television
stations, and other similar means of communication. An election
of the representative is valid if at least 40 percent of the
total resident population participates in the election and a
majority of the participants vote affirmatively for the
representative. The initial designated representative elected
under this section shall be elected to serve at least 12 months.

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

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

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

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

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

(2) Every continuing care facility shall:

(d) Distribute a copy of the full annual statement and a copy of the most recent third party financial audit filed with the annual report to the president or chair of the residents'
Section 8. This act shall take effect October 1, 2015.