A bill to be entitled
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 in the event of bankruptcy
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;
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.

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 voluntarily 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,
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 bankruptcy, 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 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. 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 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' council within 30 days after filing the annual report with the office, and designate a staff person to provide explanation thereof.
Section 8. This act shall take effect October 1, 2015.