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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/16/2018	.	
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The Committee on Banking and Insurance (Lee) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 651.011, Florida Statutes, is amended to
read:

651.011 Definitions.—As used in this chapter, the term:

(1) "Actuarial opinion" means an opinion issued by an
actuary in accordance with Actuarial Standards of Practice No. 3
for Continuing Care Retirement Communities, Revised Edition,



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11 effective May 1, 2011, or any future amendments or replacements
12 to this standard which may be adopted by the Actuarial Standards
13 Board.

14 (2) "Actuarial study" means an analysis prepared for an
15 individual facility, or consolidated for multiple facilities,
16 for either a certified provider, as of a current valuation date
17 or the most recent fiscal year, or for an applicant, as of a
18 projected future valuation date, which includes an actuary's
19 opinion as to whether such provider or applicant is in
20 satisfactory actuarial balance in accordance with Actuarial
21 Standards of Practice No. 3 for Continuing Care Retirement
22 Communities, Revised Edition, effective May 1, 2011, or any
23 future amendments or replacements to this standard which may be
24 adopted by the Actuarial Standards Board.

25 (3) "Actuary" means an individual who is qualified to sign
26 an actuarial opinion in accordance with the American Academy of
27 Actuaries' qualification standards and who is a member in good
28 standing of the American Academy of Actuaries.

29 (4)-~~(1)~~ "Advertising" means the dissemination of written,
30 visual, or electronic information by a provider, or any person
31 affiliated with or controlled by a provider, to potential
32 residents or their representatives for the purpose of inducing
33 such persons to subscribe to or enter into a contract for
34 continuing care or continuing care at-home.

35 (5)-~~(2)~~ "Continuing care" or "care" means, pursuant to a
36 contract, furnishing shelter and nursing care or personal
37 services to a resident who resides in a facility, whether such
38 nursing care or personal services are provided in the facility
39 or in another setting designated in the contract for continuing



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40 care, by an individual not related by consanguinity or affinity
41 to the resident, upon payment of an entrance fee. The terms may
42 also be referred to as a "life plan."

43 (6) ~~(3)~~ "Continuing Care Advisory Council" or "advisory
44 council" means the council established in s. 651.121.

45 (7) ~~(4)~~ "Continuing care at-home" means, pursuant to a
46 contract other than a contract described in subsection (5) ~~(2)~~,
47 furnishing to a resident who resides outside the facility the
48 right to future access to shelter and nursing care or personal
49 services, whether such services are provided in the facility or
50 in another setting designated in the contract, by an individual
51 not related by consanguinity or affinity to the resident, upon
52 payment of an entrance fee. The term may also be referred to as
53 a "life plan at-home."

54 (8) "Corrective order" means an order issued by the office
55 which specifies corrective actions the office has determined are
56 required.

57 (9) "Days cash on hand" means, for a facility or obligated
58 group, the quotient obtained by dividing the value of paragraph
59 (a) by the value of paragraph (b).

60 (a) The sum of unrestricted cash, unrestricted short-term
61 and long-term investments, provider restricted funds, and the
62 minimum liquid reserve as of the reporting period.

63 (b) Operating expenses less depreciation, amortization, and
64 other noncash expenses and nonoperating losses, divided by 365.
65 Operating expenses, depreciation, amortization, and other
66 noncash expenses and nonoperating losses are each the sum of
67 their respective values over the 12-month period immediately
68 preceding the reporting date.



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69
70 With prior written approval of the office, a demand note or
71 other parental guarantee may be considered a short-term or long-
72 term investment for the purposes of paragraph (a). However, the
73 total of all demand notes issued by the parent may not, at any
74 time, be more than the sum of unrestricted cash and unrestricted
75 short-term and long-term investments held by the parent.

76 (10) "Debt service coverage ratio" means, for a facility or
77 obligated group, the quotient obtained by dividing the value of
78 paragraph (a) by the value of paragraph (b).

79 (a) The sum of total expenses less interest expense on the
80 facility, depreciation, amortization, and other noncash expenses
81 and nonoperating losses, subtracted from the sum of total
82 revenues and gross entrance fees received less earned entrance
83 fees and refunds paid. Expenses, interest expense on the
84 facility, depreciation, amortization, other noncash expenses and
85 nonoperating losses, revenues, noncash revenues, nonoperating
86 gains, gross entrance fees, earned entrance fees, and refunds
87 are each the sum of their respective values over the 12-month
88 period immediately preceding the reporting date.

89 (b) Total annual principal and interest expense due on the
90 facility or obligated group over the 12-month period immediately
91 preceding the reporting date. For purposes of this paragraph,
92 principal excludes any balloon principal payment amounts, and
93 interest expense due is the sum of the interest over the 12-
94 month period immediately preceding the reporting date which is
95 reflected in the provider's audit.

96 (11)-(5) "Entrance fee" means an initial or deferred payment
97 of a sum of money or property made as full or partial payment



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98 for continuing care or continuing care at-home. An accommodation
99 fee, admission fee, member fee, or other fee of similar form and
100 application are considered to be an entrance fee.

101 (12)~~(6)~~ "Facility" means a place where continuing care is
102 furnished and may include one or more physical plants on a
103 primary or contiguous site or an immediately accessible site. As
104 used in this subsection, the term "immediately accessible site"
105 means a parcel of real property separated by a reasonable
106 distance from the facility as measured along public
107 thoroughfares, and the term "primary or contiguous site" means
108 the real property contemplated in the feasibility study required
109 by this chapter.

110 ~~(7) "Generally accepted accounting principles" means those~~
111 ~~accounting principles and practices adopted by the Financial~~
112 ~~Accounting Standards Board and the American Institute of~~
113 ~~Certified Public Accountants, including Statement of Position~~
114 ~~90-8 with respect to any full year to which the statement~~
115 ~~applies.~~

116 (13) "Impaired" means that any of the following have
117 occurred:

118 (a) A provider has failed to maintain its minimum liquid
119 reserve as required in s. 651.035, unless the provider has
120 received prior written approval from the office for a withdrawal
121 pursuant to s. 651.035(6) and is compliant with the approved
122 payment schedule; or

123 (b) Beginning July 1, 2019:

124 1. For a provider with mortgage financing from a third-
125 party lender or public bond issue, the provider's debt service
126 coverage ratio is less than 1.00:1 and the provider's days cash



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127 on hand is less than 90; or

128 2. For a provider without mortgage financing from a third-
129 party lender or public bond issue, the provider's days cash on
130 hand is less than 90.

131 (14)-(8) "Insolvency" means the condition in which a ~~the~~
132 provider is unable to pay its obligations as they come due in
133 the normal course of business.

134 (15)-(9) "Licensed" means that a ~~the~~ provider has obtained a
135 certificate of authority from the office ~~department~~.

136 (16) "Manager" or "management company" means a person who
137 administers the day-to-day business operations of a facility for
138 a provider, subject to the policies, directives, and oversight
139 of the provider.

140 (17)-(10) "Nursing care" means those services or acts
141 rendered to a resident by an individual licensed or certified
142 pursuant to chapter 464.

143 (18) "Obligated group" means one or more entities that
144 jointly agree to be bound by a financing structure containing
145 security provisions and covenants applicable to the group. For
146 purposes of this subsection, debt issued under such a financing
147 structure must be a joint and several obligation of each member
148 of the group.

149 (19) "Occupancy" means the total number of occupied
150 independent living, assisted living, and skilled nursing units
151 in a facility divided by the total number of units in that
152 facility, excluding units that are unavailable to market or
153 reserve, as of the most recent annual report.

154 (20)-(11) "Personal services" has the same meaning as in s.
155 429.02.



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156 (21)~~(12)~~ "Provider" means the owner or operator, whether a
157 natural person, partnership or other unincorporated association,
158 however organized, trust, or corporation, of an institution,
159 building, residence, or other place, whether operated for profit
160 or not, which owner or operator provides continuing care or
161 continuing care at-home for a fixed or variable fee, or for any
162 other remuneration of any type, whether fixed or variable, for
163 the period of care, payable in a lump sum or lump sum and
164 monthly maintenance charges or in installments. The term does
165 not apply to an entity that has existed and continuously
166 operated a facility located on at least 63 acres in this state
167 providing residential lodging to members and their spouses for
168 at least 66 years on or before July 1, 1989, and has the
169 residential capacity of 500 persons, is directly or indirectly
170 owned or operated by a nationally recognized fraternal
171 organization, is not open to the public, and accepts only its
172 members and their spouses as residents.

173 (22)~~(13)~~ "Records" means all documents, correspondence, and
174 the permanent financial, directory, and personnel information
175 and data maintained by a provider pursuant to this chapter,
176 regardless of the physical form, characteristics, or means of
177 transmission.

178 (23) "Regulatory action level event" means that any two of
179 the following have occurred:

180 (a) The provider's debt service coverage ratio is less than
181 the minimum ratio specified in the provider's bond covenants or
182 lending agreement for long-term financing, or, if the provider
183 does not have a debt service coverage ratio required by its
184 lending institution, the provider's debt service coverage ratio



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185 is less than 1.20:1 as of the most recent annual report filed
186 with the office. If the provider is a member of an obligated
187 group having cross-collateralized debt and the obligated group
188 has obtained an investment grade credit rating from a nationally
189 recognized credit rating agency, as applicable, from Moody's
190 Investors Service, Standard & Poor's, or Fitch Ratings, the
191 obligated group's debt service coverage ratio will be used as
192 the provider's debt service coverage ratio.

193 (b) The provider's days cash on hand is less than the
194 minimum number of days cash on hand specified in the provider's
195 bond covenants or lending agreement for long-term financing. If
196 the provider does not have a days cash on hand required by its
197 lending institution, the days cash on hand may not be less than
198 100 as of the most recent annual report filed with the office.
199 If the provider is a member of an obligated group having cross-
200 collateralized debt and the obligated group has obtained an
201 investment grade credit rating from a nationally recognized
202 credit rating agency, as applicable, from Moody's Investors
203 Service, Standard & Poor's, or Fitch Ratings, the days cash on
204 hand of the obligated group will be used as the provider's days
205 cash on hand.

206 (c) The occupancy at the provider's facility is less than
207 80 percent, averaged over the 12-month period immediately
208 preceding the reporting date.

209 (24)-(14) "Resident" means a purchaser of, a nominee of, or
210 a subscriber to a continuing care or continuing care at-home
211 contract. Such contract does not give the resident a part
212 ownership of the facility in which the resident is to reside,
213 unless expressly provided in the contract.



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214 ~~(25)-(15)~~ "Shelter" means an independent living unit, room,
215 apartment, cottage, villa, personal care unit, nursing bed, or
216 other living area within a facility set aside for the exclusive
217 use of one or more identified residents.

218 Section 2. Section 651.012, Florida Statutes, is amended to
219 read:

220 651.012 Exempted facility; written disclosure of
221 exemption.—Any facility exempted under ss. 632.637(1)(e) and
222 651.011(21) ~~651.011(12)~~ must provide written disclosure of such
223 exemption to each person admitted to the facility ~~after October~~
224 ~~1, 1996~~. This disclosure must be written using language likely
225 to be understood by the person and must briefly explain the
226 exemption.

227 Section 3. Subsection (2) of section 651.013, Florida
228 Statutes, is amended to read:

229 651.013 Chapter exclusive; applicability of other laws.—

230 (2) In addition to other applicable provisions cited in
231 this chapter, the office has the authority granted under ss.
232 624.302 and 624.303, 624.307-624.312, 624.318 ~~624.308-624.312,~~
233 624.319(1)-(3), 624.320-624.321, 624.324, ~~and~~ 624.34, ~~and~~
234 624.422 of the Florida Insurance Code to regulate providers of
235 continuing care and continuing care at-home.

236 Section 4. Section 651.019, Florida Statutes, is amended to
237 read:

238 651.019 New financing, additional financing, or
239 refinancing.—

240 (1)(a) A provider shall provide notice to the residents'
241 council of any new financing or refinancing at least 30 days
242 before the closing date of the financing or refinancing



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243 transaction. The notice must include a general outline of the
244 amount and terms of the financing or refinancing and the
245 intended use of proceeds.

246 (b) If the facility does not have a residents' council, the
247 facility must make available, in the same manner as other
248 community notices, the information required by paragraph (a)
249 ~~After issuance of a certificate of authority, the provider shall~~
250 ~~submit to the office a general outline, including intended use~~
251 ~~of proceeds, with respect to any new financing, additional~~
252 ~~financing, or refinancing at least 30 days before the closing~~
253 ~~date of such financing transaction.~~

254 (2) Within 30 days after the closing date of such financing
255 or refinancing transaction, The provider shall furnish any
256 ~~information the office may reasonably request in connection with~~
257 ~~any new financing, additional financing, or refinancing,~~
258 ~~including, but not limited to, the financing agreements and any~~
259 ~~related documents, escrow or trust agreements, and statistical~~
260 ~~or financial data. the provider shall also submit to the office~~
261 copies of executed financing documents and escrow or trust
262 agreements prepared in support of such financing or refinancing
263 transaction, and a copy of all documents required to be
264 submitted to the residents' council under paragraph (1) (a)
265 ~~within 30 days after the closing date.~~

266 Section 5. Section 651.021, Florida Statutes, is amended to
267 read:

268 651.021 Certificate of authority required.—

269 ~~(1)~~ A ~~No~~ person may not engage in the business of providing
270 continuing care, issuing contracts for continuing care or
271 continuing care at-home, or constructing a facility for the



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272 purpose of providing continuing care in this state without a
273 certificate of authority obtained from the office as provided in
274 this chapter. This section ~~subsection~~ does not prohibit the
275 preparation of a construction site or construction of a model
276 residence unit for marketing purposes, or both. The office may
277 allow the purchase of an existing building for the purpose of
278 providing continuing care if the office determines that the
279 purchase is not being made to circumvent the prohibitions in
280 this section.

281 ~~(2) Written approval must be obtained from the office~~
282 ~~before commencing construction or marketing for an expansion of~~
283 ~~a certificated facility equivalent to the addition of at least~~
284 ~~20 percent of existing units or 20 percent or more in the number~~
285 ~~of continuing care at-home contracts. This provision does not~~
286 ~~apply to construction for which a certificate of need from the~~
287 ~~Agency for Health Care Administration is required.~~

288 ~~(a) For providers that offer both continuing care and~~
289 ~~continuing care at-home, the 20 percent is based on the total of~~
290 ~~both existing units and existing contracts for continuing care~~
291 ~~at-home. For purposes of this subsection, an expansion includes~~
292 ~~increases in the number of constructed units or continuing care~~
293 ~~at-home contracts or a combination of both.~~

294 ~~(b) The application for such approval shall be on forms~~
295 ~~adopted by the commission and provided by the office. The~~
296 ~~application must include the feasibility study required by s.~~
297 ~~651.022(3) or s. 651.023(1)(b) and such other information as~~
298 ~~required by s. 651.023. If the expansion is only for continuing~~
299 ~~care at-home contracts, an actuarial study prepared by an~~
300 ~~independent actuary in accordance with standards adopted by the~~



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301 ~~American Academy of Actuaries which presents the financial~~
302 ~~impact of the expansion may be substituted for the feasibility~~
303 ~~study.~~

304 ~~(c) In determining whether an expansion should be approved,~~
305 ~~the office shall use the criteria provided in ss. 651.022(6) and~~
306 ~~651.023(4).~~

307 Section 6. Section 651.0215, Florida Statutes, is created
308 to read:

309 651.0215 Consolidated application for provisional
310 certificate of authority and certificate of authority; required
311 restrictions on use of entrance fees.-

312 (1) For an applicant to qualify for a certificate of
313 authority without first obtaining a provisional certificate of
314 authority, the following conditions must be met:

315 (a) All reservation deposits and entrance fees must be
316 placed in escrow in accordance with s. 651.033. The applicant
317 may not use or pledge any part of an initial entrance fee for
318 the construction or purchase of the facility or as security for
319 long-term financing.

320 (b) The reservation deposit may not exceed \$5,000 upon a
321 resident's selection of a unit and must be refundable at any
322 time before the resident takes occupancy of the selected unit.

323 (c) The resident contract must state that collection of the
324 balance of the entrance fee is to occur after the resident is
325 notified that his or her selected unit is available for
326 occupancy and on or before the occupancy date.

327 (2) The consolidated application must be on a form
328 prescribed by the commission and must contain all of the
329 following information:



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330 (a) All of the information required under s 651.022(2).

331 (b) A feasibility study prepared by an independent
332 consultant which contains all of the information required by s.
333 651.022(3) and financial forecasts or projections prepared in
334 accordance with standards adopted by the American Institute of
335 Certified Public Accountants or in accordance with standards for
336 feasibility studies for continuing care retirement communities
337 adopted by the Actuarial Standards Board.

338 1. The feasibility study must take into account project
339 costs, actual marketing results to date and marketing
340 projections, resident fees and charges, competition, resident
341 contract provisions, and other factors that affect the
342 feasibility of operating the facility.

343 2. If the feasibility study is prepared by an independent
344 certified public accountant, it must contain an examination
345 report, or a compilation report acceptable to the office,
346 containing a financial forecast or projections for the first 5
347 years of operations which take into account an actuary's
348 mortality and morbidity assumptions as the study relates to
349 turnover, rates, fees, and charges. If the study is prepared by
350 an independent consulting actuary, it must contain mortality and
351 morbidity assumptions as it relates to turnover, rates, fees,
352 and charges and an actuary's signed opinion that the project as
353 proposed is feasible and that the study has been prepared in
354 accordance with Actuarial Standards of Practice No. 3 for
355 Continuing Care Retirement Communities, Revised Edition,
356 effective May 1, 2011.

357 (c) Documents evidencing that commitments have been secured
358 for construction financing and long-term financing or that a



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359 documented plan acceptable to the office has been adopted by the
360 applicant for long-term financing.

361 (d) Documents evidencing that all conditions of the lender
362 have been satisfied to activate the commitment to disburse
363 funds, other than the obtaining of the certificate of authority,
364 the completion of construction, or the closing of the purchase
365 of realty or buildings for the facility.

366 (e) Documents evidencing that the aggregate amount of
367 entrance fees received by or pledged to the applicant, plus
368 anticipated proceeds from any long-term financing commitment and
369 funds from all other sources in the actual possession of the
370 applicant, equal at least 100 percent of the aggregate cost of
371 constructing or purchasing, equipping, and furnishing the
372 facility plus 100 percent of the anticipated startup losses of
373 the facility.

374 (f) A complete audited financial report of the applicant,
375 prepared by an independent certified public accountant in
376 accordance with generally accepted accounting principles, as of
377 the date the applicant commenced business operations or for the
378 fiscal year that ended immediately preceding the date of
379 application, whichever is later, and complete unaudited
380 quarterly financial statements attested to by the applicant
381 after the date of the last audit.

382 (g) Documents evidencing that the applicant will be able to
383 comply with s. 651.035.

384 (h) Such other reasonable data, financial statements, and
385 pertinent information as the commission or office may require
386 with respect to the applicant or the facility to determine the
387 financial status of the facility and the management capabilities



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388 of its managers and owners.

389 (3) If an applicant has or proposes to have more than one
390 facility offering continuing care or continuing care at-home, a
391 separate certificate of authority must be obtained for each
392 facility.

393 (4) Within 45 days after receipt of the information
394 required under subsection (2), the office shall examine the
395 information and notify the applicant in writing, specifically
396 requesting any additional information that the office is
397 authorized to require. An application is deemed complete when
398 the office receives all requested information and the applicant
399 corrects any error or omission of which the applicant was timely
400 notified or when the time for such notification has expired.
401 Within 15 days after receipt of all of the requested additional
402 information, the office shall notify the applicant in writing
403 that all of the requested information has been received and that
404 the application is deemed to be complete as of the date of the
405 notice. Failure to notify the applicant in writing within the
406 15-day period constitutes acknowledgment by the office that it
407 has received all requested additional information, and the
408 application is deemed complete for purposes of review on the
409 date the applicant files all of the required additional
410 information.

411 (5) Within 45 days after an application is deemed complete
412 as set forth in subsection (4) and upon completion of the
413 remaining requirements of this section, the office shall
414 complete its review and issue or deny a certificate of authority
415 to the applicant. The period for review by the office may not be
416 tolled if the office requests additional information and the



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417 applicant provides the requested information within 5 business
418 days. If a certificate of authority is denied, the office must
419 notify the applicant in writing, citing the specific failures to
420 satisfy this chapter, and the applicant is entitled to an
421 administrative hearing pursuant to chapter 120.

422 (6) The office shall issue a certificate of authority upon
423 determining that the applicant meets all requirements of law and
424 has submitted all of the information required under this
425 section, that all escrow requirements have been satisfied, and
426 that the fees prescribed in s. 651.015(2) have been paid.

427 (7) The issuance of a certificate of authority entitles the
428 applicant to begin construction and collect reservation deposits
429 and entrance fees from prospective residents. The reservation
430 contract must state the cancellation policy and the terms of the
431 continuing care contract to be entered into. All or any part of
432 an entrance fee or reservation deposit collected must be placed
433 in an escrow account or on deposit with the department pursuant
434 to s. 651.033.

435 (8) The provider is entitled to secure release of the
436 moneys held in escrow within 7 days after the office receives an
437 affidavit from the provider, along with appropriate
438 documentation to verify, and notification is provided to the
439 escrow agent by certified mail, that the following conditions
440 have been satisfied:

441 (a) A certificate of occupancy has been issued.

442 (b) Payment in full has been received for at least 70
443 percent of the total units of a phase or of the total of the
444 combined phases constructed. If a provider offering continuing
445 care at-home is applying for a release of escrowed entrance



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446 fees, the same minimum requirement must be met for the
447 continuing care and continuing care at-home contracts
448 independently of each other.

449 (c) The provider has evidence of sufficient funds to meet
450 the requirements of s. 651.035, which may include funds
451 deposited in the initial entrance fee account.

452 (d) Documents evidencing the intended application of the
453 proceeds upon release and documents evidencing that the entrance
454 fees, when released, will be applied as represented to the
455 office.

456
457 Notwithstanding chapter 120, a person, other than the provider,
458 the escrow agent, and the office, may not have a substantial
459 interest in any decision by the office regarding the release of
460 escrow funds in any proceeding under chapter 120 or this
461 chapter.

462 (9) The office may not approve any application that
463 includes in the plan of financing any encumbrance of the
464 operating reserves or renewal and replacement reserves required
465 by this chapter.

466 (10) The office may not issue a certificate of authority to
467 a facility that does not have a component that is to be licensed
468 pursuant to part II of chapter 400 or part I of chapter 429, or
469 that does not offer personal services or nursing services
470 through written contractual agreement. A written contractual
471 agreement must be disclosed in the contract for continuing care
472 or continuing care at-home and is subject to s. 651.1151.

473 Section 7. Subsection (2) and present subsections (6) and
474 (8) of section 651.022, Florida Statutes, are amended, present



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475 subsections (3) through (8) of that section are redesignated as
476 subsections (4) through (9), respectively, and a new subsection
477 (3) is added to that section, to read:

478 651.022 Provisional certificate of authority; application.-

479 (2) The application for a provisional certificate of
480 authority must ~~shall~~ be on a form prescribed by the commission
481 and must ~~shall~~ contain the following information:

482 (a) If the applicant or provider is a corporation, a copy
483 of the articles of incorporation and bylaws; if the applicant or
484 provider is a partnership or other unincorporated association, a
485 copy of the partnership agreement, articles of association, or
486 other membership agreement; and, if the applicant or provider is
487 a trust, a copy of the trust agreement or instrument.

488 (b) The full names, residences, and business addresses of:

489 1. The proprietor, if the applicant or provider is an
490 individual.

491 2. Every partner or member, if the applicant or provider is
492 a partnership or other unincorporated association, however
493 organized, having fewer than 50 partners or members, together
494 with the business name and address of the partnership or other
495 organization.

496 3. The principal partners or members, if the applicant or
497 provider is a partnership or other unincorporated association,
498 however organized, having 50 or more partners or members,
499 together with the business name and business address of the
500 partnership or other organization. If such unincorporated
501 organization has officers and a board of directors, the full
502 name and business address of each officer and director may be
503 set forth in lieu of the full name and business address of its



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504 principal members.

505 4. The corporation and each officer and director thereof,
506 if the applicant or provider is a corporation.

507 5. Every trustee and officer, if the applicant or provider
508 is a trust.

509 6. The manager, whether an individual, corporation,
510 partnership, or association.

511 7. Any stockholder holding at least a 10 percent interest
512 in the operations of the facility in which the care is to be
513 offered.

514 8. Any person whose name is required to be provided in the
515 application under this paragraph and who owns any interest in or
516 receives any remuneration from, directly or indirectly, any
517 professional service firm, association, trust, partnership, or
518 corporation providing goods, leases, or services to the facility
519 for which the application is made, with a real or anticipated
520 value of \$10,000 or more, and the name and address of the
521 professional service firm, association, trust, partnership, or
522 corporation in which such interest is held. The applicant shall
523 describe such goods, leases, or services and the probable cost
524 to the facility or provider and shall describe why such goods,
525 leases, or services should not be purchased from an independent
526 entity.

527 9. Any person, corporation, partnership, association, or
528 trust owning land or property leased to the facility, along with
529 a copy of the lease agreement.

530 10. Any affiliated parent or subsidiary corporation or
531 partnership.

532 (c)1. Evidence that the applicant is reputable and of



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533 responsible character. If the applicant is a firm, association,
534 organization, partnership, business trust, corporation, or
535 company, the form must ~~shall~~ require evidence that the members
536 or shareholders ~~are reputable and of responsible character,~~ and
537 the person in charge of providing care under a certificate of
538 authority are ~~shall likewise be required to produce evidence of~~
539 ~~being~~ reputable and of responsible character.

540 2. Evidence satisfactory to the office of the ability of
541 the applicant to comply with ~~the provisions of~~ this chapter and
542 with rules adopted by the commission pursuant to this chapter.

543 3. A statement of whether a person identified in the
544 application for a provisional certificate of authority or the
545 administrator or manager of the facility, if such person has
546 been designated, or any such person living in the same location:

547 a. Has been convicted of a felony or has pleaded nolo
548 contendere to a felony charge, or has been held liable or has
549 been enjoined in a civil action by final judgment, if the felony
550 or civil action involved fraud, embezzlement, fraudulent
551 conversion, or misappropriation of property.

552 b. Is subject to a currently effective injunctive or
553 restrictive order or federal or state administrative order
554 relating to business activity or health care as a result of an
555 action brought by a public agency or department, including,
556 without limitation, an action affecting a license under chapter
557 400 or chapter 429.

558
559 The statement must ~~shall~~ set forth the court or agency, the date
560 of conviction or judgment, and the penalty imposed or damages
561 assessed, or the date, nature, and issuer of the order. Before



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562 determining whether a provisional certificate of authority is to
563 be issued, the office may make an inquiry to determine the
564 accuracy of the information submitted pursuant to subparagraphs
565 1., 2., and 3. ~~1. and 2.~~

566 (d) The contracts for continuing care and continuing care
567 at-home to be entered into between the provider and residents
568 which meet the minimum requirements of s. 651.055 or s. 651.057
569 and which include a statement describing the procedures required
570 by law relating to the release of escrowed entrance fees. Such
571 statement may be furnished through an addendum.

572 (e) Any advertisement or other written material proposed to
573 be used in the solicitation of residents.

574 (f) Such other reasonable data, financial statements, and
575 pertinent information as the commission or office may reasonably
576 require with respect to the provider or the facility, including
577 the most recent audited financial report ~~statements~~ of
578 comparable facilities currently or previously owned, managed, or
579 developed by the applicant or its principal, to assist in
580 determining the financial viability of the project and the
581 management capabilities of its managers and owners.

582 (g) The forms of the residency contracts, reservation
583 contracts, escrow agreements, and wait list contracts, if
584 applicable, which are proposed to be used by the provider in the
585 furnishing of care. The office shall approve contracts and
586 escrow agreements that comply with ss. 651.023(1)(c), 651.033,
587 651.055, and 651.057. Thereafter, no other form of contract or
588 agreement may be used by the provider until it has been
589 submitted to the office and approved.

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591 If any material change occurs in the facts set forth in an
592 application filed with the office pursuant to this subsection,
593 an amendment setting forth such change must be filed with the
594 office within 10 business days after the applicant becomes aware
595 of such change, and a copy of the amendment must be sent by
596 registered mail to the principal office of the facility and to
597 the principal office of the controlling company.

598 (3) In addition to the information required in subsection
599 (2), an applicant for a provisional certificate of authority
600 must submit a feasibility study with appropriate financial,
601 marketing, and actuarial assumptions for the first 5 years of
602 operations. The feasibility study must include at least the
603 following information:

604 (a) A description of the proposed facility, including the
605 location, size, anticipated completion date, and the proposed
606 construction program.

607 (b) Identification and an evaluation of the primary and, if
608 appropriate, the secondary market areas of the facility and the
609 projected unit sales per month.

610 (c) Projected revenues, including anticipated entrance
611 fees; monthly service fees; nursing care revenues, if
612 applicable; and all other sources of revenue.

613 (d) Projected expenses, including staffing requirements and
614 salaries; cost of property, plant, and equipment, including
615 depreciation expense; interest expense; marketing expense; and
616 other operating expenses.

617 (e) A projected balance sheet of the applicant.

618 (f) Expectations of the financial condition of the project,
619 including the projected cash flow, and an estimate of the funds



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620 anticipated to be necessary to cover startup losses.

621 (g) The inflation factor, if any, assumed in the
622 feasibility study for the proposed facility and how and where it
623 is applied.

624 (h) Project costs and the total amount of debt financing
625 required, marketing projections, resident fees and charges, the
626 competition, resident contract provisions, and other factors
627 that affect the feasibility of the facility.

628 (i) Appropriate population projections, including morbidity
629 and mortality assumptions.

630 (j) The name of the person who prepared the feasibility
631 study and the experience of such person in preparing similar
632 studies or otherwise consulting in the field of continuing care.
633 The preparer of the feasibility study may be the provider or a
634 contracted third party.

635 (k) Any other information that the applicant deems relevant
636 and appropriate to enable the office to make a more informed
637 determination.

638 (7) ~~(6)~~ Within 45 days after the date an application is
639 deemed complete as set forth in paragraph (6) (b) ~~(5) (b)~~, the
640 office shall complete its review and issue a provisional
641 certificate of authority to the applicant based upon its review
642 and a determination that the application meets all requirements
643 of law, that the feasibility study was based on sufficient data
644 and reasonable assumptions, and that the applicant will be able
645 to provide continuing care or continuing care at-home as
646 proposed and meet all financial and contractual obligations
647 related to its operations, including the financial requirements
648 of this chapter. The period for review by the office may not be



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649 tolled if the office requests additional information and the
650 applicant provides the requested information within 5 business
651 days. If the application is denied, the office shall notify the
652 applicant in writing, citing the specific failures to meet the
653 provisions of this chapter. Such denial entitles the applicant
654 to a hearing pursuant to chapter 120.

655 ~~(9)-(8)~~ The office may ~~shall~~ not approve any application
656 that ~~which~~ includes in the plan of financing any encumbrance of
657 the operating reserves or renewal and replacement reserves
658 required by this chapter.

659 Section 8. Subsections (1) through (4), paragraph (b) of
660 subsection (5), and subsections (6), (8), and (9) of section
661 651.023, Florida Statutes, are amended to read:

662 651.023 Certificate of authority; application.—

663 (1) After issuance of a provisional certificate of
664 authority, the office shall issue to the holder of such
665 provisional certificate a certificate of authority if the holder
666 of the provisional certificate provides the office with the
667 following information:

668 (a) Any material change in status with respect to the
669 information required to be filed under s. 651.022(2) in the
670 application for the provisional certificate.

671 (b) A feasibility study prepared by an independent
672 consultant which contains all of the information required by s.
673 651.022(4) ~~s. 651.022(3)~~ and financial forecasts or projections
674 prepared in accordance with standards adopted by the American
675 Institute of Certified Public Accountants or in accordance with
676 standards for feasibility studies or continuing care retirement
677 communities adopted by the Actuarial Standards Board.



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678 ~~1. The study must also contain an independent evaluation~~
679 ~~and examination opinion, or a comparable opinion acceptable to~~
680 ~~the office, by the consultant who prepared the study, of the~~
681 ~~underlying assumptions used as a basis for the forecasts or~~
682 ~~projections in the study and that the assumptions are reasonable~~
683 ~~and proper and the project as proposed is feasible.~~

684 1.2. The study must take into account project costs, actual
685 marketing results to date and marketing projections, resident
686 fees and charges, competition, resident contract provisions, and
687 any other factors which affect the feasibility of operating the
688 facility.

689 ~~2.3.~~ If the study is prepared by an independent certified
690 public accountant, it must contain an examination opinion, or a
691 compilation report acceptable to the office, containing a
692 financial forecast or projections for the first 5 3 years of
693 operations which take into account an actuary's mortality and
694 morbidity assumptions as the study relates to turnover, rates,
695 fees, and charges and financial projections having a compilation
696 opinion for the next 3 years. If the study is prepared by an
697 independent consulting actuary, it must contain mortality and
698 morbidity assumptions as the study relates to turnover, rates,
699 fees, and charges, ~~data~~ and an actuary's signed opinion that the
700 project as proposed is feasible and that the study has been
701 prepared in accordance with standards adopted by the American
702 Academy of Actuaries.

703 (c) Subject to subsection (4), a provider may submit an
704 application for a certificate of authority and any required
705 exhibits upon submission of documents evidencing proof that the
706 project has a minimum of 30 percent of the units reserved for



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707 which the provider is charging an entrance fee. ~~This does not~~
708 ~~apply to an application for a certificate of authority for the~~
709 ~~acquisition of a facility for which a certificate of authority~~
710 ~~was issued before October 1, 1983, to a provider who~~
711 ~~subsequently becomes a debtor in a case under the United States~~
712 ~~Bankruptcy Code, 11 U.S.C. ss. 101 et seq., or to a provider for~~
713 ~~which the department has been appointed receiver pursuant to~~
714 ~~part II of chapter 631.~~

715 (d) Documents evidencing Proof that commitments have been
716 secured for both construction financing and long-term financing
717 or a documented plan acceptable to the office has been adopted
718 by the applicant for long-term financing.

719 (e) Documents evidencing Proof that all conditions of the
720 lender have been satisfied to activate the commitment to
721 disburse funds other than the obtaining of the certificate of
722 authority, the completion of construction, or the closing of the
723 purchase of realty or buildings for the facility.

724 (f) Documents evidencing Proof that the aggregate amount of
725 entrance fees received by or pledged to the applicant, plus
726 anticipated proceeds from any long-term financing commitment,
727 plus funds from all other sources in the actual possession of
728 the applicant, equal at least 100 percent of the aggregate cost
729 of constructing or purchasing, equipping, and furnishing the
730 facility plus 100 percent of the anticipated startup losses of
731 the facility.

732 (g) A complete audited financial report statements of the
733 applicant, prepared by an independent certified public
734 accountant in accordance with generally accepted accounting
735 principles, as of the date the applicant commenced business



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736 operations or for the fiscal year that ended immediately
737 preceding the date of application, whichever is later, and
738 complete unaudited quarterly financial statements attested to by
739 the applicant after the date of the last audit.

740 (h) Documents evidencing Proof that the applicant has
741 complied with the escrow requirements of subsection (5) or
742 subsection (7) and will be able to comply with s. 651.035.

743 (i) Such other reasonable data, financial statements, and
744 pertinent information as the commission or office may require
745 with respect to the applicant or the facility, to determine the
746 financial status of the facility and the management capabilities
747 of its managers and owners.

748
749 If any material change occurs in the facts set forth in an
750 application filed with the office pursuant to this subsection,
751 an amendment setting forth such change must be filed with the
752 office within 10 business days, and a copy of the amendment must
753 be sent by registered mail to the principal office of the
754 facility and to the principal office of the controlling company.

755 (2) Within 30 days after receipt of the information
756 required under subsection (1), the office shall examine such
757 information and notify the provider in writing, specifically
758 requesting any additional information the office is permitted by
759 law to require. Within 15 days after receipt of all of the
760 requested additional information, the office shall notify the
761 provider in writing that all of the requested information has
762 been received, and the application is deemed to be complete as
763 of the date of the notice. Failure to notify the provider in
764 writing within the 15-day period constitutes acknowledgment by



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765 the office that it has received all requested additional
766 information, and the application is deemed complete for purposes
767 of review on the date of filing all of the required additional
768 information ~~Within 15 days after receipt of all of the requested~~
769 ~~additional information, the office shall notify the provider in~~
770 ~~writing that all of the requested information has been received~~
771 ~~and the application is deemed to be complete as of the date of~~
772 ~~the notice. Failure to notify the applicant in writing within~~
773 ~~the 15-day period constitutes acknowledgment by the office that~~
774 ~~it has received all requested additional information, and the~~
775 ~~application shall be deemed complete for purposes of review on~~
776 ~~the date of filing all of the required additional information.~~

777 (3) Within 45 days after an application is deemed complete
778 as set forth in subsection (2), and upon completion of the
779 remaining requirements of this section, the office shall
780 complete its review and issue or deny a certificate of authority
781 to the holder of a provisional certificate of authority. If a
782 certificate of authority is denied, the office must notify the
783 holder of the provisional certificate in writing, citing the
784 specific failures to satisfy the provisions of this chapter. The
785 period for review by the office may not be tolled if the office
786 requests additional information and the applicant provides the
787 requested information within 5 business days. If denied, the
788 holder of the provisional certificate is entitled to an
789 administrative hearing pursuant to chapter 120.

790 (4) The office shall issue a certificate of authority upon
791 determining that the applicant meets all requirements of law and
792 has submitted all of the information required by this section,
793 that all escrow requirements have been satisfied, and that the



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794 fees prescribed in s. 651.015(2) have been paid.

795 (a) ~~A Notwithstanding satisfaction of the 30-percent~~
796 ~~minimum reservation requirement of paragraph (1)(c), no~~
797 ~~certificate of authority may not shall~~ be issued until
798 documentation evidencing that the project has a minimum of 50
799 percent of the units reserved for which the provider is charging
800 an entrance fee, ~~and proof~~ is provided to the office. If a
801 provider offering continuing care at-home is applying for a
802 certificate of authority ~~or approval of an expansion pursuant to~~
803 ~~s. 651.021(2)~~, the same minimum reservation requirements must be
804 met for the continuing care and continuing care at-home
805 contracts, independently of each other.

806 (b) In order for a unit to be considered reserved under
807 this section, the provider must collect a minimum deposit of the
808 lesser of \$40,000 or 10 percent of the then-current entrance fee
809 for that unit, and may assess a forfeiture penalty of 2 percent
810 of the entrance fee due to termination of the reservation
811 contract after 30 days for any reason other than the death or
812 serious illness of the resident, the failure of the provider to
813 meet its obligations under the reservation contract, or other
814 circumstances beyond the control of the resident that equitably
815 entitle the resident to a refund of the resident's deposit. The
816 reservation contract must state the cancellation policy and the
817 terms of the continuing care or continuing care at-home contract
818 to be entered into.

819 (5) Up to 25 percent of the moneys paid for all or any part
820 of an initial entrance fee may be included or pledged for the
821 construction or purchase of the facility or as security for
822 long-term financing. The term "initial entrance fee" means the



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823 total entrance fee charged by the facility to the first occupant
824 of a unit.

825 (b) For an expansion as provided in s. 651.0246 ~~s.~~
826 ~~651.021(2)~~, a minimum of 75 percent of the moneys paid for all
827 or any part of an initial entrance fee collected for continuing
828 care and 50 percent of the moneys paid for all or any part of an
829 initial fee collected for continuing care at-home shall be
830 placed in an escrow account or on deposit with the department as
831 prescribed in s. 651.033.

832 (6) The provider is entitled to secure release of the
833 moneys held in escrow within 7 days after receipt by the office
834 of an affidavit from the provider, along with appropriate copies
835 to verify, and notification to the escrow agent by certified
836 mail, that the following conditions have been satisfied:

837 (a) A certificate of occupancy has been issued.

838 (b) Payment in full has been received for at least 70
839 percent of the total units of a phase or of the total of the
840 combined phases constructed. If a provider offering continuing
841 care at-home is applying for a release of escrowed entrance
842 fees, the same minimum requirement must be met for the
843 continuing care and continuing care at-home contracts,
844 independently of each other.

845 ~~(c) The consultant who prepared the feasibility study~~
846 ~~required by this section or a substitute approved by the office~~
847 ~~certifies within 12 months before the date of filing for office~~
848 ~~approval that there has been no material adverse change in~~
849 ~~status with regard to the feasibility study. If a material~~
850 ~~adverse change exists at the time of submission, sufficient~~
851 ~~information acceptable to the office and the feasibility~~



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852 ~~consultant must be submitted which remedies the adverse~~
853 ~~condition.~~

854 (c) ~~(d)~~ Documents evidencing Proof that commitments have
855 been secured or a documented plan adopted by the applicant has
856 been approved by the office for long-term financing.

857 (d) ~~(e)~~ Documents evidencing Proof that the provider has
858 sufficient funds to meet the requirements of s. 651.035, which
859 may include funds deposited in the initial entrance fee account.

860 (e) ~~(f)~~ Documents evidencing Proof as to the intended
861 application of the proceeds upon release and documentation proof
862 that the entrance fees when released will be applied as
863 represented to the office.

864 (f) If any material change occurred in the facts set forth
865 in the application filed with the office pursuant to subsection
866 (1), the applicant timely filed the amendment setting forth such
867 change with the office and sent copies of the amendment to the
868 principal office of the facility and to the principal office of
869 the controlling company as required under that subsection.

870
871 Notwithstanding chapter 120, no person, other than the provider,
872 the escrow agent, and the office, may have a substantial
873 interest in any office decision regarding release of escrow
874 funds in any proceedings under chapter 120 or this chapter
875 regarding release of escrow funds.

876 ~~(8) The timeframes provided under s. 651.022(5) and (6)~~
877 ~~apply to applications submitted under s. 651.021(2).~~ The office
878 may not issue a certificate of authority to a facility that does
879 not have a component that is to be licensed pursuant to part II
880 of chapter 400 or to part I of chapter 429 or that does not



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881 offer personal services or nursing services through written
882 contractual agreement. A written contractual agreement must be
883 disclosed in the contract for continuing care or continuing care
884 at-home and is subject to ~~the provisions of~~ s. 651.1151,
885 relating to administrative, vendor, and management contracts.

886 (9) The office may not approve an application that includes
887 in the plan of financing any encumbrance of the operating
888 reserves or renewal and replacement reserves required by this
889 chapter.

890 Section 9. Section 651.024, Florida Statutes, is amended to
891 read:

892 651.024 Acquisition.—

893 (1) A person who seeks to assume the role of general
894 partner of a provider or otherwise assume ownership or
895 possession of, or control over, 10 percent or more of a
896 provider's assets, based on the balance sheet from the most
897 recent financial audit filed with the office, is issued a
898 certificate of authority to operate a continuing care facility
899 or a provisional certificate of authority shall be subject to
900 the provisions of s. 628.4615 and is not required to make
901 filings pursuant to s. 651.022, s. 651.023, or s. 651.0245.

902 (2) A person who seeks to acquire and become the provider
903 for a facility is subject to s. 651.0245 and is not required to
904 make filings pursuant to ss. 628.4615, 651.022, and 651.023.

905 (3) A person may rebut a presumption of control by filing a
906 disclaimer of control with the office on a form prescribed by
907 the commission. The disclaimer must fully disclose all material
908 relationships and bases for affiliation between the person and
909 the provider or facility, as well as the basis for disclaiming



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910 the affiliation. In lieu of such form, a person or acquiring
911 party may file with the office a copy of a Schedule 13G filed
912 with the Securities and Exchange Commission pursuant to Rule
913 13d-1(b) or (c), 17 C.F.R. s. 240.13d-1, under the Securities
914 Exchange Act of 1934, as amended. After a disclaimer has been
915 filed, the provider or facility is relieved of any duty to
916 register or report under this section which may arise out of the
917 provider's or facility's relationship with the person, unless
918 the office disallows the disclaimer.

919 (4) As used in this section, the term:

920 (a) "Controlling company" means any corporation, trust, or
921 association that directly or indirectly owns 25 percent or more
922 of the voting securities of one or more facilities that are
923 stock corporations, or 25 percent or more of the ownership
924 interest of one or more facilities that are not stock
925 corporations.

926 (b) "Natural person" means an individual.

927 (c) "Person" includes a natural person, corporation,
928 association, trust, general partnership, limited partnership,
929 joint venture, firm, proprietorship, or any other entity that
930 may hold a license or certificate as a facility.

931 (5) In addition to the facility or the controlling company,
932 the office has standing to petition a circuit court as described
933 in s. 628.4615(9).

934 Section 10. Section 651.0245, Florida Statutes, is created
935 to read:

936 651.0245 Application for the simultaneous acquisition of a
937 facility and issuance of a certificate of authority.-

938 (1) Except with the prior written approval of the office, a



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939 person may not, individually or in conjunction with any
940 affiliated person of such person, directly or indirectly acquire
941 a facility operating under a subsisting certificate of authority
942 and engage in the business of providing continuing care.

943 (2) An applicant seeking simultaneous acquisition of a
944 facility and issuance of a certificate of authority must:

945 (a) Comply with the notice requirements of s.
946 628.4615(2) (a); and

947 (b) File an application in the form required by the office
948 and cooperate with the office's review of the application.

949 (3) The commission shall adopt by rule application
950 requirements equivalent to those described in ss. 628.4615(4)
951 and (5), 651.022(2) (a)-(g), and 651.023(1) (b). The office shall
952 review the application and issue an approval or disapproval of
953 the filing in accordance with ss. 628.4615(6) (a) and (c), (7)-
954 (10), and (14); 651.022(9); and 651.023(1) (b).

955 (4) As used in this section, the term:

956 (a) "Controlling company" means any corporation, trust, or
957 association that directly or indirectly owns 25 percent or more
958 of the voting securities of one or more facilities that are
959 stock corporations, or 25 percent or more of the ownership
960 interest of one or more facilities that are not stock
961 corporations.

962 (b) "Natural person" means an individual.

963 (c) "Person" includes a natural person, corporation,
964 association, trust, general partnership, limited partnership,
965 joint venture, firm, proprietorship, or any other entity that
966 may hold a license or certificate as a facility.

967 (5) In addition to the facility or the controlling company,



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968 the office has standing to petition a circuit court as described
969 in s. 628.4615(9).

970 (6) A person may rebut a presumption of control by filing a
971 disclaimer of control with the office on a form prescribed by
972 the commission. The disclaimer must fully disclose all material
973 relationships and bases for affiliation between the person and
974 the provider or facility, as well as the basis for disclaiming
975 the affiliation. In lieu of such form, a person or acquiring
976 party may file with the office a copy of a Schedule 13G filed
977 with the Securities and Exchange Commission pursuant to Rule
978 13d-1(b) or (c), 17 C.F.R. s. 240.13d-1, under the Securities
979 Exchange Act of 1934, as amended. After a disclaimer has been
980 filed, the provider or facility is relieved of any duty to
981 register or report under this section which may arise out of the
982 provider's or facility's relationship with the person, unless
983 the office disallows the disclaimer.

984 (7) The commission may adopt, amend, or repeal rules as
985 necessary to administer this section.

986 Section 11. Section 651.0246, Florida Statutes, is created
987 to read:

988 651.0246 Expansions.—

989 (1) (a) A provider must obtain written approval from the
990 office before commencing construction or marketing for an
991 expansion of a certificated facility equivalent to the addition
992 of at least 20 percent of existing units or 20 percent or more
993 in the number of continuing care at-home contracts. If the
994 provider has exceeded the current statewide median for days cash
995 on hand, debt service coverage ratio, and total campus occupancy
996 for two consecutive annual reporting periods, the provider is



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997 automatically granted approval to expand the total number of
998 existing units by up to 35 percent upon submitting a letter to
999 the office indicating the total number of planned units in the
1000 expansion, the proposed sources and uses of funds, and an
1001 attestation that the provider understands and pledges to comply
1002 with all minimum liquid reserve and escrow account requirements.
1003 As used in this section, the term "existing units" means the sum
1004 of the total number of independent living units and assisted
1005 living units identified in the most recent annual report filed
1006 with the office pursuant to s. 651.026. For purposes of this
1007 section, the statewide median for days cash on hand, debt
1008 service coverage ratio, and total campus occupancy is the median
1009 calculated in the most recent annual report submitted by the
1010 office to the Continuing Care Advisory Council pursuant to s.
1011 651.121(8). This section does not apply to construction for
1012 which a certificate of need from the Agency for Health Care
1013 Administration is required.

1014 (b) The application for such approval must be on forms
1015 adopted by the commission and provided by the office. The
1016 application must include the feasibility study required by this
1017 section and such other information as reasonably requested by
1018 the office. If the expansion is only for continuing care at-home
1019 contracts, an actuarial study prepared by an independent actuary
1020 in accordance with standards adopted by the American Academy of
1021 Actuaries which presents the financial impact of the expansion
1022 may be substituted for the feasibility study.

1023 (c) In determining whether an expansion should be approved,
1024 the office shall consider:

1025 1. Whether the application meets all requirements of law;



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1026 2. Whether the feasibility study was based on sufficient
1027 data and reasonable assumptions; and

1028 3. Whether the applicant will be able to provide continuing
1029 care or continuing care at-home as proposed and meet all
1030 financial obligations related to its operations, including the
1031 financial requirements of this chapter.

1032

1033 If the application is denied, the office must notify the
1034 applicant in writing, citing the specific failures to meet the
1035 provisions of this chapter. A denial entitles the applicant to a
1036 hearing pursuant to chapter 120.

1037 (2) A provider applying for expansion of a certificated
1038 facility must submit all of the following:

1039 (a) A feasibility study prepared by an independent
1040 certified public accountant. The feasibility study must include
1041 at least the following information:

1042 1. A description of the facility and proposed expansion,
1043 including the location, size, anticipated completion date, and
1044 the proposed construction program.

1045 2. An identification and evaluation of the primary and, if
1046 applicable, secondary market areas of the facility and the
1047 projected unit sales per month.

1048 3. Projected revenues, including anticipated entrance fees;
1049 monthly service fees; nursing care rates, if applicable; and all
1050 other sources of revenue.

1051 4. Projected expenses, including for staffing requirements
1052 and salaries; the cost of property, plant, and equipment,
1053 including depreciation expense; interest expense; marketing
1054 expense; and other operating expenses.



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- 1055 5. A projected balance sheet of the applicant.
- 1056 6. Expectations of the financial condition of the project,
1057 including the projected cash flow and an estimate of the funds
1058 anticipated to be necessary to cover startup losses.
- 1059 7. The inflation factor, if any, assumed in the study for
1060 the proposed expansion and how and where it is applied.
- 1061 8. Project costs, the total amount of debt financing
1062 required, marketing projections, resident fees and charges, the
1063 competition, resident contract provisions, and other factors
1064 that affect the feasibility of the facility.
- 1065 9. Appropriate population projections, including morbidity
1066 and mortality assumptions.
- 1067 10. The name of the person who prepared the feasibility
1068 study and his or her experience in preparing similar studies or
1069 otherwise consulting in the field of continuing care.
- 1070 11. Financial forecasts or projections prepared in
1071 accordance with standards adopted by the American Institute of
1072 Certified Public Accountants or in accordance with standards for
1073 feasibility studies for continuing care retirement communities
1074 adopted by the Actuarial Standards Board.
- 1075 12. An independent evaluation and examination opinion for
1076 the first 5 years of operations, or a comparable opinion
1077 acceptable to the office, by the consultant who prepared the
1078 study, of the underlying assumptions used as a basis for the
1079 forecasts or projections in the study and that the assumptions
1080 are reasonable and proper and the project as proposed is
1081 feasible.
- 1082 13. Any other information that the provider deems relevant
1083 and appropriate to provide to enable the office to make a more



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1084 informed determination.

1085 (b) Such other reasonable data, financial statements, and
1086 pertinent information as the commission or office may require
1087 with respect to the applicant or the facility to determine the
1088 financial status of the facility and the management capabilities
1089 of its managers and owners.

1090 (3) A minimum of 75 percent of the moneys paid for all or
1091 any part of an initial entrance fee or reservation deposit
1092 collected for continuing care and 50 percent of the moneys paid
1093 for all or any part of an initial fee collected for continuing
1094 care at-home must be placed in an escrow account or on deposit
1095 with the department as prescribed in s. 651.033. Up to 25
1096 percent of the moneys paid for all or any part of an initial
1097 entrance fee or reservation deposit may be included or pledged
1098 for the construction or purchase of the facility or as security
1099 for long-term financing. As used in this section, the term
1100 "initial entrance fee" means the total entrance fee charged by
1101 the facility to the first occupant of a unit.

1102
1103 Entrance fees and reservation deposits collected for expansions
1104 must be held pursuant to the escrow requirements of s.
1105 651.023(5) and (6).

1106 (4) The provider is entitled to secure release of the
1107 moneys held in escrow within 7 days after receipt by the office
1108 of an affidavit from the provider, along with appropriate copies
1109 to verify, and notification to the escrow agent by certified
1110 mail that the following conditions have been satisfied:

1111 (a) A certificate of occupancy has been issued.

1112 (b) Payment in full has been received for at least 50



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1113 percent of the total units of a phase or of the total of the
1114 combined phases constructed. If a provider offering continuing
1115 care at-home is applying for a release of escrowed entrance
1116 fees, the same minimum requirement must be met for the
1117 continuing care and continuing care at-home contracts
1118 independently of each other.

1119 (c) Documents evidencing that commitments have been secured
1120 or that a documented plan adopted by the applicant has been
1121 approved by the office for long-term financing.

1122 (d) Documents evidencing that the provider has sufficient
1123 funds to meet the requirements of s. 651.035, which may include
1124 funds deposited in the initial entrance fee account.

1125 (e) Documents evidencing the intended application of the
1126 proceeds upon release and documentation that the entrance fees,
1127 when released, will be applied as represented to the office.

1128
1129 Notwithstanding chapter 120, only the provider, the escrow
1130 agent, and the office have a substantial interest in any office
1131 decision regarding release of escrow funds in any proceedings
1132 under chapter 120 or this chapter.

1133 (5) (a) Within 30 days after receipt of an application for
1134 expansion, the office shall examine the application and shall
1135 notify the applicant in writing, specifically setting forth and
1136 specifically requesting any additional information that the
1137 office is authorized to require. Within 15 days after the office
1138 receives all the requested additional information, the office
1139 shall notify the applicant in writing that the requested
1140 information has been received and that the application is deemed
1141 to be complete as of the date of the notice. If the office



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1142 chooses not to notify the applicant within the 15-day period,
1143 then the application is deemed complete for purposes of review
1144 on the date the applicant files the additional requested
1145 information. If the application submitted is determined by the
1146 office to be substantially incomplete so as to require
1147 substantial additional information, including biographical
1148 information, the office may return the application to the
1149 applicant with a written notice that the application as received
1150 is substantially incomplete and therefore unacceptable for
1151 filing without further action required by the office. Any filing
1152 fee received must be refunded to the applicant.

1153 (b) An application is deemed complete upon the office
1154 receiving all requested information and the applicant correcting
1155 any error or omission of which the applicant was timely notified
1156 or when the time for such notification has expired. The office
1157 shall notify the applicant in writing of the date on which the
1158 application was deemed complete.

1159 (6) Within 45 days after the date on which an application
1160 is deemed complete as set forth in paragraph (5) (b), the office
1161 shall complete its review and, based upon its review, approve an
1162 expansion by the applicant and issue a determination that the
1163 application meets all requirements of law, that the feasibility
1164 study was based on sufficient data and reasonable assumptions,
1165 and that the applicant will be able to provide continuing care
1166 or continuing care at-home as proposed and meet all financial
1167 and contractual obligations related to its operations, including
1168 the financial requirements of this chapter. The period for
1169 review by the office may not be tolled if the office requests
1170 additional information and the applicant provides information



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1171 acceptable to the office within 5 business days. If the
1172 application is denied, the office must notify the applicant in
1173 writing, citing the specific failures to meet the provisions of
1174 this chapter. The denial entitles the applicant to a hearing
1175 pursuant to chapter 120.

1176 Section 12. Paragraph (c) of subsection (2) and subsection
1177 (3) of section 651.026, Florida Statutes, are amended,
1178 subsection (10) is added to that section, and paragraph (a) of
1179 subsection (2) of that section is republished, to read:

1180 651.026 Annual reports.—

1181 (2) The annual report shall be in such form as the
1182 commission prescribes and shall contain at least the following:

1183 (a) Any change in status with respect to the information
1184 required to be filed under s. 651.022(2).

1185 (c) The following financial information:

1186 1. A detailed listing of the assets maintained in the
1187 liquid reserve as required under s. 651.035 and in accordance
1188 with part II of chapter 625;

1189 2. A schedule giving additional information relating to
1190 property, plant, and equipment having an original cost of at
1191 least \$25,000, so as to show in reasonable detail with respect
1192 to each separate facility original costs, accumulated
1193 depreciation, net book value, appraised value or insurable value
1194 and date thereof, insurance coverage, encumbrances, and net
1195 equity of appraised or insured value over encumbrances. Any
1196 property not used in continuing care must be shown separately
1197 from property used in continuing care;

1198 3. The level of participation in Medicare or Medicaid
1199 programs, or both;



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1200 4. A statement of all fees required of residents,
1201 including, but not limited to, a statement of the entrance fee
1202 charged, the monthly service charges, the proposed application
1203 of the proceeds of the entrance fee by the provider, and the
1204 plan by which the amount of the entrance fee is determined if
1205 the entrance fee is not the same in all cases; and

1206 5. Any change or increase in fees if the provider changes
1207 the scope of, or the rates for, care or services, regardless of
1208 whether the change involves the basic rate or only those
1209 services available at additional costs to the resident.

1210 6. If the provider has more than one certificated facility,
1211 or has operations that are not licensed under this chapter, it
1212 shall submit a balance sheet, statement of income and expenses,
1213 statement of equity or fund balances, and statement of cash
1214 flows for each facility licensed under this chapter as
1215 supplemental information to the audited financial report
1216 ~~statements~~ required under paragraph (b).

1217 7. The management's calculation of the provider's debt
1218 service coverage ratio and days cash on hand for the current
1219 reporting period, and an opinion from an independent certified
1220 public accountant of the management's calculations.

1221 (3) The commission shall adopt by rule additional
1222 ~~meaningful~~ measures of assessing the financial viability of a
1223 provider. ~~The rule may include the following factors:~~

1224 ~~(a) Debt service coverage ratios.~~

1225 ~~(b) Current ratios.~~

1226 ~~(c) Adjusted current ratios.~~

1227 ~~(d) Cash flows.~~

1228 ~~(e) Occupancy rates.~~



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1229 ~~(f) Other measures, ratios, or trends.~~
1230 ~~(g) Other factors as may be appropriate.~~
1231 (10) Within 90 days after the conclusion of each annual
1232 reporting period, the office shall publish an industry
1233 benchmarking report that contains all of the following:
1234 (a) The median days cash on hand for all providers.
1235 (b) The median debt service coverage ratio for all
1236 providers.
1237 (c) The median occupancy rate for all providers by setting,
1238 including independent living, assisted living, skilled nursing,
1239 and the entire campus.
1240 Section 13. Section 651.0261, Florida Statutes, is amended
1241 to read:
1242 651.0261 Quarterly and monthly statements.—
1243 (1) Within 45 days after the end of each fiscal quarter,
1244 each provider shall file a quarterly unaudited financial
1245 statement of the provider or of the facility in the form
1246 prescribed by rule of the commission and a detailed listing of
1247 the assets maintained in the liquid reserve as required under s.
1248 651.035. This requirement may be waived by the office upon
1249 written request from a provider that is accredited or that has
1250 obtained an investment grade credit rating from a United States
1251 credit rating agency as authorized under s. 651.028. The last
1252 quarterly statement for a fiscal year is not required if a
1253 provider does not have pending a regulatory action level event
1254 or corrective action plan.
1255 ~~(2) If the office finds, pursuant to rules of the~~
1256 ~~commission,~~ that such information is needed to properly monitor
1257 the financial condition of a provider or facility or is



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1258 otherwise needed to protect the public interest, the office may
1259 require the provider to file:

1260 (a) Within 25 days after the end of each month, a monthly
1261 unaudited financial statement of the provider or of the facility
1262 in the form prescribed by the commission by rule and a detailed
1263 listing of the assets maintained in the liquid reserve as
1264 required under s. 651.035, within 45 days after the end of each
1265 fiscal quarter, a quarterly unaudited financial statement of the
1266 provider or of the facility in the form prescribed by the
1267 commission by rule. The commission may by rule require all or
1268 part of the statements or filings required under this section to
1269 be submitted by electronic means in a computer-readable form
1270 compatible with the electronic data format specified by the
1271 commission.

1272 (b) Such other data, financial statements, and pertinent
1273 information as the commission or office may reasonably require
1274 with respect to the provider or the facility, or its directors,
1275 trustees, members, branches, subsidiaries, or affiliates, to
1276 determine the financial status of the provider or of the
1277 facility and the management capabilities of its managers and
1278 owners.

1279 (3) A filing under subsection (2) may be required if any of
1280 the following apply:

1281 (a) The facility has been operational for less than 2
1282 years.

1283 (b) The provider is:

1284 1. Subject to administrative supervision proceedings;

1285 2. Subject to a corrective action plan resulting from a
1286 regulatory action level event for up to 2 years after the



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1287 factors that caused the regulatory action level event have been
1288 corrected; or

1289 3. Subject to delinquency or receivership proceedings.

1290 (c) The provider or facility displays a declining financial
1291 position.

1292 (d) A change of ownership of the provider or facility has
1293 occurred within the previous 2 years.

1294 (e) The facility is deemed to be impaired.

1295 (4) The commission may by rule require all or part of the
1296 statements or filings required under this section to be
1297 submitted by electronic means in a computer-readable form
1298 compatible with an electronic data format specified by the
1299 commission.

1300 Section 14. Section 651.028, Florida Statutes, is amended
1301 to read:

1302 651.028 Accredited or certain credit-rated facilities.—If a
1303 provider or obligated group is accredited without stipulations
1304 or conditions by a process found by the office to be acceptable
1305 and substantially equivalent to the provisions of this chapter
1306 or has obtained an investment grade credit rating from a
1307 nationally recognized credit rating agency, as applicable, from
1308 Moody's Investors Service, Standard & Poor's, or Fitch Ratings,
1309 the office may, pursuant to rule of the commission, waive any
1310 requirements of this chapter with respect to the provider if the
1311 office finds that such waivers are not inconsistent with the
1312 security protections intended by this chapter.

1313 Section 15. Paragraphs (a), (c), and (d) of subsection (1)
1314 and subsections (2) and (3) of section 651.033, Florida
1315 Statutes, are amended, and subsection (6) is added to that



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1316 section, to read:

1317 651.033 Escrow accounts.—

1318 (1) When funds are required to be deposited in an escrow
1319 account pursuant to s. 651.022, s. 651.023, s. 651.035, or s.
1320 651.055:

1321 (a) The escrow account must ~~shall~~ be established in a
1322 Florida bank, Florida savings and loan association, ~~or~~ Florida
1323 trust company, or a national bank that is chartered and
1324 supervised by the Office of the Comptroller of the Currency
1325 within the United States Department of the Treasury and that has
1326 either a branch or a license to operate in this state which is
1327 acceptable to the office, or such funds must be deposited ~~on~~
1328 deposit with the department, and the funds deposited therein
1329 ~~shall~~ be kept and maintained in an account separate and apart
1330 from the provider's business accounts.

1331 (c) Any agreement establishing an escrow account required
1332 under ~~the provisions of~~ this chapter is ~~shall~~ be subject to
1333 approval by the office. The agreement must ~~shall~~ be in writing
1334 and ~~shall~~ contain, in addition to any other provisions required
1335 by law, a provision whereby the escrow agent agrees to abide by
1336 the duties imposed by paragraphs (b) and (e), (3) (a), (3) (b),
1337 and (5) (a) and subsection (6) under this section.

1338 (d) All funds deposited in an escrow account, if invested,
1339 must ~~shall~~ be invested in cash, cash equivalents, mutual funds,
1340 equities, or investment grade bonds as set forth in part II of
1341 ~~chapter 625~~; however, such investment may not diminish the funds
1342 held in escrow below the amount required by this chapter. Funds
1343 deposited in an escrow account are not subject to charges by the
1344 escrow agent except escrow agent fees associated with



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1345 administering the accounts, or subject to any liens, judgments,
1346 garnishments, creditor's claims, or other encumbrances against
1347 the provider or facility except as provided in s. 651.035(1).

1348 (2) Notwithstanding s. 651.035(7), ~~In addition, the escrow~~
1349 ~~agreement shall provide that the escrow agent or another person~~
1350 ~~designated to act in the escrow agent's place and the provider,~~
1351 ~~except as otherwise provided in s. 651.035, shall notify the~~
1352 ~~office in writing at least 10 days before the withdrawal of any~~
1353 ~~portion of any funds required to be escrowed under the~~
1354 ~~provisions of s. 651.035. However, in the event of an emergency~~
1355 ~~and upon petition by the provider, the office may waive the 10-~~
1356 ~~day notification period and allow a withdrawal of up to 10~~
1357 ~~percent of the required minimum liquid reserve. The office shall~~
1358 ~~have 3 working days to deny the petition for the emergency 10-~~
1359 ~~percent withdrawal. If the office fails to deny the petition~~
1360 ~~within 3 working days, the petition is ~~shall be~~ deemed to have~~
1361 ~~been granted by the office. For purposes ~~the purpose~~ of this~~
1362 ~~section, "working day" means each day that is not a Saturday,~~
1363 ~~Sunday, or legal holiday as defined by Florida law. Also, for~~
1364 ~~purposes ~~the purpose~~ of this section, the day the petition is~~
1365 ~~received by the office is ~~shall~~ not ~~be~~ counted as one of the 3~~
1366 ~~days.~~

1367 (3) ~~In addition,~~ When entrance fees are required to be
1368 deposited in an escrow account pursuant to s. 651.022, s.
1369 651.023, or s. 651.055:

1370 (a) The provider shall deliver to the resident a written
1371 receipt. The receipt must show the payor's name and address, the
1372 date, the price of the care contract, and the amount of money
1373 paid. A copy of each receipt, together with the funds, must



1374 ~~shall~~ be deposited with the escrow agent or as provided in
1375 paragraph (c). The escrow agent must ~~shall~~ release such funds to
1376 the provider 7 days after the date of receipt of the funds by
1377 the escrow agent if the provider, operating under a certificate
1378 of authority issued by the office, has met the requirements of
1379 s. 651.023(6). However, if the resident rescinds the contract
1380 within the 7-day period, the escrow agent must ~~shall~~ release the
1381 escrowed fees to the resident.

1382 (b) At the request of an individual resident of a facility,
1383 the escrow agent shall issue a statement indicating the status
1384 of the resident's portion of the escrow account.

1385 (c) At the request of an individual resident of a facility,
1386 the provider may hold the check for the 7-day period and may
1387 ~~shall~~ not deposit it during this time period. If the resident
1388 rescinds the contract within the 7-day period, the check must
1389 ~~shall~~ be immediately returned to the resident. Upon the
1390 expiration of the 7 days, the provider shall deposit the check.

1391 (d) A provider may assess a nonrefundable fee, which is
1392 separate from the entrance fee, for processing a prospective
1393 resident's application for continuing care or continuing care
1394 at-home.

1395 (6) Except as described in paragraph (3) (a), the escrow
1396 agent may not release or otherwise allow the transfer of funds
1397 without the written approval of the office, unless the
1398 withdrawal is from funds in excess of the amounts required by
1399 ss. 651.022, 651.023, 651.035, and 651.055.

1400 Section 16. Section 651.034, Florida Statutes, is created
1401 to read:

1402 651.034 Financial and operating requirements for



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1403 providers.-

1404 (1) (a) If a regulatory action level event occurs, the
1405 office must:

1406 1. Require the provider to prepare and submit a corrective
1407 action plan or, if applicable, a revised corrective action plan;

1408 2. Perform an examination pursuant to s. 651.105 or an
1409 analysis, as the office considers necessary, of the assets,
1410 liabilities, and operations of the provider, including a review
1411 of the corrective action plan or the revised corrective action
1412 plan; and

1413 3. After the examination or analysis, issue a corrective
1414 order specifying any corrective actions that the office
1415 determines are required.

1416 (b) In determining corrective actions, the office shall
1417 consider any factor relevant to the provider based upon the
1418 office's examination or analysis of the assets, liabilities, and
1419 operations of the provider. The provider must submit the
1420 corrective action plan or the revised corrective action plan
1421 within 30 days after the occurrence of the regulatory action
1422 level event. The office shall review and approve or disapprove
1423 the corrective action plan within 15 business days.

1424 (c) The office may use members of the Continuing Care
1425 Advisory Council, individually or as a group, or may retain
1426 actuaries, investment experts, and other consultants to review a
1427 provider's corrective action plan or revised corrective action
1428 plan, examine or analyze the assets, liabilities, and operations
1429 of a provider, and formulate the corrective order with respect
1430 to the provider. The fees, costs, and expenses relating to
1431 consultants must be borne by the affected provider.



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1432 (2) If an impairment occurs, the office must take any
1433 action necessary to place the provider under regulatory control,
1434 including any remedy available under chapter 631. An impairment
1435 is sufficient grounds for the department to be appointed as
1436 receiver as provided in chapter 631. Notwithstanding s. 631.011,
1437 impairment of a provider, for purposes of s. 631.051, is defined
1438 according to the term "impaired" under s. 651.011. The office
1439 may forego taking action for up to 180 days after the impairment
1440 if the office finds there is a reasonable expectation that the
1441 impairment may be eliminated within the 180-day period.

1442 (3) There is no liability on the part of, and a cause of
1443 action may not arise against, the commission, department, or
1444 office, or their employees or agents, for any action they take
1445 in the performance of their powers and duties under this
1446 section.

1447 (4) The office shall transmit any notice that may result in
1448 regulatory action by registered mail, certified mail, or any
1449 other method of transmission which includes documentation of
1450 receipt by the provider. Notice is effective when the provider
1451 receives it.

1452 (5) This section is supplemental to the other laws of this
1453 state and does not preclude or limit any power or duty of the
1454 department or office under those laws or under the rules adopted
1455 pursuant to those laws.

1456 (6) The office may exempt a provider from subsection (1) or
1457 subsection (2) until stabilized occupancy is reached or until
1458 the time projected to achieve stabilized occupancy as reported
1459 in the last feasibility study required by the office as part of
1460 an application filing under s. 651.023, s. 651.024, s. 651.0245,



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1461 or s. 651.0246 has elapsed, but for no longer than 5 years from
1462 the date of issuance of the certificate of occupancy.

1463 (7) The commission may adopt rules to administer this
1464 section, including, but not limited to, rules regarding
1465 corrective action plans, revised corrective action plans,
1466 corrective orders, and procedures to be followed in the event of
1467 a regulatory action level event or an impairment.

1468 Section 17. Paragraphs (a), (b), and (c) of subsection (1)
1469 of section 651.035, Florida Statutes, are amended, and
1470 subsections (7) through (10) are added to that section, to read:

1471 651.035 Minimum liquid reserve requirements.—

1472 (1) A provider shall maintain in escrow a minimum liquid
1473 reserve consisting of the following reserves, as applicable:

1474 (a) Each provider shall maintain in escrow as a debt
1475 service reserve the aggregate amount of all principal and
1476 interest payments due during the fiscal year on any mortgage
1477 loan or other long-term financing of the facility, including
1478 property taxes as recorded in the audited financial report
1479 ~~statements~~ required under s. 651.026. The amount must include
1480 any leasehold payments and all costs related to such payments.
1481 If principal payments are not due during the fiscal year, the
1482 provider must ~~shall~~ maintain in escrow as a minimum liquid
1483 reserve an amount equal to interest payments due during the next
1484 12 months on any mortgage loan or other long-term financing of
1485 the facility, including property taxes. If a provider does not
1486 have a mortgage loan or other financing on the facility, the
1487 provider must deposit monthly in escrow as a minimum liquid
1488 reserve an amount equal to one-twelfth of the annual property
1489 tax liability as indicated in the most recent tax notice



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1490 provided pursuant to s. 197.322(3).

1491 (b) A provider that has outstanding indebtedness that
1492 requires a debt service reserve to be held in escrow pursuant to
1493 a trust indenture or mortgage lien on the facility and for which
1494 the debt service reserve may only be used to pay principal and
1495 interest payments on the debt that the debtor is obligated to
1496 pay, and which may include property taxes and insurance, may
1497 include such debt service reserve in computing the minimum
1498 liquid reserve needed to satisfy this subsection if the provider
1499 furnishes to the office a copy of the agreement under which such
1500 debt service is held, together with a statement of the amount
1501 being held in escrow for the debt service reserve, certified by
1502 the lender or trustee and the provider to be correct. The
1503 trustee shall provide the office with any information concerning
1504 the debt service reserve account upon request of the provider or
1505 the office. Such separate debt service reserves, if any, are not
1506 subject to the transfer provisions set forth in subsection (8).

1507 (c) Each provider shall maintain in escrow an operating
1508 reserve equal to 30 percent of the total operating expenses
1509 projected in the feasibility study required by s. 651.023 for
1510 the first 12 months of operation. Thereafter, each provider
1511 shall maintain in escrow an operating reserve equal to 15
1512 percent of the total operating expenses in the annual report
1513 filed pursuant to s. 651.026. If a provider has been in
1514 operation for more than 12 months, the total annual operating
1515 expenses must ~~shall~~ be determined by averaging the total annual
1516 operating expenses reported to the office by the number of
1517 annual reports filed with the office within the preceding 3-year
1518 period subject to adjustment if there is a change in the number



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1519 of facilities owned. For purposes of this subsection, total
1520 annual operating expenses include all expenses of the facility
1521 except ~~+~~ depreciation and amortization; interest and property
1522 taxes included in paragraph (a); extraordinary expenses that are
1523 adequately explained and documented in accordance with generally
1524 accepted accounting principles; liability insurance premiums in
1525 excess of those paid in calendar year 1999; and changes in the
1526 obligation to provide future services to current residents. For
1527 providers initially licensed during or after calendar year 1999,
1528 liability insurance must ~~shall~~ be included in the total
1529 operating expenses in an amount not to exceed the premium paid
1530 during the first 12 months of facility operation. ~~Beginning~~
1531 ~~January 1, 1993,~~ The operating reserves required under this
1532 subsection must ~~shall~~ be in an unencumbered account held in
1533 escrow for the benefit of the residents. Such funds may not be
1534 encumbered or subject to any liens or charges by the escrow
1535 agent or judgments, garnishments, or creditors' claims against
1536 the provider or facility. However, if a facility had a lien,
1537 mortgage, trust indenture, or similar debt instrument in place
1538 before January 1, 1993, which encumbered all or any part of the
1539 reserves required by this subsection and such funds were used to
1540 meet the requirements of this subsection, then such arrangement
1541 may be continued, unless a refinancing or acquisition has
1542 occurred, and the provider is ~~shall be~~ in compliance with this
1543 subsection.

1544 (7) (a) A provider may withdraw funds held in escrow without
1545 the approval of the office if the amount held in escrow exceeds
1546 the requirements of this section and if the withdrawal will not
1547 affect compliance with this section.



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1548 (b)1. For all other proposed withdrawals, in order to
1549 receive the consent of the office, the provider must file
1550 documentation showing why the withdrawal is necessary for the
1551 continued operation of the facility and such additional
1552 information as the office reasonably requires.

1553 2. The office shall notify the provider when the filing is
1554 deemed complete. If the provider has complied with all prior
1555 requests for information, the filing is deemed complete after 30
1556 days without communication from the office.

1557 3. Within 30 days after the date a file is deemed complete,
1558 the office shall provide the provider with written notice of its
1559 approval or disapproval of the request. The office may
1560 disapprove any request to withdraw such funds if it determines
1561 that the withdrawal is not in the best interest of the
1562 residents.

1563 (8) The office may order the immediate transfer of up to
1564 100 percent of the funds held in the minimum liquid reserve to
1565 the custody of the department pursuant to part III of chapter
1566 625 if the office finds that the provider is impaired or
1567 insolvent. The office may order such a transfer regardless of
1568 whether the office has suspended or revoked, or intends to
1569 suspend or revoke, the certificate of authority of the provider.

1570 (9) Each facility shall file with the office annually,
1571 together with the annual report required by s. 651.026, a
1572 calculation of its minimum liquid reserve, determined in
1573 accordance with this section, on a form prescribed by the
1574 commission. The minimum liquid reserve must be maintained at the
1575 calculated level within 60 days after filing the annual report.

1576 (10) If the balance of the minimum liquid reserve is below



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1577 the required amount at the end of any month, the provider must
1578 fund the shortfall in the reserve within 10 business days after
1579 the beginning of the following month. If the balance of the
1580 minimum liquid reserve is not restored to the required amount
1581 within such time, the provider will be deemed out of compliance
1582 with this section.

1583 Section 18. Section 651.043, Florida Statutes, is created
1584 to read:

1585 651.043 Approval of change in management.—

1586 (1) As used in this section, the term "management" means:

1587 (a) A manager or management company; or

1588 (b) A person who exercises or who has the ability to
1589 exercise effective control of the provider or organization, or
1590 who influences or has the ability to influence the transaction
1591 of the business of the provider.

1592 (2) A contract for management entered into after July 1,
1593 2018, must be in writing and include a provision that the
1594 contract will be canceled upon issuance of an order by the
1595 office pursuant to this section without the application of any
1596 cancellation fee or penalty. If a provider contracts with a
1597 management company, a separate written contract is not required
1598 for the individual manager employed by the management company to
1599 oversee a facility.

1600 (3) A provider must notify the office, in writing or
1601 electronically, of any change in management within 10 business
1602 days. For each new management appointment, the provider must
1603 submit the information required by s. 651.022(2) and a copy of
1604 the written management contract, if applicable.

1605 (4) For a provider that is deemed to be impaired or that



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1606 has a regulatory action level event pending, the office may
1607 disapprove new management and order the provider to remove the
1608 new management after reviewing the information required in
1609 subsection (3).

1610 (5) For a provider other than that specified in subsection
1611 (4), the office may disapprove new management and order the
1612 provider to remove the new management after receiving the
1613 required information in subsection (3) if the office:

1614 (a) Finds that the new management is incompetent or
1615 untrustworthy;

1616 (b) Finds that the new management is so lacking in relevant
1617 managerial experience as to make the proposed operation
1618 hazardous to the residents or potential residents;

1619 (c) Finds that the new management is so lacking in relevant
1620 experience, ability, and standing as to jeopardize the
1621 reasonable promise of successful operation; or

1622 (d) Has good reason to believe that the new management is
1623 affiliated directly or indirectly through ownership, control, or
1624 business relations with any person or persons whose business
1625 operations are or have been marked by manipulation of assets or
1626 accounts or by bad faith, to the detriment of residents,
1627 stockholders, investors, creditors, or the public.

1628
1629 The office shall complete its review as required under
1630 subsections (4) and (5) and, if applicable, issue notice of
1631 disapproval of the new management within 15 business days after
1632 the filing is deemed complete. A filing is deemed complete upon
1633 the office's receipt of all requested information and the
1634 provider's correction of any error or omission for which the



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1635 provider was timely notified. If the office does not issue
1636 notice of disapproval of the new management within 15 business
1637 days after the filing is deemed complete, then the new
1638 management is deemed approved.

1639 (6) Management disapproved by the office must be removed
1640 within 30 days after receipt by the provider of notice of such
1641 disapproval.

1642 (7) The office may revoke, suspend, or take other
1643 administrative action against the certificate of authority of
1644 the provider if the provider:

1645 (a) Fails to timely remove management disapproved by the
1646 office;

1647 (b) Fails to timely notify the office of a change in
1648 management;

1649 (c) Appoints new management without a written contract; or

1650 (d) Repeatedly appoints management that was previously
1651 disapproved by the office or that is not approvable pursuant to
1652 subsection (5).

1653 (8) The provider shall remove any management immediately
1654 upon discovery of any of the following conditions, if the
1655 conditions were not disclosed in the notice to the office
1656 required in subsection (3):

1657 (a) That any person who exercises or has the ability to
1658 exercise effective control of the provider, or who influences or
1659 has the ability to influence the transaction of the business of
1660 the provider, has been found guilty of, or has pled guilty or no
1661 contest to, any felony or crime punishable by imprisonment of 1
1662 year or more under the laws of the United States or any state
1663 thereof or under the laws of any other country which involves



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1664 moral turpitude, without regard to whether a judgment or
1665 conviction has been entered by the court having jurisdiction in
1666 such case.

1667 (b) That any person who exercises or has the ability to
1668 exercise effective control of the organization, or who
1669 influences or has the ability to influence the transaction of
1670 the business of the provider, is now or was in the past
1671 affiliated, directly or indirectly, through ownership interest
1672 of 10 percent or more in, or control of, any business,
1673 corporation, or other entity that has been found guilty of or
1674 has pled guilty or no contest to any felony or crime punishable
1675 by imprisonment for 1 year or more under the laws of the United
1676 States, any state, or any other country, regardless of
1677 adjudication.

1678
1679 The failure to remove such management is grounds for revocation
1680 or suspension of the provider's certificate of authority.

1681 Section 19. Section 651.051, Florida Statutes, is amended
1682 to read:

1683 651.051 Maintenance of assets and records in state.—All
1684 records and assets of a provider must be maintained in this
1685 state, or, if the provider's corporate office is located in
1686 another state, must be electronically stored in a manner that
1687 will ensure that the records are readily accessible to the
1688 office. No records or assets may be removed from this state by a
1689 provider unless the office consents to such removal in writing
1690 before such removal. Such consent must ~~shall~~ be based upon the
1691 provider's submitting satisfactory evidence that the removal
1692 will facilitate and make more economical the operations of the



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1693 provider and will not diminish the service or protection
1694 thereafter to be given the provider's residents in this state.
1695 ~~Before~~ ~~Prior to~~ such removal, the provider shall give notice to
1696 the president or chair of the facility's residents' council. If
1697 such removal is part of a cash management system which has been
1698 approved by the office, disclosure of the system must ~~shall~~ meet
1699 the notification requirements. The electronic storage of records
1700 on a web-based, secured storage platform by contract with a
1701 third party is acceptable if the records are readily accessible
1702 to the office.

1703 Section 20. Subsection (2) of section 651.057, Florida
1704 Statutes, is amended to read:

1705 651.057 Continuing care at-home contracts.-

1706 (2) A provider that holds a certificate of authority and
1707 wishes to offer continuing care at-home must also:

1708 (a) Submit a business plan to the office with the following
1709 information:

1710 1. A description of the continuing care at-home services
1711 that will be provided, the market to be served, and the fees to
1712 be charged;

1713 2. A copy of the proposed continuing care at-home contract;

1714 3. An actuarial study prepared by an independent actuary in
1715 accordance with the standards adopted by the American Academy of
1716 Actuaries which presents the impact of providing continuing care
1717 at-home on the overall operation of the facility; and

1718 4. A market feasibility study that meets the requirements
1719 of s. 651.022(4) ~~s. 651.022(3)~~ and documents that there is
1720 sufficient interest in continuing care at-home contracts to
1721 support such a program;



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1722 (b) Demonstrate to the office that the proposal to offer
1723 continuing care at-home contracts to individuals who do not
1724 immediately move into the facility will not place the provider
1725 in an unsound financial condition;

1726 (c) Comply with the requirements of s. 651.0246(1) ~~s.~~
1727 ~~651.021(2)~~, except that an actuarial study may be substituted
1728 for the feasibility study; and

1729 (d) Comply with the requirements of this chapter.

1730 Section 21. Subsection (1) of section 651.071, Florida
1731 Statutes, is amended to read:

1732 651.071 Contracts as preferred claims on liquidation or
1733 receivership.—

1734 (1) In the event of receivership or liquidation proceedings
1735 against a provider, all continuing care and continuing care at-
1736 home contracts executed by a provider are ~~shall be~~ deemed
1737 preferred claims or policyholder loss preferred claims pursuant
1738 to s. 631.271(1)(b) against all assets owned by the provider;
1739 however, such claims are subordinate to any secured claim.

1740 Section 22. Subsection (2) and present paragraph (g) of
1741 subsection (3) of section 651.091, Florida Statutes, are
1742 amended, present paragraphs (h) and (i) of subsection (3) of
1743 that section are redesignated as paragraphs (g) and (h),
1744 respectively, a new paragraph (i) and paragraphs (j), (k), and
1745 (l) are added to that subsection, and paragraph (d) of
1746 subsection (3) and subsection (4) of that section are
1747 republished, to read:

1748 651.091 Availability, distribution, and posting of reports
1749 and records; requirement of full disclosure.—

1750 (2) Every continuing care facility shall:



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1751 (a) Display the certificate of authority in a conspicuous
1752 place inside the facility.

1753 (b) Post in a prominent position in the facility which is
1754 accessible to all residents and the general public a concise
1755 summary of the last examination report issued by the office,
1756 with references to the page numbers of the full report noting
1757 any deficiencies found by the office, and the actions taken by
1758 the provider to rectify such deficiencies, indicating in such
1759 summary where the full report may be inspected in the facility.

1760 (c) Provide notice to the president or chair of the
1761 residents' council within 10 business days after issuance of a
1762 final examination report or the initiation of any legal or
1763 administrative proceeding by the office or the department and
1764 include a copy of such document.

1765 (d)~~(e)~~ Post in a prominent position in the facility which
1766 is accessible to all residents and the general public a summary
1767 of the latest annual statement, indicating in the summary where
1768 the full annual statement may be inspected in the facility. A
1769 listing of any proposed changes in policies, programs, and
1770 services must also be posted.

1771 (e)~~(d)~~ Distribute a copy of the full annual statement and a
1772 copy of the most recent third-party ~~third-party~~ financial audit
1773 filed with the annual report to the president or chair of the
1774 residents' council within 30 days after filing the annual report
1775 with the office, and designate a staff person to provide
1776 explanation thereof.

1777 (f)~~(e)~~ Deliver the information described in s. 651.085(4)
1778 in writing to the president or chair of the residents' council
1779 and make supporting documentation available upon request ~~Notify~~



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1780 ~~the residents' council of any plans filed with the office to~~
1781 ~~obtain new financing, additional financing, or refinancing for~~
1782 ~~the facility and of any applications to the office for any~~
1783 ~~expansion of the facility.~~

1784 (g) ~~(f)~~ Deliver to the president or chair of the residents'
1785 council a summary of entrance fees collected and refunds made
1786 during the time period covered in the annual report and the
1787 refund balances due at the end of the report period.

1788 (h) ~~(g)~~ Deliver to the president or chair of the residents'
1789 council a copy of each quarterly statement within 30 days after
1790 the quarterly statement is filed with the office if the facility
1791 is required to file quarterly.

1792 (i) ~~(h)~~ Upon request, deliver to the president or chair of
1793 the residents' council a copy of any newly approved continuing
1794 care or continuing care at-home contract within 30 days after
1795 approval by the office.

1796 (j) Provide to the president or chair of the residents'
1797 council a copy of any notice filed with the office relating to
1798 any change in ownership within 10 business days after such
1799 filing by the provider.

1800 (k) Make the information available to prospective residents
1801 pursuant to paragraph (3) (d) available to current residents and
1802 provide notice of changes to that information to the president
1803 or chair of the residents' council within 3 business days.

1804 (3) Before entering into a contract to furnish continuing
1805 care or continuing care at-home, the provider undertaking to
1806 furnish the care, or the agent of the provider, shall make full
1807 disclosure, and provide copies of the disclosure documents to
1808 the prospective resident or his or her legal representative, of



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1809 the following information:

1810 (d) In keeping with the intent of this subsection relating
1811 to disclosure, the provider shall make available for review
1812 master plans approved by the provider's governing board and any
1813 plans for expansion or phased development, to the extent that
1814 the availability of such plans does not put at risk real estate,
1815 financing, acquisition, negotiations, or other implementation of
1816 operational plans and thus jeopardize the success of
1817 negotiations, operations, and development.

1818 ~~(g) The amount and location of any reserve funds required~~
1819 ~~by this chapter, and the name of the person or entity having a~~
1820 ~~claim to such funds in the event of a bankruptcy, foreclosure,~~
1821 ~~or rehabilitation proceeding.~~

1822 (i) Notice of the issuance of a final examination report or
1823 the initiation of any legal or administrative proceeding by the
1824 office or the department, including where the report or filing
1825 may be inspected in the facility, and that upon request, an
1826 electronic copy or specific website address will be provided
1827 where the document can be downloaded at no cost.

1828 (j) Notice that the entrance fee is the property of the
1829 provider after the expiration of the 7-day escrow requirement
1830 under s. 651.055(2).

1831 (k) If the provider operates multiple facilities, a
1832 disclosure of any distribution of assets or income between
1833 facilities that may occur and the manner in which such
1834 distributions would be made, or a statement that such
1835 distributions will not occur.

1836 (l) Notice of any holding company system or obligated group
1837 of which the provider is a member.



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1838 (4) A true and complete copy of the full disclosure
1839 document to be used must be filed with the office before use. A
1840 resident or prospective resident or his or her legal
1841 representative may inspect the full reports referred to in
1842 paragraph (2) (b); the charter or other agreement or instrument
1843 required to be filed with the office pursuant to s. 651.022(2),
1844 together with all amendments thereto; and the bylaws of the
1845 corporation or association, if any. Upon request, copies of the
1846 reports and information shall be provided to the individual
1847 requesting them if the individual agrees to pay a reasonable
1848 charge to cover copying costs.

1849 Section 23. Subsections (1) and (5) of section 651.105,
1850 Florida Statutes, are amended, and subsections (7) and (8) are
1851 added to that section, to read:

1852 651.105 Examination and inspections.—

1853 (1) The office may at any time, and shall at least once
1854 every 3 years, examine the business of any applicant for a
1855 certificate of authority and any provider engaged in the
1856 execution of care contracts or engaged in the performance of
1857 obligations under such contracts, in the same manner as is
1858 provided for the examination of insurance companies pursuant to
1859 ss. 624.316 and 624.318 ~~s. 624.316~~. For a provider as described
1860 ~~defined~~ in s. 651.028, such examinations must ~~shall~~ take place
1861 at least once every 5 years. Such examinations must ~~shall~~ be
1862 made by a representative or examiner designated by the office
1863 whose compensation will be fixed by the office pursuant to s.
1864 624.320. Routine examinations may be made by having the
1865 necessary documents submitted to the office; and, for this
1866 purpose, financial documents and records conforming to commonly



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1867 accepted accounting principles and practices, as required under
1868 s. 651.026, are deemed adequate. The final written report of
1869 each examination must be filed with the office and, when so
1870 filed, constitutes a public record. Any provider being examined
1871 shall, upon request, give reasonable and timely access to all of
1872 its records. The representative or examiner designated by the
1873 office may at any time examine the records and affairs and
1874 inspect the physical property of any provider, whether in
1875 connection with a formal examination or not.

1876 (5) A provider must respond to written correspondence from
1877 the office and provide data, financial statements, and pertinent
1878 information as requested by the office or by the office's
1879 investigators, examiners, or inspectors. The office has standing
1880 to petition a circuit court for mandatory injunctive relief to
1881 compel access to and require the provider to produce the
1882 documents, data, records, and other information requested by the
1883 office or its investigators, examiners, or inspectors. The
1884 office may petition the circuit court in the county in which the
1885 facility is situated or the Circuit Court of Leon County to
1886 enforce this section ~~At the time of the routine examination, the~~
1887 ~~office shall determine if all disclosures required under this~~
1888 ~~chapter have been made to the president or chair of the~~
1889 ~~residents' council and the executive officer of the governing~~
1890 ~~body of the provider.~~

1891 (7) Unless a provider or facility is impaired or subject to
1892 a regulatory action level event, any parent, subsidiary, or
1893 affiliate is not subject to examination by the office as part of
1894 a routine examination. However, if a provider or facility relies
1895 on a contractual or financial relationship with a parent,



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1896 subsidiary, or affiliate in order to demonstrate the provider or
1897 facility's financial condition is in compliance with this
1898 chapter, the office may examine any parent, subsidiary, or
1899 affiliate that has a contractual or financial relationship with
1900 the provider or facility to the extent necessary to ascertain
1901 the financial condition of the provider.

1902 (8) If a provider voluntarily contracts with an actuary for
1903 an actuarial study or review at regular intervals, the office
1904 may not use any recommendations made by the actuary as a measure
1905 of performance when conducting an examination or inspection. The
1906 office may not request, as part of the examination or
1907 inspection, documents associated with an actuarial study or
1908 review marked "restricted distribution" if the study or review
1909 is not required by this chapter.

1910 Section 24. Section 651.106, Florida Statutes, is amended
1911 to read:

1912 651.106 Grounds for discretionary refusal, suspension, or
1913 revocation of certificate of authority.—The office may deny an
1914 application or~~7~~ suspend~~7~~ or revoke the provisional certificate
1915 of authority or the certificate of authority of any applicant or
1916 provider if it finds that any one or more of the following
1917 grounds applicable to the applicant or provider exist:

1918 (1) Failure by the provider to continue to meet the
1919 requirements for the authority originally granted.

1920 (2) Failure by the provider to meet one or more of the
1921 qualifications for the authority specified by this chapter.

1922 (3) Material misstatement, misrepresentation, or fraud in
1923 obtaining the authority, or in attempting to obtain the same.

1924 (4) Demonstrated lack of fitness or trustworthiness.



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1925 (5) Fraudulent or dishonest practices of management in the
1926 conduct of business.

1927 (6) Misappropriation, conversion, or withholding of moneys.

1928 (7) Failure to comply with, or violation of, any proper
1929 order or rule of the office or commission or violation of any
1930 provision of this chapter.

1931 (8) The insolvent or impaired condition of the provider or
1932 the provider's being in such condition or using such methods and
1933 practices in the conduct of its business as to render its
1934 further transactions in this state hazardous or injurious to the
1935 public.

1936 (9) Refusal by the provider to be examined or to produce
1937 its accounts, records, and files for examination, or refusal by
1938 any of its officers to give information with respect to its
1939 affairs or to perform any other legal obligation under this
1940 chapter when required by the office.

1941 (10) Failure by the provider to comply with the
1942 requirements of s. 651.026 or s. 651.033.

1943 (11) Failure by the provider to maintain escrow accounts or
1944 funds as required by this chapter.

1945 (12) Failure by the provider to meet the requirements of
1946 this chapter for disclosure of information to residents
1947 concerning the facility, its ownership, its management, its
1948 development, or its financial condition or failure to honor its
1949 continuing care or continuing care at-home contracts.

1950 (13) Any cause for which issuance of the license could have
1951 been refused had it then existed and been known to the office.

1952 (14) Having been found guilty of, or having pleaded guilty
1953 or nolo contendere to, a felony in this state or any other



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1954 state, without regard to whether a judgment or conviction has
1955 been entered by the court having jurisdiction of such cases.
1956 (15) In the conduct of business under the license, engaging
1957 in unfair methods of competition or in unfair or deceptive acts
1958 or practices prohibited under part IX of chapter 626.
1959 (16) A pattern of bankrupt enterprises.
1960 (17) The ownership, control, or management of the
1961 organization includes any person:
1962 (a) Who is not reputable and of responsible character;
1963 (b) Who is so lacking in management expertise as to make
1964 the operation of the provider hazardous to potential and
1965 existing residents;
1966 (c) Who is so lacking in management experience, ability,
1967 and standing as to jeopardize the reasonable promise of
1968 successful operation;
1969 (d) Who is affiliated, directly or indirectly, through
1970 ownership or control, with any person whose business operations
1971 are or have been marked by business practices or conduct that is
1972 detrimental to the public, stockholders, investors, or
1973 creditors; or
1974 (e) Whose business operations are or have been marked by
1975 business practices or conduct that is detrimental to the public,
1976 stockholders, investors, or creditors.
1977 (18) The provider has not filed a notice of change in
1978 management, fails to remove a disapproved manager, or persists
1979 in appointing disapproved managers.
1980
1981 Revocation of a certificate of authority under this section does
1982 not relieve a provider from the provider's obligation to



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1983 residents under the terms and conditions of any continuing care
1984 or continuing care at-home contract between the provider and
1985 residents or the provisions of this chapter. The provider shall
1986 continue to file its annual statement and pay license fees to
1987 the office as required under this chapter as if the certificate
1988 of authority had continued in full force, but the provider shall
1989 not issue any new contracts. The office may seek an action in
1990 the Circuit Court of Leon County to enforce the office's order
1991 and the provisions of this section.

1992 Section 25. Section 651.1065, Florida Statutes, is created
1993 to read:

1994 651.1065 Soliciting or accepting new continuing care
1995 contracts by impaired or insolvent facilities or providers.-

1996 (1) Regardless of whether delinquency proceedings as to a
1997 continuing care retirement community have been or are to be
1998 initiated, a proprietor, general partner, member, officer,
1999 director, trustee, or manager of a continuing care retirement
2000 community may not actively solicit, approve the solicitation or
2001 acceptance of, or accept new continuing care contracts in this
2002 state after the proprietor, general partner, member, officer,
2003 director, trustee, or manager knew, or reasonably should have
2004 known, that the continuing care retirement community was
2005 impaired or insolvent, except with the written permission of the
2006 office, unless the facility has declared bankruptcy, in which
2007 case the bankruptcy court or trustee appointed by the court has
2008 jurisdiction over such matters. The office must approve or
2009 disapprove the continued marketing of new contracts within 15
2010 days after receiving a request from a provider.

2011 (2) A proprietor, general partner, member, officer,



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2012 director, trustee, or manager who violates this section commits
2013 a felony of the third degree, punishable as provided in s.
2014 775.082, s. 775.083, or s. 775.084.

2015 Section 26. Section 651.111, Florida Statutes, is amended
2016 to read:

2017 651.111 Requests for inspections.—

2018 (1) Any interested party may request an inspection of the
2019 records and related financial affairs of a provider providing
2020 care in accordance with ~~the provisions of~~ this chapter by
2021 transmitting to the office notice of an alleged violation of
2022 applicable requirements prescribed by statute or by rule,
2023 specifying to a reasonable extent the details of the alleged
2024 violation, which notice must ~~shall~~ be signed by the complainant.

2025 (2) The substance of the complaint must ~~shall~~ be given to
2026 the provider no earlier than the time of the inspection. Unless
2027 the complainant specifically requests otherwise, neither the
2028 substance of the complaint which is provided to the provider nor
2029 any copy of the complaint, closure statement, or any record
2030 which is published, released, or otherwise made available to the
2031 provider may ~~shall~~ disclose the name of any person mentioned in
2032 the complaint except the name of any duly authorized officer,
2033 employee, or agent of the office conducting the investigation or
2034 inspection pursuant to this chapter.

2035 (3) Upon receipt of a complaint, the office shall make a
2036 preliminary review; and, unless the office determines that the
2037 complaint is without any reasonable basis or the complaint does
2038 not request an inspection, the office shall make an inspection.
2039 The office shall provide the complainant with a written
2040 acknowledgment of the complaint within 15 days after receipt by



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2041 the office. Such acknowledgment must include the case number
2042 assigned by the office to the complaint and the name and contact
2043 information of any duly authorized officer, employee, or agent
2044 of the office conducting the investigation or inspection
2045 pursuant to this chapter. The complainant must ~~shall~~ be advised,
2046 within 30 days after the receipt of the complaint by the office,
2047 of the proposed course of action of the office, including an
2048 estimated timeframe for the handling of the complaint. If the
2049 office does not conclude its inspection or investigation within
2050 the office's estimated timeframe, the office must advise the
2051 complainant in writing within 15 days after any revised course
2052 of action, including a revised estimated timeframe for the
2053 handling of the complaint. Within 15 days after the office
2054 completes its inspection or concludes its investigation, the
2055 office shall provide the complainant and the provider a written
2056 closure statement specifying the office's findings and the
2057 results of any inspection or investigation.

2058 (4) A ~~No~~ provider operating under a certificate of
2059 authority under this chapter may not discriminate or retaliate
2060 in any manner against a resident or an employee of a facility
2061 providing care because such resident or employee or any other
2062 person has initiated a complaint pursuant to this section.

2063 Section 27. Section 651.114, Florida Statutes, is amended
2064 to read:

2065 651.114 Delinquency proceedings; remedial rights.—

2066 (1) Upon determination by the office that a provider is not
2067 in compliance with this chapter, the office may notify the chair
2068 of the Continuing Care Advisory Council, who may assist the
2069 office in formulating a corrective action plan.



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2070 (2) Within 30 days after a request by either the advisory
2071 council or the office, a provider shall make a plan for
2072 obtaining compliance or solvency available to the advisory
2073 council and the office, ~~within 30 days after being requested to~~
2074 ~~do so by the council, a plan for obtaining compliance or~~
2075 ~~solvency.~~

2076 (3) Within 30 days after receipt of a plan for obtaining
2077 compliance or solvency, the office, or notification, the
2078 advisory council at the request of the office, shall:

2079 (a) Consider and evaluate the plan submitted by the
2080 provider.

2081 (b) Discuss the problem and solutions with the provider.

2082 (c) Conduct such other business as is necessary.

2083 (d) Report its findings and recommendations to the office,
2084 which may require additional modification of the plan.

2085
2086 This subsection may not be interpreted so as to delay or prevent
2087 the office from taking any regulatory measures it deems
2088 necessary regarding the provider that submitted the plan.

2089 (4) If the financial condition of a continuing care
2090 facility or provider is impaired or is such that if not modified
2091 or corrected, its continued operation would result in
2092 insolvency, the office may direct the provider to formulate and
2093 file with the office a corrective action plan. If the provider
2094 fails to submit a plan within 30 days after the office's
2095 directive, or submits a plan that is insufficient to correct the
2096 condition, the office may specify a plan and direct the provider
2097 to implement the plan. Before specifying a plan, the office may
2098 seek a recommended plan from the advisory council.



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2099 (5)~~(4)~~ After receiving approval of a plan by the office,
2100 the provider shall submit a progress report monthly to the
2101 advisory council or the office, or both, in a manner prescribed
2102 by the office. After 3 months, or at any earlier time deemed
2103 necessary, the council shall evaluate the progress by the
2104 provider and shall advise the office of its findings.

2105 (6)~~(5)~~ ~~If should~~ the office finds ~~find~~ that sufficient
2106 grounds exist for rehabilitation, liquidation, conservation,
2107 reorganization, seizure, or summary proceedings of an insurer as
2108 set forth in ss. 631.051, 631.061, and 631.071, the department
2109 ~~office~~ may petition for an appropriate court order or may pursue
2110 such other relief as is afforded in part I of chapter 631.
2111 Before invoking its powers under part I of chapter 631, the
2112 department ~~office~~ shall notify the chair of the advisory
2113 council.

2114 (7) Notwithstanding s. 631.011, impairment of a provider,
2115 for purposes of s. 631.051, is defined according to the term
2116 "impaired" in s. 651.011.

2117 (8)~~(6)~~ In the event an order of conservation,
2118 rehabilitation, liquidation, or ~~conservation, reorganization,~~
2119 ~~seizure, or summary proceeding~~ has been entered against a
2120 provider, the department and office are vested with all of the
2121 powers and duties they have under ~~the provisions of~~ part I of
2122 chapter 631 in regard to delinquency proceedings of insurance
2123 companies. A provider shall give written notice of the
2124 proceeding to its residents within 3 business days after the
2125 initiation of a delinquency proceeding under chapter 631 and
2126 shall include a notice of the delinquency proceeding in any
2127 written materials provided to prospective residents.



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2128 ~~(7) If the financial condition of the continuing care~~
2129 ~~facility or provider is such that, if not modified or corrected,~~
2130 ~~its continued operation would result in insolvency, the office~~
2131 ~~may direct the provider to formulate and file with the office a~~
2132 ~~corrective action plan. If the provider fails to submit a plan~~
2133 ~~within 30 days after the office's directive or submits a plan~~
2134 ~~that is insufficient to correct the condition, the office may~~
2135 ~~specify a plan and direct the provider to implement the plan.~~

2136 (9) A provider subject to an order to show cause entered
2137 pursuant to chapter 631 must file its written response to the
2138 order, together with any defenses it may have to the
2139 department's allegations, no later than 20 days after service of
2140 the order to show cause, but no less than 15 days before the
2141 date of the hearing set by the order to show cause.

2142 (10) A hearing held pursuant to chapter 631 to determine
2143 whether cause exists for the department to be appointed receiver
2144 must be commenced within 60 days after an order directing a
2145 provider to show cause.

2146 (11) (a) ~~(8) (a)~~ The rights of the office described in this
2147 section are subordinate to the rights of a trustee or lender
2148 pursuant to the terms of a resolution, ordinance, loan
2149 agreement, indenture of trust, mortgage, lease, security
2150 agreement, or other instrument creating or securing bonds or
2151 notes issued to finance a facility, and the office, subject to
2152 the provisions of paragraph (c), may ~~shall~~ not exercise its
2153 remedial rights provided under this section and ss. 651.018,
2154 651.106, 651.108, and 651.116 with respect to a facility that is
2155 not in default of any financial or contractual obligation other
2156 than ~~subject to~~ a lien, mortgage, lease, or other encumbrance or



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2157 trust indenture securing bonds or notes issued in connection
2158 with the financing of the facility, if the trustee or lender, by
2159 inclusion or by amendment to the loan documents or by a separate
2160 contract with the office, agrees that the rights of residents
2161 under a continuing care or continuing care at-home contract will
2162 be honored and will not be disturbed by a foreclosure or
2163 conveyance in lieu thereof as long as the resident:

2164 1. Is current in the payment of all monetary obligations
2165 required by the contract;

2166 2. Is in compliance and continues to comply with all
2167 provisions of the contract; and

2168 3. Has asserted no claim inconsistent with the rights of
2169 the trustee or lender.

2170 (b) This subsection does not require a trustee or lender
2171 to:

2172 1. Continue to engage in the marketing or resale of new
2173 continuing care or continuing care at-home contracts;

2174 2. Pay any rebate of entrance fees as may be required by a
2175 resident's continuing care or continuing care at-home contract
2176 as of the date of acquisition of the facility by the trustee or
2177 lender and until expiration of the period described in paragraph
2178 (d);

2179 3. Be responsible for any act or omission of any owner or
2180 operator of the facility arising before the acquisition of the
2181 facility by the trustee or lender; or

2182 4. Provide services to the residents to the extent that the
2183 trustee or lender would be required to advance or expend funds
2184 that have not been designated or set aside for such purposes.

2185 (c) Should the office determine, at any time during the



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2186 suspension of its remedial rights as provided in paragraph (a),
2187 that the trustee or lender is not in compliance with paragraph
2188 (a), or that a lender or trustee has assigned or has agreed to
2189 assign all or a portion of a delinquent or defaulted loan to a
2190 third party without the office's written consent, the office
2191 shall notify the trustee or lender in writing of its
2192 determination, setting forth the reasons giving rise to the
2193 determination and specifying those remedial rights afforded to
2194 the office which the office shall then reinstate.

2195 (d) Upon acquisition of a facility by a trustee or lender
2196 and evidence satisfactory to the office that the requirements of
2197 paragraph (a) have been met, the office shall issue a 90-day
2198 temporary certificate of authority granting the trustee or
2199 lender the authority to engage in the business of providing
2200 continuing care or continuing care at-home and to issue
2201 continuing care or continuing care at-home contracts subject to
2202 the office's right to immediately suspend or revoke the
2203 temporary certificate of authority if the office determines that
2204 any of the grounds described in s. 651.106 apply to the trustee
2205 or lender or that the terms of the contract used as the basis
2206 for the issuance of the temporary certificate of authority by
2207 the office have not been or are not being met by the trustee or
2208 lender since the date of acquisition.

2209 Section 28. Section 651.1141, Florida Statutes, is created
2210 to read:

2211 651.1141 Immediate final orders.—The office may issue an
2212 immediate final order to cease and desist if the office finds
2213 that installation of a general partner of a provider or
2214 assumption of ownership or possession or control of 10 percent



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2215 or more of a provider's assets in violation of s. 651.024 or s.
2216 651.0245, the removal or commitment of 10 percent or more of the
2217 required minimum liquid reserve funds in violation of s.
2218 651.035, or the assumption of control over a facility's
2219 operations in violation of s. 651.043 has occurred.

2220 Section 29. Paragraphs (d) and (e) of subsection (1) of
2221 section 651.121, Florida Statutes, are amended to read:

2222 651.121 Continuing Care Advisory Council.—

2223 (1) The Continuing Care Advisory Council to the office is
2224 created consisting of 10 members who are residents of this state
2225 appointed by the Governor and geographically representative of
2226 this state. Three members shall be administrators of facilities
2227 that hold valid certificates of authority under this chapter and
2228 shall have been actively engaged in the offering of continuing
2229 care contracts in this state for 5 years before appointment. The
2230 remaining members include:

2231 ~~(d) An attorney.~~

2232 ~~(d)(e)~~ Four ~~Three~~ residents who hold continuing care or
2233 continuing care at-home contracts with a facility certified in
2234 this state.

2235 Section 30. Subsections (1) and (4) of section 651.125,
2236 Florida Statutes, are amended to read:

2237 651.125 Criminal penalties; injunctive relief.—

2238 (1) Any person who maintains, enters into, or, as manager
2239 or officer or in any other administrative capacity, assists in
2240 entering into, maintaining, or performing any continuing care or
2241 continuing care at-home contract subject to this chapter without
2242 ~~doing so in pursuance of a valid~~ provisional certificate of
2243 authority or certificate of authority ~~or renewal thereof~~, as



2244 contemplated by or provided in this chapter, or who otherwise
2245 violates any provision of this chapter or rule adopted in
2246 pursuance of this chapter, commits a felony of the third degree,
2247 punishable as provided in s. 775.082 or s. 775.083. Each
2248 violation of this chapter constitutes a separate offense.

2249 (4) Any action brought by the office against a provider
2250 shall not abate by reason of a sale or other transfer of
2251 ownership of the facility used to provide care, which provider
2252 is a party to the action, except with the express written
2253 consent of the ~~director of the~~ office.

2254 Section 31. This act shall take effect July 1, 2018.

2255
2256 ===== T I T L E A M E N D M E N T =====

2257 And the title is amended as follows:

2258 Delete everything before the enacting clause
2259 and insert:

2260 A bill to be entitled
2261 An act relating to continuing care contracts; amending
2262 s. 651.011, F.S.; defining and redefining terms;
2263 amending s. 651.012, F.S.; conforming a cross-
2264 reference; deleting an obsolete date; amending s.
2265 651.013, F.S.; revising applicability of specified
2266 provisions of the Florida Insurance Code to the Office
2267 of Insurance Regulation's authority to regulate
2268 providers of continuing care and continuing care at-
2269 home; amending s. 651.019, F.S.; revising notice and
2270 filing requirements for providers and facilities with
2271 respect to new and additional financing and
2272 refinancing; amending s. 651.021, F.S.; conforming



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2273 provisions to changes made by the act; creating s.
2274 651.0215, F.S.; specifying conditions that qualify an
2275 applicant for a certificate of authority without first
2276 obtaining a provisional certificate of authority;
2277 specifying requirements for the consolidated
2278 application; requiring an applicant to obtain separate
2279 certificates of authority for multiple facilities;
2280 specifying procedures and requirements for the
2281 office's review of such applications and issuance or
2282 denial of certificates of authority; providing
2283 requirements for reservation contracts, entrance fees,
2284 and reservation deposits; authorizing a provider to
2285 secure release of moneys held in escrow under
2286 specified circumstances; providing construction
2287 relating to the release of escrow funds; amending s.
2288 651.022, F.S.; revising the office's authority to make
2289 certain inquiries in the review of applications for
2290 provisional certificates of authority; specifying
2291 requirements for application amendments if material
2292 changes occur; requiring applicants to submit a
2293 specified feasibility study; revising procedures and
2294 requirements for the office's review of such
2295 applications; conforming a provision to changes made
2296 by the act; making a technical change; conforming
2297 cross-references; amending s. 651.023, F.S.; revising
2298 requirements for an application for a certificate of
2299 authority; specifying requirements for application
2300 amendments if material changes occur; revising
2301 procedures and requirements for the office's review of



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2302 such applications; revising minimum unit reservation
2303 and minimum deposit requirements; revising conditions
2304 under which a provider is entitled to secure release
2305 of certain moneys held in escrow; conforming
2306 provisions to changes made by the act; conforming
2307 cross-references; amending s. 651.024, F.S.; providing
2308 and revising applicability of certain provisions to a
2309 person seeking to assume the role of general partner
2310 of a provider or seeking specified ownership,
2311 possession, or control of a provider's assets;
2312 providing applicability of certain provisions to a
2313 person seeking to acquire and become the provider for
2314 a facility; providing procedures for filing a
2315 disclaimer of control; defining terms; providing
2316 standing to the office to petition a circuit court in
2317 certain proceedings; creating s. 651.0245, F.S.;
2318 prohibiting a person, without the office's prior
2319 written approval, from acquiring a facility operating
2320 under a subsisting certificate of authority and
2321 engaging in the business of providing continuing care;
2322 providing requirements for an applicant seeking
2323 simultaneous acquisition of a facility and issuance of
2324 a certificate of authority; requiring the Financial
2325 Services Commission to adopt by rule certain
2326 application requirements; requiring the office to
2327 review applications and issue approvals or
2328 disapprovals of filings in accordance with specified
2329 provisions; defining terms; providing standing to the
2330 office to petition a specified circuit court under



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2331 certain circumstances; providing procedures for filing
2332 a disclaimer of control; providing construction;
2333 authorizing the commission to adopt, amend, and repeal
2334 rules; creating s. 651.0246, F.S.; requiring a
2335 provider to obtain written approval from the office
2336 before commencing construction or marketing for
2337 specified expansions of a certificated facility;
2338 providing that a provider is automatically granted
2339 approval for certain expansions under specified
2340 circumstances; defining the term "existing units";
2341 providing applicability; specifying requirements for
2342 applying for such approval; requiring the office to
2343 consider certain factors in reviewing such
2344 applications; providing procedures and requirements
2345 for the office's review of applications and approval
2346 or denial of expansions; specifying requirements for
2347 escrowed moneys and for the release of the moneys;
2348 defining the term "initial entrance fee"; providing
2349 construction; amending s. 651.026, F.S.; revising
2350 requirements for annual reports that providers file
2351 with the office; revising guidelines for commission
2352 rulemaking; requiring the office to publish, within
2353 specified timeframes, a specified annual report;
2354 amending s. 651.0261, F.S.; revising requirements for
2355 quarterly statements filed by providers and facilities
2356 with the office; authorizing the office to waive
2357 certain filing requirements under certain
2358 circumstances; authorizing the office to require,
2359 under certain circumstances, providers or facilities



2360 to file monthly unaudited financial statements and
2361 certain other information; authorizing the commission
2362 to adopt certain rules; amending s. 651.028, F.S.;
2363 authorizing the office, under certain circumstances,
2364 to waive any requirement of ch. 651, F.S., for
2365 providers or obligated groups having certain
2366 accreditations or credit ratings; amending s. 651.033,
2367 F.S.; revising requirements for escrow accounts and
2368 escrow agreements; revising requirements for, and
2369 restrictions on, agents of escrow accounts; revising
2370 permissible investments for funds in an escrow
2371 account; revising requirements for the withdrawal of
2372 escrowed funds under certain circumstances; creating
2373 s. 651.034, F.S.; specifying requirements and
2374 procedures for the office if a regulatory action level
2375 event occurs; authorizing the office to use members of
2376 the Continuing Care Advisory Council or retain
2377 consultants for specified purposes; requiring affected
2378 providers to bear fees, costs, and expenses for such
2379 consultants; requiring the office to take certain
2380 actions if an impairment occurs; authorizing the
2381 office to forego taking action for a certain timeframe
2382 under certain circumstances; providing immunity from
2383 liability to the commission, the Department of
2384 Financial Services, the office, and their employees or
2385 agents for certain actions; requiring the office to
2386 transmit any notice that may result in regulatory
2387 action by certain methods; authorizing the office to
2388 exempt a provider from specified requirements under



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2389 certain circumstances and for a specified timeframe;
2390 authorizing the commission to adopt rules; providing
2391 construction; amending s. 651.035, F.S.; revising
2392 provider minimum liquid reserve requirements under
2393 specified circumstances; deleting an obsolete date;
2394 authorizing providers, under certain circumstances, to
2395 withdraw funds held in escrow without the office's
2396 approval; providing procedures and requirements to
2397 request approval for certain withdrawals; providing
2398 procedures and requirements for the office's review of
2399 such requests; authorizing the office, under certain
2400 circumstances, to order the immediate transfer of
2401 funds in the minimum liquid reserve to the custody of
2402 the department; providing that certain debt service
2403 reserves of a provider are not subject to such
2404 transfer provision; requiring facilities to file
2405 annual calculations of their minimum liquid reserves
2406 with the office and maintain such reserves beginning
2407 at specified periods; requiring providers to fund
2408 reserve shortfalls within a specified timeframe;
2409 providing construction; creating s. 651.043, F.S.;
2410 defining the term "management"; providing requirements
2411 for a contract for management made after a certain
2412 date; specifying procedures and requirements for
2413 providers filing notices of change in management with
2414 the office; specifying procedures, requirements, and
2415 factors for the office's review of such changes and
2416 approval or disapproval of the new management;
2417 requiring management disapproved by the office to be



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2418 removed within a specified timeframe; authorizing the
2419 office to take certain disciplinary actions under
2420 certain circumstances; requiring providers to
2421 immediately remove management under certain
2422 circumstances; amending s. 651.051, F.S.; revising
2423 requirements for the maintenance of a provider's
2424 records and assets; amending s. 651.057, F.S.;

2425 conforming cross-references; amending s. 651.071,
2426 F.S.; revising construction as to the priority of
2427 continuing care and continuing care at-home contracts
2428 in the event of receivership or liquidation
2429 proceedings against a provider; amending s. 651.091,
2430 F.S.; revising requirements for continuing care
2431 facilities and providers relating to the availability,
2432 distribution, and posting of reports and records;
2433 amending s. 651.105, F.S.; providing applicability of
2434 a provision of the Insurance Code relating to
2435 examinations and investigations to the office's
2436 authority in examining certain applicants and
2437 providers; requiring providers to respond to written
2438 correspondence from the office and provide certain
2439 information; declaring that the office has standing to
2440 petition a circuit court for certain injunctive
2441 relief; specifying venue; deleting a requirement for
2442 the office to determine if certain disclosures have
2443 been made; providing that a provider's or facility's
2444 parent, subsidiary, or affiliate is not subject to
2445 routine examination by the office except under certain
2446 circumstances; authorizing the office to examine



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2447 certain parents, subsidiaries, or affiliates to
2448 ascertain the financial condition of a provider under
2449 certain circumstances; prohibiting the office, when
2450 conducting an examination or inspection, from using
2451 certain actuary recommendations for a certain purpose
2452 or requesting certain documents under certain
2453 circumstances; amending s. 651.106, F.S.; authorizing
2454 the office to deny an application for a provisional
2455 certificate of authority or a certificate of authority
2456 on certain grounds; revising and adding grounds for
2457 application denial or disciplinary action by the
2458 office; creating s. 651.1065, F.S.; prohibiting
2459 certain persons of a continuing care retirement
2460 community, except with the office's written
2461 permission, from actively soliciting, approving the
2462 solicitation or acceptance of, or accepting new
2463 continuing care contracts if they knew or should have
2464 known that the retirement community was impaired or
2465 insolvent; providing an exception; requiring the
2466 office to approve or disapprove the continued
2467 marketing of new contracts within a specified
2468 timeframe; providing a criminal penalty; amending s.
2469 651.111, F.S.; revising procedures and requirements
2470 for the office's review of complaints requesting
2471 inspections of records and related financial affairs
2472 of a provider; amending s. 651.114, F.S.; providing
2473 that certain duties relating to a certain compliance
2474 or solvency plan must be performed by the office, or
2475 the Continuing Care Advisory Council at the request of



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2476 the office, rather than solely by the council;
2477 providing construction relating to the office's
2478 authority to take certain measures; authorizing the
2479 office to seek a recommended plan from the advisory
2480 council; replacing the office with the department as
2481 the entity taking certain actions under ch. 631, F.S.;
2482 providing construction; revising circumstances under
2483 which the department and office are vested with
2484 certain powers and duties in regard to delinquency
2485 proceedings; specifying requirements for providers to
2486 notify residents and prospective residents of
2487 delinquency proceedings; specifying procedures
2488 relating to orders to show cause and hearings pursuant
2489 to ch. 631, F.S.; revising facilities with respect to
2490 which the office may not exercise certain remedial
2491 rights; creating s. 651.1141, F.S.; authorizing the
2492 office to issue an immediate final order for a
2493 provider to cease and desist from specified
2494 violations; amending s. 651.121, F.S.; revising the
2495 composition of the Continuing Care Advisory Council;
2496 amending s. 651.125, F.S.; providing a criminal
2497 penalty for certain actions performed without a valid
2498 provisional certificate of authority; making a
2499 technical change; providing an effective date.