

By Senator Lee

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1 A bill to be entitled
2 An act relating to continuing care contracts; amending
3 s. 651.011, F.S.; adding and revising definitions;
4 amending s. 651.012, F.S.; conforming a cross-
5 reference; deleting an obsolete date; amending s.
6 651.013, F.S.; adding certain Florida Insurance Code
7 provisions to the Office of Insurance Regulation's
8 authority to regulate providers of continuing care and
9 continuing care at-home; amending s. 651.019, F.S.;
10 revising requirements for providers and facilities
11 relating to financing and refinancing transactions;
12 amending s. 651.021, F.S.; conforming provisions to
13 changes made by the act; creating s. 651.0215, F.S.;
14 specifying conditions, requirements, procedures, and
15 prohibitions relating to consolidated applications for
16 provisional certificates of authority and for
17 certificates of authority and to the office's review
18 of such applications; specifying conditions under
19 which a provider is entitled to secure the release of
20 certain escrowed funds; providing construction;
21 amending s. 651.022, F.S.; revising and specifying
22 requirements, procedures, and prohibitions relating to
23 applications for provisional certificates of authority
24 and to the office's review of such applications;
25 amending s. 651.023, F.S.; revising and specifying
26 requirements, procedures, and prohibitions relating to
27 applications for certificates of authority and to the
28 office's review of such applications; conforming
29 provisions to changes made by the act; amending s.

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30 651.024, F.S.; revising requirements for certain
31 persons relating to provider acquisitions; specifying
32 procedures for rebutting a presumption of control;
33 providing standing to the office to petition a circuit
34 court in certain proceedings; creating s. 651.0245,
35 F.S.; specifying procedures, requirements, and a
36 prohibition relating to an application for the
37 simultaneous acquisition of a facility and issuance of
38 a certificate of authority and to the office's review
39 of such application; specifying rulemaking
40 requirements and authority of the Financial Services
41 Commission; providing standing to the office to
42 petition a circuit court in certain proceedings;
43 specifying procedures for rebutting a presumption of
44 control; creating s. 651.0246, F.S.; specifying
45 requirements, conditions, procedures, and prohibitions
46 relating to provider applications to commence
47 construction or marketing for expansions of
48 certificated facilities and to the office's review of
49 such applications; defining the term "existing units";
50 specifying escrow requirements for certain moneys;
51 specifying conditions under which providers are
52 entitled to secure release of such moneys; providing
53 applicability and construction; amending s. 651.026,
54 F.S.; revising requirements for annual reports filed
55 by providers with the office; revising the
56 commission's rulemaking authority; requiring the
57 office to annually publish a specified industry
58 benchmarking report; amending s. 651.0261, F.S.;

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59 requiring providers to file quarterly unaudited
60 financial statements; authorizing the office to waive
61 such requirement under certain circumstances;
62 providing an exception for filing a certain quarterly
63 statement; revising information that the office may
64 require providers to file and the circumstances under
65 which such information must be filed; revising the
66 commission's rulemaking authority; amending s.
67 651.028, F.S.; revising requirements that the office
68 may waive under certain circumstances; revising the
69 entities that may qualify for such waiver; requiring
70 such entities to provide certain information to the
71 office under certain circumstances; amending s.
72 651.033, F.S.; revising applicability of escrow
73 requirements; revising requirements for escrow
74 accounts and agreements; revising the office's
75 authority to allow a withdrawal of a specified
76 percentage of the required minimum liquid reserve;
77 revising applicability of requirements relating to the
78 deposit of certain funds in escrow accounts;
79 prohibiting an escrow agent, except under certain
80 circumstances, from releasing or allowing the transfer
81 of funds; creating s. 651.034, F.S.; specifying
82 requirements for the office if a regulatory action
83 level event occurs; specifying requirements for
84 corrective action plans; authorizing the office to use
85 members of the Continuing Care Advisory Council and to
86 retain consultants for certain purposes; requiring
87 affected providers to bear the fees, costs, and

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88 expenses of such consultants; specifying requirements
89 for, and authorized actions of, the office and the
90 Department of Financial Services if an impairment
91 occurs; providing construction; authorizing the office
92 to exempt a provider from certain requirements for a
93 certain timeframe; authorizing the commission to adopt
94 rules; amending s. 651.035, F.S.; revising minimum
95 liquid reserve requirements for providers; specifying
96 requirements, limitations, and procedures for a
97 provider's withdrawal of funds held in escrow and the
98 office's review of certain requests for withdrawal;
99 authorizing the office to order certain transfers
100 under certain circumstances; requiring facilities to
101 annually file with the office a minimum liquid reserve
102 calculation; providing construction; creating s.
103 651.043, F.S.; specifying requirements for certain
104 management company contracts; specifying requirements,
105 procedures, and authorized actions relating to changes
106 in provider management and to the office's review of
107 such changes; requiring that disapproved management be
108 removed within a certain timeframe; authorizing the
109 office to take certain disciplinary actions under
110 certain circumstances; requiring providers to
111 immediately remove management under certain
112 circumstances; amending s. 651.051, F.S.; revising
113 requirements for the maintenance of provider records
114 and assets; amending s. 651.055, F.S.; revising a
115 required statement in continuing care contracts;
116 amending s. 651.057, F.S.; conforming provisions to

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117 changes made by the act; amending s. 651.071, F.S.;

118 specifying the priority of continuing care contracts

119 and continuing care at-home contracts in receivership

120 or liquidation proceedings against a provider;

121 amending s. 651.091, F.S.; revising requirements for

122 continuing care facilities relating to posting or

123 providing notices; amending s. 651.095, F.S.; adding

124 terms to a list of prohibited terms in certain

125 advertisements; amending s. 651.105, F.S.; adding a

126 certain Florida Insurance Code provision to the

127 office's authority to examine certain providers and

128 applicants; requiring providers to respond to the

129 office's written correspondence and to provide certain

130 information; providing standing to the office to

131 petition certain circuit courts for certain relief;

132 revising, and specifying limitations on, the office's

133 examination authority; amending s. 651.106, F.S.;

134 authorizing the office to deny applications on

135 specified grounds; adding and revising grounds for

136 suspension or revocation of provisional certificates

137 of authority and certificates of authority; creating

138 s. 651.1065, F.S.; prohibiting certain actions by

139 certain persons of an impaired or insolvent continuing

140 care facility; providing that bankruptcy courts or

141 trustees have jurisdiction over certain matters;

142 requiring the office to approve or disapprove the

143 continued marketing of new contracts within a certain

144 timeframe; providing a criminal penalty; amending s.

145 651.111, F.S.; defining the term "inspection";

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146 revising procedures and requirements relating to
147 requests for inspections to the office; amending s.
148 651.114, F.S.; revising and specifying requirements,
149 procedures, and authorized actions relating to
150 providers' corrective action plans; providing
151 construction; revising and specifying requirements and
152 procedures relating to delinquency proceedings against
153 a provider; revising circumstances under which the
154 office must provide a certain notice to trustees or
155 lenders; creating s. 651.1141, F.S.; providing
156 legislative findings; authorizing the office to issue
157 certain immediate final orders under certain
158 circumstances; amending s. 651.121, F.S.; revising the
159 composition of the Continuing Care Advisory Council;
160 amending s. 651.125, F.S.; revising a prohibition to
161 include certain actions performed without a valid
162 provisional certificate of authority; providing
163 effective dates.

164

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

166

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

169 651.011 Definitions.—As used in this chapter, the term:

170 (1) "Actuarial opinion" means an opinion issued by an
171 actuary in accordance with Actuarial Standards of Practice No. 3
172 for Continuing Care Retirement Communities, Revised Edition,
173 effective May 1, 2011.

174 (2) "Actuarial study" means an analysis prepared for an

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175 individual facility, or consolidated for multiple facilities,
176 for either a certified provider, as of a current valuation date
177 or the most recent fiscal year, or for an applicant, as of a
178 projected future valuation date, which includes an actuary's
179 opinion as to whether such provider or applicant is in
180 satisfactory actuarial balance in accordance with Actuarial
181 Standards of Practice No. 3 for Continuing Care Retirement
182 Communities, Revised Edition, effective May 1, 2011.

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

187 (4)~~(1)~~ "Advertising" means the dissemination of written,
188 visual, or electronic information by a provider, or any person
189 affiliated with or controlled by a provider, to potential
190 residents or their representatives for the purpose of inducing
191 such persons to subscribe to or enter into a contract for
192 continuing care or continuing care at-home.

193 (5)~~(2)~~ "Continuing care" or "care" means, pursuant to a
194 contract, furnishing shelter and nursing care or personal
195 services to a resident who resides in a facility, whether such
196 nursing care or personal services are provided in the facility
197 or in another setting designated in the contract for continuing
198 care, by an individual not related by consanguinity or affinity
199 to the resident, upon payment of an entrance fee.

200 (6)~~(3)~~ "Continuing Care Advisory Council" or "advisory
201 council" means the council established in s. 651.121.

202 (7)~~(4)~~ "Continuing care at-home" means, pursuant to a
203 contract other than a contract described in subsection (5) ~~(2)~~,

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204 furnishing to a resident who resides outside the facility the
205 right to future access to shelter and nursing care or personal
206 services, whether such services are provided in the facility or
207 in another setting designated in the contract, by an individual
208 not related by consanguinity or affinity to the resident, upon
209 payment of an entrance fee.

210 (8) "Controlling company" means any corporation, trust, or
211 association that directly or indirectly owns 25 percent or more
212 of:

213 (a) The voting securities of one or more providers or
214 facilities that are stock corporations; or

215 (b) The ownership interest of one or more providers or
216 facilities that are not stock corporations.

217 (9) "Corrective order" means an order issued by the office
218 which specifies corrective actions that the office determines
219 are required in accordance with this chapter or commission rule.

220 (10) "Days cash on hand" means the quotient obtained by
221 dividing the value of paragraph (a) by the value of paragraph
222 (b).

223 (a) The sum of unrestricted cash, unrestricted short-term
224 and long-term investments, provider restricted funds, and the
225 minimum liquid reserve as of the reporting date.

226 (b) Operating expenses less depreciation, amortization, and
227 other noncash expenses and nonoperating losses, divided by 365.
228 Operating expenses, depreciation, amortization, and other
229 noncash expenses and nonoperating losses are each the sum of
230 their respective values over the 12-month period ending on the
231 reporting date.

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233 With prior written approval of the office, a demand note or
234 other parental guarantee may be considered a short-term or long-
235 term investment for the purposes of paragraph (a). However, the
236 total of all demand notes issued by the parent may not, at any
237 time, be more than the sum of unrestricted cash and unrestricted
238 short-term and long-term investments held by the parent.

239 (11) "Debt service coverage ratio" means the quotient
240 obtained by dividing the value of paragraph (a) by the value of
241 paragraph (b).

242 (a) The sum of total expenses less interest expense on the
243 debt facility, depreciation, amortization, and other noncash
244 expense and nonoperating losses, subtracted from the sum of
245 total revenues, excluding noncash revenues and nonoperating
246 gains, and gross entrance fees received less earned entrance
247 fees and refunds paid. Expenses, interest expense on the debt
248 facility, depreciation, amortization, and other noncash expense
249 and nonoperating losses, revenues, noncash revenues,
250 nonoperating gains, gross entrance fees, earned entrance fees,
251 and refunds are each the sum of their respective values over the
252 12-month period ending on the reporting date.

253 (b) Total annual principal and interest expense due on the
254 debt facility over the 12-month period ending on the reporting
255 date. For the purposes of this paragraph, principal excludes any
256 balloon principal payment amounts, and interest expense due is
257 the sum of the interest over the 12-month period immediately
258 preceding the reporting date.

259 (12) "Department" means the Department of Financial
260 Services.

261 (13)~~(5)~~ "Entrance fee" means an initial or deferred payment

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262 of a sum of money or property made as full or partial payment
263 for continuing care or continuing care at-home. An accommodation
264 fee, admission fee, member fee, or other fee of similar form and
265 application are considered to be an entrance fee.

266 (14)~~(6)~~ "Facility" means a place where continuing care is
267 furnished and may include one or more physical plants on a
268 primary or contiguous site or an immediately accessible site. As
269 used in this subsection, the term "immediately accessible site"
270 means a parcel of real property separated by a reasonable
271 distance from the facility as measured along public
272 thoroughfares, and the term "primary or contiguous site" means
273 the real property contemplated in the feasibility study required
274 by this chapter.

275 ~~(7) "Generally accepted accounting principles" means those~~
276 ~~accounting principles and practices adopted by the Financial~~
277 ~~Accounting Standards Board and the American Institute of~~
278 ~~Certified Public Accountants, including Statement of Position~~
279 ~~90-8 with respect to any full year to which the statement~~
280 ~~applies.~~

281 (15) "Impaired" or "impairment" means that either of the
282 following has occurred:

283 (a) A provider has failed to maintain its minimum liquid
284 reserve as required under s. 651.035, unless the provider has
285 received prior written approval from the office for a withdrawal
286 pursuant to s. 651.035(6) and is compliant with the approved
287 payment schedule.

288 (b) Beginning January 1, 2021:

289 1. For a provider with mortgage financing from a third-
290 party lender or a public bond issue, the provider's debt service

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291 coverage ratio is less than 1.00:1 and the provider's days cash
292 on hand is less than 90; or

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

296
297 If the provider is a member of an obligated group having cross-
298 collateralized debt, the obligated group's debt service coverage
299 ratio and days cash on hand must be used to determine if the
300 provider is impaired.

301 (16)-(8) "Insolvency" means the condition in which a ~~the~~
302 provider is unable to pay its obligations as they come due in
303 the normal course of business.

304 (17)-(9) "Licensed" means that a ~~the~~ provider has obtained a
305 certificate of authority from the ~~office~~ department.

306 (18) "Manager", "management," or "management company" means
307 a person who administers the day-to-day business operations of a
308 facility for a provider, subject to the policies, directives,
309 and oversight of the provider.

310 (19)-(10) "Nursing care" means those services or acts
311 rendered to a resident by an individual licensed or certified
312 pursuant to chapter 464.

313 (20) "Obligated group" means one or more entities that
314 jointly agree to be bound by a financing structure containing
315 security provisions and covenants applicable to the group. For
316 the purposes of this subsection, debt issued under such a
317 financing structure must be a joint and several obligation of
318 each member of the group.

319 (21) "Occupancy" means the total number of occupied

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320 independent living units, assisted living units, and skilled
321 nursing beds in a facility divided by the total number of units
322 and beds in that facility, excluding units and beds that are
323 unavailable to market or that are reserved by prospective
324 residents.

325 (22)~~(11)~~ "Personal services" has the same meaning as in s.
326 429.02.

327 (23)~~(12)~~ "Provider" means the owner or operator, whether a
328 natural person, partnership or other unincorporated association,
329 however organized, trust, or corporation, of an institution,
330 building, residence, or other place, whether operated for profit
331 or not, which owner or operator provides continuing care or
332 continuing care at-home for a fixed or variable fee, or for any
333 other remuneration of any type, whether fixed or variable, for
334 the period of care, payable in a lump sum or lump sum and
335 monthly maintenance charges or in installments. The term does
336 not apply to an entity that has existed and continuously
337 operated a facility located on at least 63 acres in this state
338 providing residential lodging to members and their spouses for
339 at least 66 years on or before July 1, 1989, and has the
340 residential capacity of 500 persons, is directly or indirectly
341 owned or operated by a nationally recognized fraternal
342 organization, is not open to the public, and accepts only its
343 members and their spouses as residents.

344 (24)~~(13)~~ "Records" means all documents, correspondence, and
345 the permanent financial, directory, and personnel information
346 and data maintained by a provider pursuant to this chapter,
347 regardless of the physical form, characteristics, or means of
348 transmission.

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349 (25) "Regulatory action level event" means that any of the
350 following has occurred:

351 (a) The provider's debt service coverage ratio is less than
352 the minimum ratio specified in the provider's bond covenants or
353 lending agreement for long-term financing, or, if the provider
354 does not have a debt service coverage ratio required by its
355 lending institution, the provider's debt service coverage ratio
356 is less than 1.20:1 as of the most recent annual report filed
357 with the office. If the provider is a member of an obligated
358 group having cross-collateralized debt, the obligated group's
359 debt service coverage ratio must be used as the provider's debt
360 service coverage ratio.

361 (b) The provider's days cash on hand is less than the
362 minimum number of days cash on hand specified in the provider's
363 bond covenants or lending agreement for long-term financing. If
364 the provider does not have a days cash on hand required by its
365 lending institution, the days cash on hand may not be less than
366 100 as of the most recent annual report filed with the office.
367 If the provider is a member of an obligated group having cross-
368 collateralized debt, the days cash on hand of the obligated
369 group must be used as the provider's days cash on hand.

370 (c) The average occupancy of the provider's facility over
371 the 12-month period ending on the reporting date is less than 80
372 percent.

373 (26) ~~(14)~~ "Resident" means a purchaser of, a nominee of, or
374 a subscriber to a continuing care or continuing care at-home
375 contract. Such contract does not give the resident a part
376 ownership of the facility in which the resident is to reside,
377 unless expressly provided in the contract.

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378 ~~(27)~~~~(15)~~ "Shelter" means an independent living unit, room,
 379 apartment, cottage, villa, personal care unit, nursing bed, or
 380 other living area within a facility set aside for the exclusive
 381 use of one or more identified residents.

382 Section 2. Section 651.012, Florida Statutes, is amended to
 383 read:

384 651.012 Exempted facility; written disclosure of
 385 exemption.—Any facility exempted under ss. 632.637(1)(e) and
 386 651.011(23) ~~651.011(12)~~ must provide written disclosure of such
 387 exemption to each person admitted to the facility ~~after October~~
 388 ~~1, 1996~~. This disclosure must be written using language likely
 389 to be understood by the person and must briefly explain the
 390 exemption.

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

393 651.013 Chapter exclusive; applicability of other laws.—
 394 (2) In addition to other applicable provisions cited in
 395 this chapter, the office has the authority granted under ss.
 396 624.302 and 624.303, 624.307-624.312, 624.318 ~~624.308-624.312,~~
 397 624.319(1)-(3), 624.320-624.321, 624.324, ~~and~~ 624.34, ~~and~~
 398 624.422 of the Florida Insurance Code to regulate providers of
 399 continuing care and continuing care at-home.

400 Section 4. Section 651.019, Florida Statutes, is amended to
 401 read:

402 651.019 New financing, additional financing, or
 403 refinancing.—

404 (1) (a) A provider shall provide a written general outline
 405 of the amount and the anticipated terms of any new financing or
 406 refinancing, and the intended use of proceeds, to the residents'

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407 council at least 30 days before the closing date of the
408 financing or refinancing transaction. If there is a material
409 change in the noticed information, a provider shall provide an
410 updated notice to the residents' council within 10 business days
411 after the provider becomes aware of such change.

412 (b) If the facility does not have a residents' council, the
413 facility must make available, in the same manner as other
414 community notices, the information required under paragraph (a)
415 ~~After issuance of a certificate of authority, the provider shall~~
416 ~~submit to the office a general outline, including intended use~~
417 ~~of proceeds, with respect to any new financing, additional~~
418 ~~financing, or refinancing at least 30 days before the closing~~
419 ~~date of such financing transaction.~~

420 (2) Within 30 days after the closing date of such financing
421 or refinancing transaction, The provider shall furnish any
422 ~~information the office may reasonably request in connection with~~
423 ~~any new financing, additional financing, or refinancing,~~
424 ~~including, but not limited to, the financing agreements and any~~
425 ~~related documents, escrow or trust agreements, and statistical~~
426 ~~or financial data. the provider shall also submit to the office~~
427 copies of executed financing documents, escrow or trust
428 agreements prepared in support of such financing or refinancing
429 transaction, and a copy of all documents required to be
430 submitted to the residents' council under paragraph (1) (a)
431 ~~within 30 days after the closing date.~~

432 Section 5. Section 651.021, Florida Statutes, is amended to
433 read:

434 651.021 Certificate of authority required.-

435 ~~(1)~~ A ~~No~~ person may not engage in the business of providing

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436 continuing care, issuing contracts for continuing care or
437 continuing care at-home, or constructing a facility for the
438 purpose of providing continuing care in this state without a
439 certificate of authority obtained from the office as provided in
440 this chapter. This section ~~subsection~~ does not prohibit the
441 preparation of a construction site or construction of a model
442 residence unit for marketing purposes, or both. The office may
443 allow the purchase of an existing building for the purpose of
444 providing continuing care if the office determines that the
445 purchase is not being made to circumvent the prohibitions in
446 this section.

447 ~~(2) Written approval must be obtained from the office~~
448 ~~before commencing construction or marketing for an expansion of~~
449 ~~a certificated facility equivalent to the addition of at least~~
450 ~~20 percent of existing units or 20 percent or more in the number~~
451 ~~of continuing care at-home contracts. This provision does not~~
452 ~~apply to construction for which a certificate of need from the~~
453 ~~Agency for Health Care Administration is required.~~

454 ~~(a) For providers that offer both continuing care and~~
455 ~~continuing care at-home, the 20 percent is based on the total of~~
456 ~~both existing units and existing contracts for continuing care~~
457 ~~at-home. For purposes of this subsection, an expansion includes~~
458 ~~increases in the number of constructed units or continuing care~~
459 ~~at-home contracts or a combination of both.~~

460 ~~(b) The application for such approval shall be on forms~~
461 ~~adopted by the commission and provided by the office. The~~
462 ~~application must include the feasibility study required by s.~~
463 ~~651.022(3) or s. 651.023(1)(b) and such other information as~~
464 ~~required by s. 651.023. If the expansion is only for continuing~~

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465 ~~care at home contracts, an actuarial study prepared by an~~
466 ~~independent actuary in accordance with standards adopted by the~~
467 ~~American Academy of Actuaries which presents the financial~~
468 ~~impact of the expansion may be substituted for the feasibility~~
469 ~~study.~~

470 ~~(c) In determining whether an expansion should be approved,~~
471 ~~the office shall use the criteria provided in ss. 651.022(6) and~~
472 ~~651.023(4).~~

473 Section 6. Section 651.0215, Florida Statutes, is created
474 to read:

475 651.0215 Consolidated application for a provisional
476 certificate of authority and a certificate of authority;
477 required restrictions on use of entrance fees.-

478 (1) For an applicant to qualify for a certificate of
479 authority without first obtaining a provisional certificate of
480 authority, all of the following conditions must be met:

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

486 (b) The reservation deposit may not exceed the lesser of
487 \$40,000 or 10 percent of the then-current fee for the unit
488 selected by a resident and must be refundable at any time before
489 the resident takes occupancy of the selected unit.

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

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494 (2) The consolidated application must be on a form
495 prescribed by the commission and must contain all of the
496 following information:

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

498 (b) A feasibility study prepared by an independent
499 consultant which contains all of the information required by s.
500 651.022(3) and financial forecasts or projections prepared in
501 accordance with standards adopted by the American Institute of
502 Certified Public Accountants or in accordance with standards for
503 feasibility studies for continuing care retirement communities
504 adopted by the Actuarial Standards Board.

505 1. The feasibility study must take into account project
506 costs, actual marketing results to date and marketing
507 projections, resident fees and charges, competition, resident
508 contract provisions, and other factors that affect the
509 feasibility of operating the facility.

510 2. If the feasibility study is prepared by an independent
511 certified public accountant, it must contain an examination
512 report, or a compilation report acceptable to the office,
513 containing a financial forecast or projections for the first 5
514 years of operations which take into account an actuary's
515 mortality and morbidity assumptions as the study relates to
516 turnover, rates, fees, and charges. If the study is prepared by
517 an independent consulting actuary, it must contain mortality and
518 morbidity assumptions as it relates to turnover, rates, fees,
519 and charges and an actuary's signed opinion that the project as
520 proposed is feasible and that the study has been prepared in
521 accordance with Actuarial Standards of Practice No. 3 for
522 Continuing Care Retirement Communities, Revised Edition,

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523 effective May 1, 2011.

524 (c) Documents evidencing that commitments have been secured
525 for construction financing and long-term financing or that a
526 documented plan acceptable to the office has been adopted by the
527 applicant for long-term financing.

528 (d) Documents evidencing that all conditions of the lender
529 have been satisfied to activate the commitment to disburse
530 funds, other than the obtaining of the certificate of authority,
531 the completion of construction, or the closing of the purchase
532 of realty or buildings for the facility.

533 (e) Documents evidencing that the aggregate amount of
534 entrance fees received by or pledged to the applicant, plus
535 anticipated proceeds from any long-term financing commitment and
536 funds from all other sources in the actual possession of the
537 applicant, equal at least 100 percent of the aggregate cost of
538 constructing or purchasing, equipping, and furnishing the
539 facility plus 100 percent of the anticipated startup losses of
540 the facility.

541 (f) A complete audited financial report of the applicant,
542 prepared by an independent certified public accountant in
543 accordance with generally accepted accounting principles, as of
544 the date the applicant commenced business operations or for the
545 fiscal year that ended immediately preceding the date of
546 application, whichever is later; and complete unaudited
547 quarterly financial statements attested to by the applicant
548 after the date of the last audit.

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

551 (h) Such other reasonable data, financial statements, and

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552 pertinent information as the commission or office may require
553 with respect to the applicant or the facility to determine the
554 financial status of the facility and the management capabilities
555 of its managers and owners.

556
557 If any material change occurs in the facts set forth in an
558 application filed with the office pursuant to this subsection,
559 an amendment setting forth such change must be filed with the
560 office within 10 business days after the applicant becomes aware
561 of such change, and a copy of the amendment must be sent by
562 registered mail to the principal office of the facility and to
563 the principal office of the controlling company.

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

568 (4) Within 45 days after receipt of the information
569 required under subsection (2), the office shall examine the
570 information and notify the applicant in writing, specifically
571 requesting any additional information that the office is
572 authorized to require. An application is deemed complete when
573 the office receives all requested information and the applicant
574 corrects any error or omission of which the applicant was timely
575 notified or when the time for such notification has expired.
576 Within 15 days after receipt of all of the requested additional
577 information, the office shall notify the applicant in writing
578 that all of the requested information has been received and that
579 the application is deemed complete as of the date of the notice.
580 Failure to notify the applicant in writing within the 15-day

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581 period constitutes acknowledgment by the office that it has
582 received all requested additional information, and the
583 application is deemed complete for purposes of review on the
584 date the applicant files all of the required additional
585 information.

586 (5) Within 45 days after an application is deemed complete
587 as set forth in subsection (4) and upon completion of the
588 remaining requirements of this section, the office shall
589 complete its review and issue or deny a certificate of authority
590 to the applicant. If the office requests additional information
591 and the applicant provides it within 5 business days after
592 notification, the period for reviewing or approving an
593 application may not be extended beyond the period specified in
594 subsection (4). If a certificate of authority is denied, the
595 office shall notify the applicant in writing, citing the
596 specific failures to satisfy this chapter, and the applicant is
597 entitled to an administrative hearing pursuant to chapter 120.

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

603 (7) The issuance of a certificate of authority entitles the
604 applicant to begin construction and collect reservation deposits
605 and entrance fees from prospective residents. The reservation
606 contract must state the cancellation policy and the terms of the
607 continuing care contract. All or any part of an entrance fee or
608 reservation deposit collected must be placed in an escrow
609 account or on deposit with the department pursuant to s.

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610 651.033.

611 (8) The provider is entitled to secure release of the
612 moneys held in escrow within 7 days after the office receives an
613 affidavit from the provider, along with appropriate
614 documentation to verify, and notification is provided to the
615 escrow agent by certified mail, that all of the following
616 conditions have been satisfied:

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

618 (b) Payment in full has been received for at least 70
619 percent of the total units of a phase or of the total of the
620 combined phases constructed. If a provider offering continuing
621 care at-home is applying for a release of escrowed entrance
622 fees, the same minimum requirement must be met for the
623 continuing care contracts and for the continuing care at-home
624 contracts independently of each other.

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

628 (d) Documents evidencing the intended application of the
629 proceeds upon release and documents evidencing that the entrance
630 fees, when released, will be applied as represented to the
631 office.

632
633 Notwithstanding chapter 120, a person, other than the provider,
634 the escrow agent, and the office, may not have a substantial
635 interest in any decision by the office regarding the release of
636 escrow funds in any proceeding under chapter 120 or this
637 chapter.

638 (9) The office may not approve any application that

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639 includes in the plan of financing any encumbrance of the
640 operating reserves or renewal and replacement reserves required
641 by this chapter.

642 (10) The office may not issue a certificate of authority to
643 a facility that does not have a component that is to be licensed
644 pursuant to part II of chapter 400 or part I of chapter 429, or
645 that does not offer personal services or nursing services
646 through written contractual agreement. A written contractual
647 agreement must be disclosed in the contract for continuing care
648 or continuing care at-home and is subject to s. 651.1151.

649 Section 7. Subsections (2), (3), (6), and (8) of section
650 651.022, Florida Statutes, are amended, and subsection (5) of
651 that section is republished, to read:

652 651.022 Provisional certificate of authority; application.-

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

656 (a) If the applicant or provider is a corporation, a copy
657 of the articles of incorporation and bylaws; if the applicant or
658 provider is a partnership or other unincorporated association, a
659 copy of the partnership agreement, articles of association, or
660 other membership agreement; and, if the applicant or provider is
661 a trust, a copy of the trust agreement or instrument.

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

663 1. The proprietor, if the applicant or provider is an
664 individual.

665 2. Every partner or member, if the applicant or provider is
666 a partnership or other unincorporated association, however
667 organized, having fewer than 50 partners or members, together

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668 with the business name and address of the partnership or other
669 organization.

670 3. The principal partners or members, if the applicant or
671 provider is a partnership or other unincorporated association,
672 however organized, having 50 or more partners or members,
673 together with the business name and business address of the
674 partnership or other organization. If such unincorporated
675 organization has officers and a board of directors, the full
676 name and business address of each officer and director may be
677 set forth in lieu of the full name and business address of its
678 principal members.

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

681 5. Every trustee and officer, if the applicant or provider
682 is a trust.

683 6. The manager, whether an individual, corporation,
684 partnership, or association.

685 7. Any stockholder holding at least a 10 percent interest
686 in the operations of the facility in which the care is to be
687 offered.

688 8. Any person whose name is required to be provided in the
689 application under this paragraph and who owns any interest in or
690 receives any remuneration from, directly or indirectly, any
691 professional service firm, association, trust, partnership, or
692 corporation providing goods, leases, or services to the facility
693 for which the application is made, with a real or anticipated
694 value of \$10,000 or more, and the name and address of the
695 professional service firm, association, trust, partnership, or
696 corporation in which such interest is held. The applicant shall

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697 describe such goods, leases, or services and the probable cost
698 to the facility or provider and shall describe why such goods,
699 leases, or services should not be purchased from an independent
700 entity.

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

704 10. Any affiliated parent or subsidiary corporation or
705 partnership.

706 (c)1. Evidence that the applicant is reputable and of
707 responsible character. If the applicant is a firm, association,
708 organization, partnership, business trust, corporation, or
709 company, the form must ~~shall~~ require evidence that the members
710 or shareholders ~~are reputable and of responsible character,~~ and
711 the person in charge of providing care under a certificate of
712 authority are ~~shall likewise be required to produce evidence of~~
713 ~~being~~ reputable and of responsible character.

714 2. Evidence satisfactory to the office of the ability of
715 the applicant to comply with ~~the provisions of~~ this chapter and
716 with rules adopted by the commission pursuant to this chapter.

717 3. A statement of whether a person identified in the
718 application for a provisional certificate of authority or the
719 administrator or manager of the facility, if such person has
720 been designated, or any such person living in the same location:

721 a. Has been convicted of a felony or has pleaded nolo
722 contendere to a felony charge, or has been held liable or has
723 been enjoined in a civil action by final judgment, if the felony
724 or civil action involved fraud, embezzlement, fraudulent
725 conversion, or misappropriation of property.

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726 b. Is subject to a currently effective injunctive or
727 restrictive order or federal or state administrative order
728 relating to business activity or health care as a result of an
729 action brought by a public agency or department, including,
730 without limitation, an action affecting a license under chapter
731 400 or chapter 429.

732
733 The statement must ~~shall~~ set forth the court or agency, the date
734 of conviction or judgment, and the penalty imposed or damages
735 assessed, or the date, nature, and issuer of the order. Before
736 determining whether a provisional certificate of authority is to
737 be issued, the office may make an inquiry to determine the
738 accuracy of the information submitted pursuant to subparagraphs
739 1., 2., and 3. ~~1. and 2.~~

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

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

748 (f) Such other reasonable data, financial statements, and
749 pertinent information as the commission or office may reasonably
750 require with respect to the provider or the facility, including
751 the most recent audited financial report ~~statements~~ of
752 comparable facilities currently or previously owned, managed, or
753 developed by the applicant or its principal, to assist in
754 determining the financial viability of the project and the

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755 management capabilities of its managers and owners.

756 (g) The forms of the residency contracts, reservation
757 contracts, escrow agreements, and wait list contracts, if
758 applicable, which are proposed to be used by the provider in the
759 furnishing of care. The office shall approve contracts and
760 escrow agreements that comply with ss. 651.023(1)(c), 651.033,
761 651.055, and 651.057. Thereafter, no other form of contract or
762 agreement may be used by the provider until it has been
763 submitted to the office and approved.

764

765 If any material change occurs in the facts set forth in an
766 application filed with the office pursuant to this subsection,
767 an amendment setting forth such change must be filed with the
768 office within 10 business days after the applicant becomes aware
769 of such change, and a copy of the amendment must be sent by
770 registered mail to the principal office of the facility and to
771 the principal office of the controlling company.

772 (3) In addition to the information required in subsection
773 (2), an applicant for a provisional certificate of authority
774 shall submit a ~~market~~ feasibility study with appropriate
775 financial, marketing, and actuarial assumptions for the first 5
776 years of operations. The ~~market~~ feasibility study must ~~shall~~
777 include at least the following information:

778 (a) A description of the proposed facility, including the
779 location, size, anticipated completion date, and the proposed
780 construction program.

781 (b) An identification and evaluation of the primary and, if
782 appropriate, the secondary market areas of the facility and the
783 projected unit sales per month.

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784 (c) Projected revenues, including anticipated entrance
785 fees; monthly service fees; nursing care revenues rates, if
786 applicable; and all other sources of revenue, ~~including the~~
787 ~~total amount of debt financing required.~~

788 (d) Projected expenses, including staffing requirements and
789 salaries; cost of property, plant, and equipment, including
790 depreciation expense; interest expense; marketing expense; and
791 other operating expenses.

792 (e) A projected balance sheet ~~Current assets and~~
793 ~~liabilities of the applicant.~~

794 (f) Expectations of the financial condition of the project,
795 including the projected cash flow, and a projected balance sheet
796 ~~and~~ an estimate of the funds anticipated to be necessary to
797 cover startup losses.

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

801 (h) Project costs and the total amount of debt financing
802 required, marketing projections, resident fees and charges, the
803 competition, resident contract provisions, and other factors
804 that ~~which~~ affect the feasibility of the facility.

805 (i) Appropriate population projections, including morbidity
806 and mortality assumptions.

807 (j) The name of the person who prepared the feasibility
808 study and the experience of such person in preparing similar
809 studies or otherwise consulting in the field of continuing care.
810 The preparer of the feasibility study may be the provider or a
811 contracted third party.

812 (k) Any other information that the applicant deems relevant

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813 and appropriate to enable the office to make a more informed
814 determination.

815 (5) (a) Within 30 days after receipt of an application for a
816 provisional certificate of authority, the office shall examine
817 the application and shall notify the applicant in writing,
818 specifically setting forth and specifically requesting any
819 additional information the office is permitted by law to
820 require. If the application submitted is determined by the
821 office to be substantially incomplete so as to require
822 substantial additional information, including biographical
823 information, the office may return the application to the
824 applicant with a written notice that the application as received
825 is substantially incomplete and, therefore, unacceptable for
826 filing without further action required by the office. Any filing
827 fee received shall be refunded to the applicant.

828 (b) Within 15 days after receipt of all of the requested
829 additional information, the office shall notify the applicant in
830 writing that all of the requested information has been received
831 and the application is deemed to be complete as of the date of
832 the notice. Failure to so notify the applicant in writing within
833 the 15-day period shall constitute acknowledgment by the office
834 that it has received all requested additional information, and
835 the application shall be deemed to be complete for purposes of
836 review upon the date of the filing of all of the requested
837 additional information.

838 (6) Within 45 days after the date an application is deemed
839 complete as set forth in paragraph (5) (b), the office shall
840 complete its review and issue a provisional certificate of
841 authority to the applicant based upon its review and a

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842 determination that the application meets all requirements of
843 law, that the feasibility study was based on sufficient data and
844 reasonable assumptions, and that the applicant will be able to
845 provide continuing care or continuing care at-home as proposed
846 and meet all financial and contractual obligations related to
847 its operations, including the financial requirements of this
848 chapter. If the office requests additional information and the
849 applicant provides it within 5 business days after notification,
850 the period for reviewing or approving the application may not be
851 extended beyond the period specified in subsection (5). If the
852 application is denied, the office shall notify the applicant in
853 writing, citing the specific failures to meet the provisions of
854 this chapter. Such denial entitles the applicant to a hearing
855 pursuant to chapter 120.

856 (8) The office may ~~shall~~ not approve any application that
857 ~~which~~ includes in the plan of financing any encumbrance of the
858 operating reserves or renewal and replacement reserves required
859 by this chapter.

860 Section 8. Subsections (1), (3), and (4), paragraph (b) of
861 subsection (5), and subsections (6) through (9) of section
862 651.023, Florida Statutes, are amended, and subsection (2) of
863 that section is republished, to read:

864 651.023 Certificate of authority; application.—

865 (1) After issuance of a provisional certificate of
866 authority, the office shall issue to the holder of such
867 provisional certificate a certificate of authority if the holder
868 of the provisional certificate provides the office with the
869 following information:

870 (a) Any material change in status with respect to the

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871 information required to be filed under s. 651.022(2) in the
872 application for the provisional certificate.

873 (b) A feasibility study prepared by an independent
874 consultant which contains all of the information required by s.
875 651.022(3) and financial forecasts or projections prepared in
876 accordance with standards adopted by the American Institute of
877 Certified Public Accountants or in accordance with standards for
878 feasibility studies or continuing care retirement communities
879 adopted by the Actuarial Standards Board.

880 ~~1. The study must also contain an independent evaluation
881 and examination opinion, or a comparable opinion acceptable to
882 the office, by the consultant who prepared the study, of the
883 underlying assumptions used as a basis for the forecasts or
884 projections in the study and that the assumptions are reasonable
885 and proper and the project as proposed is feasible.~~

886 ~~1.2.~~ The study must take into account project costs, actual
887 marketing results to date and marketing projections, resident
888 fees and charges, competition, resident contract provisions, and
889 any other factors which affect the feasibility of operating the
890 facility.

891 ~~2.3.~~ If the study is prepared by an independent certified
892 public accountant, it must contain an examination opinion or a
893 compilation report acceptable to the office containing a
894 financial forecast or projections for the first 5 ~~3~~ years of
895 operations which take into account an actuary's mortality and
896 morbidity assumptions as the study relates to turnover, rates,
897 fees, and charges ~~and financial projections having a compilation~~
898 ~~opinion for the next 3 years.~~ If the study is prepared by an
899 independent consulting actuary, it must contain mortality and

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900 morbidity assumptions as the study relates to turnover, rates,
901 fees, and charges ~~data~~ and an actuary's signed opinion that the
902 project as proposed is feasible and that the study has been
903 prepared in accordance with standards adopted by the American
904 Academy of Actuaries.

905 (c) Subject to subsection (4), a provider may submit an
906 application for a certificate of authority and any required
907 exhibits upon submission of documents evidencing ~~proof~~ that the
908 project has a minimum of 30 percent of the units reserved for
909 which the provider is charging an entrance fee. ~~This does not~~
910 ~~apply to an application for a certificate of authority for the~~
911 ~~acquisition of a facility for which a certificate of authority~~
912 ~~was issued before October 1, 1983, to a provider who~~
913 ~~subsequently becomes a debtor in a case under the United States~~
914 ~~Bankruptcy Code, 11 U.S.C. ss. 101 et seq., or to a provider for~~
915 ~~which the department has been appointed receiver pursuant to~~
916 ~~part II of chapter 631.~~

917 (d) Documents evidencing ~~Proof~~ that commitments have been
918 secured for both construction financing and long-term financing
919 or a documented plan acceptable to the office has been adopted
920 by the applicant for long-term financing.

921 (e) Documents evidencing ~~Proof~~ that all conditions of the
922 lender have been satisfied to activate the commitment to
923 disburse funds other than the obtaining of the certificate of
924 authority, the completion of construction, or the closing of the
925 purchase of realty or buildings for the facility.

926 (f) Documents evidencing ~~Proof~~ that the aggregate amount of
927 entrance fees received by or pledged to the applicant, plus
928 anticipated proceeds from any long-term financing commitment,

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929 plus funds from all other sources in the actual possession of
930 the applicant, equal at least 100 percent of the aggregate cost
931 of constructing or purchasing, equipping, and furnishing the
932 facility plus 100 percent of the anticipated startup losses of
933 the facility.

934 (g) A complete audited financial report ~~statements~~ of the
935 applicant, prepared by an independent certified public
936 accountant in accordance with generally accepted accounting
937 principles, as of the date the applicant commenced business
938 operations or for the fiscal year that ended immediately
939 preceding the date of application, whichever is later, and
940 complete unaudited quarterly financial statements attested to by
941 the applicant after the date of the last audit.

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

945 (i) Such other reasonable data, financial statements, and
946 pertinent information as the commission or office may require
947 with respect to the applicant or the facility, to determine the
948 financial status of the facility and the management capabilities
949 of its managers and owners.

950

951 If any material change occurs in the facts set forth in an
952 application filed with the office pursuant to this subsection,
953 an amendment setting forth such change must be filed with the
954 office within 10 business days after the applicant becomes aware
955 of such change, and a copy of the amendment must be sent by
956 registered mail to the principal office of the facility and to
957 the principal office of the controlling company.

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958 (2) Within 30 days after receipt of the information
959 required under subsection (1), the office shall examine such
960 information and notify the provider in writing, specifically
961 requesting any additional information the office is permitted by
962 law to require. Within 15 days after receipt of all of the
963 requested additional information, the office shall notify the
964 provider in writing that all of the requested information has
965 been received and the application is deemed to be complete as of
966 the date of the notice. Failure to notify the applicant in
967 writing within the 15-day period constitutes acknowledgment by
968 the office that it has received all requested additional
969 information, and the application shall be deemed complete for
970 purposes of review on the date of filing all of the required
971 additional information.

972 (3) Within 45 days after an application is deemed complete
973 as set forth in subsection (2), and upon completion of the
974 remaining requirements of this section, the office shall
975 complete its review and issue or deny a certificate of authority
976 to the holder of a provisional certificate of authority. If a
977 certificate of authority is denied, the office must notify the
978 holder of the provisional certificate in writing, citing the
979 specific failures to satisfy the provisions of this chapter. If
980 the office requests additional information and the applicant
981 provides it within 5 business days after notification, the
982 period for reviewing or approving an application may not be
983 extended beyond the period specified in subsection (2). If
984 denied, the holder of the provisional certificate is entitled to
985 an administrative hearing pursuant to chapter 120.

986 (4) The office shall issue a certificate of authority upon

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987 determining that the applicant meets all requirements of law and
988 has submitted all of the information required by this section,
989 that all escrow requirements have been satisfied, and that the
990 fees prescribed in s. 651.015(2) have been paid.

991 (a) ~~A Notwithstanding satisfaction of the 30 percent~~
992 ~~minimum reservation requirement of paragraph (1)(c), no~~
993 certificate of authority may not shall be issued until
994 documentation evidencing that the project has a minimum of 50
995 percent of the units reserved for which the provider is charging
996 an entrance fee, ~~and proof~~ is provided to the office. If a
997 provider offering continuing care at-home is applying for a
998 certificate of authority ~~or approval of an expansion pursuant to~~
999 ~~s. 651.021(2)~~, the same minimum reservation requirements must be
1000 met for the continuing care and continuing care at-home
1001 contracts, independently of each other.

1002 (b) In order for a unit to be considered reserved under
1003 this section, the provider must collect a minimum deposit of the
1004 lesser of \$40,000 or 10 percent of the then-current entrance fee
1005 for that unit, and may assess a forfeiture penalty of 2 percent
1006 of the entrance fee due to termination of the reservation
1007 contract after 30 days for any reason other than the death or
1008 serious illness of the resident, the failure of the provider to
1009 meet its obligations under the reservation contract, or other
1010 circumstances beyond the control of the resident that equitably
1011 entitle the resident to a refund of the resident's deposit. The
1012 reservation contract must state the cancellation policy and the
1013 terms of the continuing care or continuing care at-home contract
1014 to be entered into.

1015 (5) Up to 25 percent of the moneys paid for all or any part

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1016 of an initial entrance fee may be included or pledged for the
1017 construction or purchase of the facility or as security for
1018 long-term financing. The term "initial entrance fee" means the
1019 total entrance fee charged by the facility to the first occupant
1020 of a unit.

1021 (b) For an expansion as provided in s. 651.0246 ~~s.~~
1022 ~~651.021(2)~~, a minimum of 75 percent of the moneys paid for all
1023 or any part of an initial entrance fee collected for continuing
1024 care and 50 percent of the moneys paid for all or any part of an
1025 initial fee collected for continuing care at-home shall be
1026 placed in an escrow account or on deposit with the department as
1027 prescribed in s. 651.033.

1028 (6) The provider is entitled to secure release of the
1029 moneys held in escrow within 7 days after receipt by the office
1030 of an affidavit from the provider, along with appropriate copies
1031 to verify, and notification to the escrow agent by certified
1032 mail, that the following conditions have been satisfied:

1033 (a) A certificate of occupancy has been issued.

1034 (b) Payment in full has been received for at least 70
1035 percent of the total units of a phase or of the total of the
1036 combined phases constructed. If a provider offering continuing
1037 care at-home is applying for a release of escrowed entrance
1038 fees, the same minimum requirement must be met for the
1039 continuing care and continuing care at-home contracts,
1040 independently of each other.

1041 ~~(c) The consultant who prepared the feasibility study~~
1042 ~~required by this section or a substitute approved by the office~~
1043 ~~certifies within 12 months before the date of filing for office~~
1044 ~~approval that there has been no material adverse change in~~

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1045 ~~status with regard to the feasibility study. If a material~~
1046 ~~adverse change exists at the time of submission, sufficient~~
1047 ~~information acceptable to the office and the feasibility~~
1048 ~~consultant must be submitted which remedies the adverse~~
1049 ~~condition.~~

1050 (c) ~~(d)~~ Documents evidencing Proof that commitments have
1051 been secured or a documented plan adopted by the applicant has
1052 been approved by the office for long-term financing.

1053 (d) ~~(e)~~ Documents evidencing Proof that the provider has
1054 sufficient funds to meet the requirements of s. 651.035, which
1055 may include funds deposited in the initial entrance fee account.

1056 (e) ~~(f)~~ Documents evidencing Proof ~~as to~~ the intended
1057 application of the proceeds upon release and documentation ~~proof~~
1058 that the entrance fees when released will be applied as
1059 represented to the office.

1060 (f) If any material change occurred in the facts set forth
1061 in the application filed with the office pursuant to subsection
1062 (1), the applicant timely filed the amendment setting forth such
1063 change with the office and sent copies of the amendment to the
1064 principal office of the facility and to the principal office of
1065 the controlling company as required under that subsection.

1066
1067 Notwithstanding chapter 120, no person, other than the provider,
1068 the escrow agent, and the office, may have a substantial
1069 interest in any office decision regarding release of escrow
1070 funds in any proceedings under chapter 120 or this chapter
1071 regarding release of escrow funds.

1072 (7) In lieu of the provider fulfilling the requirements in
1073 subsection (5) and paragraphs (6) (b) and (c) ~~(d)~~, the office may

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1074 authorize the release of escrowed funds to retire all
1075 outstanding debts on the facility and equipment upon application
1076 of the provider and upon the provider's showing that the
1077 provider will grant to the residents a first mortgage on the
1078 land, buildings, and equipment that constitute the facility, and
1079 that the provider has satisfied paragraphs (6) (a) ~~-(e)-~~ and (d)
1080 ~~(e)~~. Such mortgage shall secure the refund of the entrance fee
1081 in the amount required by this chapter. The granting of such
1082 mortgage is subject to the following:

1083 (a) The first mortgage is granted to an independent trust
1084 that is beneficially held by the residents. The document
1085 creating the trust must include a provision that agrees to an
1086 annual audit and will furnish to the office all information the
1087 office may reasonably require. The mortgage may secure payment
1088 on bonds issued to the residents or trustee. Such bonds are
1089 redeemable after termination of the residency contract in the
1090 amount and manner required by this chapter for the refund of an
1091 entrance fee.

1092 (b) Before granting a first mortgage to the residents, all
1093 construction must be substantially completed and substantially
1094 all equipment must be purchased. No part of the entrance fees
1095 may be pledged as security for a construction loan or otherwise
1096 used for construction expenses before the completion of
1097 construction.

1098 (c) If the provider is leasing the land or buildings used
1099 by the facility, the leasehold interest must be for a term of at
1100 least 30 years.

1101 ~~(8) The timeframes provided under s. 651.022(5) and (6)~~
1102 ~~apply to applications submitted under s. 651.021(2).~~ The office

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1103 may not issue a certificate of authority to a facility that does
1104 not have a component that is to be licensed pursuant to part II
1105 of chapter 400 or to part I of chapter 429 or that does not
1106 offer personal services or nursing services through written
1107 contractual agreement. A written contractual agreement must be
1108 disclosed in the contract for continuing care or continuing care
1109 at-home and is subject to ~~the provisions of~~ s. 651.1151,
1110 relating to administrative, vendor, and management contracts.

1111 (9) The office may not approve an application that includes
1112 in the plan of financing any encumbrance of the operating
1113 reserves or renewal and replacement reserves required by this
1114 chapter.

1115 Section 9. Section 651.024, Florida Statutes, is amended to
1116 read:

1117 651.024 Acquisition.—

1118 (1) A person who seeks to assume the role of general
1119 partner of a provider or to otherwise assume ownership or
1120 possession of, or control over, 10 percent or more of a
1121 provider's assets, based on the balance sheet from the most
1122 recent financial audit report filed with the office, is issued a
1123 certificate of authority to operate a continuing care facility
1124 or a provisional certificate of authority shall be subject to
1125 the provisions of s. 628.4615 and is not required to make
1126 filings pursuant to s. 651.022, s. 651.023, or s. 651.0245.

1127 (2) A person who seeks to acquire and become the provider
1128 for a facility is subject to s. 651.0245 and is not required to
1129 make filings pursuant to ss. 628.4615, 651.022, and 651.023.

1130 (3) A person may rebut a presumption of control by filing a
1131 disclaimer of control with the office on a form prescribed by

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1132 the commission. The disclaimer must fully disclose all material
1133 relationships and bases for affiliation between the person and
1134 the provider or facility, as well as the basis for disclaiming
1135 the affiliation. In lieu of such form, a person or acquiring
1136 party may file with the office a copy of a Schedule 13G filed
1137 with the Securities and Exchange Commission pursuant to Rule
1138 13d-1(b) or (c), 17 C.F.R. s. 240.13d-1, under the Securities
1139 Exchange Act of 1934, as amended. After a disclaimer has been
1140 filed, the provider or facility is relieved of any duty to
1141 register or report under this section which may arise out of the
1142 provider's or facility's relationship with the person, unless
1143 the office disallows the disclaimer.

1144 (4) In addition to the provider, the facility, or the
1145 controlling company, the office has standing to petition a
1146 circuit court as described in s. 628.4615(9).

1147 Section 10. Section 651.0245, Florida Statutes, is created
1148 to read:

1149 651.0245 Application for the simultaneous acquisition of a
1150 facility and issuance of a certificate of authority.—

1151 (1) Except with the prior written approval of the office, a
1152 person may not, individually or in conjunction with any
1153 affiliated person of such person, directly or indirectly acquire
1154 a facility operating under a subsisting certificate of authority
1155 and engage in the business of providing continuing care.

1156 (2) An applicant seeking simultaneous acquisition of a
1157 facility and issuance of a certificate of authority must:

1158 (a) Comply with the notice requirements of s.

1159 628.4615(2) (a); and

1160 (b) File an application in the form required by the office

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1161 and cooperate with the office's review of the application.

1162 (3) The commission shall adopt by rule application
1163 requirements equivalent to those described in ss. 628.4615(4)
1164 and (5), 651.022(2), and 651.023(1)(b). The office shall review
1165 the application and issue an approval or disapproval of the
1166 filing in accordance with ss. 628.4615(6)(a) and (c), (7)-(10),
1167 and (14); and 651.023(1)(b).

1168 (4) In addition to the facility, the provider, or the
1169 controlling company, the office has standing to petition a
1170 circuit court as described in s. 628.4615(9).

1171 (5) A person may rebut a presumption of control by filing a
1172 disclaimer of control with the office on a form prescribed by
1173 the commission. The disclaimer must fully disclose all material
1174 relationships and bases for affiliation between the person and
1175 the provider or facility, as well as the basis for disclaiming
1176 the affiliation. In lieu of such form, a person or acquiring
1177 party may file with the office a copy of a Schedule 13G filed
1178 with the Securities and Exchange Commission pursuant to Rule
1179 13d-1(b) or (c), 17 C.F.R. s. 240.13d-1, under the Securities
1180 Exchange Act of 1934, as amended. After a disclaimer has been
1181 filed, the provider or facility is relieved of any duty to
1182 register or report under this section which may arise out of the
1183 provider's or facility's relationship with the person, unless
1184 the office disallows the disclaimer.

1185 (6) The commission may adopt rules as necessary to
1186 administer this section.

1187 Section 11. Section 651.0246, Florida Statutes, is created
1188 to read:

1189 651.0246 Expansions.—

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1190 (1) (a) A provider must obtain written approval from the
1191 office before commencing construction or marketing for an
1192 expansion of a certificated facility equivalent to the addition
1193 of at least 20 percent of existing units or 20 percent or more
1194 of the number of continuing care at-home contracts. If the
1195 provider has exceeded the current statewide median for days cash
1196 on hand, debt service coverage ratio, and total campus occupancy
1197 for two consecutive annual reporting periods, the provider is
1198 automatically granted approval to expand the total number of
1199 existing units by up to 35 percent upon submitting a letter to
1200 the office indicating the total number of planned units in the
1201 expansion, the proposed sources and uses of funds, and an
1202 attestation that the provider understands and pledges to comply
1203 with all minimum liquid reserve and escrow account requirements.
1204 As used in this section, the term "existing units" means the sum
1205 of the total number of independent living units and assisted
1206 living units identified in the most recent annual report filed
1207 with the office pursuant to s. 651.026. For purposes of this
1208 section, the statewide median for days cash on hand, debt
1209 service coverage ratio, and total campus occupancy is the median
1210 calculated in the most recent annual report submitted by the
1211 office to the Continuing Care Advisory Council pursuant to s.
1212 651.121(8). This section does not apply to construction for
1213 which a certificate of need from the Agency for Health Care
1214 Administration is required.

1215 (b) The application for the approval of an addition
1216 consisting of 20 percent or more of existing units or continuing
1217 care at-home contracts must be on forms adopted by the
1218 commission and provided by the office. The application must

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1219 include the feasibility study required by this section and such
1220 other information as reasonably requested by the office. If the
1221 expansion is only for continuing care at-home contracts, an
1222 actuarial study prepared by an independent actuary in accordance
1223 with standards adopted by the American Academy of Actuaries
1224 which presents the financial impact of the expansion may be
1225 substituted for the feasibility study.

1226 (c) In determining whether an expansion should be approved,
1227 the office shall consider:

1228 1. Whether the application meets all requirements of law;

1229 2. Whether the feasibility study was based on sufficient
1230 data and reasonable assumptions; and

1231 3. Whether the applicant will be able to provide continuing
1232 care or continuing care at-home as proposed and meet all
1233 financial obligations related to its operations, including the
1234 financial requirements of this chapter.

1235

1236 If the application is denied, the office must notify the
1237 applicant in writing, citing the specific failures to meet the
1238 provisions of this chapter. A denial entitles the applicant to a
1239 hearing pursuant to chapter 120.

1240 (2) A provider applying for expansion of a certificated
1241 facility must submit all of the following:

1242 (a) A feasibility study prepared by an independent
1243 certified public accountant. The feasibility study must include
1244 at least the following information:

1245 1. A description of the facility and proposed expansion,
1246 including the location, the size, the anticipated completion
1247 date, and the proposed construction program.

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1248 2. An identification and evaluation of the primary and, if
1249 applicable, secondary market areas of the facility and the
1250 projected unit sales per month.

1251 3. Projected revenues, including anticipated entrance fees;
1252 monthly service fees; nursing care revenues, if applicable; and
1253 all other sources of revenue.

1254 4. Projected expenses, including for staffing requirements
1255 and salaries; the cost of property, plant, and equipment,
1256 including depreciation expense; interest expense; marketing
1257 expense; and other operating expenses.

1258 5. A projected balance sheet of the applicant.

1259 6. The expectations for the financial condition of the
1260 project, including the projected cash flow and an estimate of
1261 the funds anticipated to be necessary to cover startup losses.

1262 7. The inflation factor, if any, assumed in the study for
1263 the proposed expansion and how and where it is applied.

1264 8. Project costs; the total amount of debt financing
1265 required; marketing projections; resident rates, fees, and
1266 charges; the competition; resident contract provisions; and
1267 other factors that affect the feasibility of the facility.

1268 9. Appropriate population projections, including morbidity
1269 and mortality assumptions.

1270 10. The name of the person who prepared the feasibility
1271 study and his or her experience in preparing similar studies or
1272 otherwise consulting in the field of continuing care.

1273 11. Financial forecasts or projections prepared in
1274 accordance with standards adopted by the American Institute of
1275 Certified Public Accountants or in accordance with standards for
1276 feasibility studies for continuing care retirement communities

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1277 adopted by the Actuarial Standards Board.

1278 12. An independent evaluation and examination opinion for
1279 the first 5 years of operations, or a comparable opinion
1280 acceptable to the office, by the consultant who prepared the
1281 study, of the underlying assumptions used as a basis for the
1282 forecasts or projections in the study and that the assumptions
1283 are reasonable and proper and the project as proposed is
1284 feasible.

1285 13. Any other information that the provider deems relevant
1286 and appropriate to provide to enable the office to make a more
1287 informed determination.

1288 (b) Such other reasonable data, financial statements, and
1289 pertinent information as the commission or office may require
1290 with respect to the applicant or the facility to determine the
1291 financial status of the facility and the management capabilities
1292 of its managers and owners.

1293 (3) A minimum of 75 percent of the moneys paid for all or
1294 any part of an initial entrance fee or reservation deposit
1295 collected for units in the expansion and 50 percent of the
1296 moneys paid for all or any part of an initial fee collected for
1297 continuing care at-home contracts in the expansion must be
1298 placed in an escrow account or on deposit with the department as
1299 prescribed in s. 651.033. Up to 25 percent of the moneys paid
1300 for all or any part of an initial entrance fee or reservation
1301 deposit may be included or pledged for the construction or
1302 purchase of the facility or as security for long-term financing.
1303 As used in this section, the term "initial entrance fee" means
1304 the total entrance fee charged by the facility to the first
1305 occupant of a unit.

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1306 (4) The provider is entitled to secure release of the
1307 moneys held in escrow within 7 days after receipt by the office
1308 of an affidavit from the provider, along with appropriate copies
1309 to verify, and notification to the escrow agent by certified
1310 mail that the following conditions have been satisfied:

1311 (a) A certificate of occupancy has been issued.

1312 (b) Payment in full has been received for at least 50
1313 percent of the total units of a phase or of the total of the
1314 combined phases constructed. If a provider offering continuing
1315 care at-home is applying for a release of escrowed entrance
1316 fees, the same minimum requirement must be met for the
1317 continuing care and continuing care at-home contracts
1318 independently of each other.

1319 (c) Documents evidencing that commitments have been secured
1320 or that a documented plan adopted by the applicant has been
1321 approved by the office for long-term financing.

1322 (d) Documents evidencing that the provider has sufficient
1323 funds to meet the requirements of s. 651.035, which may include
1324 funds deposited in the initial entrance fee account.

1325 (e) Documents evidencing the intended application of the
1326 proceeds upon release and documentation that the entrance fees,
1327 when released, will be applied as represented to the office.

1328
1329 Notwithstanding chapter 120, only the provider, the escrow
1330 agent, and the office have a substantial interest in any office
1331 decision regarding release of escrow funds in any proceedings
1332 under chapter 120 or this chapter.

1333 (5) (a) Within 30 days after receipt of an application for
1334 expansion, the office shall examine the application and shall

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1335 notify the applicant in writing, specifically requesting any
1336 additional information that the office is authorized to require.
1337 Within 15 days after the office receives all the requested
1338 additional information, the office shall notify the applicant in
1339 writing that the requested information has been received and
1340 that the application is deemed complete as of the date of the
1341 notice. If the office chooses not to notify the applicant within
1342 the 15-day period, the application is deemed complete for
1343 purposes of review on the date the applicant files the
1344 additional requested information. If the application submitted
1345 is determined by the office to be substantially incomplete so as
1346 to require substantial additional information, including
1347 biographical information, the office may return the application
1348 to the applicant with a written notice stating that the
1349 application as received is substantially incomplete and,
1350 therefore, is unacceptable for filing without further action
1351 required by the office. Any filing fee received must be refunded
1352 to the applicant.

1353 (b) An application is deemed complete upon the office
1354 receiving all requested information and the applicant correcting
1355 any error or omission of which the applicant was timely notified
1356 or when the time for such notification has expired. The office
1357 shall notify the applicant in writing of the date on which the
1358 application was deemed complete.

1359 (6) Within 45 days after the date on which an application
1360 is deemed complete as provided in paragraph (5) (b), the office
1361 shall complete its review and, based upon its review, approve an
1362 expansion by the applicant and issue a determination that the
1363 application meets all requirements of law, that the feasibility

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1364 study was based on sufficient data and reasonable assumptions,
1365 and that the applicant will be able to provide continuing care
1366 or continuing care at-home as proposed and meet all financial
1367 and contractual obligations related to its operations, including
1368 the financial requirements of this chapter. If the office
1369 requests additional information and the applicant provides it
1370 within 5 business days after notification, the period for
1371 reviewing or approving an application may not be extended beyond
1372 the period specified in paragraph (5) (a). If the application is
1373 denied, the office must notify the applicant in writing, citing
1374 the specific failures to meet the requirements of this chapter.
1375 The denial entitles the applicant to a hearing pursuant to
1376 chapter 120.

1377 Section 12. Paragraphs (b) and (c) of subsection (2) and
1378 subsection (3) of section 651.026, Florida Statutes, are
1379 amended, subsection (10) is added to that section, and paragraph
1380 (a) of subsection (2) of that section is republished, to read:

1381 651.026 Annual reports.—

1382 (2) The annual report shall be in such form as the
1383 commission prescribes and shall contain at least the following:

1384 (a) Any change in status with respect to the information
1385 required to be filed under s. 651.022 (2).

1386 (b) A financial report ~~statements~~ audited by an independent
1387 certified public accountant which must contain, for two or more
1388 periods if the facility has been in existence that long, all of
1389 the following:

1390 1. An accountant's opinion and, in accordance with
1391 generally accepted accounting principles:

1392 a. A balance sheet;

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- 1393 b. A statement of income and expenses;
- 1394 c. A statement of equity or fund balances; and
- 1395 d. A statement of changes in cash flows.
- 1396 2. Notes to the financial report ~~statements~~ considered
- 1397 customary or necessary for full disclosure or adequate
- 1398 understanding of the financial report ~~statements~~, financial
- 1399 condition, and operation.
- 1400 (c) The following financial information:
- 1401 1. A detailed listing of the assets maintained in the
- 1402 liquid reserve as required under s. 651.035 and in accordance
- 1403 with part II of chapter 625;
- 1404 2. A schedule giving additional information relating to
- 1405 property, plant, and equipment having an original cost of at
- 1406 least \$25,000, so as to show in reasonable detail with respect
- 1407 to each separate facility original costs, accumulated
- 1408 depreciation, net book value, appraised value or insurable value
- 1409 and date thereof, insurance coverage, encumbrances, and net
- 1410 equity of appraised or insured value over encumbrances. Any
- 1411 property not used in continuing care must be shown separately
- 1412 from property used in continuing care;
- 1413 3. The level of participation in Medicare or Medicaid
- 1414 programs, or both;
- 1415 4. A statement of all fees required of residents,
- 1416 including, but not limited to, a statement of the entrance fee
- 1417 charged, the monthly service charges, the proposed application
- 1418 of the proceeds of the entrance fee by the provider, and the
- 1419 plan by which the amount of the entrance fee is determined if
- 1420 the entrance fee is not the same in all cases; ~~and~~
- 1421 5. Any change or increase in fees if the provider changes

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1422 the scope of, or the rates for, care or services, regardless of
1423 whether the change involves the basic rate or only those
1424 services available at additional costs to the resident;~~:-~~

1425 6. If the provider has more than one certificated facility,
1426 or has operations that are not licensed under this chapter, it
1427 shall submit a balance sheet, statement of income and expenses,
1428 statement of equity or fund balances, and statement of cash
1429 flows for each facility licensed under this chapter as
1430 supplemental information to the audited financial report
1431 ~~statements~~ required under paragraph (b); and:-

1432 7. The management's calculation of the provider's debt
1433 service coverage ratio, occupancy, and days cash on hand for the
1434 current reporting period.

1435 (3) The commission shall adopt by rule additional
1436 ~~meaningful~~ measures of assessing the financial viability of a
1437 provider. ~~The rule may include the following factors:-~~

1438 ~~(a) Debt service coverage ratios.~~

1439 ~~(b) Current ratios.~~

1440 ~~(c) Adjusted current ratios.~~

1441 ~~(d) Cash flows.~~

1442 ~~(e) Occupancy rates.~~

1443 ~~(f) Other measures, ratios, or trends.~~

1444 ~~(g) Other factors as may be appropriate.~~

1445 (10) Within 90 days after the conclusion of each annual
1446 reporting period, the office shall publish an industry
1447 benchmarking report that contains all of the following:

1448 (a) The median days cash on hand for all providers.

1449 (b) The median debt service coverage ratio for all
1450 providers.

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1451 (c) The median occupancy rate for all providers by setting,
1452 including independent living, assisted living, skilled nursing,
1453 and the entire campus.

1454 Section 13. Section 651.0261, Florida Statutes, is amended
1455 to read:

1456 651.0261 Quarterly and monthly statements.—

1457 (1) Within 45 days after the end of each fiscal quarter,
1458 each provider shall file a quarterly unaudited financial
1459 statement of the provider or of the facility in the form
1460 prescribed by commission rule and days cash on hand, occupancy,
1461 debt service coverage ratio, and a detailed listing of the
1462 assets maintained in the liquid reserve as required under s.
1463 651.035. This requirement may be waived by the office upon
1464 written request from a provider that is accredited without
1465 conditions or stipulations or that has obtained an investment
1466 grade credit rating from a United States credit rating agency as
1467 authorized under s. 651.028. The last quarterly statement for a
1468 fiscal year is not required if a provider does not have pending
1469 a regulatory action level event or a corrective action plan.

1470 (2) If the office finds, ~~pursuant to rules of the~~
1471 ~~commission,~~ that such information is needed to properly monitor
1472 the financial condition of a provider or facility or is
1473 otherwise needed to protect the public interest, the office may
1474 require the provider to file:

1475 (a) Within 25 days after the end of each month, a monthly
1476 unaudited financial statement of the provider or of the facility
1477 in the form prescribed by the commission by rule and a detailed
1478 listing of the assets maintained in the liquid reserve as
1479 required under s. 651.035, ~~within 45 days after the end of each~~

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1480 ~~fiscal quarter, a quarterly unaudited financial statement of the~~
1481 ~~provider or of the facility in the form prescribed by the~~
1482 ~~commission by rule. The commission may by rule require all or~~
1483 ~~part of the statements or filings required under this section to~~
1484 ~~be submitted by electronic means in a computer-readable form~~
1485 ~~compatible with the electronic data format specified by the~~
1486 ~~commission.~~

1487 (b) Such other data, financial statements, and pertinent
1488 information as the commission or office may reasonably require
1489 with respect to the provider or the facility, its directors or
1490 trustees, or, with respect to any parent, subsidiary, or
1491 affiliate, if the provider or facility relies on a contractual
1492 or financial relationship with such parent, subsidiary, or
1493 affiliate in order to meet the financial requirements of this
1494 chapter, to determine the financial status of the provider or of
1495 the facility and the management capabilities of its managers and
1496 owners.

1497 (3) A filing under subsection (2) may be required if any of
1498 the following applies:

1499 (a) The provider is:

1500 1. Subject to administrative supervision proceedings;
1501 2. Subject to a corrective action plan resulting from a
1502 regulatory action level event for up to 2 years after the
1503 factors that caused the regulatory action level event have been
1504 corrected; or

1505 3. Subject to delinquency or receivership proceedings or
1506 has filed for bankruptcy.

1507 (b) The provider or facility displays a declining financial
1508 position.

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1509 (c) A change of ownership of the provider or facility has
1510 occurred within the previous 2 years.

1511 (d) The facility is found to be impaired.

1512 (4) The commission may by rule require all or part of the
1513 statements or filings required under this section to be
1514 submitted by electronic means in a computer-readable format
1515 compatible with an electronic data format specified by the
1516 commission.

1517 Section 14. Section 651.028, Florida Statutes, is amended
1518 to read:

1519 651.028 Accredited or certain credit-rated facilities.—If a
1520 provider or obligated group is accredited without stipulations
1521 or conditions by a process found by the office to be acceptable
1522 and substantially equivalent to the provisions of this chapter
1523 or has obtained an investment grade credit rating from a
1524 nationally recognized credit rating agency, as applicable, from
1525 Moody's Investors Service, Standard & Poor's, or Fitch Ratings,
1526 the office may, pursuant to rule of the commission, waive the
1527 quarterly filing ~~any~~ requirements under s. 651.0261 ~~of this~~
1528 ~~chapter~~ with respect to the provider if the office finds that
1529 such waivers are not inconsistent with the security protections
1530 intended by this chapter. A provider or obligated group that is
1531 accredited without stipulations or conditions or that has
1532 obtained such an investment grade credit rating shall provide
1533 documentation substantiating such accreditation or investment
1534 grade rating in its request for the waiver. If the office grants
1535 a waiver to the provider or obligated group, the provider or
1536 obligated group must notify the office of any changes in the
1537 accreditation or investment grade rating.

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1538 Section 15. Subsections (1), (2), (3), and (5) of section
1539 651.033, Florida Statutes, are amended, and subsection (6) is
1540 added to that section, to read:

1541 651.033 Escrow accounts.—

1542 (1) When funds are required to be deposited in an escrow
1543 account pursuant to s. 651.0215, s. 651.022, s. 651.023, s.
1544 651.0246, s. 651.035, or s. 651.055:

1545 (a) The escrow account must ~~shall~~ be established in a
1546 Florida bank, Florida savings and loan association, ~~or~~ Florida
1547 trust company, or a national bank that is chartered and
1548 supervised by the Office of the Comptroller of the Currency
1549 within the United States Department of the Treasury and that has
1550 either a branch or a license to operate in this state, which is
1551 acceptable to the office, or such funds must be deposited ~~on~~
1552 ~~deposit~~ with the department, ~~and the funds deposited therein~~
1553 ~~shall~~ be kept and maintained in an account separate and apart
1554 from the provider's business accounts.

1555 (b) An escrow agreement shall be entered into between the
1556 bank, savings and loan association, or trust company and the
1557 provider of the facility; the agreement shall state that its
1558 purpose is to protect the resident or the prospective resident;
1559 and, upon presentation of evidence of compliance with applicable
1560 portions of this chapter, or upon order of a court of competent
1561 jurisdiction, the escrow agent shall release and pay over the
1562 funds, or portions thereof, together with any interest accrued
1563 thereon or earned from investment of the funds, to the provider
1564 or resident as directed.

1565 (c) Any agreement establishing an escrow account required
1566 under ~~the provisions of this chapter~~ is ~~shall be~~ subject to

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1567 approval by the office. The agreement must ~~shall~~ be in writing
1568 and ~~shall~~ contain, in addition to any other provisions required
1569 by law, a provision whereby the escrow agent agrees to abide by
1570 the duties imposed by paragraphs (b) and (e), (3) (a), (3) (b),
1571 and (5) (a) and subsection (6) under this section.

1572 (d) All funds deposited in an escrow account, if invested,
1573 shall be invested as set forth in part II of chapter 625;
1574 however, such investment may not diminish the funds held in
1575 escrow below the amount required by this chapter. Funds
1576 deposited in an escrow account are not subject to charges by the
1577 escrow agent except escrow agent fees associated with
1578 administering the accounts, or subject to any liens, judgments,
1579 garnishments, creditor's claims, or other encumbrances against
1580 the provider or facility except as provided in s. 651.035(1).

1581 (e) At the request of either the provider or the office,
1582 the escrow agent shall issue a statement indicating the status
1583 of the escrow account.

1584 (2) Notwithstanding s. 651.035(7), ~~In addition, the escrow~~
1585 ~~agreement shall provide that the escrow agent or another person~~
1586 ~~designated to act in the escrow agent's place and the provider,~~
1587 ~~except as otherwise provided in s. 651.035, shall notify the~~
1588 ~~office in writing at least 10 days before the withdrawal of any~~
1589 ~~portion of any funds required to be escrowed under the~~
1590 ~~provisions of s. 651.035. However,~~ in the event of an emergency
1591 and upon petition by the provider, the office may ~~waive the 10-~~
1592 ~~day notification period and~~ allow a withdrawal of up to 10
1593 percent of the required minimum liquid reserve. The office shall
1594 have 3 working days to deny the petition for the emergency 10-
1595 percent withdrawal. If the office fails to deny the petition

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1596 within 3 working days, the petition is ~~shall be~~ deemed to have
1597 been granted by the office. For purposes ~~the purpose~~ of this
1598 section, the term "working day" means each day that is not a
1599 Saturday, Sunday, or legal holiday as defined by Florida law.
1600 Also, for purposes ~~the purpose~~ of this section, the day the
1601 petition is received by the office is ~~shall~~ not be counted as
1602 one of the 3 days.

1603 (3) ~~In addition,~~ When entrance fees are required to be
1604 deposited in an escrow account pursuant to s. 651.0215, s.
1605 651.022, s. 651.023, s. 651.0246, or s. 651.055:

1606 (a) The provider shall deliver to the resident a written
1607 receipt. The receipt must show the payor's name and address, the
1608 date, the price of the care contract, and the amount of money
1609 paid. A copy of each receipt, together with the funds, must
1610 ~~shall~~ be deposited with the escrow agent or as provided in
1611 paragraph (c). The escrow agent must ~~shall~~ release such funds to
1612 the provider 7 days after the date of receipt of the funds by
1613 the escrow agent if the provider, operating under a certificate
1614 of authority issued by the office, has met the requirements of
1615 s. 651.0215(8), s. 651.023(6), or s. 651.0246. However, if the
1616 resident rescinds the contract within the 7-day period, the
1617 escrow agent must ~~shall~~ release the escrowed fees to the
1618 resident.

1619 (b) At the request of an individual resident of a facility,
1620 the escrow agent shall issue a statement indicating the status
1621 of the resident's portion of the escrow account.

1622 (c) At the request of an individual resident of a facility,
1623 the provider may hold the check for the 7-day period and may
1624 ~~shall~~ not deposit it during this time period. If the resident

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1625 rescinds the contract within the 7-day period, the check must
1626 ~~shall~~ be immediately returned to the resident. Upon the
1627 expiration of the 7 days, the provider shall deposit the check.

1628 (d) A provider may assess a nonrefundable fee, which is
1629 separate from the entrance fee, for processing a prospective
1630 resident's application for continuing care or continuing care
1631 at-home.

1632 (5) When funds are required to be deposited in an escrow
1633 account pursuant to s. 651.0215, s. 651.022, s. 651.023, s.
1634 651.0246, or s. 651.035, the following ~~shall~~ apply:

1635 (a) The escrow agreement must ~~shall~~ require that the escrow
1636 agent furnish the provider with a quarterly statement indicating
1637 the amount of any disbursements from or deposits to the escrow
1638 account and the condition of the account during the period
1639 covered by the statement. The agreement must ~~shall~~ require that
1640 the statement be furnished to the provider by the escrow agent
1641 on or before the 10th day of the month following the end of the
1642 quarter for which the statement is due. If the escrow agent does
1643 not provide the quarterly statement to the provider on or before
1644 the 10th day of the month following the month for which the
1645 statement is due, the office may, in its discretion, levy
1646 against the escrow agent a fine not to exceed \$25 a day for each
1647 day of noncompliance with the provisions of this subsection.

1648 (b) If the escrow agent does not provide the quarterly
1649 statement to the provider on or before the 10th day of the month
1650 following the quarter for which the statement is due, the
1651 provider shall, on or before the 15th day of the month following
1652 the quarter for which the statement is due, send a written
1653 request for the statement to the escrow agent by certified mail

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1654 return receipt requested.

1655 (c) On or before the 20th day of the month following the
1656 quarter for which the statement is due, the provider shall file
1657 with the office a copy of the escrow agent's statement or, if
1658 the provider has not received the escrow agent's statement, a
1659 copy of the written request to the escrow agent for the
1660 statement.

1661 (d) The office may, in its discretion, in addition to any
1662 other penalty that may be provided for under this chapter, levy
1663 a fine against the provider not to exceed \$25 a day for each day
1664 the provider fails to comply with the provisions of this
1665 subsection.

1666 (e) Funds held on deposit with the department are exempt
1667 from the reporting requirements of this subsection.

1668 (6) Except as described in paragraph (3) (a), the escrow
1669 agent may not release or otherwise allow the transfer of funds
1670 without the written approval of the office, unless the
1671 withdrawal is from funds in excess of the amounts required by
1672 ss. 651.0215, 651.022, 651.023, 651.0246, 651.035, and 651.055.

1673 Section 16. Section 651.034, Florida Statutes, is created
1674 to read:

1675 651.034 Financial and operating requirements for
1676 providers.—

1677 (1) (a) If a regulatory action level event occurs, the
1678 office must:

1679 1. Require the provider to prepare and submit a corrective
1680 action plan or, if applicable, a revised corrective action plan;

1681 2. Perform an examination pursuant to s. 651.105 or an
1682 analysis, as the office considers necessary, of the assets,

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1683 liabilities, and operations of the provider, including a review
1684 of the corrective action plan or the revised corrective action
1685 plan; and

1686 3. After the examination or analysis, issue a corrective
1687 order, if necessary, specifying any corrective actions that the
1688 office determines are required.

1689 (b) In determining corrective actions, the office shall
1690 consider any factor relevant to the provider based upon the
1691 office's examination or analysis of the assets, liabilities, and
1692 operations of the provider. The provider must submit the
1693 corrective action plan or the revised corrective action plan
1694 within 30 days after the occurrence of the regulatory action
1695 level event. The office shall review and approve or disapprove
1696 the corrective action plan within 15 business days.

1697 (c) The office may use members of the Continuing Care
1698 Advisory Council, individually or as a group, or may retain
1699 actuaries, investment experts, and other consultants to review a
1700 provider's corrective action plan or revised corrective action
1701 plan, examine or analyze the assets, liabilities, and operations
1702 of a provider, and formulate the corrective order with respect
1703 to the provider. The fees, costs, and expenses relating to
1704 consultants must be borne by the affected provider.

1705 (2) If an impairment occurs and except when s.
1706 651.114(11) (a) applies, the office must take action necessary to
1707 place the provider under regulatory control, including any
1708 remedy available under part I of chapter 631. An impairment is
1709 sufficient grounds for the department to be appointed as
1710 receiver as provided in chapter 631. Except when s.
1711 651.114(11) (a) is applicable, the department may appoint a

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1712 receiver. If s. 651.114(11)(a) applies, the provider must make
1713 available to the office copies of any corrective action plan
1714 approved by the third-party lender or trustee to cure the
1715 impairment and any related required report. Notwithstanding s.
1716 631.011, impairment of a provider, for purposes of s. 631.051,
1717 is defined according to the term "impaired" under s. 651.011.
1718 The office may forego taking action for up to 180 days after the
1719 impairment if the office finds there is a reasonable expectation
1720 that the impairment may be eliminated within the 180-day period.

1721 (3) There is no liability on the part of, and a cause of
1722 action may not arise against, the commission, department, or
1723 office, or their employees or agents, for any action they take
1724 in the performance of their powers and duties under this
1725 section.

1726 (4) The office shall transmit any notice that may result in
1727 regulatory action by registered mail, certified mail, or any
1728 other method of transmission which includes documentation of
1729 receipt by the provider. Notice is effective when the provider
1730 receives it.

1731 (5) This section is supplemental to the other laws of this
1732 state and does not preclude or limit any power or duty of the
1733 department or office under those laws or under the rules adopted
1734 pursuant to those laws.

1735 (6) The office may exempt a provider from subsection (1) or
1736 subsection (2) until stabilized occupancy is reached or until
1737 the time projected to achieve stabilized occupancy as reported
1738 in the last feasibility study required by the office as part of
1739 an application filing under s. 651.0215, s. 651.023, s. 651.024,
1740 or s. 651.0246 has elapsed, but for no longer than 5 years after

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1741 the date of issuance of the certificate of occupancy.

1742 (7) The commission may adopt rules to administer this
1743 section, including, but not limited to, rules regarding
1744 corrective action plans, revised corrective action plans,
1745 corrective orders, and procedures to be followed in the event of
1746 a regulatory action level event or an impairment.

1747 Section 17. Paragraphs (a), (b), and (c) of subsection (1)
1748 of section 651.035, Florida Statutes, are amended, and
1749 subsections (7) through (10) are added to that section, to read:

1750 651.035 Minimum liquid reserve requirements.—

1751 (1) A provider shall maintain in escrow a minimum liquid
1752 reserve consisting of the following reserves, as applicable:

1753 (a) Each provider shall maintain in escrow as a debt
1754 service reserve the aggregate amount of all principal and
1755 interest payments due during the fiscal year on any mortgage
1756 loan or other long-term financing of the facility, including
1757 property taxes as recorded in the audited financial report
1758 ~~statements~~ required under s. 651.026. The amount must include
1759 any leasehold payments and all costs related to such payments.
1760 If principal payments are not due during the fiscal year, the
1761 provider must ~~shall~~ maintain in escrow as a minimum liquid
1762 reserve an amount equal to interest payments due during the next
1763 12 months on any mortgage loan or other long-term financing of
1764 the facility, including property taxes. If a provider does not
1765 have a mortgage loan or other financing on the facility, the
1766 provider must deposit monthly in escrow as a minimum liquid
1767 reserve an amount equal to one-twelfth of the annual property
1768 tax liability as indicated in the most recent tax notice
1769 provided pursuant to s. 197.322(3), and must annually pay

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1770 property taxes out of such escrow.

1771 (b) A provider that has outstanding indebtedness that
1772 requires a debt service reserve to be held in escrow pursuant to
1773 a trust indenture or mortgage lien on the facility and for which
1774 the debt service reserve may only be used to pay principal and
1775 interest payments on the debt that the debtor is obligated to
1776 pay, and which may include property taxes and insurance, may
1777 include such debt service reserve in computing the minimum
1778 liquid reserve needed to satisfy this subsection if the provider
1779 furnishes to the office a copy of the agreement under which such
1780 debt service is held, together with a statement of the amount
1781 being held in escrow for the debt service reserve, certified by
1782 the lender or trustee and the provider to be correct. The
1783 trustee shall provide the office with any information concerning
1784 the debt service reserve account upon request of the provider or
1785 the office. Any such separate debt service reserves are not
1786 subject to the transfer provisions set forth in subsection (8).

1787 (c) Each provider shall maintain in escrow an operating
1788 reserve equal to 30 percent of the total operating expenses
1789 projected in the feasibility study required by s. 651.023 for
1790 the first 12 months of operation. Thereafter, each provider
1791 shall maintain in escrow an operating reserve equal to 15
1792 percent of the total operating expenses in the annual report
1793 filed pursuant to s. 651.026. If a provider has been in
1794 operation for more than 12 months, the total annual operating
1795 expenses must ~~shall~~ be determined by averaging the total annual
1796 operating expenses reported to the office by the number of
1797 annual reports filed with the office within the preceding 3-year
1798 period subject to adjustment if there is a change in the number

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1799 of facilities owned. For purposes of this subsection, total
1800 annual operating expenses include all expenses of the facility
1801 except ~~+~~ depreciation and amortization; interest and property
1802 taxes included in paragraph (a); extraordinary expenses that are
1803 adequately explained and documented in accordance with generally
1804 accepted accounting principles; liability insurance premiums in
1805 excess of those paid in calendar year 1999; and changes in the
1806 obligation to provide future services to current residents. For
1807 providers initially licensed during or after calendar year 1999,
1808 liability insurance must ~~shall~~ be included in the total
1809 operating expenses in an amount not to exceed the premium paid
1810 during the first 12 months of facility operation. ~~Beginning~~
1811 ~~January 1, 1993,~~ The operating reserves required under this
1812 subsection must ~~shall~~ be in an unencumbered account held in
1813 escrow for the benefit of the residents. Such funds may not be
1814 encumbered or subject to any liens or charges by the escrow
1815 agent or judgments, garnishments, or creditors' claims against
1816 the provider or facility. However, if a facility had a lien,
1817 mortgage, trust indenture, or similar debt instrument in place
1818 before January 1, 1993, which encumbered all or any part of the
1819 reserves required by this subsection and such funds were used to
1820 meet the requirements of this subsection, then such arrangement
1821 may be continued, unless a refinancing or acquisition has
1822 occurred, and the provider is ~~shall be~~ in compliance with this
1823 subsection.

1824 (7) (a) A provider may withdraw funds held in escrow without
1825 the approval of the office if the amount held in escrow exceeds
1826 the requirements of this section and if the withdrawal will not
1827 affect compliance with this section.

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1828 (b)1. For all other proposed withdrawals, in order to
1829 receive the consent of the office, the provider must file
1830 documentation showing why the withdrawal is necessary for the
1831 continued operation of the facility and such additional
1832 information as the office reasonably requires.

1833 2. The office shall notify the provider when the filing is
1834 deemed complete. If the provider has complied with all prior
1835 requests for information, the filing is deemed complete after 30
1836 days without communication from the office.

1837 3. Within 30 days after the date a file is deemed complete,
1838 the office shall provide the provider with written notice of its
1839 approval or disapproval of the request. The office may
1840 disapprove any request to withdraw such funds if it determines
1841 that the withdrawal is not in the best interest of the
1842 residents.

1843 (8) The office may order the immediate transfer of up to
1844 100 percent of the funds held in the minimum liquid reserve to
1845 the custody of the department pursuant to part III of chapter
1846 625 if the office finds that the provider is impaired or
1847 insolvent. The office may order such a transfer regardless of
1848 whether the office has suspended or revoked, or intends to
1849 suspend or revoke, the certificate of authority of the provider.

1850 (9) Each facility shall file with the office annually,
1851 together with the annual report required by s. 651.026, a
1852 calculation of its minimum liquid reserve determined in
1853 accordance with this section on a form prescribed by the
1854 commission.

1855 (10) If the balance of the minimum liquid reserve is below
1856 the required amount, the provider must be deemed out of

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1857 compliance with this section.

1858 Section 18. Effective July 1, 2019, section 651.043,
1859 Florida Statutes, is created to read:

1860 651.043 Approval of change in management.-

1861 (1) A contract with a management company entered into after
1862 July 1, 2019, must be in writing and include a provision that
1863 the contract will be canceled upon issuance of an order by the
1864 office pursuant to this section and without the application of a
1865 cancellation fee or penalty. If a provider contracts with a
1866 management company, a separate written contract is not required
1867 for the individual manager employed by the management company to
1868 oversee a facility. If a management company voluntarily executes
1869 a contract with a manager or contractor, the contract is not
1870 required to be submitted to the office unless requested by the
1871 office.

1872 (2) A provider shall notify the office, in writing or
1873 electronically, of any change in management within 10 business
1874 days. For each new management company or manager not employed by
1875 a management company, the provider shall submit to the office
1876 the information required by s. 651.022(2) and a copy of the
1877 written management contract, if applicable.

1878 (3) For a provider that is found to be impaired or that has
1879 a regulatory action level event pending, the office may
1880 disapprove new management and order the provider to remove the
1881 new management after reviewing the information required under
1882 subsection (2).

1883 (4) For a provider other than that specified in subsection
1884 (3), the office may disapprove new management and order the
1885 provider to remove the new management after receiving the

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1886 required information under subsection (2), if the office:

1887 (a) Finds that the new management is incompetent or
1888 untrustworthy;

1889 (b) Finds that the new management is so lacking in
1890 managerial experience as to make the proposed operation
1891 hazardous to the residents or potential residents;

1892 (c) Finds that the new management is so lacking in
1893 experience, ability, and standing as to jeopardize the
1894 reasonable promise of successful operation; or

1895 (d) Has good reason to believe that the new management is
1896 affiliated directly or indirectly through ownership, control, or
1897 business relations with any person or persons whose business
1898 operations are or have been marked by manipulation of assets or
1899 accounts or by bad faith, to the detriment of residents,
1900 stockholders, investors, creditors, or the public.

1901
1902 The office shall complete its review as required under
1903 subsections (3) and (4) and, if applicable, issue notice of
1904 disapproval of the new management within 15 business days after
1905 the filing is deemed complete. A filing is deemed complete upon
1906 the office's receipt of all requested information and the
1907 provider's correction of any error or omission for which the
1908 provider was timely notified. If the office does not issue
1909 notice of disapproval of the new management within 15 business
1910 days after the filing is deemed complete, the new management is
1911 deemed approved.

1912 (5) Management disapproved by the office must be removed
1913 within 30 days after receipt by the provider of notice of such
1914 disapproval.

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1915 (6) The office may revoke, suspend, or take other
1916 administrative action against the certificate of authority of
1917 the provider if the provider:

1918 (a) Fails to timely remove management disapproved by the
1919 office;

1920 (b) Fails to timely notify the office of a change in
1921 management;

1922 (c) Appoints new management without a written contract when
1923 a written contract is required under this section; or

1924 (d) Repeatedly appoints management that was previously
1925 disapproved by the office or that is not approvable under
1926 subsection (4).

1927 (7) The provider shall remove any management immediately
1928 upon discovery of either of the following conditions, if the
1929 conditions were not disclosed in the notice to the office
1930 required under subsection (2):

1931 (a) That a manager has been found guilty of, or has pled
1932 guilty or no contest to, a felony charge, or has been held
1933 liable or has been enjoined in a civil action by final judgment,
1934 if the felony or civil action involved fraud, embezzlement,
1935 fraudulent conversion, or misappropriation of property.

1936 (b) That a manager is now, or was in the past, affiliated,
1937 directly or indirectly, through ownership interest of 10 percent
1938 or more in, or control of, any business, corporation, or other
1939 entity that has been found guilty of or has pled guilty or no
1940 contest to a felony charge, or has been held liable or has been
1941 enjoined in a civil action by final judgment, if the felony or
1942 civil action involved fraud, embezzlement, fraudulent
1943 conversion, or misappropriation of property.

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

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

651.051 Maintenance of assets and records in state.—All records and assets of a provider must be maintained or readily accessible in this state or, if the provider's corporate office is located in another state, such records must be electronically stored in a manner that will ensure that the records are readily accessible to the office. No records or assets may be removed from this state by a provider unless the office consents to such removal in writing before such removal. Such consent must ~~shall~~ be based upon the provider's submitting satisfactory evidence that the removal will facilitate and make more economical the operations of the provider and will not diminish the service or protection thereafter to be given the provider's residents in this state. Before ~~Prior to~~ such removal, the provider shall give notice to the president or chair of the facility's residents' council. If such removal is part of a cash management system which has been approved by the office, disclosure of the system must ~~shall~~ meet the notification requirements. The electronic storage of records on a web-based, secured storage platform by contract with a third party is acceptable if the records are readily accessible to the office.

Section 20. Subsection (3) of section 651.055, Florida Statutes, is amended to read:

651.055 Continuing care contracts; right to rescind.—

(3) The contract must include or be accompanied by a

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1973 statement, printed in boldfaced type, which reads: "This
1974 facility and all other continuing care facilities (also known as
1975 life plan communities) in the State of Florida are regulated by
1976 chapter 651, Florida Statutes. A copy of the law is on file in
1977 this facility. The law gives you or your legal representative
1978 the right to inspect our most recent financial statement and
1979 inspection report before signing the contract."

1980 Section 21. Subsection (2) of section 651.057, Florida
1981 Statutes, is amended to read:

1982 651.057 Continuing care at-home contracts.-

1983 (2) A provider that holds a certificate of authority and
1984 wishes to offer continuing care at-home must also:

1985 (a) Submit a business plan to the office with the following
1986 information:

1987 1. A description of the continuing care at-home services
1988 that will be provided, the market to be served, and the fees to
1989 be charged;

1990 2. A copy of the proposed continuing care at-home contract;

1991 3. An actuarial study prepared by an independent actuary in
1992 accordance with the standards adopted by the American Academy of
1993 Actuaries which presents the impact of providing continuing care
1994 at-home on the overall operation of the facility; and

1995 4. A ~~market~~ feasibility study that meets the requirements
1996 of s. 651.022(3) and documents that there is sufficient interest
1997 in continuing care at-home contracts to support such a program;

1998 (b) Demonstrate to the office that the proposal to offer
1999 continuing care at-home contracts to individuals who do not
2000 immediately move into the facility will not place the provider
2001 in an unsound financial condition;

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2002 (c) Comply with the requirements of s. 651.0246(1) ~~s.~~
2003 ~~651.021(2)~~, except that an actuarial study may be substituted
2004 for the feasibility study; and

2005 (d) Comply with the requirements of this chapter.

2006 Section 22. Subsection (1) of section 651.071, Florida
2007 Statutes, is amended to read:

2008 651.071 Contracts as preferred claims on liquidation or
2009 receivership.—

2010 (1) In the event of receivership or liquidation proceedings
2011 against a provider, all continuing care and continuing care at-
2012 home contracts executed by a provider are ~~shall be~~ deemed
2013 preferred claims or policyholder loss preferred claims pursuant
2014 to s. 631.271(1)(b) against all assets owned by the provider;
2015 however, such claims are subordinate to any secured claim.

2016 Section 23. Subsection (2) and present paragraph (g) of
2017 subsection (3) of section 651.091, Florida Statutes, are
2018 amended, and a new paragraph (i) and paragraphs (j), (k), and
2019 (l) are added to that subsection, and paragraph (d) of
2020 subsection (3) and subsection (4) of that section are
2021 republished, to read:

2022 651.091 Availability, distribution, and posting of reports
2023 and records; requirement of full disclosure.—

2024 (2) Every continuing care facility shall:

2025 (a) Display the certificate of authority in a conspicuous
2026 place inside the facility.

2027 (b) Post in a prominent position in the facility which is
2028 accessible to all residents and the general public a concise
2029 summary of the last examination report issued by the office,
2030 with references to the page numbers of the full report noting

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2031 any deficiencies found by the office, and the actions taken by
2032 the provider to rectify such deficiencies, indicating in such
2033 summary where the full report may be inspected in the facility.

2034 (c) Post in a prominent position in the facility,
2035 accessible to all residents and the general public, a notice
2036 containing the contact information for the office and the
2037 Division of Consumer Services of the department and stating that
2038 the division or office may be contacted for the submission of
2039 inquiries and complaints with respect to potential violations of
2040 this chapter committed by a provider. Such contact information
2041 must include the division's website and the toll-free consumer
2042 helpline and the office's website and telephone number.

2043 (d) Provide notice to the president or chair of the
2044 residents' council within 10 business days after issuance of a
2045 final examination report or the initiation of any legal or
2046 administrative proceeding by the office or the department and
2047 include a copy of such document.

2048 (e)~~(e)~~ Post in a prominent position in the facility which
2049 is accessible to all residents and the general public a summary
2050 of the latest annual statement, indicating in the summary where
2051 the full annual statement may be inspected in the facility. A
2052 listing of any proposed changes in policies, programs, and
2053 services must also be posted.

2054 (f)~~(d)~~ Distribute a copy of the full annual statement and a
2055 copy of the most recent third-party ~~third-party~~ financial audit
2056 filed with the annual report to the president or chair of the
2057 residents' council within 30 days after filing the annual report
2058 with the office, and designate a staff person to provide
2059 explanation thereof.

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2060 (g)~~(e)~~ Deliver the information described in s. 651.085(4)
2061 in writing to the president or chair of the residents' council
2062 and make supporting documentation available upon request ~~Notify~~
2063 ~~the residents' council of any plans filed with the office to~~
2064 ~~obtain new financing, additional financing, or refinancing for~~
2065 ~~the facility and of any applications to the office for any~~
2066 ~~expansion of the facility.~~

2067 (h)~~(f)~~ Deliver to the president or chair of the residents'
2068 council a summary of entrance fees collected and refunds made
2069 during the time period covered in the annual report and the
2070 refund balances due at the end of the report period.

2071 (i)~~(g)~~ Deliver to the president or chair of the residents'
2072 council a copy of each quarterly statement within 30 days after
2073 the quarterly statement is filed with the office if the facility
2074 is required to file quarterly.

2075 (j)~~(h)~~ Upon request, deliver to the president or chair of
2076 the residents' council a copy of any newly approved continuing
2077 care or continuing care at-home contract within 30 days after
2078 approval by the office.

2079 (k) Provide to the president or chair of the residents'
2080 council a copy of any notice filed with the office relating to
2081 any change in ownership within 10 business days after such
2082 filing by the provider.

2083 (l) Make the information available to prospective residents
2084 pursuant to paragraph (3) (d) available to current residents and
2085 provide notice of changes to that information to the president
2086 or chair of the residents' council within 3 business days.

2087 (3) Before entering into a contract to furnish continuing
2088 care or continuing care at-home, the provider undertaking to

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2089 furnish the care, or the agent of the provider, shall make full
2090 disclosure, and provide copies of the disclosure documents to
2091 the prospective resident or his or her legal representative, of
2092 the following information:

2093 (d) In keeping with the intent of this subsection relating
2094 to disclosure, the provider shall make available for review
2095 master plans approved by the provider's governing board and any
2096 plans for expansion or phased development, to the extent that
2097 the availability of such plans does not put at risk real estate,
2098 financing, acquisition, negotiations, or other implementation of
2099 operational plans and thus jeopardize the success of
2100 negotiations, operations, and development.

2101 ~~(g) The amount and location of any reserve funds required~~
2102 ~~by this chapter, and the name of the person or entity having a~~
2103 ~~claim to such funds in the event of a bankruptcy, foreclosure,~~
2104 ~~or rehabilitation proceeding.~~

2105 (i) Notice of the issuance of a final examination report or
2106 the initiation of any legal or administrative proceeding by the
2107 office or the department, including where the report or filing
2108 may be inspected in the facility, and that, upon request, an
2109 electronic copy or specific website address will be provided
2110 from which the document can be downloaded at no cost.

2111 (j) Notice that the entrance fee is the property of the
2112 provider after the expiration of the 7-day escrow requirement
2113 under s. 651.055(2).

2114 (k) A statement that distribution of assets or income may
2115 occur or a statement that such distributions will not occur.

2116 (l) Notice of any holding company system or obligated group
2117 of which the provider is a member.

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2118 (4) A true and complete copy of the full disclosure
2119 document to be used must be filed with the office before use. A
2120 resident or prospective resident or his or her legal
2121 representative may inspect the full reports referred to in
2122 paragraph (2) (b); the charter or other agreement or instrument
2123 required to be filed with the office pursuant to s. 651.022(2),
2124 together with all amendments thereto; and the bylaws of the
2125 corporation or association, if any. Upon request, copies of the
2126 reports and information shall be provided to the individual
2127 requesting them if the individual agrees to pay a reasonable
2128 charge to cover copying costs.

2129 Section 24. Subsection (4) of section 651.095, Florida
2130 Statutes, is amended to read:

2131 651.095 Advertisements; requirements; penalties.-

2132 (4) It is unlawful for any person, other than a provider
2133 licensed pursuant to this chapter, to advertise or market to the
2134 general public any product similar to continuing care through
2135 the use of such terms as "life care," "life plan," "life plan
2136 at-home," "continuing care," or "guaranteed care for life," or
2137 similar terms, words, or phrases.

2138 Section 25. Section 651.105, Florida Statutes, is amended
2139 to read:

2140 651.105 Examination ~~and inspections~~.-

2141 (1) The office may at any time, and shall at least once
2142 every 3 years, examine the business of any applicant for a
2143 certificate of authority and any provider engaged in the
2144 execution of care contracts or engaged in the performance of
2145 obligations under such contracts, in the same manner as is
2146 provided for the examination of insurance companies pursuant to

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2147 ss. 624.316 and 624.318 ~~s. 624.316~~. For a provider as described
2148 ~~defined~~ in s. 651.028, such examinations must ~~shall~~ take place
2149 at least once every 5 years. Such examinations must ~~shall~~ be
2150 made by a representative or examiner designated by the office
2151 whose compensation will be fixed by the office pursuant to s.
2152 624.320. Routine examinations may be made by having the
2153 necessary documents submitted to the office; and, for this
2154 purpose, financial documents and records conforming to commonly
2155 accepted accounting principles and practices, as required under
2156 s. 651.026, are deemed adequate. The final written report of
2157 each examination must be filed with the office and, when so
2158 filed, constitutes a public record. Any provider being examined
2159 shall, upon request, give reasonable and timely access to all of
2160 its records. The representative or examiner designated by the
2161 office may at any time examine the records and affairs and
2162 inspect the physical property of any provider, whether in
2163 connection with a formal examination or not.

2164 (2) Any duly authorized officer, employee, or agent of the
2165 office may, upon presentation of proper identification, have
2166 access to, and inspect, any records, with or without advance
2167 notice, to secure compliance with, or to prevent a violation of,
2168 any provision of this chapter.

2169 (3) Reports of the results of such financial examinations
2170 must be kept on file by the office. Any investigatory records,
2171 reports, or documents held by the office are confidential and
2172 exempt from the provisions of s. 119.07(1), until the
2173 investigation is completed or ceases to be active. For the
2174 purpose of this section, an investigation is active while it is
2175 being conducted by the office with a reasonable, good faith

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2176 belief that it could lead to the filing of administrative,
2177 civil, or criminal proceedings. An investigation does not cease
2178 to be active if the office is proceeding with reasonable
2179 dispatch and has a good faith belief that action could be
2180 initiated by the office or other administrative or law
2181 enforcement agency.

2182 (4) The office shall notify the provider and the executive
2183 officer of the governing body of the provider in writing of all
2184 deficiencies in its compliance with the provisions of this
2185 chapter and the rules adopted pursuant to this chapter and shall
2186 set a reasonable length of time for compliance by the provider.
2187 In addition, the office shall require corrective action or
2188 request a corrective action plan from the provider which plan
2189 demonstrates a good faith attempt to remedy the deficiencies by
2190 a specified date. If the provider fails to comply within the
2191 established length of time, the office may initiate action
2192 against the provider in accordance with the provisions of this
2193 chapter.

2194 (5) A provider shall respond to written correspondence from
2195 the office and provide data, financial statements, and pertinent
2196 information as requested by the office or by the office's
2197 investigators, examiners, or inspectors. The office has standing
2198 to petition a circuit court for mandatory injunctive relief to
2199 compel access to and require the provider to produce the
2200 documents, data, records, and other information requested by the
2201 office or its investigators, examiners, or inspectors. The
2202 office may petition the circuit court in the county in which the
2203 facility is situated or the Circuit Court of Leon County to
2204 enforce this section ~~At the time of the routine examination, the~~

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2205 ~~office shall determine if all disclosures required under this~~
2206 ~~chapter have been made to the president or chair of the~~
2207 ~~residents' council and the executive officer of the governing~~
2208 ~~body of the provider.~~

2209 (6) A representative of the provider must give a copy of
2210 the final examination report and corrective action plan, if one
2211 is required by the office, to the executive officer of the
2212 governing body of the provider within 60 days after issuance of
2213 the report.

2214 (7) Unless a provider or facility is impaired or subject to
2215 a regulatory action level event, any parent, subsidiary, or
2216 affiliate is not subject to examination by the office as part of
2217 a routine examination. However, if a provider or facility relies
2218 on a contractual or financial relationship with a parent, a
2219 subsidiary, or an affiliate in order to meet the financial
2220 requirements of this chapter, the office may examine any parent,
2221 subsidiary, or affiliate that has a contractual or financial
2222 relationship with the provider or facility to the extent
2223 necessary to ascertain the financial condition of the provider.

2224 (8) If a provider voluntarily contracts with an actuary for
2225 an actuarial study or review at regular intervals, the office
2226 may not use any recommendations made by the actuary as a measure
2227 of performance when conducting an examination or inspection. The
2228 office may not request, as part of the examination or
2229 inspection, documents associated with an actuarial study or
2230 review marked "restricted distribution" if the study or review
2231 is not required by this chapter.

2232 Section 26. Section 651.106, Florida Statutes, is amended
2233 to read:

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2234 651.106 Grounds for discretionary refusal, suspension, or
 2235 revocation of certificate of authority.—The office may deny an
 2236 application or~~7~~ suspend~~7~~ or revoke the provisional certificate
 2237 of authority or the certificate of authority of any applicant or
 2238 provider if it finds that any one or more of the following
 2239 grounds applicable to the applicant or provider exist:

2240 (1) Failure by the provider to continue to meet the
 2241 requirements for the authority originally granted.

2242 (2) Failure by the provider to meet one or more of the
 2243 qualifications for the authority specified by this chapter.

2244 (3) Material misstatement, misrepresentation, or fraud in
 2245 obtaining the authority, or in attempting to obtain the same.

2246 (4) Demonstrated lack of fitness or trustworthiness.

2247 (5) Fraudulent or dishonest practices of management in the
 2248 conduct of business.

2249 (6) Misappropriation, conversion, or withholding of moneys.

2250 (7) Failure to comply with, or violation of, any proper
 2251 order or rule of the office or commission or violation of any
 2252 provision of this chapter.

2253 (8) The insolvent or impaired condition of the provider or
 2254 the provider's being in such condition or using such methods and
 2255 practices in the conduct of its business as to render its
 2256 further transactions in this state hazardous or injurious to the
 2257 public.

2258 (9) Refusal by the provider to be examined or to produce
 2259 its accounts, records, and files for examination, or refusal by
 2260 any of its officers to give information with respect to its
 2261 affairs or to perform any other legal obligation under this
 2262 chapter when required by the office.

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2263 (10) Failure by the provider to comply with the
2264 requirements of s. 651.026 or s. 651.033.

2265 (11) Failure by the provider to maintain escrow accounts or
2266 funds as required by this chapter.

2267 (12) Failure by the provider to meet the requirements of
2268 this chapter for disclosure of information to residents
2269 concerning the facility, its ownership, its management, its
2270 development, or its financial condition or failure to honor its
2271 continuing care or continuing care at-home contracts.

2272 (13) Any cause for which issuance of the license could have
2273 been refused had it then existed and been known to the office.

2274 (14) Having been found guilty of, or having pleaded guilty
2275 or nolo contendere to, a felony in this state or any other
2276 state, without regard to whether a judgment or conviction has
2277 been entered by the court having jurisdiction of such cases.

2278 (15) In the conduct of business under the license, engaging
2279 in unfair methods of competition or in unfair or deceptive acts
2280 or practices prohibited under part IX of chapter 626.

2281 (16) A pattern of bankrupt enterprises.

2282 (17) The ownership, control, or management of the
2283 organization includes any person:

2284 (a) Who is not reputable and of responsible character;

2285 (b) Who is so lacking in management expertise as to make
2286 the operation of the provider hazardous to potential and
2287 existing residents;

2288 (c) Who is so lacking in management experience, ability,
2289 and standing as to jeopardize the reasonable promise of
2290 successful operation;

2291 (d) Who is affiliated, directly or indirectly, through

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2292 ownership or control, with any person or persons whose business
2293 operations are or have been marked by business practices or
2294 conduct that is detrimental to the public, contract holders,
2295 investors, or creditors by manipulation of assets, finances, or
2296 accounts or by bad faith; or

2297 (e) Whose business operations are or have been marked by
2298 business practices or conduct that is detrimental to the public,
2299 contract holders, investors, or creditors by manipulation of
2300 assets, finances, or accounts or by bad faith.

2301 (18) The provider has not filed a notice of change in
2302 management, fails to remove a disapproved manager, or persists
2303 in appointing disapproved managers.

2304
2305 Revocation of a certificate of authority under this section does
2306 not relieve a provider from the provider's obligation to
2307 residents under the terms and conditions of any continuing care
2308 or continuing care at-home contract between the provider and
2309 residents or the provisions of this chapter. The provider shall
2310 continue to file its annual statement and pay license fees to
2311 the office as required under this chapter as if the certificate
2312 of authority had continued in full force, but the provider shall
2313 not issue any new contracts. The office may seek an action in
2314 the Circuit Court of Leon County to enforce the office's order
2315 and the provisions of this section.

2316 Section 27. Section 651.1065, Florida Statutes, is created
2317 to read:

2318 651.1065 Soliciting or accepting new continuing care
2319 contracts by impaired or insolvent facilities or providers.—

2320 (1) Regardless of whether delinquency proceedings as to a

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2321 continuing care facility have been or are to be initiated, a
 2322 proprietor, a general partner, a member, an officer, a director,
 2323 a trustee, or a manager of a continuing care facility may not
 2324 actively solicit, approve the solicitation or acceptance of, or
 2325 accept new continuing care contracts in this state after the
 2326 proprietor, general partner, member, officer, director, trustee,
 2327 or manager knew, or reasonably should have known, that the
 2328 continuing care facility was impaired or insolvent except with
 2329 the written permission of the office. If the facility has
 2330 declared bankruptcy, the bankruptcy court or trustee appointed
 2331 by the court has jurisdiction over such matters. The office must
 2332 approve or disapprove the continued marketing of new contracts
 2333 within 15 days after receiving a request from a provider.

2334 (2) A proprietor, a general partner, a member, an officer,
 2335 a director, a trustee, or a manager who violates this section
 2336 commits a felony of the third degree, punishable as provided in
 2337 s. 775.082, s. 775.083, or s. 775.084.

2338 Section 28. Subsections (1) and (3) of section 651.111,
 2339 Florida Statutes, are amended to read:

2340 651.111 Requests for inspections.—

2341 (1) Any interested party may request an inspection of the
 2342 records and related financial affairs of a provider providing
 2343 care in accordance with ~~the provisions of~~ this chapter by
 2344 transmitting to the office notice of an alleged violation of
 2345 applicable requirements prescribed by statute or by rule,
 2346 specifying to a reasonable extent the details of the alleged
 2347 violation, which notice must ~~shall~~ be signed by the complainant.
 2348 As used in this section, the term "inspection" means an inquiry
 2349 into a provider's compliance with this chapter.

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2350 (3) Upon receipt of a complaint, the office shall make a
2351 preliminary review to determine if the complaint alleges a
2352 violation of this chapter; and, unless the office determines
2353 that the complaint does not allege a violation of this chapter
2354 or is without any reasonable basis, the office shall make an
2355 inspection. The office shall provide the complainant with a
2356 written acknowledgment of the complaint within 15 days after
2357 receipt by the office. The complainant shall be advised, within
2358 30 days after the receipt of the complaint by the office, of the
2359 office's determination that the complaint does not allege a
2360 violation of this chapter, that the complaint is without any
2361 reasonable basis, or that the office will make an inspection.
2362 The notice must include an estimated timeframe for completing
2363 the inspection and a contact number. If the inspection is not
2364 completed within the estimated timeframe, the office must
2365 provide the complainant with a revised timeframe. Within 15 days
2366 after completing an inspection, the office shall provide the
2367 complainant and the provider a written statement specifying any
2368 violations of this chapter and any actions taken or that no such
2369 violation was found ~~proposed course of action of the office.~~

2370 Section 29. Section 651.114, Florida Statutes, is amended
2371 to read:

2372 651.114 Delinquency proceedings; remedial rights.—

2373 (1) Upon determination by the office that a provider is not
2374 in compliance with this chapter, the office may notify the chair
2375 of the Continuing Care Advisory Council, who may assist the
2376 office in formulating a corrective action plan.

2377 (2) Within 30 days after a request by either the advisory
2378 council or the office, a provider shall make a plan for

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2379 obtaining compliance or solvency available to the advisory
2380 council and the office, ~~within 30 days after being requested to~~
2381 ~~do so by the council, a plan for obtaining compliance or~~
2382 ~~solvency.~~

2383 (3) Within 30 days after receipt of a plan for obtaining
2384 compliance or solvency, the office or, at the request of the
2385 office, notification, the advisory council shall:

2386 (a) Consider and evaluate the plan submitted by the
2387 provider.

2388 (b) Discuss the problem and solutions with the provider.

2389 (c) Conduct such other business as is necessary.

2390 (d) Report its findings and recommendations to the office,
2391 which may require additional modification of the plan.

2392
2393 This subsection may not be construed to delay or prevent the
2394 office from taking any regulatory measures it deems necessary
2395 regarding the provider that submitted the plan.

2396 (4) If the financial condition of a continuing care
2397 facility or provider is impaired or is such that if not modified
2398 or corrected, its continued operation would result in
2399 insolvency, the office may direct the provider to formulate and
2400 file with the office a corrective action plan. If the provider
2401 fails to submit a plan within 30 days after the office's
2402 directive or submits a plan that is insufficient to correct the
2403 condition, the office may specify a plan and direct the provider
2404 to implement the plan. Before specifying a plan, the office may
2405 seek a recommended plan from the advisory council.

2406 (5) ~~(4)~~ After receiving approval of a plan by the office,
2407 the provider shall submit a progress report monthly to the

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2408 advisory council or the office, or both, in a manner prescribed
2409 by the office. After 3 months, or at any earlier time deemed
2410 necessary, the council shall evaluate the progress by the
2411 provider and shall advise the office of its findings.

2412 ~~(6)~~ ~~(5)~~ ~~If~~ ~~Should~~ the office finds ~~find~~ that sufficient
2413 grounds exist for rehabilitation, liquidation, conservation,
2414 reorganization, seizure, or summary proceedings of an insurer as
2415 set forth in ss. 631.051, 631.061, and 631.071, the department
2416 ~~office~~ may petition for an appropriate court order or may pursue
2417 such other relief as is afforded in part I of chapter 631.
2418 Before invoking its powers under part I of chapter 631, the
2419 department ~~office~~ shall notify the chair of the advisory
2420 council.

2421 (7) Notwithstanding s. 631.011, impairment of a provider,
2422 for purposes of s. 631.051, has the same meaning as the term
2423 "impaired" in s. 651.011.

2424 ~~(8)~~ ~~(6)~~ In the event an order of conservation,
2425 rehabilitation, liquidation, or ~~conservation, reorganization,~~
2426 ~~seizure, or summary proceeding~~ has been entered against a
2427 provider, the department and office are vested with all of the
2428 powers and duties they have under ~~the provisions of~~ part I of
2429 chapter 631 in regard to delinquency proceedings of insurance
2430 companies. A provider shall give written notice of the
2431 proceeding to its residents within 3 business days after the
2432 initiation of a delinquency proceeding under chapter 631 and
2433 shall include a notice of the delinquency proceeding in any
2434 written materials provided to prospective residents

2435 ~~(7) If the financial condition of the continuing care~~
2436 ~~facility or provider is such that, if not modified or corrected,~~

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2437 ~~its continued operation would result in insolvency, the office~~
2438 ~~may direct the provider to formulate and file with the office a~~
2439 ~~corrective action plan. If the provider fails to submit a plan~~
2440 ~~within 30 days after the office's directive or submits a plan~~
2441 ~~that is insufficient to correct the condition, the office may~~
2442 ~~specify a plan and direct the provider to implement the plan.~~

2443 (9) A provider subject to an order to show cause entered
2444 pursuant to chapter 631 must file its written response to the
2445 order, together with any defenses it may have to the
2446 department's allegations, not later than 20 days after service
2447 of the order to show cause, but not less than 15 days before the
2448 date of the hearing set by the order to show cause.

2449 (10) A hearing held pursuant to chapter 631 to determine
2450 whether cause exists for the department to be appointed receiver
2451 must be commenced within 60 days after an order directing a
2452 provider to show cause.

2453 (11) (a) ~~(8) (a)~~ The rights of the office described in this
2454 section are subordinate to the rights of a trustee or lender
2455 pursuant to the terms of a resolution, ordinance, loan
2456 agreement, indenture of trust, mortgage, lease, security
2457 agreement, or other instrument creating or securing bonds or
2458 notes issued to finance a facility, and the office, subject to
2459 ~~the provisions of~~ paragraph (c), may ~~shall~~ not exercise its
2460 remedial rights provided under this section and ss. 651.018,
2461 651.106, 651.108, and 651.116 with respect to a facility that is
2462 subject to a lien, mortgage, lease, or other encumbrance or
2463 trust indenture securing bonds or notes issued in connection
2464 with the financing of the facility, if the trustee or lender, by
2465 inclusion or by amendment to the loan documents or by a separate

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2466 contract with the office, agrees that the rights of residents
2467 under a continuing care or continuing care at-home contract will
2468 be honored and will not be disturbed by a foreclosure or
2469 conveyance in lieu thereof as long as the resident:

2470 1. Is current in the payment of all monetary obligations
2471 required by the contract;

2472 2. Is in compliance and continues to comply with all
2473 provisions of the contract; and

2474 3. Has asserted no claim inconsistent with the rights of
2475 the trustee or lender.

2476 (b) This subsection does not require a trustee or lender
2477 to:

2478 1. Continue to engage in the marketing or resale of new
2479 continuing care or continuing care at-home contracts;

2480 2. Pay any rebate of entrance fees as may be required by a
2481 resident's continuing care or continuing care at-home contract
2482 as of the date of acquisition of the facility by the trustee or
2483 lender and until expiration of the period described in paragraph
2484 (d);

2485 3. Be responsible for any act or omission of any owner or
2486 operator of the facility arising before the acquisition of the
2487 facility by the trustee or lender; or

2488 4. Provide services to the residents to the extent that the
2489 trustee or lender would be required to advance or expend funds
2490 that have not been designated or set aside for such purposes.

2491 (c) If ~~Should~~ the office determines ~~determine~~, at any time
2492 during the suspension of its remedial rights as provided in
2493 paragraph (a), that:

2494 1. The trustee or lender is not in compliance with

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2495 paragraph (a); ~~or that~~

2496 2. A lender or trustee has assigned or has agreed to assign
2497 all or a portion of a delinquent or defaulted loan to a third
2498 party without the office's written consent;

2499 3. The provider engaged in the misappropriation,
2500 conversion, or illegal commitment or withdrawal of minimum
2501 liquid reserve or escrowed funds required under this chapter;

2502 4. The provider refused to be examined by the office
2503 pursuant to s. 651.105(1); or

2504 5. The provider refused to produce any relevant accounts,
2505 records, and files requested as part of an examination,

2506
2507 the office shall notify the trustee or lender in writing of its
2508 determination, setting forth the reasons giving rise to the
2509 determination and specifying those remedial rights afforded to
2510 the office which the office shall then reinstate.

2511 (d) Upon acquisition of a facility by a trustee or lender
2512 and evidence satisfactory to the office that the requirements of
2513 paragraph (a) have been met, the office shall issue a 90-day
2514 temporary certificate of authority granting the trustee or
2515 lender the authority to engage in the business of providing
2516 continuing care or continuing care at-home and to issue
2517 continuing care or continuing care at-home contracts subject to
2518 the office's right to immediately suspend or revoke the
2519 temporary certificate of authority if the office determines that
2520 any of the grounds described in s. 651.106 apply to the trustee
2521 or lender or that the terms of the contract used as the basis
2522 for the issuance of the temporary certificate of authority by
2523 the office have not been or are not being met by the trustee or

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2524 lender since the date of acquisition.

2525 Section 30. Section 651.1141, Florida Statutes, is created
2526 to read:

2527 651.1141 Immediate final orders.-

2528 (1) The Legislature finds that the following actions
2529 constitute an imminent and immediate threat to the public
2530 health, safety, and welfare of the residents of this state:

2531 (a) The installation of a general partner of a provider or
2532 assumption of ownership or possession or control of 10 percent
2533 or more of a provider's assets in violation of s. 651.024 or s.
2534 651.0245;

2535 (b) The removal or commitment of 10 percent or more of the
2536 required minimum liquid reserve funds in violation of s.
2537 651.035; or

2538 (c) The assumption of control over a facility's operations
2539 in violation of s. 651.043.

2540 (2) If it finds that a person or entity is engaging or has
2541 engaged in one or more of the above activities, the office may,
2542 pursuant to s. 120.569, issue an immediate final order:

2543 (a) Directing that such person or entity cease and desist
2544 that activity; or

2545 (b) Suspending the certificate of authority of the
2546 facility.

2547 Section 31. Subsection (1) of section 651.121, Florida
2548 Statutes, is amended to read:

2549 651.121 Continuing Care Advisory Council.-

2550 (1) The Continuing Care Advisory Council to the office is
2551 created consisting of 10 members ~~who are residents of this state~~
2552 appointed by the Governor and geographically representative of

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2553 this state. Three members shall be representatives
2554 ~~administrators~~ of facilities that hold valid certificates of
2555 authority under this chapter and ~~shall~~ have been actively
2556 engaged in the offering of continuing care contracts in this
2557 state for 5 years before appointment. The remaining members
2558 include:

2559 (a) A representative of the business community whose
2560 expertise is in the area of management.

2561 (b) A representative of the financial community who is not
2562 a facility owner or administrator.

2563 (c) A certified public accountant.

2564 ~~(d) An attorney.~~

2565 (d)(e) Four ~~Three~~ residents who hold continuing care or
2566 continuing care at-home contracts with a facility certified in
2567 this state.

2568 Section 32. Subsections (1) and (4) of section 651.125,
2569 Florida Statutes, are amended to read:

2570 651.125 Criminal penalties; injunctive relief.—

2571 (1) Any person who maintains, enters into, or, as manager
2572 or officer or in any other administrative capacity, assists in
2573 entering into, maintaining, or performing any continuing care or
2574 continuing care at-home contract subject to this chapter without
2575 ~~doing so in pursuance of~~ a valid provisional certificate of
2576 authority or certificate of authority ~~or renewal thereof~~, as
2577 contemplated by or provided in this chapter, or who otherwise
2578 violates any provision of this chapter or rule adopted in
2579 pursuance of this chapter, commits a felony of the third degree,
2580 punishable as provided in s. 775.082 or s. 775.083. Each
2581 violation of this chapter constitutes a separate offense.

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2582 (4) Any action brought by the office against a provider
2583 shall not abate by reason of a sale or other transfer of
2584 ownership of the facility used to provide care, which provider
2585 is a party to the action, except with the express written
2586 consent of the ~~director of the~~ office.

2587 Section 33. Except as otherwise expressly provided in this
2588 act and except for this section, which shall take effect July 1,
2589 2019, this act shall take effect January 1, 2020.