

By Representative Jacobs

1 A bill to be entitled
2 An act relating to continuing care contracts;
3 amending s. 651.011, F.S.; revising
4 definitions; amending s. 651.013, F.S.;
5 specifying application of additional laws to
6 providers of continuing care; amending s.
7 651.015, F.S.; revising certain filing fee
8 provisions; amending s. 651.022, F.S.; deleting
9 certain escrow agreement requirements; limiting
10 the Department of Insurance's authority to
11 approve certain applications; amending s.
12 651.023, F.S.; clarifying provisions for
13 applications for certificates of authority;
14 revising criteria for granting certain
15 mortgages; limiting department authority to
16 approve certain applications; deleting certain
17 provisions for renewal of certificates of
18 authority; amending s. 651.0235, F.S.;
19 providing for continuing validity of
20 certificates of authority; amending s. 651.026,
21 F.S.; requiring a filing fee for annual
22 reports; providing requirements for financial
23 reports and information; amending s. 651.033,
24 F.S.; revising investment criteria for escrow
25 accounts; revising criteria for managing and
26 administering escrow accounts; amending s.
27 651.035, F.S.; clarifying minimum liquid
28 reserve requirements; decreasing certain escrow
29 operating reserve requirements; requiring
30 providers to maintain a renewal and replacement
31 reserve in escrow; providing criteria;

1 providing requirements for use of such
2 reserves; amending s. 651.051, F.S.; requiring
3 certain notice before removal of certain assets
4 and records from the state; amending s.
5 651.055, F.S.; requiring submittal to and
6 approval by the department of all continuing
7 care contracts and addenda; revising continuing
8 care agreement provisions to apply to
9 continuing care contracts; amending s. 651.061,
10 F.S.; providing criteria and requirements for
11 certain refunds to residents upon termination
12 of contracts; amending s. 651.065, F.S.;
13 applying certain waiver provisions to
14 continuing care contracts; amending s. 651.071,
15 F.S.; applying preferred claims provisions to
16 continuing care contracts in receivership;
17 amending s. 651.091, F.S.; requiring providers
18 to make available for review certain master
19 plans and plans for expansion or development;
20 requiring providers to furnish residents a copy
21 of resident's rights; requiring filing of
22 certain information with the department;
23 amending s. 651.095, F.S.; requiring department
24 approval of certain provider advertising;
25 limiting certain provider advertising; amending
26 s. 651.105, F.S.; applying examination and
27 inspection provisions to continuing care
28 contracts; amending s. 651.106, F.S.; providing
29 additional grounds for refusal, suspension, or
30 revocation of certificates of authority;
31 providing continuing requirements for providers

1 after revocation of a certificate; amending s.
2 651.107, F.S.; clarifying status of
3 certificates of authority not reinstated;
4 creating s. 651.1081, F.S.; specifying remedies
5 in cases of unlawful sales by providers;
6 amending s. 651.111, F.S.; broadening the
7 department's inspection authority; amending s.
8 651.114, F.S.; applying delinquency proceedings
9 and remedial rights provisions to continuing
10 care contracts; clarifying certain notice
11 requirements relating to release of certain
12 escrow funds; amending s. 651.1151, F.S.;
13 requiring accessibility by residents or
14 resident organizations to management services
15 contracts; amending s. 651.118, F.S.;
16 clarifying a receivership provision; amending
17 s. 651.121, F.S.; requiring the Continuing Care
18 Advisory Council to assist the department in
19 certain actions; repealing s. 651.041, F.S.,
20 relating to use of reserves for investment
21 purposes; providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Subsection (2) of section 651.011, Florida
26 Statutes, 1996 Supplement, is amended, and subsection (12) is
27 added to said section, to read:

28 651.011 Definitions.--For the purposes of this
29 chapter, the term:

30 (2) "Continuing care" or "care" means furnishing
31 pursuant to a contract ~~an agreement~~ shelter, ~~food,~~ and either

1 nursing care or personal services as defined in s.
2 400.402(16), whether such nursing care or personal services
3 are provided in the facility or in another setting designated
4 by the contract ~~agreement~~ for continuing care, to an
5 individual not related by consanguinity or affinity to the
6 provider furnishing such care, upon payment of an entrance
7 fee. Other personal services provided shall be designated in
8 the continuing care contract ~~agreement~~. Contracts ~~Agreements~~
9 to provide continuing care include agreements to provide care
10 for any duration, including contracts ~~agreements~~ that are
11 terminable by either party.

12 (12) "Advertising" means the dissemination of any
13 written, visual, or electronic information by a provider, or
14 any person affiliated with or controlled by a provider, to
15 potential residents or their representatives for the purpose
16 of inducing such persons to subscribe to or enter into a
17 contract to reside in a continuing care community covered by
18 this act.

19 Section 2. Section 651.013, Florida Statutes, is
20 amended to read:

21 651.013 Chapter exclusive; applicability of other
22 laws.--

23 (1) Except as herein provided, providers of continuing
24 care ~~facilities~~ shall be governed by the provisions of this
25 chapter and shall be exempt from all other provisions of the
26 Florida Insurance Code.

27 (2) In addition to other applicable provisions cited
28 in this chapter, the department has the authority granted
29 under ss. 624.302-624.305, ss. 624.308-624.312, s.
30 624.319(1)-(3), ss. 624.320-624.321, s. 624.324, and s. 624.34
31

1 of the Florida Insurance Code to regulate providers of
2 continuing care.

3 Section 3. Subsection (2) of section 651.015, Florida
4 Statutes, is amended to read:

5 651.015 Administration; forms; fees; rules;
6 fines.--The administration of this chapter is vested in the
7 department, which shall:

8 (2) Collect in advance, and the applicant shall pay in
9 advance, the following fees:

10 (a) At the time of filing an application for a
11 certificate of authority, an application fee in the amount of
12 \$75 for each facility.

13 (b) At the time of filing the annual report required
14 by s. 651.026 ~~renewal of a provisional certificate of~~
15 ~~authority or a certificate of authority, a renewal fee in the~~
16 ~~amount of \$100~~\$75 for each year or part thereof for each
17 facility ~~where continuing care is provided.~~

18 (c) ~~A late fee in an amount equal to 50 percent of the~~
19 ~~renewal fee in effect on the last preceding regular renewal~~
20 ~~date. In addition to any other penalty that may be provided~~
21 ~~for under this chapter, the department may levy a fine not to~~
22 ~~exceed \$50 a day for each day of noncompliance.~~

23 (d) A fee to cover the actual cost of a credit report
24 and fingerprint processing.~~An investigation fee, to be paid~~
25 ~~upon original application, in the amount of \$100 for each~~
26 ~~facility where continuing care is provided. Upon application~~
27 ~~subsequent to the denial of an earlier application or~~
28 ~~subsequent to the revocation, suspension, or surrender of a~~
29 ~~certificate of authority, the department shall collect in~~
30 ~~advance, and the applicant shall pay in advance, a second~~
31 ~~investigation fee in the amount of \$100.~~

1 (e) At the time of filing an application for a ~~For the~~
2 ~~issuance of the~~ provisional certificate of authority, a fee in
3 the amount of \$50.

4 Section 4. Paragraph (i) of subsection (3) and
5 subsection (7) of section 651.022, Florida Statutes, are
6 amended, and subsection (8) is added to said section, to read:

7 651.022 Provisional certificate of authority;
8 application.--

9 (3) In addition to the information required in
10 subsection (2), an applicant for a provisional certificate of
11 authority shall submit a market feasibility study. The market
12 feasibility study shall include at least the following
13 information:

14 (i) The application for a provisional certificate of
15 authority shall be accompanied by the forms of the continuing
16 care residency and reservation contracts and escrow agreements
17 proposed to be used by the provider in the furnishing of care.
18 If the department finds that the continuing care contracts and
19 escrow agreements comply with ss. 651.023(1)(c), 651.033, and
20 651.055, it shall approve them. Thereafter, no other form of
21 contract or agreement may be used by the provider until it has
22 been submitted to the department and approved.

23 (7) The issuance of a provisional certificate of
24 authority entitles the applicant to collect entrance fees and
25 reservation deposits from prospective residents. All or any
26 part of an entrance fee or deposit ~~fees and deposits~~ collected
27 shall be placed in an escrow account or on deposit with the
28 department, pursuant to s. 651.033, until a certificate of
29 authority is issued by the department. ~~An escrow agreement~~
30 ~~shall be entered into between the bank, savings and loan~~
31 ~~association, or trust company and the applicant. The~~

1 ~~agreement shall state that its purpose is to protect the~~
2 ~~resident or the prospective resident, and shall be subject to~~
3 ~~approval by the department. All funds deposited in an escrow~~
4 ~~account shall not be subject to any liens or charges by the~~
5 ~~escrow agent or to any judgments, garnishments, or creditor's~~
6 ~~claims against the applicant or facility, except as provided~~
7 ~~in s. 651.035(1). After the certificate of authority is~~
8 ~~issued, the initial entrance fees shall be escrowed as~~
9 ~~provided in s. 651.023.~~

10 (8) The department shall not approve any application
11 which includes in the plan of financing any encumbrance of the
12 operating reserves required by this chapter.

13 Section 5. Section 651.023, Florida Statutes, is
14 amended to read:

15 651.023 Certificate of authority; application+
16 renewal.--

17 (1) After issuance of a provisional certificate of
18 authority, the department shall issue to the holder of such
19 provisional certificate of authority a certificate of
20 authority; provided, however, that no certificate of authority
21 shall be issued until the holder of such provisional
22 certificate of authority provides the department with the
23 following information:

24 (a) Any material change in status with respect to the
25 information required to be filed under s. 651.022(2) in the
26 application for a provisional certificate of authority.

27 (b) A feasibility study prepared by an independent
28 consultant which contains all of the information required by
29 s. 651.022(3) and contains financial forecasts or projections
30 prepared in accordance with standards promulgated by the
31 American Institute of Certified Public Accountants or

1 financial forecasts or projections prepared in accordance with
2 standards for feasibility studies or continuing care
3 retirement communities promulgated by the Actuarial Standards
4 Board. The study must also contain an independent evaluation
5 and examination opinion, or a comparable opinion acceptable to
6 the department, by the consultant who prepared the study, of
7 the underlying assumptions used as a basis for the forecasts
8 or projections in the study and that the assumptions are
9 reasonable and proper and that the project as proposed is
10 feasible. The study shall take into account project costs,
11 actual marketing results to date and marketing projections,
12 resident fees and charges, competition, resident contract
13 provisions, and any other factors which affect the feasibility
14 of operating the facility.

15 (c) Subject to the requirements of subsection (2), a
16 provider may submit an application for a certificate of
17 authority and any required exhibits upon submission of proof
18 that the project has a minimum of 30 percent of the units
19 reserved for which the provider is charging an entrance fee;
20 however, this provision shall not apply to an application for
21 a certificate of authority for the acquisition of a facility
22 for which a certificate of authority was issued prior to
23 October 1, 1983, to a provider who subsequently becomes a
24 debtor in a case under the United States Bankruptcy Code, 11
25 U.S.C. ss. 101 et seq., or to a provider for which the
26 department has been appointed receiver pursuant to the
27 provisions of part II of chapter 631. ~~In order for a unit to
28 be considered reserved under this section, the provider must
29 collect a minimum deposit of 10 percent of the then current
30 entrance fee for that unit, and must assess a forfeiture
31 penalty of 2 percent of the entrance fee due to termination of~~

1 ~~the reservation after 30 days for any reason other than the~~
2 ~~death or serious illness of the prospective resident, the~~
3 ~~failure of the provider to meet its obligations under the~~
4 ~~reservation agreement, or other circumstances beyond the~~
5 ~~control of the prospective resident that equitably entitle the~~
6 ~~prospective resident to a refund of his deposit. The~~
7 ~~reservation agreement shall state the cancellation policy and~~
8 ~~the terms of the continuing care agreement to be entered into.~~
9 ~~The department may require the holder of such certificate to~~
10 ~~disclose to the prospective resident on forms prescribed by~~
11 ~~the department such additional financial information as the~~
12 ~~department may deem necessary. The provisions of this~~
13 ~~paragraph shall not be construed to alter the provisions of s.~~
14 ~~651.055.~~

15 (d) Proof that commitments have been secured for both
16 construction financing and long-term financing or a documented
17 plan acceptable to the department has been adopted by the
18 applicant for long-term financing.

19 (e) Proof that all conditions of the lender have been
20 satisfied to activate the commitment to disburse funds other
21 than the obtaining of the certificate of authority, the
22 completion of construction, or the closing of the purchase of
23 realty or buildings for the facility.

24 (f) Proof that the aggregate amount of entrance fees
25 received by or pledged to the applicant, plus anticipated
26 proceeds from any long-term financing commitment, plus funds
27 from all other sources in the actual possession of the
28 applicant, equal not less than 100 percent of the aggregate
29 cost of constructing or purchasing, equipping, and furnishing
30 the facility plus 100 percent of the anticipated startup
31 losses of the facility.

1 (g) Complete audited financial statements of the
2 applicant, prepared by an independent certified public
3 accountant in accordance with generally accepted accounting
4 principles, as of the date the applicant commenced business
5 operations or for the fiscal year that ended immediately
6 preceding the date of application, whichever is later, and
7 complete unaudited quarterly financial statements attested to
8 by the applicant subsequent to the date of the last audit.

9 (h) Proof that the applicant has complied ~~will be able~~
10 ~~to comply~~ with the escrow requirements of subsection (3) or
11 subsection (5) and will be able to comply with s. 651.035.

12 (i) Such other reasonable data, financial statements,
13 and pertinent information as the department may require with
14 respect to the applicant or the facility, to determine the
15 financial status of the facility and the management
16 capabilities of its managers and owners.

17 (j) Within 30 days of the receipt of the information
18 required under paragraphs (a)-(h), the department shall
19 examine such information and shall notify the provider in
20 writing, specifically requesting any additional information
21 the department is permitted by law to require. Within 15 days
22 after receipt of all of the requested additional information,
23 the department shall notify the provider in writing that all
24 of the requested information has been received and the
25 application is deemed to be complete as of the date of the
26 notice. Failure to so notify the applicant in writing within
27 the 15-day period shall constitute acknowledgment by the
28 department that it has received all requested additional
29 information, and the application shall be deemed to be
30 complete for purposes of review upon the date of the filing of
31 all of the required additional information.

1 (k) Within 45 days after an application is deemed
2 complete as set forth in paragraph (j), and upon completion of
3 the remaining requirements of this section, the department
4 shall complete its review and shall issue, or deny, to the
5 holder of a provisional certificate of authority a certificate
6 of authority. If a certificate of authority is denied, the
7 department shall notify the holder of the provisional
8 certificate of authority in writing, citing the specific
9 failures to satisfy the provisions of this chapter. If
10 denied, the holder of the provisional certificate of authority
11 shall be entitled to an administrative hearing pursuant to
12 chapter 120.

13 (2)(a) The department shall issue a certificate of
14 authority upon its determination that the applicant meets all
15 requirements of law and has submitted all of the information
16 required by this section, that all escrow requirements have
17 been satisfied, and that the fees prescribed in s. 651.015(2)
18 have been paid. Notwithstanding satisfaction of the
19 30-percent minimum reservation requirement of paragraph
20 (1)(c), no certificate of authority shall be issued until the
21 project has a minimum of 50 percent of the units reserved for
22 which the provider is charging an entrance fee, and proof
23 thereof is provided to the department.

24 (b) In order for a unit to be considered reserved
25 under this section, the provider must collect a minimum
26 deposit of 10 percent of the then current entrance fee for
27 that unit, and must assess a forfeiture penalty of 2 percent
28 of the entrance fee due to termination of the reservation
29 contract after 30 days for any reason other than the death or
30 serious illness of the resident, the failure of the provider
31 to meet its obligations under the reservation contract, or

1 other circumstances beyond the control of the resident that
2 equitably entitle the resident to a refund of the resident's
3 deposit. The reservation contract shall state the cancellation
4 policy and the terms of the continuing care contract to be
5 entered into.

6 (3) No more than 25 percent of the moneys paid for all
7 or any part of an initial entrance fee may be included or
8 pledged for the construction or purchase of the facility, or
9 included or pledged as security for long-term financing. The
10 term "initial entrance fee" means the total entrance fee
11 charged by the facility to the first occupant of a unit. A
12 minimum of 75 percent of the moneys paid for all or any part
13 of an initial entrance fee collected shall be placed in an
14 escrow account or on deposit with the department as prescribed
15 in s. 651.033.

16 (4) The provider shall be entitled to secure release
17 of the moneys held in escrow within 7 days after receipt by
18 the department of an affidavit from the provider, along with
19 appropriate copies to verify, and notification to the escrow
20 agent by certified mail, that the following conditions have
21 been satisfied:

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

23 (b) Payment in full has been received for no less than
24 70 percent of the total units of a phase or of the total of
25 the combined phases constructed.

26 (c) The consultant who prepared the feasibility study
27 required by this section or a substitute approved by the
28 department certifies that there has been no material adverse
29 change in status with regard to the feasibility study, with
30 such statement dated not more than 12 months from the date of
31 filing for department approval. If a material adverse change

1 should exist at the time of submission, then sufficient
2 information acceptable to the department and the feasibility
3 consultant shall be submitted which remedies the adverse
4 condition.

5 (d) Proof that commitments have been secured or a
6 documented plan adopted by the applicant has been approved by
7 the department for long-term financing.

8 (e) Proof that the provider has sufficient funds to
9 meet the requirements of s. 651.035, which may include funds
10 deposited in the initial entrance fee account.

11 (f) Proof as to the intended application of the
12 proceeds upon release and proof that the entrance fees when
13 released will be applied as represented to the department.

14
15 Notwithstanding any provision of chapter 120, no person, other
16 than the provider, the escrow agent, and the department, shall
17 have a substantial interest in any departmental decision
18 regarding release of escrow funds in any proceedings under
19 chapter 120 or this chapter regarding release of escrow funds.

20 (5) In lieu of fulfilling the requirements in
21 subsection (3) and paragraphs (4)(b) and (d), ~~the provider may~~
22 ~~have sufficient funds in the escrow account to meet all~~
23 ~~outstanding debts on the facility and equipment.~~the
24 department may authorize the release of such funds to retire
25 all outstanding debts on the facility and equipment upon
26 application of the provider and upon the provider's showing
27 that the provider will grant to initial the residents and all
28 subsequent generation residents a first mortgage on the land,
29 buildings, and equipment that constitute the facility, and
30 that the provider satisfies the requirements of paragraphs
31 (4)(a), (c), and (e). Such mortgage shall secure the refund

1 of the entrance fee in the amount required by this chapter.
2 The granting of such mortgage shall be subject to the
3 following:

4 (a) The first mortgage shall ~~may~~ be granted to an
5 independent ~~a~~ trust which is beneficially held by all ~~the~~
6 residents who reside in the facility pursuant to a continuing
7 care contract regardless of the date of entry. The document
8 creating the trust shall contain a provision that it agrees to
9 an annual audit and will furnish to the department all
10 information the department may reasonably require. The
11 mortgage may secure payment on bonds issued to the residents
12 or trustee. Such bonds shall be redeemable after termination
13 of the residency contract ~~agreement~~ in the amount and manner
14 required by this chapter for the refund of an entrance fee.

15 (b) Before granting a first mortgage to the residents,
16 all construction shall be substantially completed and
17 substantially all equipment shall be purchased. No part of
18 the entrance fees may be pledged as security for a
19 construction loan or otherwise used for construction expenses
20 before the completion of construction.

21 (c) If the provider is leasing the land or buildings
22 used by the facility, the leasehold interest shall be for a
23 term of at least 30 years.

24 (6) The timeframes provided under s. 651.022(5) and
25 (6) apply to applications submitted under s. 651.021(2). The
26 department may not issue a certificate of authority under this
27 chapter to any facility which does not have a component which
28 is to be licensed pursuant to ~~chapter 395~~ or part II or part
29 III of chapter 400 or which will not offer personal services
30 or nursing services through written contractual agreement. Any
31 written contractual agreement must be disclosed in the

1 continuing care contract and is subject to the provisions of
2 s. 651.1151, relating to administrative, vendor, and
3 management contracts.

4 (7) The department shall not approve an application
5 which includes in the plan of financing any encumbrance of the
6 operating reserves required by this chapter.

7 Section 6. Section 651.0235, Florida Statutes, is
8 amended to read:

9 651.0235 Validity ~~Annual renewal~~ of provisional
10 certificates of authority and certificates of authority.--

11 (1) The provisional certificate of authority and
12 certificate of authority shall be valid for as long as
13 ~~renewable annually on or before September 30 upon payment of~~
14 ~~the renewal fee prescribed in s. 651.015(2) and upon a~~
15 ~~determination by~~ the department determines that the provider
16 continues to meet the requirements of this chapter.

17 (2) If the provider fails to meet the requirements of
18 this chapter for a provisional certificate of authority or a
19 certificate of authority, the department may notify ~~issue a~~
20 ~~renewal certificate if it notifies~~ the provider of any
21 deficiencies and requires the provider to correct such
22 deficiencies within a period to be determined by the
23 department. If such deficiencies are not corrected within 20
24 days after the notice to the provider, or within less time at
25 the discretion of the department, the department shall notify
26 the advisory council, which may assist the facility in
27 formulating a remedial plan to be submitted to the department
28 no later than 60 days from the date of notification. The time
29 period granted to correct deficiencies may be extended upon
30 submission of a plan for corrective action approved by the
31 department. If such deficiencies have not been cleared by the

1 expiration of such time period, as extended, the department
2 shall petition for a delinquency proceeding or pursue such
3 other relief as is provided for under this chapter ~~s. 651.114~~,
4 as the circumstances may require.

5 (3) The Department of Insurance shall notify the
6 Agency for Health Care Administration ~~Department of Health and~~
7 ~~Rehabilitative Services~~ of any facility for which a
8 provisional certificate of authority or certificate of
9 authority is no longer valid ~~has not been renewed~~.

10 Section 7. Subsections (7) and (8) are added to
11 section 651.026, Florida Statutes, to read:

12 651.026 Annual reports.--

13 (7) A filing fee in the amount of \$100 shall accompany
14 each annual report required by this section.

15 (8) All financial reports and any supplemental
16 financial information submitted to the department shall be
17 prepared in conformity with generally accepted accounting
18 principles.

19 Section 8. Section 651.033, Florida Statutes, is
20 amended to read:

21 651.033 Escrow accounts.--

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

25 (a) The escrow account shall be established in a
26 Florida bank, Florida savings and loan association, or Florida
27 trust company acceptable to the department or on deposit with
28 the department; and the funds deposited therein shall be kept
29 and maintained in an account separate and apart from the
30 provider's business accounts.

31

1 (b) An escrow contract ~~agreement~~ shall be entered into
2 between the bank, savings and loan association, or trust
3 company and the provider of the facility; the contract
4 ~~agreement~~ shall state that its purpose is to protect the
5 resident or the prospective resident; and, upon presentation
6 of evidence of compliance with applicable portions of this
7 chapter, or upon order of a court of competent jurisdiction,
8 the escrow agent shall release and pay over the funds, or
9 portions thereof, together with any interest accrued thereon
10 or earned from investment of the funds, to the provider or
11 resident as directed.

12 (c) Any contract ~~agreement~~ establishing an escrow
13 account required under the provisions of this chapter shall be
14 subject to approval by the department. The contract ~~agreement~~
15 shall be in writing and shall contain, in addition to any
16 other provisions required by law, a provision whereby the
17 escrow agent agrees to abide by the duties imposed under this
18 section.

19 (d) All funds deposited in an escrow account, if
20 invested, shall be invested as set forth in part II of chapter
21 625; however, such investment shall not diminish the funds
22 held in escrow below the amount required by this chapter. All
23 funds deposited in an escrow account shall not be subject to
24 any ~~liens or~~ charges by the escrow agent except escrow agent
25 fees associated with administering the accounts, or subject to
26 any liens, judgments, garnishments, or creditor's claims or
27 other encumbrances against the provider or facility except as
28 provided in s. 651.035(1).

29 (e) At the request of either the provider or the
30 department, the escrow agent shall issue a statement
31 indicating the status of the escrow account.

1 (2) In addition, when funds are required to be
2 ~~deposited in an escrow account pursuant to s. 651.035:~~

3 ~~(a) Funds may also be held in escrow in an investment
4 company which:~~

5 ~~1. Is registered and subject to the Investment Company
6 Act of 1940, 15 U.S.C. s. 80a, as amended;~~

7 ~~2. Is an open-end, diversified investment company as
8 defined in 15 U.S.C. 80a-5(a)(1), as amended, and 15 U.S.C.
9 80a-5(b)(1), as amended, respectively;~~

10 ~~3. Is approved by the department;~~

11 ~~4. Maintains its investments on the same basis as an
12 insurer is required to maintain its investments under part II
13 of chapter 625; and~~

14 ~~5. Meets the diversification requirements of chapter
15 625 on the same basis as the requirements apply to life
16 insurers.~~

17
18 ~~Department approval of an investment company shall be
19 contingent upon the investment company demonstrating to the
20 satisfaction of the department that it complies with
21 provisions of this subsection and that investment risk will
22 not diminish the funds held in escrow below the minimum
23 required amounts.~~

24 ~~(b) the escrow agreement shall provide that the escrow
25 agent or another person designated to act in his place and the
26 provider, except as otherwise provided in s. 651.035, shall
27 notify the department in writing at least 10 days before the
28 withdrawal of any portion of any funds required to be escrowed
29 under the provisions of s. 651.035. However, in the event of
30 an emergency and upon petition by the provider, the department
31 may waive the 10-day notification period and allow a~~

1 withdrawal of up to 10 percent of the required minimum liquid
2 reserve. The department shall have 3 working days to deny the
3 petition for the emergency 10-percent withdrawal. If the
4 department fails to deny the petition within 3 working days,
5 the petition shall be deemed to have been granted by the
6 department. For the purpose of this section, "working day"
7 means each day that is not a Saturday, Sunday, or legal
8 holiday as defined by Florida law. Also for the purpose of
9 this section, the day the petition is received by the
10 department shall not be counted as one of the 3 days.

11 ~~However, funds may be withdrawn without departmental approval~~
12 ~~upon prior notification to the department and provided the~~
13 ~~amount withdrawn does not exceed the amount required for the~~
14 ~~facility to bring current the past due portion of an~~
15 ~~indebtedness created by a lien on the facility pursuant to a~~
16 ~~trust indenture or mortgage.~~

17 (3) In addition, when entrance fees are required to be
18 deposited in an escrow account pursuant to s. 651.022, s.
19 651.023, or s. 651.055:

20 (a) ~~The escrow agreement between the bank, savings and~~
21 ~~loan association, or trust company and the provider shall~~
22 ~~state that its purpose is to protect the resident or the~~
23 ~~prospective resident; and, upon presentation of evidence of~~
24 ~~compliance with applicable portions of this chapter, or upon~~
25 ~~order of a court of competent jurisdiction, the escrow agent~~
26 ~~shall release and pay over the funds, or portions thereof,~~
27 ~~together with any interest accrued thereon or earned from~~
28 ~~investment of the funds, to the provider or resident as~~
29 ~~directed.~~

30 (b) ~~When funds are received from a resident or~~
31 ~~prospective resident, The provider shall deliver to the~~

1 resident a written receipt. The receipt shall show the
2 payor's name and address, the date, the price of the care
3 contract agreement, and the amount of money paid. A copy of
4 each receipt together with the funds shall be deposited with
5 the escrow agent or as provided in paragraph (c). The escrow
6 agent shall release such funds to the provider upon the
7 expiration of 7 days after the date of receipt of the funds by
8 the escrow agent if the provider, operating under a
9 certificate of authority issued by the department, has met the
10 requirements of s. 651.023(4). However, if the resident
11 rescinds the contract within the 7-day period, the escrow
12 agent shall release the escrowed fees to the resident.

13 ~~(b)(c) Checks, drafts, and money orders for deposit~~
14 ~~from prospective residents shall be made payable only to the~~
15 ~~escrow agent. At the request of an individual resident or a~~
16 ~~prospective resident of a facility, the escrow agent shall~~
17 ~~issue a statement indicating the status of the resident's~~
18 ~~portion of the escrow account.~~

19 (c) At the request of an individual resident of a
20 facility, the provider may hold the check for the 7-day period
21 and shall not deposit it during this time period. If the
22 resident rescinds the contract within the 7-day period, the
23 check shall be immediately returned to the resident. Upon the
24 expiration of the 7 days, the provider shall deposit the
25 check.

26 ~~(d) When the provider, operating under a certificate~~
27 ~~of authority from the department, deposits an entrance fee in~~
28 ~~the escrow account pursuant to s. 651.055(2), the escrow~~
29 ~~agent, upon receiving evidence that the required 7-day period~~
30 ~~has expired from receipt of such funds, shall release to the~~
31 ~~provider such fees. In the event that the resident rescinds~~

1 ~~the agreement with the provider during the 7-day period, the~~
2 ~~escrow agent shall release to the resident the escrowed fees.~~
3 ~~If such funds have not been authorized for release to the~~
4 ~~provider under the provisions of s. 651.023(4), the funds~~
5 ~~shall be subject to the escrow requirements for initial~~
6 ~~entrance fees as provided in s. 651.023.~~

7 (4) Any fees of \$1,500 or less which are assessed with
8 respect to prospective residents to have their names placed on
9 a facility's waiting list shall not be subject to the escrow
10 provisions of this section.

11 (5) When funds are required to be deposited in an
12 escrow account pursuant to s. 651.022, s. 651.023, or s.
13 651.035, the following shall apply:

14 (a) The escrow agreement shall require that the escrow
15 agent furnish the provider with a quarterly statement
16 indicating the amount of any disbursements from or deposits to
17 the escrow account and the condition of the account during the
18 period covered by the statement. The agreement shall require
19 that the statement be furnished to the provider by the escrow
20 agent on or before the 10th day of the month following the end
21 of the quarter for which the statement is due. If the escrow
22 agent does not provide the quarterly statement to the provider
23 on or before the 10th day of the month following the month for
24 which the statement is due, the department may, in its
25 discretion, levy against the escrow agent a fine not to exceed
26 \$25 a day for each day of noncompliance with the provisions of
27 this subsection.

28 (b) If the escrow agent does not provide the quarterly
29 statement to the provider on or before the 10th day of the
30 month following the quarter for which the statement is due,
31 the provider shall, on or before the 15th day of the month

1 following the quarter for which the statement is due, send a
2 written request for the statement to the escrow agent by
3 certified mail return receipt requested.

4 (c) On or before the 20th day of the month following
5 the quarter for which the statement is due, the provider shall
6 file with the department a copy of the escrow agent's
7 statement or, if the provider has not received the escrow
8 agent's statement, a copy of the written request to the escrow
9 agent for the statement.

10 (d) The department may, in its discretion, in addition
11 to any other penalty that may be provided for under this
12 chapter, levy a fine against the provider not to exceed \$25 a
13 day for each day the provider fails to comply with the
14 provisions of this subsection.

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

17 ~~(6) The failure to maintain escrowed funds as provided~~
18 ~~in this chapter shall subject the provider to the provisions~~
19 ~~established by s. 651.106 or s. 651.114.~~

20 Section 9. Paragraph (a) of subsection (1) and
21 subsections (2) and (4) of section 651.035, Florida Statutes,
22 are amended, and subsection (8) is added to said section, to
23 read:

24 651.035 Minimum liquid reserve requirements.--

25 (1)(a) A provider shall maintain in escrow and as a
26 minimum liquid reserve an amount equal to the aggregate amount
27 of all principal and interest payments due during the fiscal
28 year on any mortgage loan or other long-term financing of the
29 facility, including taxes and insurance as recorded in the
30 audited financial statements required under s. 651.026. The
31 amount shall include any leasehold payments and all costs

1 related to same. If principal payments are not due during the
2 fiscal year, the provider shall maintain in escrow as a
3 minimum liquid reserve an amount equal to interest payments
4 due during the next 12 ~~18~~ months on any mortgage loan or other
5 long-term financing of the facility, including taxes and
6 insurance.

7 (2)(a) Each provider shall maintain in escrow an
8 operating reserve in an amount equal to 30 percent of the
9 total operating expenses projected in the feasibility study
10 required by s. 651.023~~(1)(b)~~ for the first 12 months of
11 operation. Thereafter, each provider shall maintain in escrow
12 an operating reserve in an amount equal to 15 ~~30~~ percent of
13 the total operating expenses in the annual report filed
14 pursuant to s. 651.026. Where a provider has been in
15 operation for more than 12 months, the total annual operating
16 expenses shall be determined by averaging the total annual
17 operating expenses reported to the department by the number of
18 annual reports filed with the department within the immediate
19 preceding 3-year period subject to adjustment in the event
20 there is a change in the number of facilities owned. For
21 purposes of this subsection, total annual operating expenses
22 shall include all expenses of the facility except:
23 depreciation and amortization; interest, insurance and taxes
24 included in subsection (1); extraordinary expenses which are
25 adequately explained and documented in accordance with
26 generally accepted accounting principles; and changes in the
27 obligation to provide future services to current residents.
28 Beginning January 1, 1993, the operating reserves required
29 under this subsection shall be in an unencumbered account held
30 in escrow for the benefit of the residents. Such funds may
31 not be encumbered or subject to any liens or charges by the

1 escrow agent or judgments, garnishments, or creditors' claims
2 against the provider or facility. However, if a facility had
3 a lien, mortgage, trust indenture, or similar debt instrument
4 in place prior to January 1, 1993, which encumbered all or any
5 part of the reserves required by this subsection and such
6 funds were used to meet the requirements of this subsection,
7 then such arrangement may be continued, unless a refinancing
8 or acquisition has occurred, and the provider shall be in
9 compliance with this subsection.

10 (b) Each provider shall maintain in escrow a renewal
11 and replacement reserve in an amount equal to 15 percent of
12 the total accumulated depreciation based on the audited
13 financial statement required to be filed pursuant to s.
14 651.026, not to exceed 15 percent of the facility's average
15 operating expenses for the past 3 fiscal years based on the
16 audited financial statements for each of such years. For a
17 provider who is an operator of a facility but is not the owner
18 and depreciation is not included as part of the provider's
19 financial statement, the renewal and replacement reserve
20 required by this paragraph shall equal 15 percent of the total
21 operating expenses of the provider, as described in this
22 section. Each provider licensed prior to October 1, 1983,
23 shall be required to fully fund the renewal and replacement
24 reserve by October 1, 2003, by multiplying the difference
25 between the former escrow requirement and the present escrow
26 requirement by the number of years the facility has been in
27 operation after October 1, 1983.

28 (4)(a) In facilities where not all residents ~~tenants~~
29 are under continuing care contracts ~~agreements~~, the reserve
30 requirements of subsection (2) shall be computed only with
31 respect to the proportional share of operating expenses that

1 is applicable to residents as defined in s. 651.011. For
2 purposes of this calculation, the proportional share shall be
3 based upon the ratio of residents under continuing care
4 contracts ~~agreements~~ to those residents who do not hold such
5 contracts ~~agreements~~.

6 (b) In facilities which have voluntarily and
7 permanently discontinued marketing continuing care contracts
8 ~~agreements~~, the department may allow a reduced debt service
9 reserve as required in subsection (1) based upon the ratio of
10 residents under continuing care contracts ~~agreements~~ to those
11 residents who do not hold such contracts ~~agreements~~ if the
12 department finds that such reduction is not inconsistent with
13 the security protections intended by this chapter. In making
14 this determination, the department may consider such factors
15 as the financial condition of the facility, the provisions of
16 the outstanding continuing care contracts ~~agreements~~, the
17 ratio of residents under continuing care agreements to those
18 residents who do not hold a continuing care contract
19 ~~agreement~~, current occupancy rates, previous sales and
20 marketing efforts, life expectancy of the remaining contract
21 holders, and the written policies of the board of directors of
22 the provider or a similar board.

23 (8)(a) Each fiscal year, a provider may withdraw up to
24 33 percent of the total renewal and replacement reserve
25 available. The reserve available is equal to the market value
26 of the invested reserves at the end of the provider's prior
27 fiscal year. The withdrawal is to be used for capital items or
28 major repairs and before any funds are eligible for
29 withdrawal, the provider must obtain written permission from
30 the department by submitting the following information:
31

1 1. The amount of the withdrawal and the intended use
2 of the proceeds.

3 2. A board resolution and sworn affidavit signed by
4 two officers or general partners of the provider which
5 indicates approval of the withdrawal and use of the funds.

6 3. Proof that the provider has met all funding
7 requirements for the operating, debt service, and renewal and
8 replacement reserves computed for the previous fiscal year.

9 4. Anticipated payment schedule for refunding the
10 renewal and replacement reserve fund.

11 (b) Within 30 days after the withdrawal of funds from
12 the renewal and replacement reserve fund, the provider must
13 begin refunding the reserve account in equal monthly payments
14 which allow for a complete funding of such withdrawal within
15 36 months. If the payment schedule required under subparagraph
16 (a)4. has changed, the provider must update the department
17 with the new payment schedule. If the provider fails to make a
18 required monthly payment or the payment is late, the provider
19 must notify the department within 5 days after the due date of
20 the payment. No additional withdrawals from the renewal and
21 replacement reserve will be allowed until all scheduled
22 payments are current.

23 Section 10. Section 651.051, Florida Statutes, is
24 amended to read:

25 651.051 Maintenance of assets and records in
26 state.--No records or assets may be removed from this state by
27 a provider unless the department consents to such removal in
28 writing before such removal. Such consent shall be based upon
29 the provider's submitting satisfactory evidence that the
30 removal will facilitate and make more economical the
31 operations of the provider and will not diminish the service

1 or protection thereafter to be given the provider's residents
2 in this state. Prior to such removal, the provider shall give
3 notice to the president or chair of the facility's residents'
4 council. If such removal is part of a cash management system
5 which has been approved by the department, disclosure of the
6 system shall meet the notification requirements.

7 Section 11. Section 651.055, Florida Statutes, is
8 amended to read:

9 651.055 Contracts ~~Agreements~~; right to rescind.--

10 (1) Each continuing care contract and each addendum to
11 such contract shall be submitted to and approved by the
12 department prior to its use in this state. Thereafter, no
13 other form of contract shall be used by the provider unless it
14 has been submitted to and approved by the department. ~~In~~
15 ~~addition to other provisions considered proper to effectuate~~
16 ~~any continuing care agreement, Each contract ~~agreement~~ shall:~~

17 (a) Provide for the continuing care of only one
18 resident, or for two persons occupying space designed for
19 double occupancy, under appropriate regulations established by
20 the provider and shall list all properties transferred and
21 their market value at the time of transfer, including
22 donations, subscriptions, fees, and any other amounts paid or
23 payable by, or on behalf of, the resident or residents.

24 (b) Specify all services which are to be provided by
25 the provider to each resident, including, in detail, all items
26 which each resident will receive, whether the items will be
27 provided for a designated time period or for life, and whether
28 the services will be available on the premises or at another
29 specified location. The provider shall indicate which services
30 or items are included in the contract ~~agreement~~ for continuing
31 care and which services or items are made available at or by

1 the facility at extra charge. Such items shall include, but
2 are not limited to, food, shelter, personal services or
3 nursing care, drugs, burial, and incidentals.

4 (c) Describe the terms and conditions under which a
5 contract ~~an agreement~~ for continuing care may be canceled by
6 the provider or by a resident and the conditions, if any,
7 under which all or any portion of the entrance fee will be
8 refunded in the event of cancellation of the contract
9 ~~agreement~~ by the provider or by the resident, including the
10 effect of any change in the health or financial condition of a
11 person between the date of entering a contract ~~an agreement~~
12 for continuing care and the date of initial occupancy of a
13 living unit by that person.

14 (d) Describe the health and financial conditions
15 required for a person to be accepted as a resident and to
16 continue as a resident, once accepted, including the effect of
17 any change in the health or financial condition of a person
18 between the date of entering into a continuing care contract
19 ~~agreement~~ and the date of taking occupancy in a unit.

20 (e) Describe the circumstances under which the
21 resident will be permitted to remain in the facility in the
22 event of financial difficulties of the resident. The stated
23 policy may not be less than the terms stated in s. 651.061.

24 (f) State the fees that will be charged if the
25 resident marries while at the designated facility, the terms
26 concerning the entry of a spouse to the facility, and the
27 consequences if the spouse does not meet the requirements for
28 entry.

29 (g) Provide that the contract ~~agreement~~ may be
30 canceled upon the giving of written notice of cancellation of
31 at least 30 days by the provider, the resident, or the person

1 who provided the transfer of property or funds for the care of
2 such resident; however, if a contract ~~an agreement~~ is canceled
3 because there has been a good faith determination that a
4 resident is a danger to himself or others, only such notice as
5 is reasonable under the circumstances shall be required.

6 1. The contract ~~agreement~~ shall further provide in
7 clear and understandable language, in print no smaller than
8 the largest type used in the body of the contract ~~agreement~~,
9 the terms governing the refund of any portion of the entrance
10 fee, ~~which terms shall include a provision that all refunds be~~
11 ~~made within 120 days after notification.~~

12 2. For a resident whose contract ~~agreement~~ with the
13 facility provides that the resident does not receive a
14 transferable membership or ownership right in the facility,
15 and who has occupied his unit, the refund shall be calculated
16 on a pro rata basis with the facility retaining no more than 2
17 percent per month of occupancy by the resident and no more
18 than a 4-percent fee for processing. Such refund shall be
19 paid no later than 120 days after the giving of notice of
20 intention to cancel.

21 3. ~~Alternatively,~~ If the contract provides for the
22 facility to retain no more than 1 percent per month of
23 occupancy by the resident, it may provide that such refund
24 will be paid from the proceeds of the next entrance fees
25 received by the provider for units for which there are no
26 prior claims by any resident until paid in full or, if the
27 provider has discontinued marketing continuing care contracts,
28 within 200 days after the date of notice.

29 4. Unless the provisions of subsection (5) apply, for
30 any prospective resident, regardless of whether or not such a
31 resident receives a transferable membership or ownership right

1 in the facility, who cancels the contract ~~agreement~~ prior to
2 occupancy of the unit, the refund shall be the entire amount
3 paid toward the entrance fee, less a processing fee not to
4 exceed 4 percent of the entire entrance fee, but in no event
5 shall such processing fee exceed the amount paid by the
6 prospective resident. Such refund shall be paid no later than
7 60 days after the giving of notice of intention to cancel.
8 For a resident who has occupied his unit and who has received
9 a transferable membership or ownership right in the facility,
10 the foregoing refund provisions shall not apply but shall be
11 deemed satisfied by the acquisition or receipt of a
12 transferable membership or an ownership right in the facility.
13 The provider shall not charge any fee for the transfer of
14 membership or sale of an ownership right.

15 (h) State the terms under which a contract ~~an~~
16 ~~agreement~~ is canceled by the death of the resident. These
17 terms may contain a provision that, upon the death of a
18 resident, the entrance fee of such resident shall be
19 considered earned and shall become the property of the
20 provider. When the unit is shared, the conditions with
21 respect to the effect of the death or removal of one of the
22 residents shall be included in the contract ~~agreement~~.

23 (i) Describe the policies which may lead to changes in
24 monthly recurring and nonrecurring charges or fees for goods
25 and services received. The contract ~~agreement~~ shall provide
26 for advance notice to the resident, of not less than 60 days,
27 before any change in fees or charges or the scope of care or
28 services may be effective, except for changes required by
29 state or federal assistance programs.

30 (j) Provide that charges for care paid in one lump sum
31 shall not be increased or changed during the duration of the

1 agreed upon care, except for changes required by state or
2 federal assistance programs.

3 (k) Specify whether or not the facility is, or is
4 affiliated with, a religious, nonprofit, or proprietary
5 organization or management entity; the extent to which the
6 affiliate organization will be responsible for the financial
7 and contractual obligations of the provider; and the
8 provisions of the federal Internal Revenue Code, if any, under
9 which the provider or affiliate is exempt from the payment of
10 federal income tax.

11 ~~(1) Describe the policy of the provider regarding~~
12 ~~reserve funding.~~

13 (2) A resident has the right to rescind a continuing
14 care contract and receive a full refund of any funds paid
15 agreement, without penalty or forfeiture, within 7 days after
16 executing the contract agreement. ~~During the 7-day period,~~
17 ~~the resident's funds shall be retained in a separate escrow~~
18 ~~account under terms approved by the department.~~ A resident
19 shall not be required to move into the facility designated in
20 the contract agreement before the expiration of the 7-day
21 period.

22 (3) The contract agreement shall include or shall be
23 accompanied by a statement, printed in boldfaced type, which
24 reads: "This facility and all other continuing care facilities
25 in the State of Florida are regulated by chapter 651, Florida
26 Statutes. A copy of the law is on file in this facility. The
27 law gives you or your legal representative the right to
28 inspect our most recent financial statement and inspection
29 report before signing the contract agreement."

30 (4) Before the transfer of any money or other property
31 to a provider by or on behalf of a prospective resident, the

1 provider shall present a typewritten or printed copy of the
2 contract agreement to the prospective resident and all other
3 parties to the contract agreement. The provider shall secure
4 a signed, dated statement from each party to the contract
5 certifying that a copy of the contract agreement with the
6 specified attachment as required pursuant to this chapter was
7 received.

8 (5) If a resident dies before occupying the facility
9 or, through illness, injury, or incapacity, is precluded from
10 becoming a resident under the terms of the continuing care
11 contract agreement, the contract agreement is automatically
12 canceled, and the resident or his legal representative shall
13 receive a full refund of all moneys paid to the facility,
14 except those costs specifically incurred by the facility at
15 the request of the resident and set forth in writing in a
16 separate addendum, signed by both parties, to the contract
17 agreement.

18 (6) In order to comply with this section, a provider
19 may furnish information not contained in his continuing care
20 contract agreement through an addendum.

21 (7) Those contracts agreements entered into subsequent
22 to July 1, 1977, and before the issuance of a certificate of
23 authority to the provider are valid and binding upon both
24 parties in accordance with their terms.

25 (8) The provisions of this section shall control over
26 any conflicting provisions contained in part II or part III of
27 chapter 400.

28 Section 12. Subsection (1) of section 651.061, Florida
29 Statutes, is amended to read:

30 651.061 Dismissal or discharge of resident; refund.--
31

1 (1) No contract agreement for care shall permit
2 dismissal or discharge of the resident from the facility
3 providing care before the expiration of the contract
4 agreement, without just cause for such a removal. For any
5 contract entered into on or after October 1, 1997, and
6 terminated if a facility terminates a resident for just cause,
7 the provider facility shall pay to the resident any refund due
8 upon the resident's vacating the facility, less a reasonable
9 amount to cover the anticipated cost of utilities, telephone,
10 or other obligations, if applicable and as documented by the
11 provider. Any funds retained and not used for such purposes
12 will be refunded to the resident within 45 days of vacating
13 the unit. For contracts written prior to October 1, 1997, any
14 refund due shall be made in accordance with the terms of the
15 contract in the same manner as if the resident had provided
16 notice pursuant to s. 651.055(1)(g). The term "just cause"
17 includes, but is not limited to, a good faith determination
18 that a resident is a danger to himself or others while
19 remaining in the facility. The term "just cause" does not
20 include termination of contract holders for the purpose of
21 decertifying a facility from this chapter.

22 Section 13. Section 651.065, Florida Statutes, is
23 amended to read:

24 651.065 Waiver of statutory protection.--No act,
25 agreement, or statement of any resident, or of an individual
26 purchasing care for a resident, under any contract agreement
27 to furnish care to the resident shall constitute a valid
28 waiver of any provision of this chapter intended for the
29 benefit or protection of the resident or the individual
30 purchasing care for the resident.

31

1 Section 14. Section 651.071, Florida Statutes, is
2 amended to read:

3 651.071 Contracts ~~Agreements~~ as preferred claims on
4 liquidation.--

5 (1) In the event of receivership or liquidation
6 proceedings against a ~~of the~~ provider, all continuing care
7 contracts ~~agreements~~ executed by a provider shall be deemed
8 preferred claims against all assets owned by the provider;
9 however, such claims shall be subordinate to those priority
10 claims set forth in s. 631.271 and any secured claim as
11 defined in s. 631.011.

12 (2) Any other claims not set forth in subsection (1)
13 shall be considered as general creditors' claims.

14 (3) Nothing in this section shall be construed to
15 impair the priority, with respect to the lien property, of
16 mortgages, security agreements, or lease agreements or
17 installment sales agreements on property not otherwise
18 encumbered entered into by a provider with an issuer of bonds
19 or notes, which has financed a facility, and which bonds are
20 secured by a resolution, ordinance, or indenture of trust, if
21 such mortgages or agreements were duly recorded at least 4
22 months prior to the institution of receivership or liquidation
23 proceedings.

24 Section 15. Section 651.091, Florida Statutes, is
25 amended to read:

26 651.091 Availability, distribution, and posting of
27 reports and records; requirement of full disclosure.--

28 (1) Each continuing care facility shall maintain as
29 public information, available upon request, records of all
30 cost and inspection reports pertaining to that facility that
31 have been filed with or issued by any governmental agency. A

1 copy of each such report shall be retained in such records for
2 not less than 5 years from the date the report is filed or
3 issued. Each facility shall also maintain as public
4 information, available upon request, all annual statements
5 that have been filed with the department.

6 (2) Every continuing care facility shall:

7 (a) Display the certificate of authority in a
8 conspicuous place inside the facility.

9 (b) Post in a prominent position in the facility so as
10 to be accessible to all residents and to the general public a
11 concise summary of the last examination report issued by the
12 department, with references to the page numbers of the full
13 report noting any deficiencies found by the department, and
14 the actions taken by the provider to rectify such
15 deficiencies, indicating in such summary where the full report
16 may be inspected in the facility.

17 (c) Post in a prominent position in the facility so as
18 to be accessible to all residents and to the general public a
19 summary of the latest annual statement, indicating in the
20 summary where the full annual statement may be inspected in
21 the facility. A listing of any proposed changes in policies,
22 programs, and services shall also be posted.

23 (d) Distribute a copy of the full annual statement to
24 the president or chairman of the residents' council within 30
25 days after the filing of the annual report with the
26 department, and designate a staff person to provide
27 explanation thereof.

28 (e) Notify the residents' council of any plans filed
29 with the department to obtain new financing, additional
30 financing, or refinancing for the facility and of any
31

1 applications to the department for any expansion of the
2 facility.

3 (3) Before entering into a contract ~~an agreement~~ to
4 furnish continuing care, the provider undertaking to furnish
5 the care, or the agent of the provider, shall make full
6 disclosure, and provide copies of the disclosure documents to
7 the prospective resident or his legal representative, of the
8 following information ~~relative to the undertaking~~:

9 (a) The contract ~~agreement~~ to furnish continuing care.

10 (b) The summary listed in paragraph (2)(b).

11 (c) All ownership interests and lease agreements,
12 including information specified in s. 651.022(2)(b)8.

13 (d) In keeping with the intent of this subsection
14 relating to disclosure, the provider shall make available for
15 review, master plans approved by the provider's governing
16 board and any plans for expansion or phased development, to
17 the extent that the availability of such plans will not put at
18 risk real estate, financing, acquisition, negotiations, or
19 other implementation of operational plans and thus jeopardize
20 the success of negotiations, operations, and development. ~~Any~~
21 ~~plans adopted by the governing body of the provider for~~
22 ~~expansion or phased development during the next 3 years, or,~~
23 ~~if a master plan for development has been adopted by the~~
24 ~~governing body, the longer period of time appropriate to such~~
25 ~~master plan.~~

26 (e) Copies of the rules and regulations of the
27 facility and an explanation of the responsibilities of the
28 resident.

29 (f) The policy of the facility with respect to
30 admission to and discharge from the various levels of health
31 care offered by the facility.

1 (g) The amount and location of any reserve funds
2 required by this chapter, and the name of the person or entity
3 having a claim to such funds in the event of a bankruptcy,
4 foreclosure, or rehabilitation proceeding.

5 (h) A copy of the resident's rights as described in s.
6 651.083.

7
8 A true and complete copy of the full disclosure document to be
9 used shall be filed with the department prior to its use. A
10 resident or ~~The~~ prospective resident or his or her legal
11 representative shall be permitted to inspect the full reports
12 referred to in paragraph (2)(b); the charter or other
13 agreement or instrument required to be filed with the
14 department pursuant to s. 651.022(2), together with all
15 amendments thereto; and the bylaws of the corporation or
16 association, if any. Upon request, copies of the reports and
17 information shall be provided to the individual requesting
18 them if the individual agrees to pay a reasonable charge to
19 cover copying costs.

20 Section 16. Section 651.095, Florida Statutes, is
21 amended to read:

22 651.095 Advertisements; requirements; penalties.--

23 (1) Upon application for a provisional certificate of
24 authority, the department shall require the applicant to
25 submit for approval all ~~each financial statement, pamphlet,~~
26 ~~circular, form letter, advertisement, or other sales~~
27 ~~literature or advertising communication addressed or intended~~
28 ~~for distribution to prospective residents.~~ Approval of the
29 application constitutes approval of the advertising such
30 documents, unless the department has otherwise notified the
31 applicant ~~has consented otherwise in writing.~~ The department

1 shall disapprove any document which is a violation of any
2 provision of part X of chapter 626 ~~untrue, deceptive, or~~
3 ~~misleading or which contains misrepresentations or omissions~~
4 ~~of material facts.~~

5 (2) After an application has been approved, a provider
6 is not required to submit new advertising ~~an advertisement~~ to
7 the department for approval; however, a provider may not use,
8 and may not have published, and a person may not use or may
9 not have published ~~publish~~, any advertisement which is a
10 violation of any provision of part X of chapter 626 or which
11 has previously been disapproved by the department ~~untrue,~~
12 ~~deceptive, or misleading, or which contains misrepresentations~~
13 ~~or omissions of material fact.~~

14 ~~(3) For purposes of this section, advertising~~
15 ~~includes, but is not limited to, any report, circular, public~~
16 ~~announcement, certificate, financial statement, or other~~
17 ~~printed matter or advertising material which is designed or~~
18 ~~used to solicit or induce any persons to enter into any~~
19 ~~continuing care agreement. Any advertisement which lists or~~
20 ~~refers to the name of any person as being interested in, or~~
21 ~~connected with, the provider that is to perform the continuing~~
22 ~~care contract, shall clearly state the extent of any financial~~
23 ~~responsibility assumed by that person.~~

24 (3)~~(4)~~ This chapter does not impose liability, civil
25 or criminal, upon a person or publisher who is regularly
26 engaged in the business of publishing a bona fide newspaper or
27 operating a radio or television station and who, acting solely
28 in his official capacity, publishes an advertisement in good
29 faith and without knowledge that the advertisement or
30 publication constitutes a violation of this chapter.

31

1 ~~(4)~~(5) ~~It is unlawful~~ Any person who engages in the
2 ~~business of providing continuing care is subject to the~~
3 ~~provisions of part X of chapter 626, entitled "Unfair~~
4 ~~Insurance Trade Practices."~~ ~~It shall also be considered an~~
5 ~~unfair insurance trade practice~~ for any person, other than a
6 provider licensed pursuant to this chapter, to advertise or
7 market to the general public any product similar to continuing
8 care through the use of such terms as "life care," "continuing
9 care," or "guaranteed care for life," or similar terms, words,
10 or phrases.

11 ~~(5)~~(6) The provisions of this section shall control
12 over any conflicting provisions contained in part II or part
13 III of chapter 400.

14 Section 17. Subsection (1) of section 651.105, Florida
15 Statutes, 1996 Supplement, is amended to read:

16 651.105 Examination and inspections.--

17 (1) The department may at any time, and shall at least
18 once every 3 years, examine the business of any applicant for
19 a certificate of authority and any provider engaged in the
20 execution of care contracts ~~agreements~~ or engaged in the
21 performance of obligations under such contracts ~~agreements~~, in
22 the same manner as is provided for examination of insurance
23 companies pursuant to s. 624.316. Such examinations shall be
24 made by a representative or examiner designated by the
25 department, whose compensation will be fixed by the department
26 pursuant to s. 624.320. Routine examinations may be made by
27 having the necessary documents submitted to the department;
28 and, for this purpose, financial documents and records
29 conforming to commonly accepted accounting principles and
30 practices, as required under s. 651.026, will be deemed
31 adequate. The final written report of each such examination

1 shall be filed in the office of the department and, when so
2 filed, will constitute a public record. Any provider being
3 examined shall, upon request, give reasonable and timely
4 access to all of its records. The representative or examiner
5 designated by the department may at any time examine the
6 records and affairs and inspect the physical property of any
7 provider, whether in connection with a formal examination or
8 not.

9 Section 18. Section 651.106, Florida Statutes, is
10 amended to read:

11 651.106 Grounds for discretionary refusal, suspension,
12 or revocation of certificate of authority.--The department, in
13 its discretion, may deny, suspend, or revoke the provisional
14 certificate of authority or the certificate of authority of
15 any applicant or provider if it finds that any one or more of
16 the following grounds applicable to the applicant or provider
17 exist:

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

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

22 (3) Material misstatement, misrepresentation, or fraud
23 in obtaining the authority, or in attempting to obtain the
24 same.

25 (4) Demonstrated lack of fitness or trustworthiness.

26 (5) Fraudulent or dishonest practices of management in
27 the conduct of business.

28 (6) Misappropriation, conversion, or withholding of
29 moneys.

30
31

1 (7) Failure to comply with, or violation of, any
2 proper order or rule of the department or violation of any
3 provision of this chapter.

4 (8) The insolvent condition of the provider or the
5 provider's being in such condition or using such methods and
6 practices in the conduct of its business as to render its
7 further transactions in this state hazardous or injurious to
8 the public.

9 (9) Refusal by the provider to be examined or to
10 produce its accounts, records, and files for examination, or
11 refusal by any of its officers to give information with
12 respect to its affairs or to perform any other legal
13 obligation under this chapter when required by the department.

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

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

18 (12) Failure by the provider to meet the requirements
19 of this chapter for disclosure of information to residents
20 concerning the facility, its ownership, its management, its
21 development, or its financial condition or failure to honor
22 its continuing care contracts.

23 (13) Any cause for which issuance of the license could
24 have been refused had it then existed and been known to the
25 department.

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

31

1 (15) In the conduct of business under the license,
2 engaging in unfair methods of competition or in unfair or
3 deceptive acts or practices prohibited under part X of chapter
4 626.

5 (16) A pattern of bankrupt enterprises.

6
7 Revocation of a certificate of authority under this section
8 does not relieve a provider from the provider's obligation to
9 residents under the terms and conditions of any continuing
10 care contract between the provider and residents or the
11 provisions of this chapter. The provider shall continue to
12 file its annual statement and pay license fees to the
13 department as required under this chapter as if the
14 certificate of authority had continued in full force, but the
15 provider shall not issue any new continuing care contracts.
16 The department may seek an action in the circuit court of Leon
17 County to enforce the department's order and the provisions of
18 this section.

19 Section 19. Subsection (3) of section 651.107, Florida
20 Statutes, is amended to read:

21 651.107 Duration of suspension; obligations during
22 suspension period; reinstatement.--

23 (3) Upon expiration of the suspension period, if
24 within such period the certificate of authority has not
25 otherwise terminated, the provider's certificate of authority
26 shall automatically be reinstated unless the department finds
27 that the causes for the suspension have not been removed or
28 that the provider is otherwise not in compliance with the
29 requirements of this chapter. If not so automatically
30 reinstated, the certificate of authority shall be deemed to be
31 revoked ~~have expired~~ as of the end of the suspension period or

1 upon failure of the provider to continue the certificate
2 during the suspension period, whichever event first occurs.

3 Section 20. Section 651.1081, Florida Statutes, is
4 created to read:

5 651.1081 Remedies available in cases of unlawful
6 sale.--

7 (1) Upon a determination by the department that a
8 provider is or has been violating the provisions of this
9 chapter, the department may order the provider to cease sales
10 and make a rescission offer to the resident in accordance with
11 the provisions of this section.

12 (2) Upon such order by the department, every unlawful
13 sale made in violation of this chapter may be rescinded at the
14 election of the resident without penalty.

15 (3) No resident shall have the benefit of this section
16 who, within 30 days of receipt, has refused or failed to
17 accept an offer made in writing by the provider to rescind the
18 contract in question and to refund the full amount paid by the
19 resident with interest on the full amount paid for the
20 contract at the legal rate, pursuant to s. 55.03, for the
21 period from the date of payment by the resident to the date of
22 repayment, less the amount of the cost of care provided, if
23 applicable, and the amount of any costs specifically incurred
24 by the provider at the request of the resident and set forth
25 in writing in a separate addendum, signed by both parties to
26 the contract.

27 Section 21. Subsection (3) of section 651.111, Florida
28 Statutes, is amended to read:

29 651.111 Requests for inspections.--

30 (3) Upon receipt of a complaint, the department shall
31 make a preliminary review; and, unless the department

1 determines that the complaint is ~~willfully intended to harass~~
2 ~~a provider or is~~ without any reasonable basis, the department
3 shall make an ~~onsite~~ inspection, ~~or instruct the advisory~~
4 ~~council to act, within 10 business days after receiving the~~
5 ~~complaint.~~ ~~In either event,~~ The complainant shall be advised,
6 within 30 days after ~~of~~ the receipt of the complaint by the
7 department, of the proposed course of action of the
8 department.

9 Section 22. Section 651.114, Florida Statutes, is
10 amended to read:

11 651.114 Delinquency proceedings; remedial rights.--

12 (1) Upon determination by the department that a
13 provider is not in compliance with this chapter, the
14 department may notify the chairman of the advisory council,
15 who may assist the department in formulating a corrective
16 action plan to require the provider to come into compliance.

17 ~~(2) Upon notification by an escrow agent or another~~
18 ~~person designated to act in his place, or by the provider,~~
19 ~~that a portion of any funds required to be escrowed under the~~
20 ~~provisions of this chapter have been or are proposed to be~~
21 ~~released, and before invoking its powers under part I of~~
22 ~~chapter 631, the department shall notify the chairman of the~~
23 ~~advisory council of the release of the funds required to be~~
24 ~~escrowed under the provisions of this chapter.~~

25 (2)(3) A The provider shall make available to the
26 advisory council, no later than 30 ~~14~~ days after being
27 requested to do so by the advisory council, ~~all documents~~
28 ~~requested by the council, including, but not limited to:~~

29 ~~(a) An explanation of the use of, or proposed use of,~~
30 ~~the escrowed funds.~~

31

1 ~~(b)~~ a plan for obtaining compliance or restoring the
2 ~~funds and for future~~ solvency.

3 (3)~~(4)~~ The council shall convene no later than 30
4 days after notification ~~to~~:

5 (a) Consider and evaluate the plan submitted by the
6 provider.

7 (b) Discuss the problem and solutions with the
8 provider.

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

10 (d) Report its findings and recommendations to the
11 department, which may require additional modification of the
12 plan.

13 (4)~~(5)~~(a) Upon approval of a plan by the department,
14 the provider shall submit monthly a progress report to the
15 council or the department, or both, in a manner prescribed by
16 the department.

17 (b) After a period of 3 months, or at any earlier time
18 deemed necessary, the council shall evaluate the progress by
19 the provider of the facility and shall advise the department
20 of its findings.

21 (5)~~(6)~~ Should the department find that sufficient
22 grounds exist ~~as to a provider~~ for rehabilitation,
23 liquidation, conservation, reorganization, seizure, or summary
24 proceedings of an insurer as set forth in ss. 631.051,
25 631.061, and 631.071, the department may petition for an
26 appropriate court order or may pursue such other relief as is
27 afforded in part I of chapter 631. Before invoking its powers
28 under part I of chapter 631, the department shall notify the
29 chairman of the advisory council.

30 (6)~~(7)~~ In the event an order of rehabilitation,
31 liquidation, conservation, reorganization, seizure, or summary

1 proceeding has been entered against a provider, the department
2 is vested with all of the powers and duties it has under the
3 provisions of part I of chapter 631 in regard to delinquency
4 proceedings of insurance companies.

5 (7)~~(8)~~ If the financial condition of the continuing
6 care facility or provider is such that, if not modified or
7 corrected, its continued operation would result in insolvency,
8 the department may direct order the ~~facility or~~ provider to
9 formulate and file with the department a corrective action
10 plan. If the ~~continuing care facility or~~ provider fails to
11 submit a plan within 30 days after the department's directive
12 ~~order~~ or submits a plan that is insufficient to correct the
13 ~~facility's or provider's financial~~ condition, the department
14 may specify a plan and direct order the ~~facility or~~ provider
15 to implement the plan.

16 (8)~~(9)~~(a) The rights of the department described in
17 this section shall be subordinate to the rights of a trustee
18 or lender pursuant to the terms of a resolution, ordinance,
19 loan agreement, indenture of trust, mortgage, lease, security
20 agreement, or other instrument creating or securing bonds or
21 notes issued to finance a facility, and the department,
22 subject to the provisions of paragraph (c), shall not exercise
23 its remedial rights provided under ss. 651.018, 651.106,
24 651.108, 651.114, and 651.116 with respect to a facility that
25 is subject to a lien, mortgage, lease, or other encumbrance or
26 trust indenture securing bonds or notes issued in connection
27 with the financing of the facility, if the trustee or lender,
28 by inclusion or by amendment to the loan documents or by a
29 separate contract agreement with the department, agrees that
30 the rights of residents under a continuing care contract
31 ~~agreement~~ will be honored and will not be disturbed by a

1 foreclosure or conveyance in lieu thereof ~~of the facility~~ as
2 long as the resident:

3 1. Is current in the payment of all monetary
4 obligations required by the continuing care contract
5 ~~agreement~~;

6 2. Is in compliance and continues to comply with all
7 provisions of the resident's continuing care contract
8 ~~agreement~~; and

9 3. Has asserted no claim inconsistent with the rights
10 of the trustee or lender.

11 (b) Nothing in this subsection requires a trustee or
12 lender to:

13 1. Continue to engage in the marketing or resale of
14 new continuing care contracts ~~agreements~~;

15 2. Pay any rebate of entrance fees as may be required
16 by a resident's continuing care contract ~~agreement~~ as of the
17 date of acquisition of the facility by the trustee or lender
18 and until expiration of the period described in paragraph (d);

19 3. Be responsible for any act or omission of any owner
20 or operator of the facility arising prior to the acquisition
21 of the facility by the trustee or lender; or

22 4. Provide services to the residents to the extent
23 that the trustee or lender would be required to advance or
24 expend funds that have not been designated or set aside for
25 such purposes.

26 (c) Should the department determine, at any time
27 during the suspension of its remedial rights as provided in
28 paragraph (a), that the trustee or lender is not in compliance
29 with the provisions of paragraph (a), or that a lender or
30 trustee has assigned or has agreed to assign all or a portion
31 of a delinquent or defaulted loan to a third party without the

1 department's written consent, the department shall notify the
2 trustee or lender in writing of its determination, setting
3 forth the reasons giving rise to the determination and
4 specifying those remedial rights afforded to the department
5 which the department shall then reinstate.

6 (d) Upon acquisition of a facility by a trustee or
7 lender and evidence satisfactory to the department that the
8 requirements of paragraph (a) have been met, the department
9 shall issue a 90-day temporary certificate of authority
10 granting the trustee or lender the authority to engage in the
11 business of providing continuing care and to issue continuing
12 care contracts ~~agreements~~ subject to the department's right to
13 immediately suspend or revoke the temporary certificate of
14 authority if the department determines that any of the grounds
15 described in s. 651.106 apply to the trustee or lender or that
16 the terms of the agreement used as the basis for the issuance
17 of the temporary certificate of authority by the department
18 have not been or are not being met by the trustee or lender
19 since the date of acquisition.

20 Section 23. Subsections (1) and (3) of section
21 651.1151, Florida Statutes, are amended to read:

22 651.1151 Administrative, vendor, and management
23 contracts.--

24 (1) The department may require a provider to submit
25 any contract for administrative, vendor, or management
26 services if the department has information and belief that a
27 provider has entered into a contract with an affiliate, an
28 entity controlled by the provider, or an entity controlled by
29 an affiliate of the provider, which has not been disclosed to
30 the department or which contract requires the provider to pay
31

1 a fee that is unreasonably high in relation to the service
2 provided.

3 (3) Any contract with an affiliate, an entity
4 controlled by the provider, or an entity controlled by an
5 affiliate of the provider for administrative, vendor, or
6 management services entered into or renewed after October 1,
7 1991, shall contain a provision that the contract shall be
8 canceled upon issuance of an order by the department pursuant
9 to this section. A copy of the current management services
10 contract, pursuant to this section, if any, must be on file in
11 the marketing office or other accessible area to residents and
12 the appropriate resident organizations.

13 Section 24. Subsection (10) of section 651.118,
14 Florida Statutes, 1996 Supplement, is amended to read:

15 651.118 Agency for Health Care Administration;
16 certificates of need; sheltered beds; community beds.--

17 (10) Whenever the department ~~Agency for Health Care~~
18 ~~Administration~~ has been appointed receiver of a provider
19 pursuant to the provisions of part I of chapter 631, the
20 receiver may petition, upon approval of the court having
21 jurisdiction as being in the best interest of the residents,
22 the Agency for Health Care Administration for the conversion
23 of sheltered nursing home beds of the facility to community
24 nursing home beds. The agency shall, upon petition of the
25 receiver and through an expedited review, issue a certificate
26 of need converting the sheltered nursing home beds to
27 community nursing home beds. The court having jurisdiction of
28 the delinquency proceeding shall enforce the provisions of
29 this section.

30 Section 25. Paragraph (f) of subsection (5) of section
31 651.121, Florida Statutes, is amended to read:

