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1 A bill to be entitled
2 An act relating to continuing care retirement communities;
3 providing for the provision of continuing care at-home;
4 amending s. 651.011, F.S.; revising definitions; defining
5 "continuing care at-home," "nursing care," "personal
6 services," and "shelter"; amending s. 651.012, F.S.;
7 conforming a cross-reference; amending s. 651.013, F.S.;
8 conforming provisions to changes made by the act; amending
9 s. 651.021, F.S., relating to the requirement for
10 certificates of authority; requiring that a person in the
11 business of issuing continuing care at-home contracts
12 obtain a certificate of authority from the Office of
13 Insurance Regulation; requiring written approval from the
14 Office of Insurance Regulation for a 20 percent or more
15 expansion in the number of continuing care at-home
16 contracts; providing that an actuarial study may be
17 substituted for a feasibility study in specified
18 circumstances; amending s. 651.022, F.S., relating to
19 provisional certificates of authority; conforming
20 provisions to changes made by the act; amending s.
21 651.023, F.S., relating to an application for a
22 certificate of authority; specifying the content of the
23 feasibility study that is included in the application for
24 a certificate; requiring the same minimum reservation
25 requirements for continuing care at-home contracts as
26 continuing care contracts; requiring that a certain amount
27 of the entrance fee collected for contracts resulting from
28 an expansion be placed in an escrow account or on deposit

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29 with the department; amending ss. 651.033, 651.035, and
 30 651.055, F.S.; requiring a facility to provide proof of
 31 compliance with a residency contract; conforming
 32 provisions to changes made by the act; providing
 33 application relating to the entitlement of a prospective
 34 resident, resident, or resident's estate to interest on a
 35 deposit or entrance fee; creating s. 651.057, F.S.;
 36 providing additional requirements for continuing care at-
 37 home contracts; requiring that a provider who wishes to
 38 offer continuing care at-home contracts submit certain
 39 additional documents to the office; requiring that the
 40 provider comply with certain requirements; limiting the
 41 number of continuing care and continuing care at-home
 42 contracts at a facility based on the types of units at the
 43 facility; amending ss. 651.071, 651.091, 651.106, 651.114,
 44 651.118, 651.121, and 651.125, F.S.; conforming provisions
 45 to changes made by the act; providing an effective date.

46
 47 Be It Enacted by the Legislature of the State of Florida:

48
 49 Section 1. Section 651.011, Florida Statutes, is amended
 50 to read:

51 651.011 Definitions.—As used in ~~For the purposes of~~ this
 52 chapter, the term:

53 (1) "Advertising" means the dissemination of written,
 54 visual, or electronic information by a provider, or any person
 55 affiliated with or controlled by a provider, to potential
 56 residents or their representatives for the purpose of inducing

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57 | such persons to subscribe to or enter into a contract for
58 | continuing care or continuing care at-home ~~to reside in a~~
59 | ~~continuing care community that is subject to this chapter.~~

60 | (2) "Continuing care" or "care" means, pursuant to a
61 | contract, furnishing shelter and nursing care or personal
62 | services to a resident who resides in a facility ~~as defined in~~
63 | ~~s. 429.02, whether such nursing care or personal services are~~
64 | ~~provided in the facility or in another setting designated in~~ by
65 | ~~the contract for continuing care, by~~ to an individual not
66 | related by consanguinity or affinity to the resident ~~provider~~
67 | ~~furnishing such care, upon payment of an entrance fee. Other~~
68 | ~~personal services provided must be designated in the continuing~~
69 | ~~care contract. Contracts to provide continuing care include~~
70 | ~~agreements to provide care for any duration, including contracts~~
71 | ~~that are terminable by either party.~~

72 | (3) "Continuing Care Advisory Council" or "advisory
73 | council" means the council established in s. 651.121.

74 | (4) "Continuing care at-home" means, pursuant to a
75 | contract other than a contract described in subsection (2),
76 | furnishing to a resident who resides outside the facility the
77 | right to future access to shelter and nursing care or personal
78 | services, whether such services are provided in the facility or
79 | in another setting designated in the contract, by an individual
80 | not related by consanguinity or affinity to the resident, upon
81 | payment of an entrance fee.

82 | ~~(5)-(4)~~ "Entrance fee" means an initial or deferred payment
83 | of a sum of money or property made as full or partial payment
84 | for continuing care or continuing care at-home ~~to assure the~~

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85 ~~resident a place in a facility.~~ An accommodation fee, admission
86 fee, member fee, or other fee of similar form and application
87 are considered to be an entrance fee.

88 ~~(6)-(5)~~ "Facility" means a place where that provides
89 continuing care is furnished and may include one or more
90 physical plants on a primary or contiguous site or an
91 immediately accessible site. As used in this subsection, the
92 term "immediately accessible site" means a parcel of real
93 property separated by a reasonable distance from the facility as
94 measured along public thoroughfares, and the term "primary or
95 contiguous site" means the real property contemplated in the
96 feasibility study required by this chapter.

97 ~~(7)-(6)~~ "Generally accepted accounting principles" means
98 those accounting principles and practices adopted by the
99 Financial Accounting Standards Board and the American Institute
100 of Certified Public Accountants, including Statement of Position
101 90-8 with respect to any full year to which the statement
102 applies.

103 ~~(8)-(7)~~ "Insolvency" means the condition in which the
104 provider is unable to pay its obligations as they come due in
105 the normal course of business.

106 ~~(9)-(8)~~ "Licensed" means that the provider has obtained a
107 certificate of authority from the department.

108 (10) "Nursing care" means those services or acts rendered
109 to a resident by an individual licensed or certified pursuant to
110 chapter 464.

111 (11) "Personal services" has the same meaning as in s.
112 429.02.

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113 ~~(12)(9)~~ "Provider" means the owner or operator, whether a
 114 natural person, partnership or other unincorporated association,
 115 however organized, trust, or corporation, of an institution,
 116 building, residence, or other place, whether operated for profit
 117 or not, which owner or operator provides continuing care or
 118 continuing care at-home for a fixed or variable fee, or for any
 119 other remuneration of any type, whether fixed or variable, for
 120 the period of care, payable in a lump sum or lump sum and
 121 monthly maintenance charges or in installments. The term, ~~but~~
 122 does not apply to ~~mean~~ an entity that has existed and
 123 continuously operated a facility located on at least 63 acres in
 124 this state providing residential lodging to members and their
 125 spouses for at least 66 years on or before July 1, 1989, and has
 126 the residential capacity of 500 persons, is directly or
 127 indirectly owned or operated by a nationally recognized
 128 fraternal organization, is not open to the public, and accepts
 129 only its members and their spouses as residents.

130 ~~(13)(10)~~ "Records" means the permanent financial,
 131 directory, and personnel information and data maintained by a
 132 provider pursuant to this chapter.

133 ~~(14)(11)~~ "Resident" means a purchaser of, a nominee of, or
 134 a subscriber to a continuing care or continuing care at-home
 135 contract agreement. Such contract agreement does not give the
 136 resident a part ownership of the facility in which the resident
 137 is to reside, unless expressly provided ~~for~~ in the contract
 138 agreement.

139 (15) "Shelter" means an independent living unit, room,
 140 apartment, cottage, villa, personal care unit, nursing bed, or

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141 other living area within a facility set aside for the exclusive
142 use of one or more identified residents.

143 Section 2. Section 651.012, Florida Statutes, is amended
144 to read:

145 651.012 Exempted facility; written disclosure of
146 exemption.—Any facility exempted under ss. 632.637(1)(e) and
147 651.011(12)~~(9)~~ must provide written disclosure of such exemption
148 to each person admitted to the facility after October 1, 1996.
149 This disclosure must be written using language likely to be
150 understood by the person and must briefly explain the exemption.

151 Section 3. Section 651.013, Florida Statutes, is amended
152 to read:

153 651.013 Chapter exclusive; applicability of other laws.—

154 (1) Except as herein provided, providers of continuing
155 care and continuing care at-home ~~shall be~~ governed by the
156 provisions of this chapter and are ~~shall be~~ exempt from all
157 other provisions of the Florida Insurance Code.

158 (2) In addition to other applicable provisions cited in
159 this chapter, the office has the authority granted under ss.
160 624.302 and 624.303, 624.308-624.312, 624.319(1)-(3), 624.320-
161 624.321, 624.324, and 624.34 of the Florida Insurance Code to
162 regulate providers of continuing care and continuing care at-
163 home.

164 Section 4. Section 651.021, Florida Statutes, is amended
165 to read:

166 651.021 Certificate of authority required.—

167 (1) No person may engage in the business of providing
168 continuing care, ~~or~~ issuing contracts for continuing care or

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169 continuing care at-home, or constructing ~~agreements or construct~~
 170 a facility for the purpose of providing continuing care in this
 171 state without a certificate of authority ~~therefor~~ obtained from
 172 the office as provided in this chapter. This subsection does
 173 ~~shall not be construed to prohibit~~ the preparation of a ~~the~~
 174 construction site or construction of a model residence unit for
 175 marketing purposes, or both. The office may allow the purchase
 176 of an existing building for the purpose of providing continuing
 177 care if the office determines that the purchase is not being
 178 made to circumvent ~~for the purpose of circumventing~~ the
 179 prohibitions ~~contained~~ in this section.

180 (2) ~~(a)~~ Written approval must be obtained from the office
 181 before commencing ~~commencement~~ of construction or marketing for
 182 an ~~any~~ expansion of a certificated facility equivalent to the
 183 addition of at least 20 percent of existing units or 20 percent
 184 or more in the number of continuing care at-home contracts,
 185 ~~written approval must be obtained from the office.~~ This
 186 provision does not apply to construction for which a certificate
 187 of need from the Agency for Health Care Administration is
 188 required.

189 (a) For providers that offer both continuing care and
 190 continuing care at-home, the 20 percent is based on the total of
 191 both existing units and existing contracts for continuing care
 192 at-home. For purposes of this subsection, an expansion includes
 193 increases in the number of constructed units or continuing care
 194 at-home contracts or a combination of both.

195 (b) The application for such approval shall be on forms
 196 adopted by the commission and provided by the office. The

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197 application must ~~shall~~ include the feasibility study required by
 198 s. 651.022(3) or s. 651.023(1)(b) and such other information as
 199 required by s. 651.023. If the expansion is only for continuing
 200 care at-home contracts, an actuarial study prepared by an
 201 independent actuary in accordance with standards adopted by the
 202 American Academy of Actuaries which presents the financial
 203 impact of the expansion may be substituted for the feasibility
 204 study.

205 (c) In determining whether an expansion should be
 206 approved, the office shall use ~~utilize~~ the criteria provided in
 207 ss. 651.022(6) and 651.023 (4) ~~(2)~~.

208 Section 5. Paragraphs (d) and (g) of subsection (2) and
 209 subsections (4) and (6) of section 651.022, Florida Statutes,
 210 are amended to read:

211 651.022 Provisional certificate of authority;
 212 application.-

213 (2) The application for a provisional certificate of
 214 authority shall be on a form prescribed by the commission and
 215 shall contain the following information:

216 (d) The contracts ~~agreements~~ for continuing care and
 217 continuing care at-home to be entered into between the provider
 218 and residents which meet the minimum requirements of s. 651.055
 219 or s. 651.057 and which include a statement describing the
 220 procedures required by law relating to the release of escrowed
 221 entrance fees. Such statement may be furnished through an
 222 addendum.

223 (g) The forms of the ~~continuing care~~ residency contracts,
 224 reservation contracts, escrow agreements, and wait list

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225 contracts, if applicable, which are proposed to be used by the
226 provider in the furnishing of care. ~~If~~ The office shall approve
227 ~~finds that the continuing care~~ contracts and escrow agreements
228 that comply with ss. 651.023(1)(c), 651.033, ~~and~~ 651.055, and
229 651.057 ~~it shall approve them~~. Thereafter, no other form of
230 contract or agreement may be used by the provider until it has
231 been submitted to the office and approved.

232 (4) If an applicant has or proposes to have more than one
233 facility offering continuing care or continuing care at-home, a
234 separate provisional certificate of authority and a separate
235 certificate of authority must ~~shall~~ be obtained for each
236 facility.

237 (6) Within 45 days after ~~from~~ the date an application is
238 deemed ~~to be~~ complete, as set forth in paragraph (5)(b), the
239 office shall complete its review and ~~shall~~ issue a provisional
240 certificate of authority to the applicant based upon its review
241 and a determination that the application meets all requirements
242 of law, ~~and~~ that the feasibility study was based on sufficient
243 data and reasonable assumptions, and that the applicant will be
244 able to provide continuing care or continuing care at-home as
245 proposed and meet all financial obligations related to its
246 operations, including the financial requirements of this chapter
247 ~~to provide continuing care as proposed~~. If the application is
248 denied, the office shall notify the applicant in writing, citing
249 the specific failures to meet the provisions of this chapter.
250 Such denial entitles ~~shall entitle~~ the applicant to a hearing
251 pursuant to ~~the provisions of~~ chapter 120.

252 Section 6. Section 651.023, Florida Statutes, is amended

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253 to read:

254 651.023 Certificate of authority; application.—

255 (1) After issuance of a provisional certificate of

256 authority, the office shall issue to the holder of such

257 provisional certificate ~~of authority~~ a certificate of authority

258 ~~if, provided, however, that no certificate of authority shall be~~

259 ~~issued until~~ the holder of the ~~such~~ provisional certificate ~~of~~

260 ~~authority~~ provides the office with the following information:

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

262 information required to be filed under s. 651.022(2) in the

263 application for the ~~a~~ provisional certificate ~~of authority~~.

264 (b) A feasibility study prepared by an independent

265 consultant which contains all of the information required by s.

266 651.022(3) and ~~contains~~ financial forecasts or projections

267 prepared in accordance with standards adopted ~~promulgated~~ by the

268 American Institute of Certified Public Accountants or ~~financial~~

269 ~~forecasts or projections prepared~~ in accordance with standards

270 for feasibility studies or continuing care retirement

271 communities adopted ~~promulgated~~ by the Actuarial Standards

272 Board.

273 1. The study must also contain an independent evaluation

274 and examination opinion, or a comparable opinion acceptable to

275 the office, by the consultant who prepared the study, of the

276 underlying assumptions used as a basis for the forecasts or

277 projections in the study and that the assumptions are reasonable

278 and proper and ~~that~~ the project as proposed is feasible.

279 2. The study must ~~shall~~ take into account project costs,

280 actual marketing results to date and marketing projections,

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281 resident fees and charges, competition, resident contract
282 provisions, and any other factors which affect the feasibility
283 of operating the facility.

284 3. If the study is prepared by an independent certified
285 public accountant, it must contain an examination opinion for
286 the first 3 years of operations and financial projections having
287 a compilation opinion for the next 3 years. If the study is
288 prepared by an independent consulting actuary, it must contain
289 mortality and morbidity data and an actuary's signed opinion
290 that the project as proposed is feasible and that the study has
291 been prepared in accordance with standards adopted by the
292 American Academy of Actuaries.

293 (c) Subject to ~~the requirements of~~ subsection (4) ~~(2)~~, a
294 provider may submit an application for a certificate of
295 authority and any required exhibits upon submission of proof
296 that the project has a minimum of 30 percent of the units
297 reserved for which the provider is charging an entrance fee. ~~+~~
298 ~~however, This does provision shall~~ not apply to an application
299 for a certificate of authority for the acquisition of a facility
300 for which a certificate of authority was issued before ~~prior to~~
301 October 1, 1983, to a provider who subsequently becomes a debtor
302 in a case under the United States Bankruptcy Code, 11 U.S.C. ss.
303 101 et seq., or to a provider for which the department has been
304 appointed receiver pursuant to ~~the provisions of~~ part II of
305 chapter 631.

306 (d) Proof that commitments have been secured for both
307 construction financing and long-term financing or a documented
308 plan acceptable to the office has been adopted by the applicant

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309 for long-term financing.

310 (e) Proof that all conditions of the lender have been
311 satisfied to activate the commitment to disburse funds other
312 than the obtaining of the certificate of authority, the
313 completion of construction, or the closing of the purchase of
314 realty or buildings for the facility.

315 (f) Proof that the aggregate amount of entrance fees
316 received by or pledged to the applicant, plus anticipated
317 proceeds from any long-term financing commitment, plus funds
318 from all other sources in the actual possession of the
319 applicant, equal at least ~~not less than~~ 100 percent of the
320 aggregate cost of constructing or purchasing, equipping, and
321 furnishing the facility plus 100 percent of the anticipated
322 startup losses of the facility.

323 (g) Complete audited financial statements of the
324 applicant, prepared by an independent certified public
325 accountant in accordance with generally accepted accounting
326 principles, as of the date the applicant commenced business
327 operations or for the fiscal year that ended immediately
328 preceding the date of application, whichever is later, and
329 complete unaudited quarterly financial statements attested to by
330 the applicant after ~~subsequent to~~ the date of the last audit.

331 (h) Proof that the applicant has complied with the escrow
332 requirements of subsection (5) ~~(3)~~ or subsection (7) ~~(5)~~ and
333 will be able to comply with s. 651.035.

334 (i) Such other reasonable data, financial statements, and
335 pertinent information as the commission or office may require
336 with respect to the applicant or the facility, to determine the

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337 financial status of the facility and the management capabilities
338 of its managers and owners.

339 (2)~~(j)~~ Within 30 days after ~~of the~~ receipt of the
340 information required under subsection (1) ~~paragraphs (a)–(h)~~,
341 the office shall examine such information and ~~shall~~ notify the
342 provider in writing, specifically requesting any additional
343 information the office is permitted by law to require. Within 15
344 days after receipt of all of the requested additional
345 information, the office shall notify the provider in writing
346 that all of the requested information has been received and the
347 application is deemed to be complete as of the date of the
348 notice. Failure to ~~so~~ notify the applicant in writing within the
349 15-day period constitutes ~~shall constitute~~ acknowledgment by the
350 office that it has received all requested additional
351 information, and the application shall be deemed ~~to be~~ complete
352 for purposes of review on ~~upon~~ the date of ~~the~~ filing ~~of~~ all of
353 the required additional information.

354 (3)~~(k)~~ Within 45 days after an application is deemed
355 complete as set forth in subsection (2) ~~paragraph (j)~~, and upon
356 completion of the remaining requirements of this section, the
357 office shall complete its review and ~~shall~~ issue or deny a
358 certificate of authority ~~to the holder of a provisional~~
359 certificate of authority ~~a certificate of authority~~. If a
360 certificate of authority is denied, the office must ~~shall~~ notify
361 the holder of the provisional certificate ~~of authority~~ in
362 writing, citing the specific failures to satisfy the provisions
363 of this chapter. If denied, the holder of the provisional
364 certificate is ~~of authority~~ ~~shall be~~ entitled to an

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365 administrative hearing pursuant to chapter 120.

366 ~~(4)(2)(a)~~ The office shall issue a certificate of
367 authority upon determining ~~its determination~~ that the applicant
368 meets all requirements of law and has submitted all of the
369 information required by this section, that all escrow
370 requirements have been satisfied, and that the fees prescribed
371 in s. 651.015(2) have been paid.

372 (a) Notwithstanding satisfaction of the 30-percent minimum
373 reservation requirement of paragraph (1)(c), no certificate of
374 authority shall be issued until the project has a minimum of 50
375 percent of the units reserved for which the provider is charging
376 an entrance fee, and proof ~~thereof~~ is provided to the office. If
377 a provider offering continuing care at-home is applying for a
378 certificate of authority or approval of an expansion pursuant to
379 s. 651.021(2), the same minimum reservation requirements must be
380 met for the continuing care and continuing care at-home
381 contracts, independently of each other.

382 (b) In order for a unit to be considered reserved under
383 this section, the provider must collect a minimum deposit of 10
384 percent of the then-current entrance fee for that unit, and ~~must~~
385 assess a forfeiture penalty of 2 percent of the entrance fee due
386 to termination of the reservation contract after 30 days for any
387 reason other than the death or serious illness of the resident,
388 the failure of the provider to meet its obligations under the
389 reservation contract, or other circumstances beyond the control
390 of the resident that equitably entitle the resident to a refund
391 of the resident's deposit. The reservation contract must ~~shall~~
392 state the cancellation policy and the terms of the continuing

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393 | care or continuing care at-home contract to be entered into.

394 | ~~(5)(3)~~ Up to ~~No more than~~ 25 percent of the moneys paid
395 | for all or any part of an initial entrance fee may be included
396 | or pledged for the construction or purchase of the facility, ~~or~~
397 | ~~included or pledged~~ as security for long-term financing. The
398 | term "initial entrance fee" means the total entrance fee charged
399 | by the facility to the first occupant of a unit.

400 | (a) A minimum of 75 percent of the moneys paid for all or
401 | any part of an initial entrance fee collected for continuing
402 | care or continuing care at-home shall be placed in an escrow
403 | account or on deposit with the department as prescribed in s.
404 | 651.033.

405 | (b) For an expansion as provided in s. 651.021(2), a
406 | minimum of 75 percent of the moneys paid for all or any part of
407 | an initial entrance fee collected for continuing care and 50
408 | percent of the moneys paid for all or any part of an initial fee
409 | collected for continuing care at-home shall be placed in an
410 | escrow account or on deposit with the department as prescribed
411 | in s. 651.033.

412 | ~~(6)(4)~~ The provider is ~~shall be~~ entitled to secure release
413 | of the moneys held in escrow within 7 days after receipt by the
414 | office of an affidavit from the provider, along with appropriate
415 | copies to verify, and notification to the escrow agent by
416 | certified mail, that the following conditions have been
417 | satisfied:

418 | (a) A certificate of occupancy has been issued.

419 | (b) Payment in full has been received for at least ~~no less~~
420 | ~~than~~ 70 percent of the total units of a phase or of the total of

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421 the combined phases constructed. If a provider offering
422 continuing care at-home is applying for a release of escrowed
423 entrance fees, the same minimum requirement must be met for the
424 continuing care and continuing care at-home contracts,
425 independently of each other.

426 (c) The consultant who prepared the feasibility study
427 required by this section or a substitute approved by the office
428 certifies within 12 months before the date of filing for office
429 approval that there has been no material adverse change in
430 status with regard to the feasibility study, ~~with such statement~~
431 ~~dated not more than 12 months from the date of filing for office~~
432 ~~approval~~. If a material adverse change exists ~~should exist~~ at
433 the time of submission, ~~then~~ sufficient information acceptable
434 to the office and the feasibility consultant must ~~shall~~ be
435 submitted which remedies the adverse condition.

436 (d) Proof that commitments have been secured or a
437 documented plan adopted by the applicant has been approved by
438 the office for long-term financing.

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

442 (f) Proof as to the intended application of the proceeds
443 upon release and proof that the entrance fees when released will
444 be applied as represented to the office.

445
446 Notwithstanding ~~any provision of~~ chapter 120, no person, other
447 than the provider, the escrow agent, and the office, may ~~shall~~
448 have a substantial interest in any office decision regarding

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449 release of escrow funds in any proceedings under chapter 120 or
450 this chapter regarding release of escrow funds.

451 ~~(7)(5)~~ In lieu of the provider fulfilling the requirements
452 in subsection ~~(5) (3)~~ and paragraphs ~~(6)(4)~~(b) and (d), the
453 office may authorize the release of escrowed funds to retire all
454 outstanding debts on the facility and equipment upon application
455 of the provider and upon the provider's showing that the
456 provider will grant to the residents a first mortgage on the
457 land, buildings, and equipment that constitute the facility, and
458 that the provider has satisfied ~~satisfies the requirements of~~
459 paragraphs ~~(6)(4)~~(a), (c), and (e). Such mortgage shall secure
460 the refund of the entrance fee in the amount required by this
461 chapter. The granting of such mortgage is ~~shall be~~ subject to
462 the following:

463 (a) The first mortgage is ~~shall be~~ granted to an
464 independent trust that ~~which~~ is beneficially held by the
465 residents. The document creating the trust must include ~~shall~~
466 ~~contain~~ a provision that ~~it~~ agrees to an annual audit and will
467 furnish to the office all information the office may reasonably
468 require. The mortgage may secure payment on bonds issued to the
469 residents or trustee. Such bonds are ~~shall be~~ redeemable after
470 termination of the residency contract in the amount and manner
471 required by this chapter for the refund of an entrance fee.

472 (b) Before granting a first mortgage to the residents, all
473 construction must ~~shall~~ be substantially completed and
474 substantially all equipment must ~~shall~~ be purchased. No part of
475 the entrance fees may be pledged as security for a construction
476 loan or otherwise used for construction expenses before the

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477 completion of construction.

478 (c) If the provider is leasing the land or buildings used
479 by the facility, the leasehold interest must ~~shall~~ be for a term
480 of at least 30 years.

481 ~~(8)(6)~~ The timeframes provided under s. 651.022(5) and (6)
482 apply to applications submitted under s. 651.021(2). The office
483 may not issue a certificate of authority ~~under this chapter~~ to a
484 ~~any~~ facility that ~~which~~ does not have a component that ~~which~~ is
485 to be licensed pursuant to part II of chapter 400 or to part I
486 of chapter 429 or that does ~~which will~~ not offer personal
487 services or nursing services through written contractual
488 agreement. A ~~Any~~ written contractual agreement must be disclosed
489 in the ~~continuing care~~ contract for continuing care or
490 continuing care at-home and is subject to the provisions of s.
491 651.1151, relating to administrative, vendor, and management
492 contracts.

493 ~~(9)(7)~~ The office may ~~shall~~ not approve an application
494 that ~~which~~ includes in the plan of financing any encumbrance of
495 the operating reserves required by this chapter.

496 Section 7. Paragraphs (a) and (d) of subsection (3) of
497 section 651.033, Florida Statutes, are amended to read:

498 651.033 Escrow accounts.—

499 (3) In addition, when entrance fees are required to be
500 deposited in an escrow account pursuant to s. 651.022, s.
501 651.023, or s. 651.055:

502 (a) The provider shall deliver to the resident a written
503 receipt. The receipt must ~~shall~~ show the payor's name and
504 address, the date, the price of the care contract, and the

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505 amount of money paid. A copy of each receipt, together with the
506 funds, shall be deposited with the escrow agent or as provided
507 in paragraph (c). The escrow agent shall release such funds to
508 the provider ~~upon the expiration of~~ 7 days after the date of
509 receipt of the funds by the escrow agent if the provider,
510 operating under a certificate of authority issued by the office,
511 has met the requirements of s. 651.023 (6) ~~(4)~~. However, if the
512 resident rescinds the contract within the 7-day period, the
513 escrow agent shall release the escrowed fees to the resident.

514 (d) A provider may assess a nonrefundable fee, which is
515 separate from the entrance fee, for processing a prospective
516 resident's application for continuing care or continuing care
517 at-home.

518 Section 8. Subsections (2) and (3) of section 651.035,
519 Florida Statutes, are amended to read:

520 651.035 Minimum liquid reserve requirements.—

521 (2) (a) In facilities where not all residents are under
522 continuing care or continuing care at-home contracts, the
523 reserve requirements of subsection (1) shall be computed only
524 with respect to the proportional share of operating expenses
525 that ~~which~~ are applicable to residents ~~as defined in s. 651.011~~.
526 For purposes of this calculation, the proportional share shall
527 be based upon the ratio of residents under continuing care or
528 continuing care at-home contracts to those residents who do not
529 hold such contracts.

530 (b) In facilities that have voluntarily and permanently
531 discontinued marketing continuing care and continuing care at-
532 home contracts, the office may allow a reduced debt service

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533 | reserve as required in subsection (1) based upon the ratio of
 534 | residents under continuing care or continuing care at-home
 535 | contracts to those residents who do not hold such contracts if
 536 | the office finds that such reduction is not inconsistent with
 537 | the security protections intended by this chapter. In making
 538 | this determination, the office may consider such factors as the
 539 | financial condition of the facility, the provisions of ~~the~~
 540 | outstanding continuing care and continuing care at-home
 541 | contracts, the ratio of residents under continuing care or
 542 | continuing care at-home contracts ~~agreements~~ to those residents
 543 | who do not hold such contracts ~~a continuing care contract~~, the
 544 | current occupancy rates, the previous sales and marketing
 545 | efforts, the life expectancy of the remaining residents ~~contract~~
 546 | ~~holders~~, and the written policies of the board of directors of
 547 | the provider or a similar board.

548 | (3) If principal and interest payments are paid to a trust
 549 | that is beneficially held by the residents as described in s.
 550 | 651.023 (7) ~~(5)~~, the office may waive all or any portion of the
 551 | escrow requirements for mortgage principal and interest
 552 | contained in subsection (1) if the office finds that such waiver
 553 | is not inconsistent with the security protections intended by
 554 | this chapter.

555 | Section 9. Section 651.055, Florida Statutes, is amended
 556 | to read:

557 | 651.055 Continuing care contracts; right to rescind.—

558 | (1) Each continuing care contract and each addendum to
 559 | such contract shall be submitted to and approved by the office
 560 | before ~~prior to~~ its use in this state. Thereafter, no other form

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561 of contract shall be used by the provider until ~~unless~~ it has
562 been submitted to and approved by the office. Each contract must
563 ~~shall~~:

564 (a) Provide for the continuing care of only one resident,
565 or for two persons occupying space designed for double
566 occupancy, under appropriate regulations established by the
567 provider, and must ~~shall~~ list all properties transferred and
568 their market value at the time of transfer, including donations,
569 subscriptions, fees, and any other amounts paid or payable by,
570 or on behalf of, the resident or residents.

571 (b) Specify all services that ~~which~~ are to be provided by
572 the provider to each resident, including, in detail, all items
573 that ~~which~~ each resident will receive, whether the items will be
574 provided for a designated time period or for life, and whether
575 the services will be available on the premises or at another
576 specified location. The provider shall indicate which services
577 or items are included in the contract for continuing care and
578 which services or items are made available at or by the facility
579 at extra charge. Such items ~~shall~~ include, but are not limited
580 to, food, shelter, personal services or nursing care, drugs,
581 burial, and incidentals.

582 (c) Describe the terms and conditions under which a
583 contract for continuing care may be canceled by the provider or
584 by a resident and the conditions, if any, under which all or any
585 portion of the entrance fee will be refunded in the event of
586 cancellation of the contract by the provider or by the resident,
587 including the effect of any change in the health or financial
588 condition of a person between the date of entering a contract

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589 | for continuing care and the date of initial occupancy of a
590 | living unit by that person.

591 | (d) Describe the health and financial conditions required
592 | for a person to be accepted as a resident and to continue as a
593 | resident, once accepted, including the effect of any change in
594 | the health or financial condition of the person between the date
595 | of submitting an application for admission to the facility and
596 | entering into a continuing care contract. If a prospective
597 | resident signs a contract but postpones moving into the
598 | facility, the individual is deemed to be occupying a unit at the
599 | facility when he or she pays the entrance fee or any portion of
600 | the fee, other than a reservation deposit, and begins making
601 | monthly maintenance fee payments. Such resident may rescind the
602 | contract and receive a full refund of any funds paid, without
603 | penalty or forfeiture, within 7 days after executing the
604 | contract as specified in subsection (2).

605 | (e) Describe the circumstances under which the resident
606 | will be permitted to remain in the facility in the event of
607 | financial difficulties of the resident. The stated policy may
608 | not be less than the terms stated in s. 651.061.

609 | (f) State the fees that will be charged if the resident
610 | marries while at the designated facility, the terms concerning
611 | the entry of a spouse to the facility, and the consequences if
612 | the spouse does not meet the requirements for entry.

613 | (g) Provide that the contract may be canceled by giving at
614 | least 30 days' written notice of cancellation by the provider,
615 | the resident, or the person who provided the transfer of
616 | property or funds for the care of such resident. ‡ However, if a

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617 contract is canceled because there has been a good faith
618 determination that a resident is a danger to himself or herself
619 or others, only such notice as is reasonable under the
620 circumstances is required.

621 1. The contract must also provide in clear and
622 understandable language, in print no smaller than the largest
623 type used in the body of the contract, the terms governing the
624 refund of any portion of the entrance fee.

625 2. For a resident whose contract with the facility
626 provides that the resident does not receive a transferable
627 membership or ownership right in the facility, and who has
628 occupied his or her unit, the refund shall be calculated on a
629 pro rata basis with the facility retaining up to 2 percent per
630 month of occupancy by the resident and up to a 5 percent ~~5-~~
631 ~~percent~~ processing fee. Such refund must be paid within 120 days
632 after giving the notice of intention to cancel.

633 3. In addition to a processing fee, if the contract
634 provides for the facility to retain up to 1 percent per month of
635 occupancy by the resident, it may provide that such refund will
636 be paid from the proceeds of the next entrance fees received by
637 the provider for units for which there are no prior claims by
638 any resident until paid in full or, if the provider has
639 discontinued marketing continuing care contracts, within 200
640 days after the date of notice.

641 4. Unless subsection (5) applies, for any prospective
642 resident, regardless of whether or not such a resident receives
643 a transferable membership or ownership right in the facility,
644 who cancels the contract before occupancy of the unit, the

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645 entire amount paid toward the entrance fee shall be refunded,
646 less a processing fee of up to 5 percent of the entire entrance
647 fee; however, the processing fee may not exceed the amount paid
648 by the prospective resident. Such refund must be paid within 60
649 days after giving ~~the~~ notice of intention to cancel. For a
650 resident who has occupied his or her unit and who has received a
651 transferable membership or ownership right in the facility, the
652 foregoing refund provisions do not apply but are deemed
653 satisfied by the acquisition or receipt of a transferable
654 membership or an ownership right in the facility. The provider
655 may not charge any fee for the transfer of membership or sale of
656 an ownership right.

657 (h) State the terms under which a contract is canceled by
658 the death of the resident. These terms may contain a provision
659 that, upon the death of a resident, the entrance fee of such
660 resident is ~~shall be~~ considered earned and becomes ~~shall become~~
661 the property of the provider. If ~~When~~ the unit is shared, the
662 conditions with respect to the effect of the death or removal of
663 one of the residents must ~~shall~~ be included in the contract.

664 (i) Describe the policies that ~~which~~ may lead to changes
665 in monthly recurring and nonrecurring charges or fees for goods
666 and services received. The contract must ~~shall~~ provide for
667 advance notice to the resident, of at least ~~not less than~~ 60
668 days, before any change in fees or charges or the scope of care
669 or services is ~~may be~~ effective, except for changes required by
670 state or federal assistance programs.

671 (j) Provide that charges for care paid in one lump sum may
672 ~~shall~~ not be increased or changed during the duration of the

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673 | agreed upon care, except for changes required by state or
674 | federal assistance programs.

675 | (k) Specify whether ~~or not~~ the facility is, or is
676 | affiliated with, a religious, nonprofit, or proprietary
677 | organization or management entity; the extent to which the
678 | affiliate organization will be responsible for the financial and
679 | contractual obligations of the provider; and the provisions of
680 | the federal Internal Revenue Code, if any, under which the
681 | provider or affiliate is exempt from the payment of federal
682 | income tax.

683 | (2) A resident has the right to rescind a continuing care
684 | contract and receive a full refund of any funds paid, without
685 | penalty or forfeiture, within 7 days after executing the
686 | contract. A resident may not be required to move into the
687 | facility designated in the contract before the expiration of the
688 | 7-day period. During the 7-day period, the resident's funds must
689 | be held in an escrow account unless otherwise requested by the
690 | resident pursuant to s. 651.033(3)(c).

691 | (3) The contract must ~~shall~~ include or ~~shall~~ be
692 | accompanied by a statement, printed in boldfaced type, which
693 | reads: "This facility and all other continuing care facilities
694 | in the State of Florida are regulated by chapter 651, Florida
695 | Statutes. A copy of the law is on file in this facility. The law
696 | gives you or your legal representative the right to inspect our
697 | most recent financial statement and inspection report before
698 | signing the contract."

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

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701 provider shall present a typewritten or printed copy of the
702 contract to the prospective resident and all other parties to
703 the contract. The provider shall secure a signed, dated
704 statement from each party to the contract certifying that a copy
705 of the contract with the specified attachment, as required
706 pursuant to this chapter, was received.

707 (5) Except for a resident who postpones moving into the
708 facility but is deemed to have occupied a unit as described in
709 paragraph (1)(d), if a prospective resident dies before
710 occupying the facility or, through illness, injury, or
711 incapacity, is precluded from becoming a resident under the
712 terms of the continuing care contract, the contract is
713 automatically canceled, and the prospective resident or his or
714 her legal representative shall receive a full refund of all
715 moneys paid to the facility, except those costs specifically
716 incurred by the facility at the request of the prospective
717 resident and set forth in writing in a separate addendum, signed
718 by both parties, to the contract.

719 (6) In order to comply with this section, a provider may
720 furnish information not contained in his or her continuing care
721 contract through an addendum.

722 (7) Contracts to provide continuing care, including
723 contracts that are terminable by either party, may include
724 agreements to provide care for any duration.

725 (8)~~(7)~~ Those contracts entered into after ~~subsequent to~~
726 July 1, 1977, and before the issuance of a certificate of
727 authority to the provider are valid and binding upon both
728 parties in accordance with their terms. Within 30 days after

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729 receipt of a letter from the office notifying the provider of a
 730 noncompliant residency contract, the provider shall file a new
 731 residency contract for approval that complies with Florida law.
 732 Pending review and approval of the new residency contract, the
 733 provider may continue to use the previously approved contract.

734 (9) A prospective resident, resident, or resident's estate
 735 is not entitled to interest of any type on a deposit or entrance
 736 fee unless interest is specified in the continuing care
 737 contract. This subsection is remedial in nature and clarifies
 738 existing law.

739 (10) ~~(8)~~ The provisions of this section shall control over
 740 any conflicting provisions contained in part II of chapter 400
 741 or in part I of chapter 429.

742 Section 10. Section 651.057, Florida Statutes, is created
 743 to read:

744 651.057 Continuing care at-home contracts.-

745 (1) In addition to the requirements of s. 651.055, a
 746 provider offering contracts for continuing care at-home must:

747 (a) Disclose the following in the continuing care at-home
 748 contract:

749 1. Whether transportation will be provided to residents
 750 when traveling to and from the facility for services;

751 2. That the provider has no liability for residents
 752 residing outside the facility beyond the delivery of services
 753 specified in the contract and future access to nursing care or
 754 personal services at the facility or in another setting
 755 designated in the contract;

756 3. The mechanism for monitoring residents who live outside

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757 the facility;

758 4. The process that will be followed to establish priority
759 if a resident wishes to exercise his or her right to move into
760 the facility; and

761 5. The policy that will be followed if a resident living
762 outside the facility relocates to a different residence and no
763 longer avails himself or herself of services provided by the
764 facility.

765 (b) Ensure that persons employed by or under contract with
766 the provider who assist in the delivery of services to residents
767 residing outside the facility are appropriately licensed or
768 certified as required by law.

769 (c) Include operating expenses for continuing care at-home
770 contracts in the calculation of the operating reserve required
771 by s. 651.035(1)(c).

772 (d) Include the operating activities for continuing care
773 at-home contracts in the total operation of the facility when
774 submitting financial reports to the office as required by s.
775 651.026.

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

778 (a) Submit a business plan to the office with the
779 following information:

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

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

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

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

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

796 (c) Comply with the requirements of s. 651.021(2), except
797 that an actuarial study may be substituted for the feasibility
798 study; and

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

800 (3) Contracts to provide continuing care at-home,
801 including contracts that are terminable by either party, may
802 include agreements to provide care for any duration.

803 (4) A provider offering continuing care at-home contracts
804 must, at a minimum, have a facility that is licensed under this
805 chapter and has accommodations for independent living which are
806 primarily intended for residents who do not require staff
807 supervision. The facility need not offer assisted living units
808 licensed under part I of chapter 429 or nursing home units
809 licensed under part II of chapter 400 in order to be able to
810 offer continuing care at-home contracts.

811 (a) The combined number of outstanding continuing care
812 (CCRC) and continuing care at-home (CCAH) contracts allowed at

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813 the facility may be the greater of:

814 1. One and one-half times the combined number of
815 independent living units (ILU), assisted living units (ALF) that
816 are licensed under part I of chapter 429, and nursing home units
817 licensed under part II of chapter 400 at the facility; or

818 2. Four times the combined number of assisted living units
819 (ALF) that are licensed under part I of chapter 429 and nursing
820 home units that are licensed under part II of chapter 400 at
821 that facility.

822 (b) The number of independent living units at the facility
823 must be equal to or greater than 10 percent of the initial 100
824 continuing care (CCRC) and continuing care at-home (CAAH)
825 contracts and 5 percent of the combined number of outstanding
826 continuing care (CCRC) and continuing care at-home (CAAH)
827 contracts in excess of 100 issued by that facility.

828 Section 11. Subsection (1) of section 651.071, Florida
829 Statutes, is amended to read:

830 651.071 Contracts as preferred claims on liquidation or
831 receivership.—

832 (1) In the event of receivership or liquidation
833 proceedings against a provider, all continuing care and
834 continuing care at-home contracts executed by a provider shall
835 be deemed preferred claims against all assets owned by the
836 provider; however, such claims are ~~shall be~~ subordinate to those
837 priority claims set forth in s. 631.271 and any secured claim ~~as~~
838 ~~defined in s. 631.011.~~

839 Section 12. Paragraph (h) of subsection (2) and subsection
840 (3) of section 651.091, Florida Statutes, are amended to read:

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841 651.091 Availability, distribution, and posting of reports
842 and records; requirement of full disclosure.—

843 (2) Every continuing care facility shall:

844 (h) Upon request, deliver to the president or chair of the
845 residents' council a copy of any newly approved continuing care
846 or continuing care at-home contract within 30 days after
847 approval by the office.

848 (3) Before entering into a contract to furnish continuing
849 care or continuing care at-home, the provider undertaking to
850 furnish the care, or the agent of the provider, shall make full
851 disclosure, and provide copies of the disclosure documents to
852 the prospective resident or his or her legal representative, of
853 the following information:

854 (a) The contract to furnish continuing care or continuing
855 care at-home.

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

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

859 (d) In keeping with the intent of this subsection relating
860 to disclosure, the provider shall make available for review,
861 master plans approved by the provider's governing board and any
862 plans for expansion or phased development, to the extent that
863 the availability of such plans do ~~will~~ not put at risk real
864 estate, financing, acquisition, negotiations, or other
865 implementation of operational plans and thus jeopardize the
866 success of negotiations, operations, and development.

867 (e) Copies of the rules and regulations of the facility
868 and an explanation of the responsibilities of the resident.

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869 (f) The policy of the facility with respect to admission
870 to and discharge from the various levels of health care offered
871 by the facility.

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

876 (h) A copy of s. 651.071.

877 (i) A copy of the resident's rights as described in s.
878 651.083.

879 Section 13. Section 651.106, Florida Statutes, is amended
880 to read:

881 651.106 Grounds for discretionary refusal, suspension, or
882 revocation of certificate of authority.—The office, ~~in its~~
883 ~~discretion,~~ may deny, suspend, or revoke the provisional
884 certificate of authority or the certificate of authority of any
885 applicant or provider if it finds that any one or more of the
886 following grounds applicable to the applicant or provider exist:

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

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

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

893 (4) Demonstrated lack of fitness or trustworthiness.

894 (5) Fraudulent or dishonest practices of management in the
895 conduct of business.

896 (6) Misappropriation, conversion, or withholding of

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- 897 moneys.
- 898 (7) Failure to comply with, or violation of, any proper
899 order or rule of the office or commission or violation of any
900 provision of this chapter.
- 901 (8) The insolvent condition of the provider or the
902 provider's being in such condition or using such methods and
903 practices in the conduct of its business as to render its
904 further transactions in this state hazardous or injurious to the
905 public.
- 906 (9) Refusal by the provider to be examined or to produce
907 its accounts, records, and files for examination, or refusal by
908 any of its officers to give information with respect to its
909 affairs or to perform any other legal obligation under this
910 chapter when required by the office.
- 911 (10) Failure by the provider to comply with the
912 requirements of s. 651.026 or s. 651.033.
- 913 (11) Failure by the provider to maintain escrow accounts
914 or funds as required by this chapter.
- 915 (12) Failure by the provider to meet the requirements of
916 this chapter for disclosure of information to residents
917 concerning the facility, its ownership, its management, its
918 development, or its financial condition or failure to honor its
919 continuing care or continuing care at-home contracts.
- 920 (13) Any cause for which issuance of the license could
921 have been refused had it then existed and been known to the
922 office.
- 923 (14) Having been found guilty of, or having pleaded guilty
924 or nolo contendere to, a felony in this state or any other

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925 state, without regard to whether a judgment or conviction has
926 been entered by the court having jurisdiction of such cases.

927 (15) In the conduct of business under the license,
928 engaging in unfair methods of competition or in unfair or
929 deceptive acts or practices prohibited under part IX of chapter
930 626.

931 (16) A pattern of bankrupt enterprises.

932
933 Revocation of a certificate of authority under this section does
934 not relieve a provider from the provider's obligation to
935 residents under the terms and conditions of any continuing care
936 or continuing care at-home contract between the provider and
937 residents or the provisions of this chapter. The provider shall
938 continue to file its annual statement and pay license fees to
939 the office as required under this chapter as if the certificate
940 of authority had continued in full force, but the provider shall
941 not issue any new ~~continuing care~~ contracts. The office may seek
942 an action in the circuit court of Leon County to enforce the
943 office's order and the provisions of this section.

944 Section 14. Subsection (8) of section 651.114, Florida
945 Statutes, is amended to read:

946 651.114 Delinquency proceedings; remedial rights.—

947 (8) (a) The rights of the office described in this section
948 are ~~shall be~~ subordinate to the rights of a trustee or lender
949 pursuant to the terms of a resolution, ordinance, loan
950 agreement, indenture of trust, mortgage, lease, security
951 agreement, or other instrument creating or securing bonds or
952 notes issued to finance a facility, and the office, subject to

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953 the provisions of paragraph (c), shall not exercise its remedial
954 rights provided under this section and ss. 651.018, 651.106,
955 651.108, and 651.116 with respect to a facility that is subject
956 to a lien, mortgage, lease, or other encumbrance or trust
957 indenture securing bonds or notes issued in connection with the
958 financing of the facility, if the trustee or lender, by
959 inclusion or by amendment to the loan documents or by a separate
960 contract with the office, agrees that the rights of residents
961 under a continuing care or continuing care at-home contract will
962 be honored and will not be disturbed by a foreclosure or
963 conveyance in lieu thereof as long as the resident:

964 1. Is current in the payment of all monetary obligations
965 required by the ~~continuing care~~ contract;

966 2. Is in compliance and continues to comply with all
967 provisions of the ~~resident's continuing care~~ contract; and

968 3. Has asserted no claim inconsistent with the rights of
969 the trustee or lender.

970 (b) ~~Nothing in~~ This subsection does not require ~~requires~~ a
971 trustee or lender to:

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

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

979 3. Be responsible for any act or omission of any owner or
980 operator of the facility arising before ~~prior to~~ the acquisition

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981 of the facility by the trustee or lender; or

982 4. Provide services to the residents to the extent that
983 the trustee or lender would be required to advance or expend
984 funds that have not been designated or set aside for such
985 purposes.

986 (c) Should the office determine, at any time during the
987 suspension of its remedial rights as provided in paragraph (a),
988 that the trustee or lender is not in compliance with ~~the~~
989 ~~provisions of~~ paragraph (a), or that a lender or trustee has
990 assigned or has agreed to assign all or a portion of a
991 delinquent or defaulted loan to a third party without the
992 office's written consent, the office shall notify the trustee or
993 lender in writing of its determination, setting forth the
994 reasons giving rise to the determination and specifying those
995 remedial rights afforded to the office which the office shall
996 then reinstate.

997 (d) Upon acquisition of a facility by a trustee or lender
998 and evidence satisfactory to the office that the requirements of
999 paragraph (a) have been met, the office shall issue a 90-day
1000 temporary certificate of authority granting the trustee or
1001 lender the authority to engage in the business of providing
1002 continuing care or continuing care at-home and to issue
1003 continuing care or continuing care at-home contracts subject to
1004 the office's right to immediately suspend or revoke the
1005 temporary certificate of authority if the office determines that
1006 any of the grounds described in s. 651.106 apply to the trustee
1007 or lender or that the terms of the contract ~~agreement~~ used as
1008 the basis for the issuance of the temporary certificate of

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1009 authority by the office have not been or are not being met by
1010 the trustee or lender since the date of acquisition.

1011 Section 15. Subsections (4), (7), (9), and (11) of section
1012 651.118, Florida Statutes, are amended to read:

1013 651.118 Agency for Health Care Administration;
1014 certificates of need; sheltered beds; community beds.-

1015 (4) Not including the residences of residents residing
1016 outside the facility pursuant to a continuing care at-home
1017 contract, the Agency for Health Care Administration shall
1018 approve one sheltered nursing home bed for every four proposed
1019 residential units, including those that are licensed under part
1020 I of chapter 429, in the continuing care facility unless the
1021 provider demonstrates the need for a lesser number of sheltered
1022 nursing home beds based on proposed utilization by prospective
1023 residents or demonstrates the need for additional sheltered
1024 nursing home beds based on actual utilization and demand by
1025 current residents.

1026 (7) Notwithstanding ~~the provisions of~~ subsection (2), at
1027 the discretion of the ~~continuing care~~ provider, sheltered
1028 nursing home beds may be used for persons who are not residents
1029 of the continuing care facility and who are not parties to a
1030 continuing care contract for ~~a period of~~ up to 5 years after the
1031 date of issuance of the initial nursing home license. A provider
1032 whose 5-year period has expired or is expiring may request an
1033 extension from the Agency for Health Care Administration ~~for an~~
1034 ~~extension,~~ not to exceed 30 percent of the total sheltered
1035 nursing home beds or 30 sheltered beds, whichever is greater, if
1036 the utilization by residents of the nursing home facility in the

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1037 sheltered beds will not generate sufficient income to cover
1038 nursing home facility expenses, as evidenced by one of the
1039 following:

1040 (a) The nursing home facility has a net loss for the most
1041 recent fiscal year as determined under generally accepted
1042 accounting principles, excluding the effects of extraordinary or
1043 unusual items, as demonstrated in the most recently audited
1044 financial statement. ~~;~~ ~~or~~

1045 (b) The nursing home facility would have had a pro forma
1046 loss for the most recent fiscal year, excluding the effects of
1047 extraordinary or unusual items, if revenues were reduced by the
1048 amount of revenues from persons in sheltered beds who were not
1049 residents, as reported ~~on~~ by a certified public accountant.

1050
1051 The Agency for Health Care Administration may ~~shall be~~
1052 ~~authorized to~~ grant an extension to the provider based on the
1053 evidence required in this subsection. The Agency for Health Care
1054 Administration may request a continuing care facility to use up
1055 to 25 percent of the patient days generated by new admissions of
1056 nonresidents during the extension period to serve Medicaid
1057 recipients for those beds authorized for extended use if there
1058 is a demonstrated need in the respective service area and if
1059 funds are available. A provider who obtains an extension is
1060 prohibited from applying for additional sheltered beds under ~~the~~
1061 ~~provision of~~ subsection (2), unless additional residential units
1062 are built or the provider can demonstrate need by continuing
1063 care facility residents to the Agency for Health Care
1064 Administration. The 5-year limit does not apply to up to five

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1065 sheltered beds designated for inpatient hospice care as part of
 1066 a contractual arrangement with a hospice licensed under part IV
 1067 of chapter 400. A continuing care facility that uses such beds
 1068 after the 5-year period shall report such use to the Agency for
 1069 Health Care Administration. For purposes of this subsection,
 1070 "resident" means a person who, upon admission to the continuing
 1071 care facility, initially resides in a part of the continuing
 1072 care facility not licensed under part II of chapter 400, or who
 1073 contracts for continuing care at-home.

1074 (9) This section does not preclude a ~~continuing care~~
 1075 provider from applying to the Agency for Health Care
 1076 Administration for a certificate of need for community nursing
 1077 home beds or a combination of community and sheltered nursing
 1078 home beds. Any nursing home bed located in a continuing care
 1079 facility which ~~that~~ is or has been issued for nonrestrictive use
 1080 retains ~~shall retain~~ its legal status as a community nursing
 1081 home bed unless the provider requests a change in status. Any
 1082 nursing home bed located in a continuing care facility and not
 1083 issued as a sheltered nursing home bed before ~~prior to~~ 1979 must
 1084 be classified as a community bed. The Agency for Health Care
 1085 Administration may require continuing care facilities to submit
 1086 bed utilization reports for the purpose of determining community
 1087 and sheltered nursing home bed inventories based on historical
 1088 utilization by residents and nonresidents.

1089 (11) For a provider issued a provisional certificate of
 1090 authority after July 1, 1986, to operate a facility not
 1091 previously regulated under this chapter, the following criteria
 1092 must ~~shall~~ be met in order to obtain a certificate of need for

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1093 sheltered beds pursuant to subsections (2), (3), (4), (5), (6),
1094 and (7):

1095 (a) Seventy percent or more of the current residents hold
1096 continuing care or continuing care at-home contracts ~~agreements~~
1097 ~~pursuant to s. 651.011(2)~~ or, if the facility is not occupied,
1098 70 percent or more of the prospective residents will hold such
1099 contracts ~~continuing care agreements pursuant to s. 651.011(2)~~
1100 as projected in the feasibility study and demonstrated by the
1101 provider's marketing practices; and

1102 (b) The continuing care or continuing care at-home
1103 contracts ~~agreements~~ entered into or to be entered into by 70
1104 percent or more of the current residents or prospective
1105 residents must ~~pursuant to s. 651.011(2)~~ shall provide nursing
1106 home care for a minimum of 360 cumulative days, and such
1107 residents ~~the holders of the continuing care agreements~~ shall be
1108 charged at rates that ~~which~~ are 80 percent or less than the
1109 rates charged by the provider to persons receiving nursing home
1110 care who have not entered into such contracts ~~continuing care~~
1111 ~~agreements pursuant to s. 651.011(2)~~.

1112 Section 16. Subsection (1) of section 651.121, Florida
1113 Statutes, is amended to read:

1114 651.121 Continuing Care Advisory Council.—

1115 (1) The Continuing Care Advisory Council to the office is
1116 created consisting ~~to consist~~ of 10 members who are residents of
1117 this state appointed by the Governor and geographically
1118 representative of this state. Three members shall be
1119 administrators of facilities that hold valid certificates of
1120 authority under this chapter and shall have been actively

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1121 engaged in the offering of continuing care contracts ~~agreements~~
1122 in this state for 5 years before appointment. The remaining
1123 members include:

1124 (a) A representative of the business community whose
1125 expertise is in the area of management.

1126 (b) A representative of the financial community who is not
1127 a facility owner or administrator.

1128 (c) A certified public accountant.

1129 (d) An attorney.

1130 (e) Three residents who hold continuing care or continuing
1131 care at-home contracts ~~agreements~~ with a facility certified in
1132 this state.

1133 Section 17. Subsection (1) of section 651.125, Florida
1134 Statutes, is amended to read:

1135 651.125 Criminal penalties; injunctive relief.—

1136 (1) Any person who maintains, enters into, or, as manager
1137 or officer or in any other administrative capacity, assists in
1138 entering into, maintaining, or performing any continuing care or
1139 continuing care at-home contract ~~agreement~~ subject to this
1140 chapter without doing so in pursuance of a valid certificate of
1141 authority or renewal thereof, as contemplated by or provided in
1142 this chapter, or who otherwise violates any provision of this
1143 chapter or rule adopted in pursuance of this chapter, commits ~~is~~
1144 ~~guilty of~~ a felony of the third degree, punishable as provided
1145 in s. 775.082 or s. 775.083. Each violation of this chapter
1146 constitutes a separate offense.

1147 Section 18. This act shall take effect July 1, 2011.