

1 A bill to be entitled
2 An act relating to continuing care contracts;
3 providing a short title; amending s. 651.011, F.S.;
4 defining and redefining terms; amending s. 651.013,
5 F.S.; revising applicability of certain provisions of
6 the Florida Insurance Code as to providers of
7 continuing care and continuing care at-home; providing
8 legislative intent; amending s. 651.014, F.S.; making
9 technical changes; amending s. 651.019, F.S.;
10 requiring all new financing or refinancing to be in
11 the best interest of facilities and their residents;
12 revising requirements for providers relating to
13 financing and refinancing; amending s. 651.021, F.S.;
14 revising requirements for obtaining a certain written
15 approval from the Office of Insurance Regulation
16 relating to construction or marketing for an expansion
17 of a certificated facility; revising criteria used by
18 the office in determining whether to approve an
19 expansion; requiring certain entrance fees and
20 reservation deposits to be held according to certain
21 escrow requirements; amending s. 651.022, F.S.;
22 revising the required information on applications for
23 provisional certificates of authority; revising
24 requirements for amending such applications; revising
25 construction and the office's procedures for reviewing

26 | such applications; amending s. 651.023, F.S.; revising
27 | the information required to be provided to the office
28 | for the issuance of certificates of authority;
29 | revising construction; revising the office's
30 | procedures for reviewing applications for such
31 | certificates; revising the office's requirements for
32 | issuing such certificates; amending s. 651.024, F.S.;
33 | revising requirements for persons who seek to acquire
34 | or assume specified ownership, possession, or control
35 | over providers or providers' assets; authorizing such
36 | persons to rebut presumptions of control by making
37 | specified filings with the office; creating s.
38 | 651.0245, F.S.; providing application requirements and
39 | procedures for the simultaneous acquisition of
40 | facilities and the issuance of certificates of
41 | authority; specifying conditions under which the
42 | office may disapprove acquisitions or must approve
43 | acquisitions; prohibiting the office from approving
44 | certain applications; authorizing persons to rebut
45 | presumptions of control by making specified filings
46 | with the office; defining terms; providing
47 | construction; authorizing the Financial Services
48 | Commission to adopt rules; creating s. 651.025, F.S.;
49 | prohibiting certain persons who served in specified
50 | capacities with certain insolvent facilities or

51 providers from thereafter serving in such capacities
52 under certain circumstances; amending s. 651.0261,
53 F.S.; requiring providers to file specified quarterly
54 statements at specified intervals; authorizing the
55 office to waive the requirement under certain
56 circumstances; revising the office's authority to
57 require, under certain circumstances, providers and
58 facilities to file monthly statements and certain
59 other information; authorizing the commission to adopt
60 rules; creating s. 651.0271, F.S.; specifying
61 requirements for actuarial opinions by providers, if
62 required by the office; specifying the circumstances
63 under which the office may require a provider to
64 submit an actuarial opinion; amending s. 651.033,
65 F.S.; revising requirements for escrow accounts that
66 are required for specified funds; prohibiting escrow
67 agents from releasing or permitting the transfer of
68 funds under certain circumstances; creating s.
69 651.034, F.S.; specifying contractual liability
70 reserve requirements for providers; specifying
71 allowable investments for such reserves; requiring
72 providers to submit to the office actuarial opinions
73 and actuarial studies at specified intervals;
74 providing requirements for such opinions and studies;
75 authorizing disciplinary actions by the office;

76 | authorizing the commission to adopt rules; amending s.
77 | 651.035, F.S.; revising, as of a specified date, the
78 | minimum liquid reserve requirements of providers;
79 | providing applicability; authorizing the office to
80 | order the immediate transfer of specified funds under
81 | certain circumstances; authorizing providers to
82 | withdraw funds from certain debt service reserves
83 | under certain circumstances; providing procedures for
84 | the office to provide approval or disapproval for such
85 | withdrawals; conforming provisions to changes made by
86 | the act; creating s. 651.036, F.S.; defining terms;
87 | requiring providers to obtain the office's approval
88 | before paying certain dividends or distributions of
89 | assets; providing notice requirements for providers
90 | intending to pay such dividends or distributions;
91 | specifying conditions under which the office may
92 | approve such dividends or distributions; providing
93 | criminal penalties for certain acts by persons of the
94 | provider relating to dividends or distributions;
95 | authorizing administrative actions by the office;
96 | creating s. 651.043, F.S.; defining the term
97 | "management"; providing requirements for contracts for
98 | management; providing requirements and procedures for
99 | providers to notify the office of certain changes in
100 | management; providing procedures for the office's

101 review and approval or disapproval of such changes;
102 specifying conditions under which the office may
103 disapprove new management and order providers to
104 cancel such contracts; requiring disapproved
105 management to be removed within a specified timeframe;
106 authorizing disciplinary action by the office under
107 certain circumstances; requiring providers to
108 immediately remove management under certain
109 circumstances; providing for construction; amending s.
110 651.051, F.S.; requiring all records and assets of
111 providers to be maintained in this state; providing
112 for construction relating to certain electronic
113 storage of records; amending s. 651.055, F.S.;
114 revising requirements for continuing care contracts;
115 conforming a cross-reference; specifying the required
116 timeframe for a certain refund; creating s. 651.058,
117 F.S.; specifying grounds upon which the office may
118 disapprove continuing care contracts; creating s.
119 651.064, F.S.; prohibiting persons from unfair and
120 deceptive trade practices relating to continuing care
121 contracts; providing civil penalties; specifying such
122 unfair and deceptive trade practices; authorizing
123 certain trade practices; providing for construction;
124 amending s. 651.071, F.S.; revising construction
125 relating to continuing care and continuing care at-

126 home contracts in the event of receivership or
127 liquidation proceedings against providers; amending s.
128 651.091, F.S.; revising disclosure requirements for
129 continuing care facilities and certain providers;
130 conforming a cross-reference; amending s. 651.105,
131 F.S.; revising applicability of certain provisions of
132 the Florida Insurance Code relating to examinations
133 and investigations; authorizing the office, as of a
134 specified date, to examine providers and their
135 affiliates for a specified purpose; defining the term
136 "enterprise risk"; creating s. 651.1055, F.S.;
137 requiring providers to cooperate with the office,
138 including responding to correspondence and providing
139 certain information; amending s. 651.106, F.S.;
140 revising the office's authority in certain
141 disciplinary actions; revising grounds for such
142 actions against applicants or providers; creating s.
143 651.1065, F.S.; prohibiting certain persons of
144 impaired or insolvent continuing care retirement
145 communities from permitting such communities to
146 solicit or accept new continuing care contracts under
147 certain circumstances; providing a criminal penalty;
148 amending s. 651.107, F.S.; revising the period of
149 suspension of certificates of authority; revising
150 certain conditions under which such suspensions are

151 rescinded and the certificates are reinstated;
152 amending s. 651.114, F.S.; revising procedures and
153 requirements of providers and the office in
154 delinquency proceedings of providers; providing for
155 and revising construction; revising certain authority
156 relating to a certain petition for a court order from
157 the office to the Department of Financial Services;
158 revising conditions under which the department or
159 office are vested with certain powers and duties
160 relating to delinquency proceedings; revising notice
161 requirements for providers in delinquency proceedings;
162 creating s. 651.1141, F.S.; providing that certain
163 violations constitute an immediate danger to the
164 public health, safety, or welfare; authorizing the
165 office to issue immediate final orders for such
166 violations; amending s. 651.1151, F.S.; requiring
167 providers to submit to the office contracts for
168 administrative, vendor, or management services with
169 certain entities; authorizing the office to disapprove
170 such contracts under certain circumstances; deleting
171 an obsolete date; amending s. 651.119, F.S.; providing
172 that the department is the creditor of liquidated
173 facilities or facilities pending liquidation for the
174 purpose of providing certain entrance fee refunds;
175 authorizing the office to seek voluntary contributions

176 from and levy certain assessments against providers'
177 contractual liability reserves; revising the limit on
178 assessments that the office may assess from certain
179 reserves for specified purposes; revising requirements
180 for the office in modifying providers' minimum liquid
181 reserve requirements; specifying the allocation and
182 maximum refund amounts payable to displaced residents;
183 defining the term "entrance fee refund"; amending s.
184 651.125, F.S.; providing a criminal penalty for a
185 person who takes certain actions without having a
186 valid provisional certificate of authority; making a
187 technical change; amending s. 651.131, F.S.; revising
188 applicability of certain limitations of judgment
189 amounts resulting from actions under prior law;
190 repealing s. 651.132, F.S., relating to amendment or
191 renewal of existing contracts; amending s. 651.012,
192 F.S.; conforming a cross-reference; providing
193 effective dates.

194
195 Be It Enacted by the Legislature of the State of Florida:

196
197 Section 1. This act may be cited as the "Protecting
198 Florida Seniors from Financial Fraud Act."

199 Section 2. Section 651.011, Florida Statutes, is amended
200 to read:

201 651.011 Definitions.—As used in this chapter, the term:

202 (1) "Actuarial opinion" means an opinion issued by an

203 actuary in accordance with the standards of practice adopted by

204 the Actuarial Standards Board.

205 (2) "Actuarial study" means an analysis addressing the

206 current actuarial financial condition of a provider or the

207 projected actuarial financial condition of an applicant, which

208 is performed by an actuary in accordance with accepted actuarial

209 principles and the standards of practice adopted by the

210 Actuarial Standards Board, and which includes all of the

211 following:

212 (a) An actuarial report.

213 (b) A statement of actuarial opinion.

214 (c) An actuarial balance sheet.

215 (d) A cohort pricing analysis.

216 (e) A cash-flow projection.

217 (f) A description of the actuarial methodology, formulas,

218 and assumptions used in the study.

219 (g) Other information as reasonably requested by the

220 office.

221 (3) "Actuary" means an individual who is qualified to sign

222 an actuarial opinion in accordance with the American Academy of

223 Actuaries' qualification standards and who is a member in good

224 standing of the American Academy of Actuaries.

225 (4)~~(1)~~ "Advertising" means the dissemination of written,

226 visual, or electronic information by a provider, or any person
227 affiliated with or controlled by a provider, to potential
228 residents or their representatives for the purpose of inducing
229 such persons to subscribe to or enter into a contract for
230 continuing care or continuing care at-home.

231 (5)~~(2)~~ "Continuing care" or "care" means, pursuant to a
232 contract, furnishing shelter and nursing care or personal
233 services to a resident who resides in a facility, whether such
234 nursing care or personal services are provided in the facility
235 or in another setting designated in the contract for continuing
236 care, by an individual not related by consanguinity or affinity
237 to the resident, upon payment of an entrance fee.

238 (6)~~(3)~~ "Continuing Care Advisory Council" or "advisory
239 council" means the council established in s. 651.121.

240 (7)~~(4)~~ "Continuing care at-home" means, pursuant to a
241 contract other than a contract described in subsection (5) ~~(2)~~,
242 furnishing to a resident who resides outside the facility the
243 right to future access to shelter and nursing care or personal
244 services, whether such services are provided in the facility or
245 in another setting designated in the contract, by an individual
246 not related by consanguinity or affinity to the resident, upon
247 payment of an entrance fee.

248 (8)~~(5)~~ "Entrance fee" means an initial or deferred payment
249 of a sum of money or property made as full or partial payment
250 for continuing care or continuing care at-home. An accommodation

251 fee, admission fee, member fee, or other fee of similar form and
252 application are considered to be an entrance fee.

253 (9)~~(6)~~ "Facility" means a place where continuing care is
254 furnished and may include one or more physical plants on a
255 primary or contiguous site or an immediately accessible site. As
256 used in this subsection, the term "immediately accessible site"
257 means a parcel of real property separated by a reasonable
258 distance from the facility as measured along public
259 thoroughfares, and the term "primary or contiguous site" means
260 the real property contemplated in the feasibility study required
261 by this chapter.

262 (10)~~(7)~~ "Generally accepted accounting principles" means
263 those accounting principles and practices adopted by the
264 Financial Accounting Standards Board and the American Institute
265 of Certified Public Accountants, including Statement of Position
266 90-8 with respect to any full year to which the statement
267 applies.

268 (11) "Impaired" means the provider is not in compliance
269 with the capital reserve requirement under s. 651.035(1)(c).

270 (12)~~(8)~~ "Insolvency" means the condition in which the
271 provider is unable to pay its obligations as they come due in
272 the normal course of business.

273 (13)~~(9)~~ "Licensed" means that the provider has obtained a
274 certificate of authority from the department.

275 (14) "Manager" or "management company" means a person who

276 administers the day-to-day business operations of a facility for
277 a provider, subject to the policies, directives, and oversight
278 of the provider.

279 ~~(15)-(10)~~ "Nursing care" means those services or acts
280 rendered to a resident by an individual licensed or certified
281 pursuant to chapter 464.

282 ~~(16)-(11)~~ "Personal services" has the same meaning as in s.
283 429.02.

284 ~~(17)-(12)~~ "Provider" means:

285 (a) For provisional certificates of authority applied for
286 on or after July 1, 2017, the corporation, whether operated for
287 profit or not, that:

288 1. Owns and operates a facility ~~the owner or operator,~~
289 ~~whether a natural person, partnership or other unincorporated~~
290 ~~association, however organized, trust, or corporation, of an~~
291 ~~institution, building, residence, or other place, whether~~
292 ~~operated for profit or not, which owner or operator~~ and that
293 provides continuing care for a fixed or variable fee, or for any
294 other remuneration of any type, whether fixed or variable, for
295 the period of care, payable in a lump sum or lump sum and
296 monthly maintenance charges or in installments; or

297 2. Provides ~~or~~ continuing care at-home for a fixed or
298 variable fee, or for any other remuneration of any type, whether
299 fixed or variable, for the period of care, payable in a lump sum
300 or lump sum and monthly maintenance charges or in installments.

301 (b) For a provisional certificate of authority or a
302 certificate of authority applied for before July 1, 2017, and
303 subsequently issued, the owner or operator, whether a natural
304 person, partnership, other unincorporated association however
305 organized, trust, or corporation of an institution, building,
306 residence, or other place, whether operated for profit or not,
307 which owner or operator provides continuing care or continuing
308 care at-home for a fixed or variable fee, or for any other
309 remuneration of any type, whether fixed or variable, for the
310 period of care, payable in a lump sum or lump sum and monthly
311 maintenance charges or in installments.

312

313 The term does not apply to an entity that has existed and
314 continuously operated a facility located on at least 63 acres in
315 this state providing residential lodging to members and their
316 spouses for at least 66 years on or before July 1, 1989, and has
317 the residential capacity of 500 persons, is directly or
318 indirectly owned or operated by a nationally recognized
319 fraternal organization, is not open to the public, and accepts
320 only its members and their spouses as residents.

321 (18)-(13)- "Records" means all documents, correspondence,
322 and the permanent financial, directory, and personnel
323 information and data maintained by a provider pursuant to this
324 chapter, regardless of the physical form, characteristics, or
325 means of transmission.

326 ~~(19)~~~~(14)~~ "Resident" means a purchaser of, a nominee of, or
327 a subscriber to a continuing care or continuing care at-home
328 contract. Such contract does not give the resident a part
329 ownership of the facility in which the resident is to reside,
330 unless expressly provided in the contract.

331 ~~(20)~~~~(15)~~ "Shelter" means an independent living unit, room,
332 apartment, cottage, villa, personal care unit, nursing bed, or
333 other living area within a facility set aside for the exclusive
334 use of one or more identified residents.

335 Section 3. Section 651.013, Florida Statutes, is amended
336 to read:

337 651.013 Chapter exclusive; applicability of other laws;
338 legislative intent.—

339 (1) Except as herein provided, providers of continuing
340 care and continuing care at-home are governed by the provisions
341 of this chapter and are exempt from all other provisions of the
342 Florida Insurance Code.

343 (2) In addition to other applicable provisions cited in
344 this chapter, the office has the authority granted under ss.
345 624.302 and 624.303, 624.307-624.312, ~~624.308-624.312~~, 624.318,
346 624.319(1)-(3), 624.320-624.321, 624.324, ~~and~~ 624.34, and
347 624.422 of the Florida Insurance Code to regulate providers of
348 continuing care and continuing care at-home.

349 (3) The Legislature recognizes that continuing care
350 communities have become an important option for the long-term

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351 care needs for many elderly residents of this state. The
352 Legislature further recognizes that, in exchange for an entrance
353 fee or monthly maintenance charges, a continuing care contract
354 guarantees continuing care or the refund of a portion of the
355 entrance fee upon death or other specified circumstance.
356 Continuing care providers contract for services substantially
357 similar to life, health, and long-term care insurance products.
358 Therefore, the Legislature finds that providers of continuing
359 care and continuing care at-home are engaged in the business of
360 insurance and must be regulated and governed by this chapter.

361 Section 4. Section 651.014, Florida Statutes, is amended
362 to read:

363 651.014 Other insurance business not authorized. ~~Nothing~~
364 ~~in~~ The Florida Insurance Code or this chapter may not shall be
365 deemed to authorize any provider of a continuing care facility
366 to transact any insurance business other than that of continuing
367 care insurance or otherwise to engage in any other type of
368 insurance, unless it is authorized under a certificate of
369 authority issued by the office under the provisions of the
370 Florida Insurance Code.

371 Section 5. Section 651.019, Florida Statutes, is amended
372 to read:

373 651.019 New financing, additional financing, or
374 refinancing.-

375 (1) All new financing or refinancing must be in the best

376 interest of the facility and its residents ~~After issuance of a~~
377 ~~certificate of authority, the provider shall submit to the~~
378 ~~office a general outline, including intended use of proceeds,~~
379 ~~with respect to any new financing, additional financing, or~~
380 ~~refinancing at least 30 days before the closing date of such~~
381 ~~financing transaction.~~

382 (2) The provider shall:

383 (a) Provide notice to the residents' council of any new
384 financing or refinancing at least 30 days before the closing
385 date of such financing or refinancing transaction. The notice
386 must include a general outline and the intended use of proceeds,
387 as well as any financing agreements and any related documents,
388 escrow or trust agreements, and statistical or financial data
389 prepared in support of such financing or refinancing
390 transaction; or

391 (b) If the facility does not have a residents' council,
392 inform all residents in writing that the notice required by
393 paragraph (a) is available for review and specify where the
394 notice may be accessed ~~furnish any information the office may~~
395 ~~reasonably request in connection with any new financing,~~
396 ~~additional financing, or refinancing, including, but not limited~~
397 ~~to, the financing agreements and any related documents, escrow~~
398 ~~or trust agreements, and statistical or financial data.~~

399 (3) Within 30 days after the closing date of such
400 financing or refinancing transaction, the provider shall also

401 submit to the office copies of executed financing documents and
402 a copy of all documents required to be submitted to the
403 residents' council under paragraph (2) (a) within 30 days after
404 the closing date.

405 Section 6. Paragraphs (b) and (c) of subsection (2) of
406 section 651.021, Florida Statutes, are amended, and subsection
407 (3) is added to that section, to read:

408 651.021 Certificate of authority required.—

409 (2) Written approval must be obtained from the office
410 before commencing construction or marketing for an expansion of
411 a certificated facility equivalent to the addition of at least
412 20 percent of existing units or 20 percent or more in the number
413 of continuing care at-home contracts. This provision does not
414 apply to construction for which a certificate of need from the
415 Agency for Health Care Administration is required.

416 (b) The application for such approval shall be on forms
417 adopted by the commission and provided by the office. The
418 application must include the feasibility study required by ~~s.~~
419 ~~651.022(3) or~~ s. 651.023(1) (b) and such other information as
420 required by s. 651.023 or as reasonably requested by the office.
421 If the expansion is only for continuing care at-home contracts,
422 an actuarial study prepared by an independent actuary in
423 accordance with standards adopted by the American Academy of
424 Actuaries which presents the financial impact of the expansion
425 may be substituted for the feasibility study.

426 (c) In determining whether an expansion should be
427 approved, the office shall use the criteria provided in s.
428 651.022(6) ~~ss. 651.022(6) and 651.023(4)~~.

429 (3) Entrance fees and reservation deposits collected for
430 expansions must be held pursuant to the escrow requirements of
431 s. 651.023(5) and (6).

432 Section 7. Subsection (2), paragraph (b) of subsection
433 (5), and subsections (6) and (8) of section 651.022, Florida
434 Statutes, are amended to read:

435 651.022 Provisional certificate of authority;
436 application.—

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

440 (a) ~~If the applicant or provider is a corporation, A copy~~
441 ~~of the articles of incorporation and bylaws; if the applicant or~~
442 ~~provider is a partnership or other unincorporated association, a~~
443 ~~copy of the partnership agreement, articles of association, or~~
444 ~~other membership agreement; and, if the applicant or provider is~~
445 ~~a trust, a copy of the trust agreement or instrument.~~

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

447 1. ~~The proprietor, if the applicant or provider is an~~
448 ~~individual.~~

449 2. ~~Every partner or member, if the applicant or provider~~
450 ~~is a partnership or other unincorporated association, however~~

451 ~~organized, having fewer than 50 partners or members, together~~
452 ~~with the business name and address of the partnership or other~~
453 ~~organization.~~

454 ~~3. The principal partners or members, if the applicant or~~
455 ~~provider is a partnership or other unincorporated association,~~
456 ~~however organized, having 50 or more partners or members,~~
457 ~~together with the business name and business address of the~~
458 ~~partnership or other organization. If such unincorporated~~
459 ~~organization has officers and a board of directors, the full~~
460 ~~name and business address of each officer and director may be~~
461 ~~set forth in lieu of the full name and business address of its~~
462 ~~principal members.~~

463 ~~1.4. The corporation and each officer and director~~
464 ~~thereof, if the applicant or provider is a corporation.~~

465 ~~5. Every trustee and officer, if the applicant or provider~~
466 ~~is a trust.~~

467 ~~2.6. The manager, whether an individual, corporation,~~
468 ~~partnership, or association.~~

469 ~~3.7. Any stockholder holding at least a 10 percent~~
470 ~~interest in the operations of the facility in which the care is~~
471 ~~to be offered.~~

472 ~~4.8. Any person whose name is required to be provided in~~
473 ~~the application under this paragraph and who owns any interest~~
474 ~~in or receives any remuneration from, directly or indirectly,~~
475 ~~any professional service firm, association, trust, partnership,~~

476 or corporation providing goods, leases, or services to the
477 facility for which the application is made, with a real or
478 anticipated value of \$10,000 or more, and the name and address
479 of the professional service firm, association, trust,
480 partnership, or corporation in which such interest is held. The
481 applicant shall describe such goods, leases, or services and the
482 probable cost to the facility or provider and shall describe why
483 such goods, leases, or services should not be purchased from an
484 independent entity.

485 ~~5.9.~~ Any person, corporation, partnership, association, or
486 trust owning land or property leased to the facility, along with
487 a copy of the lease agreement.

488 ~~6.10.~~ Any affiliated parent or subsidiary corporation or
489 partnership.

490 (c)1. Evidence that the persons named in paragraph (b) are
491 competent and trustworthy ~~applicant is reputable and of~~
492 ~~responsible character. If the applicant is a firm, association,~~
493 ~~organization, partnership, business trust, corporation, or~~
494 ~~company,~~ The form must further ~~shall~~ require evidence that the
495 ~~members or shareholders are reputable and of responsible~~
496 ~~character, and the person in charge of providing care under a~~
497 certificate of authority is competent and trustworthy ~~shall~~
498 ~~likewise be required to produce evidence of being reputable and~~
499 ~~of responsible character.~~

500 2. Evidence satisfactory to the office of the ability of

501 the applicant to comply with ~~the provisions of~~ this chapter and
 502 with rules adopted by the commission pursuant to this chapter.

503 3. A statement of whether a person identified in the
 504 application for a provisional certificate of authority or the
 505 administrator or manager of the facility, if such person has
 506 been designated, or any such person living in the same location:

507 a. Has been convicted of a felony or has pleaded nolo
 508 contendere to a felony charge, or has been held liable or has
 509 been enjoined in a civil action by final judgment, if the felony
 510 or civil action involved fraud, embezzlement, fraudulent
 511 conversion, or misappropriation of property.

512 b. Is subject to a currently effective injunctive or
 513 restrictive order or federal or state administrative order
 514 relating to business activity or health care as a result of an
 515 action brought by a public agency or department, including,
 516 without limitation, an action affecting a license under chapter
 517 400 or chapter 429.

518
 519 The statement must ~~shall~~ set forth the court or agency, the date
 520 of conviction or judgment, and the penalty imposed or damages
 521 assessed, or the date, nature, and issuer of the order. Before
 522 determining whether a provisional certificate of authority is to
 523 be issued, the office may make an inquiry to determine the
 524 accuracy of the information submitted pursuant to subparagraphs
 525 1., 2., and 3. ~~1. and 2.~~

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

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

534 (f) Such other reasonable data, financial statements, and
535 pertinent information as the commission or office may reasonably
536 require with respect to the provider or the facility, including
537 the most recent audited financial statements of comparable
538 facilities currently or previously owned, managed, or developed
539 by the applicant or its principal, to assist in determining the
540 financial viability of the project and the management
541 capabilities of its managers and owners.

542 (g) The forms of the residency contracts, reservation
543 contracts, escrow agreements, and wait list contracts, if
544 applicable, which are proposed to be used by the provider in the
545 furnishing of care. The office shall approve contracts and
546 escrow agreements that comply with ss. 651.023(1)(c), 651.033,
547 651.055, and 651.057. Thereafter, no other form of contract or
548 agreement may be used by the provider until it has been
549 submitted to the office and approved.

550 (h) An actuarial study.

551
552 If any material change occurs in the facts set forth in an
553 application filed with the office pursuant to this subsection,
554 an amendment setting forth such changes must be immediately
555 filed with the office, and a copy of the amendment must be sent
556 by registered mail to the principal office of the facility and
557 to the principal office of the controlling company.

558 (5)

559 (b) An application is deemed complete upon receipt of all
560 requested information and correction of any error or omission
561 for which the applicant was timely notified or when the time for
562 such notification has expired ~~Within 15 days after receipt of~~
563 ~~all of the requested additional information, the office shall~~
564 ~~notify the applicant in writing that all of the requested~~
565 ~~information has been received and the application is deemed to~~
566 ~~be complete as of the date of the notice. Failure to so notify~~
567 ~~the applicant in writing within the 15-day period shall~~
568 ~~constitute acknowledgment by the office that it has received all~~
569 ~~requested additional information, and the application shall be~~
570 ~~deemed to be complete for purposes of review upon the date of~~
571 ~~the filing of all of the requested additional information.~~

572 (6) Within 90 ~~45~~ days after the date an application is
573 deemed complete as set forth in paragraph (5) (b), the office
574 shall complete its review and issue a provisional certificate of
575 authority to the applicant based upon its review and a

576 determination that the application meets all requirements of
 577 law, that the feasibility study was based on sufficient data and
 578 reasonable assumptions, and that the applicant will be able to
 579 provide continuing care or continuing care at-home as proposed
 580 and meet all financial and contractual obligations related to
 581 its operations, including the financial requirements of this
 582 chapter. If the application is denied, the office shall notify
 583 the applicant in writing, citing the specific failures to meet
 584 the provisions of this chapter. Such denial entitles the
 585 applicant to a hearing pursuant to chapter 120.

586 (8) The office may ~~shall~~ not approve any application that
 587 ~~which~~ includes in the plan of financing any encumbrance of the
 588 ~~operating~~ reserves required by this chapter.

589 Section 8. Subsections (1), (2), and (3), paragraph (a) of
 590 subsection (4), and present subsection (9) of section 651.023,
 591 Florida Statutes, are amended, paragraph (c) of subsection (7)
 592 of that section is redesignated as subsection (8), and present
 593 subsection (8) of that section is redesignated as subsection
 594 (9), to read:

595 651.023 Certificate of authority; application.—

596 (1) After issuance of a provisional certificate of
 597 authority, the office shall issue to the holder of such
 598 provisional certificate a certificate of authority if the holder
 599 of the provisional certificate provides the office with the
 600 following information:

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

604 (b) A feasibility study prepared by an independent
605 consultant which contains all of the information required by s.
606 651.022(3) and financial forecasts or projections prepared in
607 accordance with standards adopted by the American Institute of
608 Certified Public Accountants ~~or in accordance with standards for~~
609 ~~feasibility studies or continuing care retirement communities~~
610 ~~adopted by the Actuarial Standards Board.~~

611 1. The study must also contain an independent evaluation
612 and examination opinion, or a comparable opinion acceptable to
613 the office, by the consultant who prepared the study, of the
614 underlying assumptions used as a basis for the forecasts or
615 projections in the study and that the assumptions are reasonable
616 and proper and the project as proposed is feasible.

617 2. The study must take into account project costs, actual
618 marketing results to date and marketing projections, resident
619 fees and charges, competition, resident contract provisions, and
620 any other factors which affect the feasibility of operating the
621 facility.

622 3. If the study is prepared by an independent certified
623 public accountant, it must contain an examination opinion for
624 the first 3 years of operations and financial projections having
625 a compilation opinion for the next 3 years. ~~If the study is~~

626 ~~prepared by an independent consulting actuary, it must contain~~
627 ~~mortality and morbidity data and an actuary's signed opinion~~
628 ~~that the project as proposed is feasible and that the study has~~
629 ~~been prepared in accordance with standards adopted by the~~
630 ~~American Academy of Actuaries.~~

631 (c) Subject to subsection (4), a provider may submit an
632 application for a certificate of authority and any required
633 exhibits upon submission of proof that the project has a minimum
634 of 50 ~~30~~ percent of the units reserved for which the provider is
635 charging an entrance fee. This does not apply to an application
636 for a certificate of authority for the acquisition of a facility
637 for which a certificate of authority was issued before October
638 1, 1983, ~~to a provider who subsequently becomes a debtor in a~~
639 ~~ease under the United States Bankruptcy Code, 11 U.S.C. ss. 101~~
640 ~~et seq.,~~ or to a provider for which the department has been
641 appointed receiver pursuant to part II of chapter 631.

642 (d) Proof that commitments have been secured for both
643 construction financing and long-term financing or a documented
644 plan acceptable to the office has been adopted by the applicant
645 for long-term financing.

646 (e) Proof that all conditions of the lender have been
647 satisfied to activate the commitment to disburse funds other
648 than the obtaining of the certificate of authority, the
649 completion of construction, or the closing of the purchase of
650 realty or buildings for the facility.

651 (f) Proof that the aggregate amount of entrance fees
652 received by or pledged to the applicant, plus anticipated
653 proceeds from any long-term financing commitment, plus funds
654 from all other sources in the actual possession of the
655 applicant, equal at least 100 percent of the aggregate cost of
656 constructing or purchasing, equipping, and furnishing the
657 facility plus 100 percent of the anticipated startup losses of
658 the facility.

659 (g) Complete audited financial statements of the
660 applicant, prepared by an independent certified public
661 accountant in accordance with generally accepted accounting
662 principles, as of the date the applicant commenced business
663 operations or for the fiscal year that ended immediately
664 preceding the date of application, whichever is later, and
665 complete unaudited quarterly financial statements attested to by
666 the applicant after the date of the last audit.

667 (h) Proof that the applicant has complied with the escrow
668 requirements of subsection (5) or subsection (7) and will be
669 able to comply with s. 651.035.

670 (i) An actuarial study.

671 (j) Such other reasonable data, financial statements, and
672 pertinent information as the commission or office may require
673 with respect to the applicant or the facility, to determine the
674 financial status of the facility and the management capabilities
675 of its managers and owners.

676 (2) Within 30 days after receipt of the information
677 required under subsection (1), the office shall examine such
678 information and notify the provider in writing, specifically
679 requesting any additional information the office is permitted by
680 law to require. An application is deemed complete upon receipt
681 of all requested information and correction of any error or
682 omission for which the applicant was timely notified or when the
683 time for such notification has expired ~~Within 15 days after~~
684 ~~receipt of all of the requested additional information, the~~
685 ~~office shall notify the provider in writing that all of the~~
686 ~~requested information has been received and the application is~~
687 ~~deemed to be complete as of the date of the notice. Failure to~~
688 ~~notify the applicant in writing within the 15 day period~~
689 ~~constitutes acknowledgment by the office that it has received~~
690 ~~all requested additional information, and the application shall~~
691 ~~be deemed complete for purposes of review on the date of filing~~
692 ~~all of the required additional information.~~

693 (3) Within 90 ~~45~~ days after an application is deemed
694 complete as set forth in subsection (2), and upon completion of
695 the remaining requirements of this section, the office shall
696 complete its review and issue or deny a certificate of authority
697 to the holder of a provisional certificate of authority. If a
698 certificate of authority is denied, the office must notify the
699 holder of the provisional certificate in writing, citing the
700 specific failures to satisfy the provisions of this chapter. If

701 denied, the holder of the provisional certificate is entitled to
 702 an administrative hearing pursuant to chapter 120.

703 (4) The office shall issue a certificate of authority upon
 704 determining that the applicant meets all requirements of law and
 705 has submitted all of the information required by this section,
 706 that all escrow requirements have been satisfied, and that the
 707 fees prescribed in s. 651.015(2) have been paid.

708 (a) ~~Notwithstanding satisfaction of the 30 percent minimum~~
 709 ~~reservation requirement of paragraph (1)(c),~~ A ~~No~~ certificate of
 710 authority may not ~~shall~~ be issued until the project has a
 711 minimum of 50 percent of the units reserved for which the
 712 provider is charging an entrance fee, and proof is provided to
 713 the office. If a provider offering continuing care at-home is
 714 applying for a certificate of authority or approval of an
 715 expansion pursuant to s. 651.021(2), the same minimum
 716 reservation requirements must be met for the continuing care and
 717 continuing care at-home contracts, independently of each other.

718 ~~(10)(9)~~ The office may not approve an application that
 719 includes in the plan of financing any encumbrance of the
 720 ~~operating~~ reserves required by this chapter.

721 Section 9. Section 651.024, Florida Statutes, is amended
 722 to read:

723 651.024 Acquisition.—

724 (1) A person who seeks to acquire a provider; assume the
 725 role of general partner of a provider; or otherwise assume

726 ownership or possession of, or control over, 10 percent or more
727 of a provider's assets is issued a certificate of authority to
728 operate a continuing care facility or a provisional certificate
729 of authority shall be subject to the provisions of s. 628.4615
730 and is not required to make filings pursuant to s. 651.022 or s.
731 651.023.

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

735 (3) A person may rebut a presumption of control by filing
736 a disclaimer of control with the office on a form prescribed by
737 the commission. The disclaimer must fully disclose all material
738 relationships and bases for affiliation between the person and
739 the provider or facility, as well as the basis for disclaiming
740 the affiliation. In lieu of such form, a person or acquiring
741 party may file with the office a copy of a Schedule 13G filed
742 with the Securities and Exchange Commission pursuant to Rule
743 13d-1(b) or (c) under the Securities Exchange Act of 1934 as
744 amended, 17 C.F.R. s. 240.13d-1. After a disclaimer has been
745 filed, the provider or facility is relieved of any duty to
746 register or report under this section which may arise out of the
747 provider's or facility's relationship with the person, unless
748 the office disallows the disclaimer.

749 Section 10. Section 651.0245, Florida Statutes, is created
750 to read:

751 651.0245 Application for the simultaneous acquisition of a
752 facility and issuance of a certificate of authority.-

753 (1) A person may not, individually or in conjunction with
754 any affiliated person of such person, directly or indirectly,
755 acquire a facility operating under a subsisting certificate of
756 authority and engage in the business of providing continuing
757 care, unless:

758 (a) The person or affiliated person has filed with the
759 office and has sent by registered mail to the principal office
760 of the facility and controlling company a letter of notification
761 regarding the transaction or proposed transaction no later than
762 5 days after entering into an agreement to purchase the
763 facility. The notification must be provided on forms prescribed
764 by the commission, containing information determined necessary
765 to understand the transaction and to identify all purchasers and
766 owners involved;

767 (b) The person or affiliated person has filed with the
768 office an application, signed under oath and prepared on forms
769 prescribed by the commission, which contains the information
770 specified in subsection (2). The application must be completed
771 and filed within 30 days after entering into an agreement to
772 purchase the facility; and

773 (c) The office has approved the application to purchase
774 the facility and has issued a certificate of authority to the
775 applicant.

776 (2) An application filed with the office and furnished to
777 the facility and controlling company must contain the following
778 information and any additional information that the office deems
779 necessary to determine the character, experience, ability, and
780 other qualifications of the person, or the affiliated person of
781 such person, for the protection of the residents of the facility
782 and of the public:

783 (a) A copy of the articles of incorporation and bylaws of
784 the applicant.

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

786 1. The corporation and each officer and director thereof.

787 2. The manager, whether an individual, corporation,
788 partnership, or association.

789 3. Any stockholder holding at least a 10 percent interest
790 in the operations of the facility in which the care is to be
791 offered.

792 4. Any person whose name is required to be provided in the
793 application under this paragraph and who owns any interest in or
794 receives any remuneration from, directly or indirectly, any
795 professional service firm, association, trust, partnership, or
796 corporation providing goods, leases, or services to the facility
797 for which the application is made, with a real or anticipated
798 value of \$10,000 or more, and the name and address of the
799 professional service firm, association, trust, partnership, or
800 corporation in which such interest is held. The applicant shall

801 describe such goods, leases, or services and the probable cost
802 to the facility or provider and shall describe why such goods,
803 leases, or services should not be purchased from an independent
804 entity.

805 5. Any person, corporation, partnership, association, or
806 trust owning land or property leased to the facility, along with
807 a copy of the lease agreement.

808 6. Any affiliated parent or subsidiary corporation or
809 partnership.

810 7. Any other person performing duties similar to those of
811 persons in the positions described in subparagraphs 1.-6.

812 (c)1. Evidence that the persons named in paragraph (b) are
813 competent and trustworthy. The form must require evidence that
814 the person in charge of providing care under a certificate of
815 authority is competent and trustworthy.

816 2. Evidence satisfactory to the office of the applicant's
817 ability to comply with this chapter and with rules adopted by
818 the commission pursuant to this chapter.

819 3. A statement of whether a person identified in the
820 application or the administrator or manager of the facility, if
821 such person has been designated, or any person living in the
822 same location:

823 a. Has been convicted of a felony, has pleaded nolo
824 contendere to a felony charge, or has been held liable or has
825 been enjoined in a civil action by final judgment, if the felony

826 or civil action involved fraud, embezzlement, fraudulent
827 conversion, or misappropriation of property.

828 b. Is subject to a currently effective injunctive or
829 restrictive order or federal or state administrative order
830 relating to business activity or health care as a result of an
831 action brought by a public agency or department, including,
832 without limitation, an action affecting a license under chapter
833 400 or chapter 429.

834
835 The statement must specify the court or agency, the date of
836 conviction or judgment, and the penalty imposed or damages
837 assessed; or the date, nature, and issuer of the order. Before
838 determining whether to issue a provisional certificate of
839 authority, the office may make an inquiry to determine the
840 accuracy of the information submitted pursuant to subparagraphs
841 1., 2., and 3.

842 4. For each natural person about whom information is
843 required to be furnished pursuant to paragraph (b), a statement
844 describing:

845 a. The natural person's occupations, positions of
846 employment, and offices held during the past 10 years.

847 b. The principal business and address of any business,
848 corporation, or organization in which each office of the natural
849 person was held, or in which each occupation or position of
850 employment was carried on.

851 c. Whether the natural person was at any time during the
852 past 10 years convicted of any crime other than a traffic
853 violation.

854 d. Whether the natural person has been the subject of any
855 proceeding for the revocation of any license during the past 10
856 years and, if so, the nature of the proceeding and the
857 disposition of the proceeding.

858 e. Whether, during the past 10 years, the natural person
859 has been the subject of any proceeding under the federal
860 Bankruptcy Act; or whether, during such 10-year period, any
861 person or other business or organization in which the natural
862 person was a director, officer, trustee, partner, owner,
863 manager, or other official has been subject to any such
864 proceeding, either during the time in which the natural person
865 was a director, officer, or trustee, if a corporation, or a
866 partner, owner, manager, joint venturer, or other official, if
867 not a corporation, or within 12 months thereafter.

868 f. Whether, during the past 10 years, the natural person
869 has been enjoined, temporarily or permanently, by a court of
870 competent jurisdiction from violating any federal or state law
871 regulating the business of continuing care, insurance,
872 securities, or banking or from carrying out any particular
873 practice or practices in the course of the business of
874 continuing care, insurance, securities, or banking, together
875 with details as to any such event.

876
877 Any person filing the statement required by this subparagraph
878 must give all required information that is within the knowledge
879 of the directors, officers, or trustees of the person making the
880 filing and of any person directly or indirectly controlling such
881 person.

882 5. Fingerprints of each person referred to in paragraph
883 (b).

884 (d) The source and amount of the funds or other
885 consideration used, or to be used, in making the acquisition of
886 the facility.

887 (e) Any plan or proposal that persons described under
888 paragraph (b) may have made to liquidate the facility, to sell
889 any of its assets or merge or consolidate it with any person, or
890 to make any other major change in its business or corporate
891 structure or management; and any plan or proposal that such
892 persons may have made to liquidate any controlling company of
893 the facility, to sell any of its assets or merge or consolidate
894 it with any person, or to make any other major change in its
895 business or corporate structure or management.

896 (f) The contracts for continuing care and continuing care
897 at-home to be entered into between the provider and residents
898 which meet the minimum requirements of s. 651.055 or s. 651.057
899 and which include a statement describing the procedures required
900 by law relating to the release of escrowed entrance fees. Such

901 statement may be furnished through an addendum.

902 (g) Such other data, financial statements, and pertinent
903 information as the commission or office may reasonably require
904 with respect to the provider or the facility, including the most
905 recent audited financial statements of comparable facilities
906 currently or previously owned, managed, or developed by the
907 applicant or its principal, to assist in determining the
908 financial viability of the project and the management
909 capabilities of its managers and owners.

910 (h) The forms of the residency contracts, reservation
911 contracts, escrow agreements, and wait list contracts, if
912 applicable, which are proposed to be used by the provider in the
913 furnishing of care. The office shall approve contracts and
914 escrow agreements that comply with ss. 651.023(1)(c), 651.033,
915 651.055, and 651.057. Thereafter, no other form of contract or
916 agreement may be used by the provider until it has been
917 submitted to the office and approved.

918 (i) An actuarial study.

919 (j) Any advertisement or other written material proposed
920 to be used in the solicitation of residents.

921
922 If any material change occurs in the facts set forth in the
923 application filed with the office pursuant to this subsection,
924 an amendment setting forth such changes must be filed
925 immediately with the office and a copy of the amendment must be

926 sent by registered mail to the principal office of the facility
927 and to the principal office of the controlling company.

928 (3) (a) In addition to the information required in
929 subsection (2), an applicant shall submit a feasibility study
930 prepared by an independent consultant and financial forecasts or
931 projections prepared in accordance with standards adopted by the
932 American Institute of Certified Public Accountants. The
933 feasibility study must include at least the following
934 information:

935 1. A description of the facility, including the location,
936 size, occupancy level, and description of the continuing care
937 and continuing care at-home contracts in force.

938 2. Projected revenues, including anticipated entrance
939 fees; monthly service fees; nursing care rates, if applicable;
940 and all other sources of revenue, including the total amount of
941 debt financing required.

942 3. Projected expenses, including staffing requirements and
943 salaries; cost of property, plant, and equipment, including
944 depreciation expense; interest expense; marketing expense; and
945 other operating expenses.

946 4. Current assets and liabilities of the applicant.

947 5. Expectations of the financial condition of the project,
948 including the projected cash flow and a projected balance sheet
949 and an estimate of the funds anticipated to be necessary to
950 cover startup losses, if any, for 3 years.

951 6. The inflation factor, if any, assumed in the study for
952 the proposed facility and how and where it is applied.

953 7. Project costs, marketing projections, resident fees and
954 charges, the competition, resident contract provisions, and
955 other factors that affect the feasibility of the facility.

956 8. The name of the person who prepared the feasibility
957 study and the experience of that person in preparing similar
958 studies or otherwise consulting in the field of continuing care.

959 (b)1. The study must also contain an independent
960 evaluation and examination opinion, or a comparable opinion
961 acceptable to the office, by the consultant who prepared the
962 study, of the underlying assumptions used as a basis for the
963 forecasts or projections in the study and that the assumptions
964 are reasonable and proper and the project as proposed is
965 feasible.

966 2. The study must take into account project costs, actual
967 marketing results to date and marketing projections, resident
968 fees and charges, competition, resident contract provisions, and
969 any other factors which affect the feasibility of operating the
970 facility.

971 3. If the study is prepared by an independent certified
972 public accountant, it must contain an examination opinion for
973 the first 3 years of operations and financial projections having
974 a compilation opinion for the next 3 years. If the study is
975 prepared by an independent consulting actuary, it must contain

976 mortality and morbidity data and an actuary's signed opinion
977 that the project as proposed is feasible and that the study has
978 been prepared in accordance with standards adopted by the
979 American Academy of Actuaries.

980 (4) (a) The application must be reviewed in accordance with
981 chapter 120. The office may conduct on its own initiative, or
982 shall conduct if requested to do so in writing by a
983 substantially affected person, a proceeding to consider the
984 appropriateness of the proposed acquisition. Timeframes for
985 purposes of chapter 120 are tolled during the pendency of the
986 proceeding. Any written request for a proceeding must be filed
987 with the office within 10 days after the date notice is given
988 pursuant to paragraph (1) (a). During the pendency of the
989 proceeding or review period by the office, any person or
990 affiliated person complying with the filing requirements of this
991 section may proceed and take all steps necessary to conclude the
992 acquisition so long as the acquisition becoming final is
993 conditioned upon obtaining office approval. However, at any time
994 the office finds an immediate danger exists to the public
995 health, safety, and welfare of the residents, the office shall
996 immediately order, pursuant to s. 120.569(2) (n), the proposed
997 acquisition disapproved and any further steps to conclude the
998 acquisition ceased.

999 (b) If a request for a proceeding is filed, the proceeding
1000 must be conducted within 60 days after the date the written

1001 request for a proceeding is received by the office. A
 1002 recommended order must be issued within 20 days after the date
 1003 the proceedings are closed. A final order must be issued within
 1004 20 days after the date of the recommended order or, if
 1005 exceptions to the recommended order are filed, within 20 days
 1006 after the date the exceptions are filed.

1007 (5) The office may disapprove any acquisition subject to
 1008 the provisions of this section by any person or any affiliated
 1009 person of such person who:

1010 (a) Willfully violates this section;

1011 (b) Fails to divest any ownership interest obtained in
 1012 violation of this section or fails to divest any direct or
 1013 indirect control of such ownership interest within 25 days after
 1014 the issuance of an order by the office; or

1015 (c) Acquires any ownership interest in a facility or
 1016 controlling company or direct or indirect control of such
 1017 ownership interest without complying with this section.

1018 (6) The office must approve any such acquisition and issue
 1019 a certificate of authority if it finds, on the basis of the
 1020 record made during any proceeding or on the basis of the filed
 1021 application if no proceeding is conducted, all of the following:

1022 (a) Upon completion of the acquisition, the applicant will
 1023 be able to satisfy the requirements for the issuance of a
 1024 certificate of authority to provide continuing care.

1025 (b) The financial condition of the acquiring person or

1026 persons will not jeopardize the financial stability of the
1027 facility or prejudice the interests of its residents or the
1028 public.

1029 (c) Any plan or proposal that the acquiring person or
1030 persons have made:

1031 1. To liquidate the facility, sell its assets, or merge or
1032 consolidate it with any person, or to make any other major
1033 change in its business or corporate structure or management is
1034 fair and free of prejudice to the residents of the facility or
1035 to the public; or

1036 2. To liquidate any controlling company, sell its assets,
1037 or merge or consolidate it with any person, or to make any major
1038 change in its business or corporate structure or management
1039 which would have an effect upon the facility is fair and free of
1040 prejudice to the residents of the facility or to the public.

1041 (d) The competence, experience, and integrity of those
1042 persons who will control directly or indirectly the operation of
1043 the applicant indicate that the acquisition is in the best
1044 interest of the residents of the facility and in the public
1045 interest.

1046 (e) The natural persons for whom background information is
1047 required to be furnished pursuant to this section have such
1048 backgrounds as to indicate that it is in the best interests of
1049 the residents of the facility and in the public interest to
1050 permit such persons to exercise control over the applicant.

1051 (f) The directors and officers or other persons performing
1052 duties similar to those of persons to be employed after the
1053 acquisition have sufficient continuing care experience and
1054 ability to assure reasonable promise of successful operation.

1055 (g) The management of the applicant after the acquisition
1056 will be competent and trustworthy, and will possess sufficient
1057 managerial experience so as to make the proposed operation of
1058 the facility not hazardous to the public.

1059 (h) The management of the applicant and facility after the
1060 acquisition will not include any person who has directly or
1061 indirectly through ownership, control, reinsurance transactions,
1062 or other business relations unlawfully manipulated the assets,
1063 accounts, finances, or books of any facility, insurer, provider,
1064 or other entity or otherwise acted in bad faith with respect
1065 thereto.

1066 (i) The acquisition is not likely to be hazardous or
1067 prejudicial to the residents of the facility or to the public.

1068 (j) The effect of the acquisition would not substantially
1069 lessen competition or would not tend to create a monopoly
1070 therein.

1071
1072 The applicant has the burden of proof for any finding made
1073 pursuant to this subsection.

1074 (7) A vote by the stockholder of record, or by any other
1075 person, of any security acquired in contravention of this

1076 section is invalid. An acquisition contrary to this section is
1077 void. Upon the petition of the office, the facility, or the
1078 controlling company, the circuit court for the county in which
1079 the principal office of the facility is located may, without
1080 limiting the generality of its authority, order the issuance or
1081 entry of an injunction or other order to enforce the provisions
1082 of this section. A facility or controlling company has a private
1083 right of action to enforce this section. The facility or
1084 controlling company is not required to file a demand with the
1085 office that it perform its functions as a prerequisite to a suit
1086 by the facility or controlling company against another person,
1087 and the office is not deemed a necessary party in any action by
1088 the facility or controlling company to enforce this section. A
1089 person who makes or proposes an acquisition requiring the filing
1090 of an application pursuant to this section, or who files such an
1091 application, is deemed to have thereby designated the Chief
1092 Financial Officer, or his or her assistant or deputy or another
1093 person in charge of his or her office, as such person's agent
1094 for service of process under this section and is thereby deemed
1095 to have submitted himself or herself to the administrative
1096 jurisdiction of the office and to the jurisdiction of the
1097 circuit court.

1098 (8) An approval by the office under this section does not
1099 constitute a recommendation by the office of the tender offer or
1100 exchange offer, or acquisition if no tender offer or exchange

1101 offer is involved. It is unlawful for a person to represent that
1102 the office's approval constitutes a recommendation. A person who
1103 violates the provisions of this subsection commits a felony of
1104 the third degree, punishable as provided in s. 775.082, s.
1105 775.083, or s. 775.084. The statute of limitations period for
1106 the prosecution of an offense committed under this subsection is
1107 5 years.

1108 (9) The office may not approve any application that
1109 includes in the plan of financing any encumbrance of the
1110 reserves required by this chapter.

1111 (10) A facility acquired in violation of this section
1112 holds no certificate of authority and is deemed to be in such
1113 condition, or to be using or to have been subject to such
1114 methods or practices in the conduct of its business, as to
1115 render its further operation presently or prospectively
1116 hazardous to its residents, creditors, or stockholders or to the
1117 public.

1118 (11) A person may rebut a presumption of control by filing
1119 a disclaimer of control with the office on a form prescribed by
1120 the office. The disclaimer must fully disclose all material
1121 relationships and bases for affiliation between the person and
1122 the provider or facility as well as the basis for disclaiming
1123 the affiliation. In lieu of such form, a person or acquiring
1124 party may file with the office a copy of a Schedule 13G filed
1125 with the Securities and Exchange Commission pursuant to Rule

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1126 13d-1(b) or (c) under the Securities Exchange Act of 1934 as
1127 amended, 17 C.F.R. s. 240.13d-1.

1128 (12) For the purposes of this section:

1129 (a) The term "controlling company" means any corporation,
1130 trust, or association owning, directly or indirectly, 25 percent
1131 or more of the voting securities of one or more facilities that
1132 are stock corporations, or 25 percent or more of the ownership
1133 interest of one or more facilities that are not stock
1134 corporations.

1135 (b) The term "natural person" means an individual.

1136 (c) The term "person" includes a natural person,
1137 corporation, association, trust, general partnership, limited
1138 partnership, joint venture, firm, proprietorship, or any other
1139 entity that may hold a license or certificate as a facility.

1140 (13) The commission may adopt, amend, or repeal rules
1141 pursuant to chapter 120 which are necessary to implement this
1142 section.

1143 Section 11. Section 651.025, Florida Statutes, is created
1144 to read:

1145 651.025 Insolvent facilities or providers.—A person who
1146 was a proprietor, general partner, member, officer, director,
1147 trustee, or manager of a facility or provider doing business in
1148 this state and who served in that capacity within the 2-year
1149 period before the date the facility or provider became
1150 insolvent, for any insolvency that occurs on or after July 1,

1151 2017, may not thereafter serve as a proprietor, general partner,
1152 member, officer, director, trustee, or manager of a facility or
1153 provider authorized in this state unless such person
1154 demonstrates that his or her personal actions or omissions were
1155 not a significant contributing cause to the insolvency.

1156 Section 12. Section 651.0261, Florida Statutes, is amended
1157 to read:

1158 651.0261 Quarterly and monthly statements.-

1159 (1) Within 45 days after the end of each fiscal quarter,
1160 each provider shall file a quarterly unaudited financial
1161 statement of the provider or of the facility in the form
1162 prescribed by the commission by rule and a detailed listing of
1163 the assets maintained in the liquid reserve as required under s.
1164 651.035. This requirement may be waived by the office upon
1165 written request from a provider accredited under s. 651.028.

1166 (2) If the office finds, ~~pursuant to rules of the~~
1167 ~~commission,~~ that such information is needed to properly monitor
1168 the financial condition of a provider or facility or is
1169 otherwise needed to protect the public interest, the office may
1170 require the provider to file:~~7~~

1171 (a) Within 25 days after the end of each month, a monthly
1172 unaudited financial statement of the provider or of the facility
1173 in the form prescribed by the commission by rule and a detailed
1174 listing of the assets maintained in the liquid reserve as
1175 required under s. 651.035 ~~Within 45 days after the end of each~~

1176 ~~fiscal quarter, a quarterly unaudited financial statement of the~~
1177 ~~provider or of the facility in the form prescribed by the~~
1178 ~~commission by rule. The commission may by rule require all or~~
1179 ~~part of the statements or filings required under this section to~~
1180 ~~be submitted by electronic means in a computer readable form~~
1181 ~~compatible with the electronic data format specified by the~~
1182 ~~commission.~~

1183 (b) Such other data, financial statements, and pertinent
1184 information as the commission or office may reasonably require
1185 with respect to the provider or the facility, or its directors,
1186 trustees, members, branches, subsidiaries, or affiliates, to
1187 determine the financial status of the provider or of the
1188 facility, and the management capabilities of its managers and
1189 owners.

1190 (3) A filing under subsection (2) may be required if:

1191 (a) The provider has been in operation for less than 2
1192 years since the date of issuance of its certificate of
1193 authority.

1194 (b) The provider is subject to:

1195 1. Administrative supervision proceedings;

1196 2. A corrective action plan;

1197 3. Refinancing;

1198 4. An acquisition; or

1199 5. Delinquency or receivership proceedings.

1200 (c) The provider or facility displays a declining

1201 financial position.

1202 (4) The commission may by rule require all or part of the
1203 statements or filings required under this section to be
1204 submitted by electronic means in a computer-readable form
1205 compatible with the electronic data format specified by the
1206 commission.

1207 Section 13. Section 651.0271, Florida Statutes, is created
1208 to read:

1209 651.0271 Actuarial opinions.—

1210 (1) When required by the office pursuant to subsection
1211 (2), a provider must submit an actuarial opinion for each
1212 facility operated in this state which states whether the
1213 reserves and related actuarial items held in support of the
1214 policies and contracts are computed appropriately, are based on
1215 assumptions that satisfy contractual provisions, are consistent
1216 with prior reported amounts, and comply with applicable state
1217 law.

1218 (a) The actuarial opinion must state whether the provider
1219 has adequate resources to meet all of its actuarial liabilities
1220 and related statement items for each operated facility and
1221 whether the provider's financial condition is actuarially sound.

1222 (b) The amount to be held in the reserve must be
1223 determined and certified by an actuary pursuant to s. 651.034.

1224 (c) The opinion must be conducted within 1 year before the
1225 date of the office's request or completed within 90 days after

1226 | the date of the office's request.

1227 | (2) The office may require a provider to submit the
 1228 | actuarial opinion if the office finds that:

1229 | (a) The provider has a negative net worth;

1230 | (b) The provider is subject to quarterly or monthly
 1231 | reporting;

1232 | (c) The average occupancy of the facility has declined by
 1233 | more than 5 percent from the prior year;

1234 | (d) The provider is delinquent on the payment of refunds
 1235 | due pursuant to the terms of resident contracts; or

1236 | (e) More than 20 percent of the contracts issued by the
 1237 | provider are refundable.

1238 | Section 14. Section 651.033, Florida Statutes, is amended
 1239 | to read:

1240 | 651.033 Escrow accounts.—

1241 | (1) When funds are required to be deposited in an escrow
 1242 | account pursuant to s. 651.022, s. 651.023, s. 651.035, or s.
 1243 | 651.055:

1244 | (a) The escrow account must ~~shall~~ be established in a
 1245 | Florida bank, Florida savings and loan association, or Florida
 1246 | trust company acceptable to the office or on deposit with the
 1247 | department; and the funds deposited therein must ~~shall~~ be kept
 1248 | and maintained in an account separate and apart from the
 1249 | provider's business accounts.

1250 | (b) An escrow agreement must ~~shall~~ be entered into between

1251 the bank, savings and loan association, or trust company and the
1252 provider of the facility; the agreement must ~~shall~~ state that
1253 its purpose is to protect the resident or the prospective
1254 resident; and, upon presentation of evidence of compliance with
1255 applicable portions of this chapter, or upon order of a court of
1256 competent jurisdiction, the escrow agent must ~~shall~~ release and
1257 pay over the funds, or portions thereof, together with any
1258 interest accrued thereon or earned from investment of the funds,
1259 to the provider or resident as directed.

1260 (c) Any agreement establishing an escrow account required
1261 under ~~the provisions of~~ this chapter is ~~shall be~~ subject to
1262 approval by the office. The agreement must ~~shall~~ be in writing
1263 and ~~shall~~ contain, in addition to any other provisions required
1264 by law, a provision whereby the escrow agent agrees to abide by
1265 the duties imposed by paragraphs (b) and (e), (2)(a), (2)(b),
1266 and (4)(a) and subsection (5) under this section.

1267 (d) All funds deposited in an escrow account, if invested,
1268 must ~~shall~~ be invested in cash, cash equivalents, mutual funds,
1269 equities, or investment grade bonds as set forth in part II of
1270 ~~chapter 625~~; however, such investment may not diminish the funds
1271 held in escrow below the amount required by this chapter. Funds
1272 deposited in an escrow account are not subject to charges by the
1273 escrow agent except escrow agent fees associated with
1274 administering the accounts, or subject to any liens, judgments,
1275 garnishments, creditor's claims, or other encumbrances against

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1276 the provider or facility except as provided in s. 651.035(1).

1277 (e) At the request of either the provider or the office,
1278 the escrow agent shall issue a statement indicating the status
1279 of the escrow account.

1280 ~~(2) In addition, the escrow agreement shall provide that~~
1281 ~~the escrow agent or another person designated to act in the~~
1282 ~~escrow agent's place and the provider, except as otherwise~~
1283 ~~provided in s. 651.035, shall notify the office in writing at~~
1284 ~~least 10 days before the withdrawal of any portion of any funds~~
1285 ~~required to be escrowed under the provisions of s. 651.035.~~
1286 ~~However, in the event of an emergency and upon petition by the~~
1287 ~~provider, the office may waive the 10-day notification period~~
1288 ~~and allow a withdrawal of up to 10 percent of the required~~
1289 ~~minimum liquid reserve. The office shall have 3 working days to~~
1290 ~~deny the petition for the emergency 10 percent withdrawal. If~~
1291 ~~the office fails to deny the petition within 3 working days, the~~
1292 ~~petition shall be deemed to have been granted by the office. For~~
1293 ~~the purpose of this section, "working day" means each day that~~
1294 ~~is not a Saturday, Sunday, or legal holiday as defined by~~
1295 ~~Florida law. Also for the purpose of this section, the day the~~
1296 ~~petition is received by the office shall not be counted as one~~
1297 ~~of the 3 days.~~

1298 ~~(3) In addition,~~ When entrance fees are required to be
1299 deposited in an escrow account pursuant to s. 651.022, s.
1300 651.023, or s. 651.055:

1301 (a) The provider shall deliver to the resident a written
1302 receipt. The receipt must show the payor's name and address, the
1303 date, the price of the care contract, and the amount of money
1304 paid. A copy of each receipt, together with the funds, must
1305 ~~shall~~ be deposited with the escrow agent or as provided in
1306 paragraph (c). The escrow agent must ~~shall~~ release such funds to
1307 the provider 7 days after the date of receipt of the funds by
1308 the escrow agent if the provider, operating under a certificate
1309 of authority issued by the office, has met the requirements of
1310 s. 651.023(6). However, if the resident rescinds the contract
1311 within the 7-day period, the escrow agent must ~~shall~~ release the
1312 escrowed fees to the resident.

1313 (b) At the request of an individual resident of a
1314 facility, the escrow agent shall issue a statement indicating
1315 the status of the resident's portion of the escrow account.

1316 (c) At the request of an individual resident of a
1317 facility, the provider may hold the check for the 7-day period
1318 and may ~~shall~~ not deposit it during this time period. If the
1319 resident rescinds the contract within the 7-day period, the
1320 check must ~~shall~~ be immediately returned to the resident. Upon
1321 the expiration of the 7 days, the provider shall deposit the
1322 check.

1323 (d) A provider may assess a nonrefundable fee, which is
1324 separate from the entrance fee, for processing a prospective
1325 resident's application for continuing care or continuing care

1326 at-home.

1327 (3)~~(4)~~ Any fees of \$1,500 or less which are assessed with
 1328 respect to prospective residents to have their names placed on a
 1329 facility's waiting list are ~~shall~~ not be subject to the escrow
 1330 provisions of this section.

1331 (4)~~(5)~~ When funds are required to be deposited in an
 1332 escrow account pursuant to s. 651.022 or, s. 651.023, ~~or s.~~
 1333 ~~651.035~~, the following ~~shall~~ apply:

1334 (a) The escrow agreement must ~~shall~~ require that the
 1335 escrow agent furnish the provider with a quarterly statement
 1336 indicating the amount of any disbursements from or deposits to
 1337 the escrow account and the condition of the account during the
 1338 period covered by the statement. The agreement must ~~shall~~
 1339 require that the statement be furnished to the provider by the
 1340 escrow agent on or before the 10th day of the month following
 1341 the end of the quarter for which the statement is due. If the
 1342 escrow agent does not provide the quarterly statement to the
 1343 provider on or before the 10th day of the month following the
 1344 month for which the statement is due, the office may, in its
 1345 discretion, levy against the escrow agent a fine not to exceed
 1346 \$25 a day for each day of noncompliance with the provisions of
 1347 this subsection.

1348 (b) If the escrow agent does not provide the quarterly
 1349 statement to the provider on or before the 10th day of the month
 1350 following the quarter for which the statement is due, the

1351 provider must ~~shall~~, on or before the 15th day of the month
1352 following the quarter for which the statement is due, send a
1353 written request for the statement to the escrow agent by
1354 certified mail return receipt requested.

1355 (c) On or before the 20th day of the month following the
1356 quarter for which the statement is due, the provider shall file
1357 with the office a copy of the escrow agent's statement or, if
1358 the provider has not received the escrow agent's statement, a
1359 copy of the written request to the escrow agent for the
1360 statement.

1361 (d) The office may, in its discretion, in addition to any
1362 other penalty that may be provided for under this chapter, levy
1363 a fine against the provider not to exceed \$25 a day for each day
1364 the provider fails to comply with the provisions of this
1365 subsection.

1366 (e) Funds held on deposit with the department are exempt
1367 from the reporting requirements of this subsection.

1368 (5) The escrow agent may not release or otherwise permit
1369 the transfer of funds without the written approval of the
1370 office, except as described in paragraph (2) (a).

1371 Section 15. Section 651.034, Florida Statutes, is created
1372 to read:

1373 651.034 Contractual liability reserve.—

1374 (1) A provider shall maintain a reserve for the benefit of
1375 residents in an amount determined by an actuary to be

1376 appropriate given the amount of the provider's contractual
1377 obligations to residents, including refunds and medical care.

1378 (2) The provider must revise the reserve amount annually
1379 and submit the provider's calculation of the reserve amount to
1380 the office concurrently with the annual report.

1381 (3) The reserve may be invested in any combination of the
1382 following:

1383 (a) Cash or cash equivalents;

1384 (b) Mutual funds, equities, or investment grade bonds that
1385 accumulate interest or earnings;

1386 (c) Clean, irrevocable, unconditional evergreen letters of
1387 credit issued or confirmed by a qualified United States
1388 financial institution that is regulated, supervised, and
1389 examined by federal or state authorities having regulatory
1390 authority over banks and trust companies; or

1391 (d) Real property, subject to all of the following
1392 conditions:

1393 1. With the prior written approval of the office, up to 70
1394 percent of the reserves may be held as net equity in the real
1395 property of the facility.

1396 2. Not more than 50 percent of the provider's net equity
1397 in the real property may be allocated as part of the reserve.
1398 The net equity is the book value, assessed value, or current
1399 appraised value within 12 months before the end of the fiscal
1400 year, less any depreciation and encumbrances, as recorded on

1401 audited financial statements acceptable to the office.

1402 (4) The provider shall submit to the office, at least once
 1403 every 3 years with the annual report, an actuarial opinion as to
 1404 the provider's actuarial financial condition, along with the
 1405 supporting actuarial study. The actuarial opinion must be based
 1406 on an actuarial study completed by the actuary. The actuarial
 1407 opinion and supporting actuarial study must examine, refer to,
 1408 and opine on the provider's actuarial financial condition as of
 1409 December 31 of the reporting year. The actuarial study must
 1410 demonstrate that fees for nonrefundable contracts are not
 1411 increased due to any portion of reserves held under this section
 1412 which are due to refund liability.

1413 (5) The office may suspend, revoke, or take other
 1414 administrative action against the certificate of authority of a
 1415 facility that violates this section.

1416 (6) The commission may adopt rules providing the standards
 1417 for the actuarial opinion which are consistent with standards
 1418 adopted by the Actuarial Standards Board on December 31, 2016,
 1419 and subsequent revisions thereto.

1420 Section 16. Effective January 1, 2018, section 651.035,
 1421 Florida Statutes, is amended to read:

1422 651.035 Minimum liquid reserve requirements.—

1423 (1) A provider shall maintain in escrow a minimum liquid
 1424 reserve consisting of the following reserves, as applicable:

1425 (a) Each provider shall maintain in escrow as a debt

1426 service reserve the aggregate amount of all principal and
1427 interest payments due during the fiscal year on any mortgage
1428 loan or other long-term financing of the facility, including
1429 property taxes as recorded in the audited financial statements
1430 required under s. 651.026. The amount must include any leasehold
1431 payments and all costs related to such payments. If principal
1432 payments are not due during the fiscal year, the provider shall
1433 maintain in escrow as a minimum liquid reserve an amount equal
1434 to interest payments due during the next 12 months on any
1435 mortgage loan or other long-term financing of the facility,
1436 including property taxes.

1437 (b) A provider that has outstanding indebtedness that
1438 requires a debt service reserve to be held in escrow pursuant to
1439 a trust indenture or mortgage lien on the facility and for which
1440 the debt service reserve may only be used to pay principal and
1441 interest payments on the debt that the debtor is obligated to
1442 pay, and which may include property taxes and insurance, may
1443 include such debt service reserve in computing the minimum
1444 liquid reserve needed to satisfy this subsection if the provider
1445 furnishes to the office a copy of the agreement under which such
1446 debt service is held, together with a statement of the amount
1447 being held in escrow for the debt service reserve, certified by
1448 the lender or trustee and the provider to be correct. The
1449 trustee shall provide the office with any information concerning
1450 the debt service reserve account upon request of the provider or

1451 the office.

1452 (c) A ~~Each~~ provider shall at all times maintain a capital
1453 reserve consisting of:

1454 1. For the first 12 months of operation, 25 percent of the
1455 total operating expenses projected in the feasibility study
1456 required by s. 651.023.

1457 2. After the first 12 months of operation, 25 percent of
1458 the total operating expenses in the most recent annual report
1459 filed pursuant to s. 651.026.

1460
1461 For purposes of this subsection, total annual operating expenses
1462 include all expenses of the facility except depreciation and
1463 amortization. Paragraphs (a) and (b) do not apply to obligations
1464 undertaken after January 1, 2018 ~~in escrow an operating reserve~~
1465 ~~equal to 30 percent of the total operating expenses projected in~~
1466 ~~the feasibility study required by s. 651.023 for the first 12~~
1467 ~~months of operation. Thereafter, each provider shall maintain in~~
1468 ~~escrow an operating reserve equal to 15 percent of the total~~
1469 ~~operating expenses in the annual report filed pursuant to s.~~
1470 ~~651.026. If a provider has been in operation for more than 12~~
1471 ~~months, the total annual operating expenses shall be determined~~
1472 ~~by averaging the total annual operating expenses reported to the~~
1473 ~~office by the number of annual reports filed with the office~~
1474 ~~within the preceding 3-year period subject to adjustment if~~
1475 ~~there is a change in the number of facilities owned. For~~

1476 ~~purposes of this subsection, total annual operating expenses~~
1477 ~~include all expenses of the facility except: depreciation and~~
1478 ~~amortization; interest and property taxes included in paragraph~~
1479 ~~(a); extraordinary expenses that are adequately explained and~~
1480 ~~documented in accordance with generally accepted accounting~~
1481 ~~principles; liability insurance premiums in excess of those paid~~
1482 ~~in calendar year 1999; and changes in the obligation to provide~~
1483 ~~future services to current residents. For providers initially~~
1484 ~~licensed during or after calendar year 1999, liability insurance~~
1485 ~~shall be included in the total operating expenses in an amount~~
1486 ~~not to exceed the premium paid during the first 12 months of~~
1487 ~~facility operation. Beginning January 1, 1993, the operating~~
1488 ~~reserves required under this subsection shall be in an~~
1489 ~~unencumbered account held in escrow for the benefit of the~~
1490 ~~residents. Such funds may not be encumbered or subject to any~~
1491 ~~liens or charges by the escrow agent or judgments, garnishments,~~
1492 ~~or creditors' claims against the provider or facility. However,~~
1493 ~~if a facility had a lien, mortgage, trust indenture, or similar~~
1494 ~~debt instrument in place before January 1, 1993, which~~
1495 ~~encumbered all or any part of the reserves required by this~~
1496 ~~subsection and such funds were used to meet the requirements of~~
1497 ~~this subsection, then such arrangement may be continued, unless~~
1498 ~~a refinancing or acquisition has occurred, and the provider~~
1499 ~~shall be in compliance with this subsection.~~

1500 ~~(d) Each provider shall maintain in escrow a renewal and~~

1501 ~~replacement reserve equal to 15 percent of the total accumulated~~
1502 ~~depreciation based on the audited financial statement required~~
1503 ~~to be filed pursuant to s. 651.026, not to exceed 15 percent of~~
1504 ~~the facility's average operating expenses for the past 3 fiscal~~
1505 ~~years based on the audited financial statements for each of~~
1506 ~~those years. For a provider who is an operator of a facility but~~
1507 ~~is not the owner and depreciation is not included as part of the~~
1508 ~~provider's financial statement, the renewal and replacement~~
1509 ~~reserve required by this paragraph must equal 15 percent of the~~
1510 ~~total operating expenses of the provider, as described in this~~
1511 ~~section. Each provider licensed before October 1, 1983, shall~~
1512 ~~fully fund the renewal and replacement reserve by October 1,~~
1513 ~~2003, by multiplying the difference between the former escrow~~
1514 ~~requirement and the present escrow requirement by the number of~~
1515 ~~years the facility has been in operation after October 1, 1983.~~

1516 (2) (a) In facilities where not all residents are under
1517 continuing care or continuing care at-home contracts, the
1518 reserve requirements of subsection (1) must ~~shall~~ be computed
1519 only with respect to the proportional share of operating
1520 expenses that are applicable to residents. For purposes of this
1521 calculation, the proportional share must ~~shall~~ be based upon the
1522 ratio of residents under continuing care or continuing care at-
1523 home contracts to those residents who do not hold such
1524 contracts.

1525 (b) In facilities that have ~~voluntarily and permanently~~

1526 discontinued marketing continuing care and continuing care at-
1527 home contracts, the office may allow a reduced ~~debt service~~
1528 reserve as required in subsection (1) based upon the ratio of
1529 residents under continuing care or continuing care at-home
1530 contracts to those residents who do not hold such contracts if
1531 the office finds that such reduction is not inconsistent with
1532 the security protections intended by this chapter. In making
1533 this determination, the office may consider such factors as the
1534 financial condition of the facility, the provisions of
1535 outstanding continuing care and continuing care at-home
1536 contracts, the ratio of residents under continuing care or
1537 continuing care at-home contracts to those residents who do not
1538 hold such contracts, the current occupancy rates, the previous
1539 sales and marketing efforts, the life expectancy of the
1540 remaining residents, and the written policies of the board of
1541 directors of the provider or a similar board.

1542 (3) The capital reserve must be held in a manner that
1543 accumulates interest and earnings and be invested in cash, cash
1544 equivalents, mutual funds, equities, or investment grade bonds.
1545 However, the office may order the immediate transfer of up to
1546 100 percent of the funds held in the capital reserve to the
1547 custody of the department pursuant to part III of chapter 625 if
1548 the office finds that any of the grounds enumerated in s.
1549 651.106 exist. The office may order such transfer regardless of
1550 whether the office has suspended or revoked, or intends to

1551 suspend or revoke, the certificate of authority of the provider
1552 ~~If principal and interest payments are paid to a trust that is~~
1553 ~~beneficially held by the residents as described in s.~~
1554 ~~651.023(7), the office may waive all or any portion of the~~
1555 ~~escrow requirements for mortgage principal and interest~~
1556 ~~contained in subsection (1) if the office finds that such waiver~~
1557 ~~is not inconsistent with the security protections intended by~~
1558 ~~this chapter.~~

1559 (4) A provider may withdraw funds from the debt service
1560 reserve as provided in s. 625.62 with the written consent of the
1561 office.

1562 (a) In order to receive the consent of the office, the
1563 provider must file the following:

1564 1. The reason for such filing;
1565 2. Proof that the amount held on such reserve is in excess
1566 of the amount required under this section, or documentation
1567 showing why the withdrawal is necessary for the continued
1568 operation of the facility; and

1569 3. Such additional information as the office reasonably
1570 requires.

1571 (b) The office shall notify the provider when the file is
1572 deemed complete. If the provider has complied with all prior
1573 requests for information, the file is deemed complete after 30
1574 days without communication from the office.

1575 (c) Within 30 days after the date a file is deemed

1576 complete, the office shall provide the provider with written
1577 notice of its approval or disapproval of the request. The office
1578 may disapprove any request to withdraw such funds if it
1579 determines that the withdrawal is not in the best interest of
1580 the residents ~~The office, upon approval of a plan for fulfilling~~
1581 ~~the requirements of this section and upon demonstration by the~~
1582 ~~facility of an annual increase in liquid reserves, may extend~~
1583 ~~the time for compliance.~~

1584 ~~(5) A provider may satisfy the minimum liquid reserve~~
1585 ~~requirements of this section by acquiring from a financial~~
1586 ~~institution, as specified in paragraph (b), a clean,~~
1587 ~~unconditional irrevocable letter of credit equal to the~~
1588 ~~requirements of this section.~~

1589 ~~(a) The letter of credit must be issued by a financial~~
1590 ~~institution participating in the State of Florida Treasury~~
1591 ~~Certificate of Deposit Program, and must be approved by the~~
1592 ~~office before issuance and before any renewal or modification~~
1593 ~~thereof. At a minimum, the letter of credit must provide for:~~

1594 ~~1. Ninety days' prior written notice to both the provider~~
1595 ~~and the office of the financial institution's determination not~~
1596 ~~to renew or extend the term of the letter of credit.~~

1597 ~~2. Unless otherwise arranged by the provider to the~~
1598 ~~satisfaction of the office, deposit by the financial institution~~
1599 ~~of letter of credit funds in an account designated by the office~~
1600 ~~no later than 30 days before the expiration of the letter of~~

1601 ~~credit.~~

1602 ~~3. Deposit by the financial institution of letter of~~
1603 ~~credit funds in an account designated by the office within 4~~
1604 ~~business days following written instructions from the office~~
1605 ~~that, in the sole judgment of the office, funding of the minimum~~
1606 ~~liquid reserve is required.~~

1607 ~~(b) The terms of the letter of credit must be approved by~~
1608 ~~the office and the long-term debt of the financial institution~~
1609 ~~providing such letter of credit must be rated in one of their~~
1610 ~~top three long-term debt rating categories by either Moody's~~
1611 ~~Investors Service, Standard & Poor's Corporation, or a~~
1612 ~~recognized securities rating agency acceptable to the office.~~

1613 ~~(c) The letter of credit must name the office as~~
1614 ~~beneficiary.~~

1615 ~~(d) Notwithstanding any other provision of this section, a~~
1616 ~~provider using a letter of credit pursuant to this subsection~~
1617 ~~shall, at all times, have and maintain in escrow an operating~~
1618 ~~cash reserve equal to 2 months' operating expenses as determined~~
1619 ~~pursuant to s. 651.026.~~

1620 ~~(e) If the issuing financial institution no longer~~
1621 ~~participates in the State of Florida Treasury Certificate of~~
1622 ~~Deposit Program, such financial institution shall deposit as~~
1623 ~~collateral with the department eligible securities, as~~
1624 ~~prescribed by s. 625.52, having a market value equal to or~~
1625 ~~greater than 100 percent of the stated amount of the letter of~~

1626 ~~credit.~~

1627 ~~(6) Each fiscal year, a provider may withdraw up to 33~~
1628 ~~percent of the total renewal and replacement reserve available.~~
1629 ~~The reserve available is equal to the market value of the~~
1630 ~~invested reserves at the end of the provider's prior fiscal~~
1631 ~~year. The withdrawal must be used for capital items or major~~
1632 ~~repairs.~~

1633 ~~(a) Before any funds are eligible for withdrawal, the~~
1634 ~~provider must obtain written permission from the office by~~
1635 ~~submitting the following:~~

1636 ~~1. The amount of the withdrawal and the intended use of~~
1637 ~~the proceeds.~~

1638 ~~2. A board resolution and sworn affidavit signed by two~~
1639 ~~officers or general partners of the provider which indicates~~
1640 ~~approval of the withdrawal and use of the funds.~~

1641 ~~3. Proof that the provider has met all funding~~
1642 ~~requirements for the operating, debt service, and renewal and~~
1643 ~~replacement reserves computed for the previous fiscal year.~~

1644 ~~4. Anticipated payment schedule for refunding the renewal~~
1645 ~~and replacement reserve fund.~~

1646 ~~(b) Within 30 days after the withdrawal of funds, the~~
1647 ~~provider must begin refunding the reserve account in equal~~
1648 ~~monthly payments that allow for a complete funding of the~~
1649 ~~withdrawal within 36 months. If the payment schedule required~~
1650 ~~under subparagraph (a)4. has changed, the provider must update~~

1651 ~~the office with the new payment schedule. If the provider fails~~
1652 ~~to make a required monthly payment or the payment is late, the~~
1653 ~~provider must notify the office within 5 days after the due date~~
1654 ~~of the payment. No additional withdrawals from the renewal and~~
1655 ~~replacement reserve will be allowed until all scheduled payments~~
1656 ~~are current.~~

1657 Section 17. Section 651.036, Florida Statutes, is created
1658 to read:

1659 651.036 Dividends and other distributions of assets.—

1660 (1) As used in this section, the term "extraordinary
1661 dividend" means a dividend or distribution in excess of the
1662 greater of the provider's entire net operating profit for the
1663 prior fiscal year or 25 percent of the net equity in the
1664 facility. As used in this subsection, the term "net operating
1665 profit" means the total revenues of a provider less total
1666 expenses, excluding amortization and depreciation.

1667 (2) A provider shall obtain the approval of the office
1668 before paying any extraordinary dividend or distributing cash or
1669 other property to stockholders, officers, directors, owners,
1670 partners, or members.

1671 (3) A provider shall file notice of its intent to pay any
1672 dividend or distribution with the office and provide a copy of
1673 such notice to the chair of the residents' council at least 30
1674 days before the payment of such dividend or distribution. If the
1675 facility does not have a residents' council, the provider must

1676 inform all residents of the intent to pay the dividend or
1677 distribution.

1678 (4) The office may not approve an extraordinary dividend
1679 unless, considering the following factors, it determines that
1680 the distribution or dividend would not jeopardize the financial
1681 condition of the facility:

1682 (a) The liquidity, quality, and diversification of the
1683 facility's assets and the effect of the distribution or dividend
1684 on its ability to meet its obligations.

1685 (b) Reduction of investment portfolio and investment
1686 income.

1687 (c) Effects on the facility's ability to pay resident
1688 refunds.

1689 (d) Industrywide financial conditions.

1690 (e) Prior dividend distributions of the facility.

1691 (f) Whether the dividend is only a "pass-through" dividend
1692 from a subsidiary or affiliate of the facility.

1693 (g) The ongoing maintenance obligations of the facility.

1694 (5) A director of a provider who knowingly votes for or
1695 concurrs in declaration or payment of a dividend to stockholders
1696 or members other than as authorized under this section commits a
1697 misdemeanor of the second degree, punishable as provided in s.
1698 775.082 or s. 775.083, and is jointly and severally liable,
1699 together with other such directors likewise voting for or
1700 concurring, for any loss thereby sustained by creditors of the

1701 facility to the extent of such dividend.

1702 (6) A partner or stockholder receiving such an illegal
 1703 dividend is liable in the amount thereof to the facility.

1704 (7) A partner voting for, concurring in, or otherwise
 1705 facilitating or cooperating in the payment of a distribution
 1706 other than as authorized under this section commits a
 1707 misdemeanor of the second degree, punishable as provided in s.
 1708 775.082 or s. 775.083, and is jointly and severally liable,
 1709 together with other such partners likewise voting for,
 1710 concurring in, facilitating or cooperating in the payment, for
 1711 any loss thereby sustained by creditors of the facility to the
 1712 extent of such dividend.

1713 (8) The office may revoke or suspend or take other
 1714 administrative action against the certificate of authority of a
 1715 provider that has declared or paid such an illegal dividend or
 1716 distribution.

1717 Section 18. Section 651.043, Florida Statutes, is created
 1718 to read:

1719 651.043 Approval of change in management.-

1720 (1) For purposes of this section, the term "management"
 1721 means:

1722 (a) A manager or management company;

1723 (b) An officer or director of the provider or of the
 1724 manager or management company;

1725 (c) Any other person performing duties similar to those of

1726 persons in paragraphs (a) or (b); or

1727 (d) A person who exercises or who has the ability to
1728 exercise effective control of the organization, or who
1729 influences or has the ability to influence the transaction of
1730 the business of the provider.

1731 (2) Effective July 1, 2017, a contract for management must
1732 be in writing and include a provision that the contract will be
1733 canceled upon issuance of an order by the office pursuant to
1734 this section without the application of any cancelation fee or
1735 penalty.

1736 (3) A provider must file notice with the office of any
1737 change in management within 5 days after the appointment of new
1738 management or the removal of approved management, whichever is
1739 sooner. For each new management appointment, the provider must
1740 submit the information required by s. 651.022(2) and a copy of
1741 the written management contract. The office shall complete its
1742 review and issue an approval or disapproval of the management
1743 contract within 30 days after the filing is deemed complete. A
1744 filing is deemed complete upon receipt of all requested
1745 information and correction of any error or omission for which
1746 the applicant was timely notified.

1747 (4) The office may disapprove new management and order the
1748 provider to cancel the contract in accordance with the terms of
1749 the contract and applicable law if the office:

1750 (a) Finds that the new management is incompetent or

1751 untrustworthy;

1752 (b) Finds that the new management is so lacking in
1753 continuing care retirement community managerial experience as to
1754 make the proposed operation hazardous to the residents or
1755 potential residents;

1756 (c) Finds that the new management is so lacking in
1757 continuing care experience, ability, and standing as to
1758 jeopardize the reasonable promise of successful operation; or

1759 (d) Has good reason to believe that the new management is
1760 affiliated directly or indirectly through ownership, control,
1761 reinsurance transactions, or other insurance or business
1762 relations with any person or persons whose business operations
1763 are or have been marked by manipulation of assets, accounts, or
1764 reinsurance or by bad faith, to the detriment of policyholders,
1765 stockholders, investors, creditors, or the public.

1766 (5) Management disapproved by the office must be removed
1767 within 30 days after receipt by the provider of such
1768 disapproval.

1769 (6) The office may revoke, suspend, or take other
1770 administrative action against the certificate of authority of
1771 the provider if the provider:

1772 (a) Fails to timely remove management disapproved by the
1773 office;

1774 (b) Fails to timely notify the office of a change in
1775 management;

1776 (c) Appoints management without a written contract; or

1777 (d) Repeatedly appoints management who were previously
1778 disapproved by the office or who are not approvable pursuant to
1779 subsection (4).

1780 (7) The provider shall remove any management immediately
1781 upon discovery of any of the following conditions, if the
1782 conditions were not disclosed in the notice to the office
1783 required in subsection (3):

1784 (a) That any person who exercises or has the ability to
1785 exercise effective control of the provider, or who influences or
1786 has the ability to influence the transaction of the business of
1787 the provider, has been found guilty of, or has pled guilty or no
1788 contest to, any felony or crime punishable by imprisonment of 1
1789 year or more under the laws of the United States or any state
1790 thereof or under the laws of any other country, which involves
1791 moral turpitude, without regard to whether a judgment or
1792 conviction has been entered by the court having jurisdiction in
1793 such case.

1794 (b) That any person who exercises or has the ability to
1795 exercise effective control of the organization, or who
1796 influences or has the ability to influence the transaction of
1797 the business of the provider, is now or was in the past
1798 affiliated, directly or indirectly, through ownership interest
1799 of 10 percent or more in, control of, or reinsurance
1800 transactions with any business, corporation, or other entity

1801 that has been found guilty of or has pleaded guilty or nolo
1802 contendere to any felony or crime punishable by imprisonment for
1803 1 year or more under the laws of the United States, any state,
1804 or any other country, regardless of adjudication.

1805
1806 The failure to remove such management is grounds for revocation
1807 or suspension of the provider's certificate of authority.

1808 Section 19. Section 651.051, Florida Statutes, is amended
1809 to read:

1810 651.051 Maintenance of assets and records in this state.—
1811 All records and assets of a provider must be maintained in this
1812 state. No records or assets may be removed from this state by a
1813 provider unless the office consents to such removal in writing
1814 before such removal. Such consent must ~~shall~~ be based upon the
1815 provider's submitting satisfactory evidence that the removal
1816 will facilitate and make more economical the operations of the
1817 provider and will not diminish the service or protection
1818 thereafter to be given the provider's residents in this state.
1819 Before ~~Prior to~~ such removal, the provider must ~~shall~~ give
1820 notice to the president or chair of the facility's residents'
1821 council. If such removal is part of a cash management system
1822 which has been approved by the office, disclosure of the system
1823 meets ~~shall meet~~ the notification requirements. The electronic
1824 storage of records on a web-based, secured storage platform by
1825 contract with a third party constitutes removal from the state

1826 | and requires prior approval by the office.

1827 | Section 20. Paragraphs (h) and (l) of subsection (1),
 1828 | subsection (2), and subsection (5) of section 651.055, Florida
 1829 | Statutes, are amended, and a new paragraph (m) is added to
 1830 | subsection (1) of that section, to read:

1831 | 651.055 Continuing care contracts; right to rescind.—

1832 | (1) Each continuing care contract and each addendum to
 1833 | such contract shall be submitted to and approved by the office
 1834 | before its use in this state. Thereafter, no other form of
 1835 | contract shall be used by the provider until it has been
 1836 | submitted to and approved by the office. Each contract must:

1837 | (h) Describe in clear and understandable language, in
 1838 | print no smaller than the largest type used in the body of the
 1839 | contract, the terms governing the refund of any portion of the
 1840 | entrance fee.

1841 | 1. For a resident whose contract with the facility
 1842 | provides that the resident does not receive a transferable
 1843 | membership or ownership right in the facility, and who has
 1844 | occupied his or her unit, the refund shall be calculated on a
 1845 | pro rata basis with the facility retaining up to 2 percent per
 1846 | month of occupancy by the resident and up to a 5 percent
 1847 | processing fee. Such refund must be paid within 120 days after
 1848 | giving the notice of intention to cancel. For contracts entered
 1849 | into on or after January 1, 2016, refunds must be made within 90
 1850 | days after the contract is terminated and the unit is vacated. A

1851 resident who enters into a contract before January 1, 2016, may
1852 voluntarily sign a contract addendum approved by the office that
1853 provides for such revised refund requirement.

1854 2. In addition to a processing fee not to exceed 5
1855 percent, if the contract provides for the facility to retain no
1856 more than 1 percent per month of occupancy by the resident and
1857 the resident does not receive a transferable membership or
1858 ownership right in the facility, the contract shall provide that
1859 such refund will be paid from one of the following:

1860 a. The proceeds of the next entrance fees received by the
1861 provider for units for which there are no prior claims by any
1862 resident until paid in full;

1863 b. The proceeds of the next entrance fee received by the
1864 provider for a like or similar unit as specified in the
1865 residency or reservation contract signed by the resident for
1866 which there are no prior claims by any resident until paid in
1867 full; ~~or~~

1868 c. The proceeds of the next entrance fee received by the
1869 provider for the unit that is vacated if the contract is
1870 approved by the office before October 1, 2015. Providers may not
1871 use this refund option after October 1, 2016, and must submit a
1872 new or amended contract with an alternative refund provision to
1873 the office for approval by August 2, 2016; or-

1874 d. Unrestricted funds available to the provider within 90
1875 days after the contract is terminated and the unit is vacated.

1876 3. For contracts entered into on or after January 1, 2016,
 1877 that provide for a refund in accordance with sub-subparagraph
 1878 2.b., the following provisions apply:

1879 a. Any refund that is due upon the resident's death or
 1880 relocation of the resident to another level of care that results
 1881 in the termination of the contract must be paid the earlier of:

1882 (I) Thirty days after receipt by the provider of the next
 1883 entrance fee received for a like or similar unit for which there
 1884 is no prior claim by any resident until paid in full; or

1885 (II) No later than a specified maximum number of months or
 1886 years, determined by the provider and specified in the contract,
 1887 after the contract is terminated and the unit is vacated.

1888 b. Any refund that is due to a resident who vacates the
 1889 unit and voluntarily terminates a contract after the 7-day
 1890 rescission period required in subsection (2) must be paid within
 1891 30 days after receipt by the provider of the next entrance fee
 1892 for a like or similar unit for which there are no prior claims
 1893 by any resident until paid in full and is not subject to the
 1894 provisions in sub-subparagraph a. A contract is voluntarily
 1895 terminated when a resident provides written notice of intent to
 1896 leave and moves out of the continuing care facility after the 7-
 1897 day rescission period.

1898 4. For purposes of this paragraph, the term "like or
 1899 similar unit" means a residential dwelling categorized into a
 1900 group of units which have similar characteristics such as

1901 comparable square footage, number of bedrooms, location, age of
1902 construction, or a combination of one or more of these features
1903 as specified in the residency or reservation contract. Each
1904 category must consist of at least 5 percent of the total number
1905 of residential units designated for independent living or 10
1906 residential units designated for independent living, whichever
1907 is less. However, a group of units consisting of single family
1908 homes may contain fewer than 10 units.

1909 5. If the provider has discontinued marketing continuing
1910 care contracts, any refund due a resident must be paid within
1911 200 days after the contract is terminated and the unit is
1912 vacated.

1913 6. Unless subsection (5) applies, for any prospective
1914 resident, regardless of whether or not such a resident receives
1915 a transferable membership or ownership right in the facility,
1916 who cancels the contract before occupancy of the unit, the
1917 entire amount paid toward the entrance fee shall be refunded,
1918 less a processing fee of up to 5 percent of the entire entrance
1919 fee; however, the processing fee may not exceed the amount paid
1920 by the prospective resident. Such refund must be paid within 60
1921 days after the resident gives notice of intention to cancel. For
1922 a resident who has occupied his or her unit and who has received
1923 a transferable membership or ownership right in the facility,
1924 the foregoing refund provisions do not apply but are deemed
1925 satisfied by the acquisition or receipt of a transferable

1926 membership or an ownership right in the facility. The provider
 1927 may not charge any fee for the transfer of membership or sale of
 1928 an ownership right.

1929 (1) Specify whether the facility is, or is affiliated
 1930 with, a religious, nonprofit, or proprietary organization or
 1931 management entity or whether other facilities are owned or
 1932 operated by a common provider; the extent to which the affiliate
 1933 organization will be responsible for the financial and
 1934 contractual obligations of the provider; and the provisions of
 1935 the federal Internal Revenue Code, if any, under which the
 1936 provider or affiliate is exempt from the payment of federal
 1937 income tax.

1938 (m) Be marked with a combination of letters or figures
 1939 identifying the contract and differentiating that contract from
 1940 other contracts issued by the same provider. Whenever a change
 1941 is made to a contract, the designating letters or figures
 1942 thereon must be correspondingly changed.

1943 (2) A resident has the right to rescind a continuing care
 1944 contract and receive a full refund of any funds paid, without
 1945 penalty or forfeiture, within 7 days after executing the
 1946 contract. A resident may not be required to move into the
 1947 facility designated in the contract before the expiration of the
 1948 7-day period. During the 7-day period, the resident's funds must
 1949 be held in an escrow account unless otherwise requested by the
 1950 resident pursuant to s. 651.033(2)(c) ~~s. 651.033(3)(e)~~.

1951 (5) Except for a resident who postpones moving into the
 1952 facility but is deemed to have occupied a unit as described in
 1953 paragraph (1)(d), if a prospective resident dies before
 1954 occupying the facility or, through illness, injury, or
 1955 incapacity, is precluded from becoming a resident under the
 1956 terms of the continuing care contract, the contract is
 1957 automatically canceled, and the prospective resident or his or
 1958 her legal representative shall receive a full refund of all
 1959 moneys paid to the facility, except those costs specifically
 1960 incurred by the facility at the request of the prospective
 1961 resident and set forth in writing in a separate addendum, signed
 1962 by both parties, to the contract. Such refund must be paid
 1963 within 60 days after the provider receives notice of the
 1964 prospective resident's death, illness, injury, or incapacity.

1965 Section 21. Section 651.058, Florida Statutes, is created
 1966 to read:

1967 651.058 Grounds for continuing care contract disapproval.—
 1968 The office may disapprove any contract filed under s. 651.055 or
 1969 s. 651.057, or withdraw any previous approval thereof, only if
 1970 the contract:

1971 (1) Is in any respect in violation of, or does not comply
 1972 with, this chapter or any section herein incorporated by
 1973 reference;

1974 (2) Contains or incorporates by reference, where such
 1975 incorporation is otherwise permissible, any inconsistent,

1976 ambiguous, or misleading clauses, exceptions, or conditions;

1977 (3) Has a title, heading, or other indication of its
 1978 provisions which is misleading; or

1979 (4) Is printed or otherwise reproduced in such manner as
 1980 to render any material provision of the form substantially
 1981 illegible.

1982 Section 22. Section 651.064, Florida Statutes, is created
 1983 to read:

1984 651.064 Unfair and deceptive trade practices prohibited.-

1985 (1) A person may not engage in this state in a trade
 1986 practice that is defined in this section as, or that is
 1987 determined by the office to be, an unfair method of competition
 1988 or an unfair or deceptive act or practice involving the business
 1989 of continuing care.

1990 (2) A person who violates this part is subject to a fine
 1991 of up to \$5,000 for each nonwillful violation and up to \$40,000
 1992 for each willful violation. Fines under this subsection imposed
 1993 against a provider may not exceed an aggregate amount of \$20,000
 1994 for all nonwillful violations arising out of the same action or
 1995 an aggregate amount of \$200,000 for all willful violations
 1996 arising out of the same action. The fines may be imposed in
 1997 addition to any other applicable penalty, including revocation
 1998 or suspension of the provider's certificate of authority. Such
 1999 finer may not be used as justification for a rate increase.

2000 (3) The following are defined as unfair methods of

2001 competition and unfair or deceptive acts or practices:
 2002 (a) Misrepresentations and false advertising of continuing
 2003 care contracts.—Knowingly making, issuing, circulating, or
 2004 causing to be made, issued, or circulated an estimate,
 2005 illustration, circular, statement, sales presentation, omission,
 2006 comparison, or continuing care contract altered after being
 2007 issued which:
 2008 1. Misrepresents the benefits, advantages, conditions, or
 2009 terms of a continuing care contract;
 2010 2. Misrepresents the dividends or share of the surplus to
 2011 be received on a continuing care contract;
 2012 3. Makes a false or misleading statement as to the
 2013 dividends or share of surplus previously paid on a continuing
 2014 care contract;
 2015 4. Is misleading, or is a misrepresentation, as to the
 2016 financial condition of a person;
 2017 5. Uses a name or title of a continuing care contract or
 2018 continuing care contracts which misrepresents the true nature
 2019 thereof;
 2020 6. Is a misrepresentation for the purpose of inducing, or
 2021 tending to induce, the lapse, forfeiture, exchange, conversion,
 2022 or surrender of a continuing care contract;
 2023 7. Is a misrepresentation for the purpose of effecting a
 2024 pledge or assignment of, or effecting a loan against, a
 2025 continuing care contract;

2026 8. Misrepresents a continuing care contract as being
 2027 shares of stock or misrepresents ownership interest in the
 2028 provider or facility; or

2029 9. Uses an advertisement that would mislead or otherwise
 2030 cause a reasonable person to believe mistakenly that the state
 2031 or the Federal Government is responsible for the continuing care
 2032 sales activities of a person or stands behind a person's credit
 2033 or that a person, the state, or the Federal Government
 2034 guarantees any returns on a continuing care contract or is a
 2035 source of payment of a continuing care obligation of or sold by
 2036 a person.

2037 (b) False information and advertising generally.—Knowingly
 2038 making, publishing, disseminating, circulating, or placing
 2039 before the public or causing, directly or indirectly, to be
 2040 made, published, disseminated, circulated, or placed before the
 2041 public:

- 2042 1. In a newspaper, magazine, or other publication;
- 2043 2. In the form of a notice, circular, pamphlet, letter, or
- 2044 poster;
- 2045 3. Over a radio or television station; or
- 2046 4. In any other way,

2047
 2048 an advertisement, an announcement, or a statement containing an
 2049 assertion, a representation, or a statement with respect to the
 2050 business of continuing care which is untrue, deceptive, or

2051 misleading.

2052 (c) Defamation.—Knowingly making, publishing,
 2053 disseminating, or circulating, directly or indirectly, or
 2054 aiding, abetting, or encouraging the making, publishing,
 2055 disseminating, or circulating, of an oral or written statement
 2056 or a pamphlet, circular, article, or literature which is false
 2057 or maliciously critical of, or derogatory to, a person and which
 2058 is calculated to injure that person.

2059 (d) Boycott, coercion, and intimidation.—Entering into an
 2060 agreement to commit, or by a concerted action committing, an act
 2061 of boycott, coercion, or intimidation resulting in, or tending
 2062 to result in, unreasonable restraint of, or monopoly in, the
 2063 business of continuing care.

2064 (e) False statements and entries.—

2065 1. Knowingly:

2066 a. Filing with a supervisory or other public official;
 2067 b. Making, publishing, disseminating, or circulating;
 2068 c. Delivering to a person;
 2069 d. Placing before the public; or
 2070 e. Causing, directly or indirectly, to be made, published,
 2071 disseminated, circulated, delivered to a person, or placed
 2072 before the public,

2073

2074 a false material statement.

2075 2. Knowingly making a false entry of a material fact in a

2076 book, report, or statement of a person, or knowingly omitting to
2077 make a true entry of a material fact pertaining to the business
2078 of such person in a book, report, or statement of such person.

2079 (f) *Stock operations and advisory board contracts.*—Issuing
2080 or delivering, promising to issue or deliver, or permitting
2081 officers or employees to issue or deliver capital stock, benefit
2082 certificates or shares in a common-law corporation, or
2083 securities or any special or advisory board contracts or other
2084 contracts of any kind promising returns or profits as an
2085 inducement to a continuing care contract.

2086 (g) *Unfair discrimination.*—

2087 1. Knowingly making or permitting unfair discrimination
2088 between individuals of the same actuarially supportable class
2089 and equal expectation of life in the rates charged for a
2090 continuing care contract, in the dividends or other benefits
2091 payable thereon, or in any other term or condition of such
2092 contract.

2093 2. Knowingly making or permitting unfair discrimination
2094 between individuals of the same actuarially supportable class,
2095 as determined at the time of initial issuance of the coverage,
2096 and essentially the same hazard in the amount of premium, policy
2097 fees, or rates charged for a policy or contract of accident,
2098 disability, or health insurance, in the benefits payable
2099 thereunder, in the terms or conditions of such contract, or in
2100 any other manner.

2101 3. Knowingly refusing to issue, canceling, or otherwise
 2102 terminating a continuing care contract based upon the fact that
 2103 a resident or potential resident has sought or should have
 2104 sought medical or psychological treatment in the past for abuse.
 2105 A provider may refuse to issue a contract based on the potential
 2106 resident's medical condition but may not consider whether such
 2107 condition was caused by an act of abuse. For purposes of this
 2108 subparagraph, the term "abuse" means the occurrence of one or
 2109 more of the following acts:

- 2110 a. Attempting or committing assault, battery, sexual
 2111 assault, or sexual battery;
- 2112 b. Placing another in fear of imminent serious bodily
 2113 injury by physical menace;
- 2114 c. False imprisonment;
- 2115 d. Physically or sexually abusing a minor child; or
- 2116 e. An act of domestic violence as defined in s. 741.28.

2117 (h) Failure to maintain complaint-handling procedures.—
 2118 Failure of any person to maintain a complete record of all the
 2119 complaints received since the date of the last examination. For
 2120 purposes of this paragraph, "complaint" means a written
 2121 communication primarily expressing a grievance.

- 2122 (i) Misrepresentation in applications.—
 2123 1. Knowingly making a false or fraudulent written or oral
 2124 statement or representation on, or relative to, an application
 2125 or negotiation for a continuing care contract for the purpose of

2126 obtaining a fee, commission, money, or other benefit from an
 2127 insurer, agent, broker, or individual.

2128 2. Knowingly making a material omission in the comparison
 2129 of a continuing care contract with the contract it replaces for
 2130 the purpose of obtaining a fee, commission, money, or other
 2131 benefit from an insurer, agent, broker, or individual. For the
 2132 purposes of this subparagraph, a "material omission" includes
 2133 the failure to advise the resident or potential resident of the
 2134 existence and operation of a preexisting condition clause in the
 2135 replacement contract.

2136 (j) Twisting.—Knowingly making a misleading
 2137 representation, incomplete or fraudulent comparison, or
 2138 fraudulent material omission of or with respect to a continuing
 2139 care contract, facility, or provider for the purpose of
 2140 inducing, or tending to induce, a person to lapse, forfeit,
 2141 surrender, terminate, retain, pledge, assign, borrow on, or
 2142 convert a continuing care contract or to buy a continuing care
 2143 contract in another facility.

2144 (k) Advertising gifts permitted.—Paragraphs (f) and (g) do
 2145 not prohibit a licensed provider or facility from giving to a
 2146 resident, a potential resident, or another person, for the
 2147 purpose of advertising, an article of merchandise having a value
 2148 of not more than \$25.

2149 (l) Free care prohibited.—
 2150 1. Advertising, offering, or providing free continuing

2151 care as an inducement to the purchase or sale of real or
2152 personal property or of services directly or indirectly
2153 connected with such real or personal property.

2154 2. For the purposes of this paragraph, "free" continuing
2155 care is:

2156 a. Continuing care for which no identifiable and
2157 additional charge is made to the purchaser of such real
2158 property, personal property, or services.

2159 b. Continuing care for which an identifiable or additional
2160 charge is made in an amount less than the cost of such
2161 continuing care as to the seller or other person, other than the
2162 provider or facility, providing the same.

2163 (m) *Illegal dealings in charges for care.*

2164 1. Knowingly collecting any sum for continuing care, which
2165 is not then provided, or is not in due course to be provided,
2166 under a continuing care contract as permitted by this code.

2167 2. Knowingly collecting any sum for continuing care in
2168 excess of or less than the charge applicable to continuing care
2169 as specified in the continuing care contract and as fixed by the
2170 provider.

2171 3. A provider may not cancel or otherwise terminate a
2172 continuing care contract, or require execution of a consent to
2173 rate endorsement, during the stated contract term for the
2174 purpose of offering to issue, or issuing, a similar or identical
2175 contract to the same resident at a higher cost or continuing an

2176 existing contract at an increased cost.

2177 4. A provider may not cancel or issue a nonrenewal notice
 2178 on any continuing care contract without complying with any
 2179 applicable cancellation or nonrenewal provision required under
 2180 the Florida Insurance Code.

2181 (n) Interlocking ownership and management.—

2182 1. A provider may retain, invest in, or acquire the whole
 2183 or any part of the capital stock of any other provider or
 2184 providers, or have a common management with any other provider
 2185 or providers, unless such retention, investment, acquisition, or
 2186 common management is inconsistent with this code or unless by
 2187 reason thereof the business of such providers with the public is
 2188 conducted in a manner that substantially lessens competition
 2189 generally in the continuing care business.

2190 2. A person otherwise qualified may be a director of two
 2191 or more providers that are competitors unless the effect thereof
 2192 is substantially to lessen competition between providers
 2193 generally or materially tends to create a monopoly.

2194 3. The limitations contained in this paragraph do not
 2195 apply to a person who is a director of two or more providers
 2196 under common control or management.

2197 (o) Prohibited arrangements as to funerals.—

2198 1. A provider may not designate in a continuing care
 2199 contract the person to conduct the funeral of the resident, or
 2200 organize, promote, or operate an enterprise or plan to enter

2201 into a contract with a resident under which the freedom of
 2202 choice in the open market of the person having the legal right
 2203 to such choice is restricted as to the purchase, arrangement,
 2204 and conduct of a funeral service or any part thereof for a
 2205 resident.

2206 2. A provider may not contract or agree to furnish funeral
 2207 merchandise or services in connection with the disposition of a
 2208 person upon the death of a resident.

2209 3. A provider may not contract or agree with a funeral
 2210 director or direct disposer to the effect that such funeral
 2211 director or direct disposer conducts the funeral of a resident.

2212 (p) *Certain relations with funeral directors prohibited.*

2213 1. A provider may not:

2214 a. Affix, or permit to be affixed, advertising matter of
 2215 any kind or character of a licensed funeral director or direct
 2216 disposer to a continuing care contract.

2217 b. Circulate, or permit to be circulated, any such
 2218 advertising matter with a continuing care contract.

2219 c. Attempt in any manner or form to influence residents to
 2220 employ the services of a particular licensed funeral director or
 2221 direct disposer.

2222 2. A provider may not maintain, or permit its agent to
 2223 maintain, an office or place of business in the office,
 2224 establishment, or place of business of a funeral director or
 2225 direct disposer in this state.

2226 (q) False claims; obtaining or retaining money
 2227 dishonestly.—

2228 1. An agent, physician, resident, or other person who
 2229 causes to be presented to a provider a false claim for payment,
 2230 knowing the same to be false; or

2231 2. An agent, collector, or other person who represents a
 2232 provider or collects or does business without the authority of
 2233 the provider, secures cash advances by false statements, or
 2234 fails to turn over when required, or satisfactorily account for,
 2235 all collections of such provider,

2236
 2237 in addition to the other penalties provided in this act, commits
 2238 a misdemeanor of the second degree and, upon conviction thereof,
 2239 is subject to the penalties provided by s. 775.082 or s.
 2240 775.083.

2241 (r) Refusal to contract.—In addition to other provisions
 2242 of this code, the refusal to issue a continuing care contract to
 2243 an individual solely because of:

2244 1. Race, color, creed, marital status, sex, or national
 2245 origin;

2246 2. The age or lawful occupation of the individual, unless
 2247 there is a reasonable relationship between the age or lawful
 2248 occupation of the individual and the continuing care contract;

2249 3. The resident's or potential resident's failure to agree
 2250 to place collateral business with an insurer;

2251 4. The resident's or potential resident's failure to
2252 purchase noninsurance services or commodities;

2253 5. The fact that the resident or potential resident is a
2254 public official; or

2255 6. The fact that the resident or potential resident had
2256 been previously refused a continuing care contract by a
2257 provider, when such refusal for this reason occurs with such
2258 frequency as to indicate a general business practice.

2259 (s) Powers of attorney.—Except as provided in s.
2260 627.842(2):

2261 1. Requiring, as a condition to issuance of a continuing
2262 care contract, that a resident or potential resident execute a
2263 power of attorney in favor of the provider, facility, or an
2264 employee thereof; or

2265 2. Presenting to the resident or potential resident, as a
2266 routine business practice, a form that authorizes the provider
2267 or facility to sign the resident's or potential resident's name
2268 on any continuing care document. To be valid, a power of
2269 attorney must be an act or practice other than as described in
2270 this paragraph, must be a separate writing in a separate
2271 document, must be executed with the full knowledge and consent
2272 of the resident or potential resident who grants the power of
2273 attorney, must be in the best interests of the resident or
2274 potential resident, and a copy of the power of attorney must be
2275 provided to the resident or potential resident at the time of

2276 the transaction.

2277 (t) Sliding.—Sliding is the act or practice of:

2278 1. Representing to the applicant that a specific ancillary
2279 coverage or product is required by law in conjunction with the
2280 purchase of a continuing care contract when such coverage or
2281 product is not required;

2282 2. Representing to the applicant that a specific ancillary
2283 coverage or product is included in the continuing care contract
2284 applied for without an additional charge when such charge is
2285 required; or

2286 3. Charging an applicant for a specific ancillary coverage
2287 or product, in addition to the cost of the continuing care
2288 contract applied for, without the informed consent of the
2289 applicant.

2290 (u) Deceptive use of name.—Using the name or logo of a
2291 financial institution, as defined in s. 655.005(1), or its
2292 affiliates or subsidiaries when marketing to or soliciting
2293 existing or prospective residents if such name or logo is used
2294 without the written consent of the financial institution and in
2295 a manner that would lead a reasonable person to believe that the
2296 material or solicitation originated from, was endorsed by, or is
2297 related to or the responsibility of the financial institution or
2298 its affiliates or subsidiaries.

2299 (v) Fraudulent signatures on an application or policy-
2300 related document.—Willfully submitting to an insurer or provider

2301 on behalf of a consumer an insurance application, continuing
2302 care contract, or policy-related document bearing a false or
2303 fraudulent signature.

2304 (4) This section does not prohibit a provider from
2305 negotiating or entering into a contract with a licensed health
2306 care provider for alternative rates of payment, or from limiting
2307 payments under a policy pursuant to an agreement with a
2308 resident, as long as the continuing care provider offers the
2309 benefit of such alternative rates to residents who select
2310 designated health care providers.

2311 (5) (a) Participation in a wellness or health improvement
2312 program.—A provider may offer a voluntary wellness or health
2313 improvement program and may encourage or reward participation in
2314 the program by authorizing rewards or incentives, including, but
2315 not limited to, merchandise, gift cards, debit cards, or
2316 discounts on fees. An advertisement of the program is not
2317 subject to the limitations set forth in paragraph (1) (m).

2318 (b) Verification of medical condition by nonparticipants
2319 due to medical condition.—A provider may require a resident to
2320 provide verification, such as an affirming statement from the
2321 resident's physician, that the resident's medical condition
2322 makes it unreasonably difficult or inadvisable to participate in
2323 the wellness or health improvement program in order for that
2324 nonparticipant to receive the reward or incentive.

2325 (c) Disclosure requirement.—A reward or incentive offered

2326 | under this subsection must be disclosed in the contract.

2327 | (d) *Other incentives.*—This subsection does not prohibit
 2328 | providers from offering other incentives or rewards for
 2329 | adherence to a wellness or health improvement program if
 2330 | otherwise authorized by state or federal law.

2331 | Section 23. Subsection (1) of section 651.071, Florida
 2332 | Statutes, is amended to read:

2333 | 651.071 Contracts as preferred claims on liquidation or
 2334 | receivership.—

2335 | (1) In the event of receivership or liquidation
 2336 | proceedings against a provider, all continuing care and
 2337 | continuing care at-home contracts executed by a provider are
 2338 | ~~shall be~~ deemed policyholder loss preferred claims pursuant to
 2339 | s. 631.271 against all assets owned by the provider; however,
 2340 | such claims are subordinate to any secured claim.

2341 | Section 24. Present paragraphs (c) through (h) of
 2342 | subsection (2) of section 651.091, Florida Statutes, are
 2343 | redesignated as paragraphs (d) through (i), respectively, new
 2344 | paragraphs (c), (j), and (k) are added to that subsection,
 2345 | present paragraph (e) of subsection (2) and paragraphs (c) and
 2346 | (g) of subsection (3) of that section are amended, paragraphs
 2347 | (j) through (m) are added to subsection (3) of that section, and
 2348 | paragraph (d) of subsection (3) of that section is republished,
 2349 | to read:

2350 | 651.091 Availability, distribution, and posting of reports

2351 and records; requirement of full disclosure.—

2352 (2) Every continuing care facility shall:

2353 (c) Provide notice to the president or chair of the
 2354 residents' council within 3 business days of issuance of an
 2355 examination report or the initiation of any legal or
 2356 administrative proceeding by the office or the department and
 2357 include a copy of such document.

2358 (f)-(e) Deliver the information described in s. 651.085(4)
 2359 in writing to the president or chair of the residents' council
 2360 and make supporting documentation available upon request ~~Notify~~
 2361 ~~the residents' council of any plans filed with the office to~~
 2362 ~~obtain new financing, additional financing, or refinancing for~~
 2363 ~~the facility and of any applications to the office for any~~
 2364 ~~expansion of the facility.~~

2365 (j) Provide to the president or chair of the residents'
 2366 council a copy of any notice filed with the office relating to
 2367 any change in ownership within 3 business days after the receipt
 2368 of such filing by the provider.

2369 (k) Make the information available to prospective
 2370 residents pursuant to paragraph (3) (d) available to current
 2371 residents and provide notice of changes to that information to
 2372 the president or chair of the residents' council within 3
 2373 business days.

2374 (3) Before entering into a contract to furnish continuing
 2375 care or continuing care at-home, the provider undertaking to

2376 | furnish the care, or the agent of the provider, shall make full
 2377 | disclosure, and provide copies of the disclosure documents to
 2378 | the prospective resident or his or her legal representative, of
 2379 | the following information:

2380 | (c) All ownership interests and lease agreements,
 2381 | including information specified in s. 651.022(2)(b)4. ~~s.~~
 2382 | ~~651.022(2)(b)8.~~

2383 | (d) In keeping with the intent of this subsection relating
 2384 | to disclosure, the provider shall make available for review
 2385 | master plans approved by the provider's governing board and any
 2386 | plans for expansion or phased development, to the extent that
 2387 | the availability of such plans does not put at risk real estate,
 2388 | financing, acquisition, negotiations, or other implementation of
 2389 | operational plans and thus jeopardize the success of
 2390 | negotiations, operations, and development.

2391 | (g) A statement of the reserve requirements of ss. 651.034
 2392 | and 651.035 and the amounts required to be held for each reserve
 2393 | as of the date of the last annual statement to the office ~~The~~
 2394 | ~~amount and location of any reserve funds required by this~~
 2395 | ~~chapter, and the name of the person or entity having a claim to~~
 2396 | ~~such funds in the event of a bankruptcy, foreclosure, or~~
 2397 | ~~rehabilitation proceeding.~~

2398 | (j) Notice of the issuance of an examination report or the
 2399 | initiation of any legal or administrative proceeding by the
 2400 | office or the department, including a copy of such document.

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2401 (k) Notice that the entrance fee is the property of the
2402 provider after the expiration of the 7-day escrow requirement
2403 under s. 651.055(2).

2404 (l) If the provider operates multiple facilities, a
2405 disclosure of any distribution of assets or income between
2406 facilities that may occur and the manner in which such
2407 distributions would be made, or a statement that such
2408 distributions will not occur.

2409 (m) Notice of any holding company system or obligated
2410 group of which the provider is a member.

2411 Section 25. Subsection (1) of section 651.105, Florida
2412 Statutes, is amended, and subsection (7) is added to that
2413 section, to read:

2414 651.105 Examination and inspections.—

2415 (1) The office may at any time, and shall at least once
2416 every 3 years, examine the business of any applicant for a
2417 certificate of authority and any provider engaged in the
2418 execution of care contracts or engaged in the performance of
2419 obligations under such contracts, in the same manner as is
2420 provided for the examination of insurance companies pursuant to
2421 ss. 624.316 and 624.318 ~~s. 624.316~~. For a provider as described
2422 ~~defined~~ in s. 651.028, such examinations shall take place at
2423 least once every 5 years. Such examinations shall be made by a
2424 representative or examiner designated by the office whose
2425 compensation will be fixed by the office pursuant to s. 624.320.

2426 Routine examinations may be made by having the necessary
2427 documents submitted to the office; and, for this purpose,
2428 financial documents and records conforming to commonly accepted
2429 accounting principles and practices, as required under s.
2430 651.026, are deemed adequate. The final written report of each
2431 examination must be filed with the office and, when so filed,
2432 constitutes a public record. Any provider being examined shall,
2433 upon request, give reasonable and timely access to all of its
2434 records. The representative or examiner designated by the office
2435 may at any time examine the records and affairs and inspect the
2436 physical property of any provider, whether in connection with a
2437 formal examination or not.

2438 (7) (a) Effective January 1, 2018, the office may examine a
2439 provider and its affiliates to ascertain the financial condition
2440 of the provider, including the enterprise risk to the provider
2441 by the ultimate controlling party, or by any entity or
2442 combination of entities within the holding company system, or by
2443 the holding company system on a consolidated basis.

2444 (b) As used in this subsection, the term "enterprise risk"
2445 means an activity, circumstance, event, or series of events
2446 involving one or more affiliates of a provider which, if not
2447 remedied promptly, is likely to have a materially adverse effect
2448 upon the financial condition or liquidity of the provider or its
2449 holding company system as a whole, including anything that would
2450 cause the provider to be in a hazardous financial condition.

2451 Section 26. Section 651.1055, Florida Statutes, is created
 2452 to read:

2453 651.1055 Duty of provider to cooperate.—A provider has a
 2454 duty to cooperate with the office, including responding to
 2455 written correspondence and providing data, financial statements,
 2456 and pertinent information as requested by the office.

2457 Section 27. Section 651.106, Florida Statutes, is amended
 2458 to read:

2459 651.106 Grounds for discretionary denial ~~refusal~~,
 2460 suspension, or revocation of certificate of authority.—The
 2461 office may deny an application or ~~or~~ suspend ~~or~~ or revoke the
 2462 provisional certificate of authority or the certificate of
 2463 authority of any applicant or provider if it finds that any one
 2464 or more of the following grounds applicable to the applicant or
 2465 provider exist:

2466 (1) Failure by the provider to continue to meet the
 2467 requirements for the authority originally granted.

2468 (2) Failure by the provider to meet one or more of the
 2469 qualifications for the authority specified by this chapter.

2470 (3) Material misstatement, misrepresentation, or fraud in
 2471 obtaining the authority, or in attempting to obtain the same.

2472 (4) Demonstrated lack of fitness or trustworthiness.

2473 (5) Fraudulent or dishonest practices of management in the
 2474 conduct of business.

2475 (6) Misappropriation, conversion, or withholding of

2476 moneys.

2477 (7) Failure to comply with, or violation of, any proper
 2478 order or rule of the office or commission or violation of any
 2479 provision of this chapter.

2480 (8) The insolvent or impaired condition of the provider or
 2481 the provider's being in such condition or using such methods and
 2482 practices in the conduct of its business as to render its
 2483 further transactions in this state hazardous or injurious to the
 2484 public.

2485 (9) Refusal by the provider to be examined or to produce
 2486 its accounts, records, and files for examination, or refusal by
 2487 any of its officers to give information with respect to its
 2488 affairs or to perform any other legal obligation under this
 2489 chapter when required by the office.

2490 (10) Failure by the provider to comply with the
 2491 requirements of s. 651.026 or s. 651.033.

2492 (11) Failure by the provider to maintain escrow accounts
 2493 or funds as required by this chapter.

2494 (12) Failure by the provider to meet the requirements of
 2495 this chapter for disclosure of information to residents
 2496 concerning the facility, its ownership, its management, its
 2497 development, or its financial condition or failure to honor its
 2498 continuing care or continuing care at-home contracts.

2499 (13) Any cause for which issuance of the license could
 2500 have been refused had it then existed and been known to the

2501 office.

2502 (14) Having been found guilty of, or having pleaded guilty
 2503 or nolo contendere to, a felony in this state or any other
 2504 state, without regard to whether a judgment or conviction has
 2505 been entered by the court having jurisdiction of such cases.

2506 (15) In the conduct of business under the license,
 2507 engaging in unfair methods of competition or in unfair or
 2508 deceptive acts or practices prohibited under s. 651.064 ~~part IX~~
 2509 ~~of chapter 626~~.

2510 (16) A pattern of bankrupt enterprises.

2511 (17) (a) The ownership, control, or management of the
 2512 organization includes any person:

2513 1. Who is incompetent or untrustworthy;

2514 2. Who is so lacking in continuing care expertise as to
 2515 make the operation of the provider hazardous to potential and
 2516 existing residents;

2517 3. Who is so lacking in continuing care experience,
 2518 ability, and standing as to jeopardize the reasonable promise of
 2519 successful operation;

2520 4. Who is affiliated, directly or indirectly, through
 2521 ownership, control, reinsurance transactions, or other business
 2522 relations, with any person whose business operations are or have
 2523 been marked by business practices or conduct that is to the
 2524 detriment of the public, stockholders, investors, or creditors;
 2525 or

2526 5. Whose business operations are or have been marked by
2527 business practices or conduct that is to the detriment of the
2528 public, stockholders, investors, or creditors;

2529 (b) Any person, including any stock subscriber,
2530 stockholder, or incorporator, who exercises or has the ability
2531 to exercise effective control of the organization, or who
2532 influences or has the ability to influence the transaction of
2533 the provider's business, does not possess the financial standing
2534 and business experience for the successful operation of the
2535 provider.

2536 (18) The provider has not filed a notice of change in
2537 management, fails to remove a disapproved manager, or persists
2538 in appointing disapproved or unapprovable managers.

2539
2540 Revocation of a certificate of authority under this section does
2541 not relieve a provider from the provider's obligation to
2542 residents under the terms and conditions of any continuing care
2543 or continuing care at-home contract between the provider and
2544 residents or the provisions of this chapter. The provider shall
2545 continue to file its annual statement and pay license fees to
2546 the office as required under this chapter as if the certificate
2547 of authority had continued in full force, but the provider shall
2548 not issue any new contracts. The office may seek an action in
2549 the circuit court of Leon County to enforce the office's order
2550 and the provisions of this section.

2551 Section 28. Section 651.1065, Florida Statutes, is created
 2552 to read:

2553 651.1065 Soliciting or accepting new continuing care
 2554 contracts by impaired or insolvent facilities or providers.-

2555 (1) Whether or not delinquency proceedings as to a
 2556 continuing care retirement community have been or are to be
 2557 initiated, a proprietor, general partner, member, officer,
 2558 director, trustee, or manager of a continuing care retirement
 2559 community, except with the written permission of the office, may
 2560 not permit the continuing care retirement community to solicit
 2561 or accept new continuing care contracts in this state after the
 2562 proprietor, general partner, member, officer, director, trustee,
 2563 or manager knew, or reasonably should have known, that the
 2564 continuing care retirement community was impaired or insolvent.

2565 (2) A proprietor, general partner, member, officer,
 2566 director, trustee, or manager who violates this section commits
 2567 a felony of the third degree, punishable as provided in s.
 2568 775.082, s. 775.083, or s. 775.084.

2569 Section 29. Subsection (1) of section 651.107, Florida
 2570 Statutes, is amended, and subsection (4) is added to that
 2571 section, to read:

2572 651.107 Duration of suspension; obligations during
 2573 suspension period; reinstatement.-

2574 (1) Suspension of a certificate of authority shall be for
 2575 such period, not to exceed 2 years ~~1 year~~, as is fixed by the

2576 office in the order of suspension or until the occurrence of a
2577 specific event necessary for remedying the reasons for
2578 suspension, unless the office shortens or rescinds such
2579 suspension or the order of suspension is modified, rescinded, or
2580 reversed.

2581 (4) If the suspension of the certificate of authority was
2582 until the occurrence of a specific event or events and the
2583 certificate of authority has not been otherwise terminated, upon
2584 the presentation of evidence satisfactory to the office that the
2585 specific event or events have occurred, the provider's
2586 certificate of authority must be reinstated unless the office
2587 finds that the provider is otherwise not in compliance with the
2588 requirements of this chapter. The office shall promptly notify
2589 the provider of such reinstatement, but the provider may not
2590 consider its certificate of authority reinstated until so
2591 notified by the office. If satisfactory evidence as to the
2592 occurrence of the specific event or events has not been
2593 presented to the office within 2 years of the date of such
2594 suspension, the certificate of authority is deemed to have
2595 expired as of 2 years from the date of suspension or upon
2596 failure of the provider to continue the certificate during the
2597 suspension period in accordance with subsection (2), whichever
2598 first occurs.

2599 Section 30. Section 651.114, Florida Statutes, is amended
2600 to read:

2601 651.114 Delinquency proceedings; remedial rights.—

2602 (1) Upon determination by the office that a provider is

2603 not in compliance with this chapter, the office may notify the

2604 chair of the Continuing Care Advisory Council, who may assist

2605 the office in formulating a corrective action plan.

2606 (2) Within 30 days after a request by either the advisory

2607 council or the office, a provider shall make a plan for

2608 obtaining compliance or solvency available to the advisory

2609 council ~~and the office,~~ ~~within 30 days after being requested to~~

2610 ~~do so by the council,~~ ~~a plan for obtaining compliance or~~

2611 ~~solvency.~~

2612 (3) Within 30 days after receipt of a plan for obtaining

2613 compliance or solvency, the office or notification, ~~the advisory~~

2614 ~~council,~~ at the request of the office, shall:

2615 (a) Consider and evaluate the plan submitted by the

2616 provider.

2617 (b) Discuss the problem and solutions with the provider.

2618 (c) Conduct such other business as is necessary.

2619 (d) Report its findings and recommendations to the office,

2620 which may require additional modification of the plan.

2621

2622 This subsection may not be interpreted so as to delay or prevent

2623 the office from taking any regulatory measures it deems

2624 necessary regarding the provider that submitted the plan.

2625 (4) If the financial condition of the continuing care

2626 facility or provider is impaired or is such that if not modified
2627 or corrected, its continued operation would result in
2628 insolvency, the office may direct the provider to formulate and
2629 file with the office a corrective action plan. If the provider
2630 fails to submit a plan within 30 days after the office's
2631 directive, or submits a plan that is insufficient to correct the
2632 condition, the office may specify a plan and direct the provider
2633 to implement the plan.

2634 (5)~~(4)~~ After receiving approval of a plan by the office,
2635 the provider shall submit a progress report monthly to the
2636 advisory council and ~~or~~ the office, ~~or both,~~ in a manner
2637 prescribed by the office. After 3 months, or at any earlier time
2638 deemed necessary, the council shall evaluate the progress by the
2639 provider and shall advise the office of its findings.

2640 (6) Supervision by the office under ss. 624.80-624.87
2641 constitutes the exclusive means of supervising a provider
2642 licensed under this chapter.

2643 (7)~~(5)~~ ~~If should~~ the office finds ~~find~~ that sufficient
2644 grounds exist for rehabilitation, liquidation, conservation,
2645 reorganization, seizure, or summary proceedings of an insurer as
2646 set forth in ss. 631.051, 631.061, and 631.071, the department
2647 ~~office~~ may petition for an appropriate court order or may pursue
2648 such other relief as is afforded in part I of chapter 631.
2649 Before invoking its powers under part I of chapter 631, the
2650 department ~~office~~ shall notify the chair of the advisory

2651 council.

2652 (8) A delinquency proceeding under part I of chapter 631
 2653 constitutes the sole and exclusive means of conserving,
 2654 rehabilitating, liquidating, or seizing a provider licensed
 2655 under this chapter. Notwithstanding s. 631.011, impairment of a
 2656 provider for the purposes of s. 631.051 is defined according to
 2657 the term "impaired" in s. 651.011.

2658 (9)(6) In the event an order of conservation,
 2659 rehabilitation, liquidation, or conservation, reorganization,
 2660 seizure, or summary proceeding has been entered against a
 2661 provider, the department and office are vested with all of the
 2662 powers and duties they have under the provisions of part I of
 2663 chapter 631 in regard to delinquency proceedings of insurance
 2664 companies. A provider shall give written notice of the
 2665 proceeding to its residents within 3 business days after the
 2666 initiation of a delinquency proceeding under chapter 631 and
 2667 shall include a notice of the delinquency proceeding in any
 2668 written materials provided to prospective residents.

2669 ~~(7) If the financial condition of the continuing care~~
 2670 ~~facility or provider is such that, if not modified or corrected,~~
 2671 ~~its continued operation would result in insolvency, the office~~
 2672 ~~may direct the provider to formulate and file with the office a~~
 2673 ~~corrective action plan. If the provider fails to submit a plan~~
 2674 ~~within 30 days after the office's directive or submits a plan~~
 2675 ~~that is insufficient to correct the condition, the office may~~

2676 ~~specify a plan and direct the provider to implement the plan.~~

2677 ~~(8)(a) The rights of the office described in this section~~

2678 ~~are subordinate to the rights of a trustee or lender pursuant to~~

2679 ~~the terms of a resolution, ordinance, loan agreement, indenture~~

2680 ~~of trust, mortgage, lease, security agreement, or other~~

2681 ~~instrument creating or securing bonds or notes issued to finance~~

2682 ~~a facility, and the office, subject to the provisions of~~

2683 ~~paragraph (c), shall not exercise its remedial rights provided~~

2684 ~~under this section and ss. 651.018, 651.106, 651.108, and~~

2685 ~~651.116 with respect to a facility that is subject to a lien,~~

2686 ~~mortgage, lease, or other encumbrance or trust indenture~~

2687 ~~securing bonds or notes issued in connection with the financing~~

2688 ~~of the facility, if the trustee or lender, by inclusion or by~~

2689 ~~amendment to the loan documents or by a separate contract with~~

2690 ~~the office, agrees that the rights of residents under a~~

2691 ~~continuing care or continuing care at-home contract will be~~

2692 ~~honored and will not be disturbed by a foreclosure or conveyance~~

2693 ~~in lieu thereof as long as the resident:~~

2694 ~~1. Is current in the payment of all monetary obligations~~

2695 ~~required by the contract;~~

2696 ~~2. Is in compliance and continues to comply with all~~

2697 ~~provisions of the contract; and~~

2698 ~~3. Has asserted no claim inconsistent with the rights of~~

2699 ~~the trustee or lender.~~

2700 ~~(b) This subsection does not require a trustee or lender~~

2701 ~~to:~~

2702 1. ~~Continue to engage in the marketing or resale of new~~

2703 ~~continuing care or continuing care at-home contracts;~~

2704 2. ~~Pay any rebate of entrance fees as may be required by a~~

2705 ~~resident's continuing care or continuing care at-home contract~~

2706 ~~as of the date of acquisition of the facility by the trustee or~~

2707 ~~lender and until expiration of the period described in paragraph~~

2708 ~~(d);~~

2709 3. ~~Be responsible for any act or omission of any owner or~~

2710 ~~operator of the facility arising before the acquisition of the~~

2711 ~~facility by the trustee or lender; or~~

2712 4. ~~Provide services to the residents to the extent that~~

2713 ~~the trustee or lender would be required to advance or expend~~

2714 ~~funds that have not been designated or set aside for such~~

2715 ~~purposes.~~

2716 (c) ~~Should the office determine, at any time during the~~

2717 ~~suspension of its remedial rights as provided in paragraph (a),~~

2718 ~~that the trustee or lender is not in compliance with paragraph~~

2719 ~~(a), or that a lender or trustee has assigned or has agreed to~~

2720 ~~assign all or a portion of a delinquent or defaulted loan to a~~

2721 ~~third party without the office's written consent, the office~~

2722 ~~shall notify the trustee or lender in writing of its~~

2723 ~~determination, setting forth the reasons giving rise to the~~

2724 ~~determination and specifying those remedial rights afforded to~~

2725 ~~the office which the office shall then reinstate.~~

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2726 ~~(d) Upon acquisition of a facility by a trustee or lender~~
2727 ~~and evidence satisfactory to the office that the requirements of~~
2728 ~~paragraph (a) have been met, the office shall issue a 90-day~~
2729 ~~temporary certificate of authority granting the trustee or~~
2730 ~~lender the authority to engage in the business of providing~~
2731 ~~continuing care or continuing care at home and to issue~~
2732 ~~continuing care or continuing care at home contracts subject to~~
2733 ~~the office's right to immediately suspend or revoke the~~
2734 ~~temporary certificate of authority if the office determines that~~
2735 ~~any of the grounds described in s. 651.106 apply to the trustee~~
2736 ~~or lender or that the terms of the contract used as the basis~~
2737 ~~for the issuance of the temporary certificate of authority by~~
2738 ~~the office have not been or are not being met by the trustee or~~
2739 ~~lender since the date of acquisition.~~

2740 Section 31. Section 651.1141, Florida Statutes, is created
2741 to read:

2742 651.1141 Immediate final orders.—The Legislature finds
2743 that a violation of s. 651.024, s. 651.0245, s. 651.025, s.
2744 651.035(3), s. 651.036, s. 651.043, s. 651.083, or s. 651.105
2745 constitutes an immediate danger to the public health, safety, or
2746 welfare. Pursuant to s. 120.569, the office may issue an
2747 immediate final order to cease and desist if it finds that a
2748 provider is in violation of such sections.

2749 Section 32. Section 651.1151, Florida Statutes, is amended
2750 to read:

2751 651.1151 Administrative, vendor, and management
2752 contracts.—

2753 (1) ~~The office may require~~ A provider must ~~to~~ submit to
2754 the office any contract for administrative, vendor, or
2755 management services ~~if the office has information and belief~~
2756 ~~that a provider has entered into a contract~~ with an affiliate,
2757 an entity controlled by the provider, or an entity controlled by
2758 an affiliate of the provider, ~~which has not been disclosed to~~
2759 ~~the office or which contract requires the provider to pay a fee~~
2760 ~~that is unreasonably high in relation to the service provided.~~

2761 (2) The office may disapprove a contract for
2762 administrative, vendor, or management services if it finds that
2763 the fees to be paid are so unreasonably high as compared with
2764 similar contracts entered into by other providers in similar
2765 circumstances that the contract is detrimental to the facility
2766 or its residents.

2767 (3)~~(2)~~ After review of the contract, the office may order
2768 the provider to cancel the contract in accordance with the terms
2769 of the contract and applicable law if it determines that the
2770 fees to be paid are so unreasonably high as compared with
2771 similar contracts entered into by other providers in similar
2772 circumstances that the contract is detrimental to the facility
2773 or its residents.

2774 (4)~~(3)~~ Any contract with an affiliate, an entity
2775 controlled by the provider, or an entity controlled by an

2776 affiliate of the provider for administrative, vendor, or
 2777 management services ~~entered into or renewed after October 1,~~
 2778 ~~1991,~~ must include a provision that the contract will be
 2779 canceled upon issuance of an order by the office pursuant to
 2780 this section. A copy of the current management services
 2781 contract, pursuant to this section, if any, must be on file in
 2782 the marketing office or other area accessible to residents and
 2783 the appropriate residents' council.

2784 (5)~~(4)~~ Any action of the office under this section is
 2785 subject to review pursuant to the procedures provided in chapter
 2786 120.

2787 Section 33. Section 651.119, Florida Statutes, is amended
 2788 to read:

2789 651.119 Assistance to persons affected by closure due to
 2790 liquidation or pending liquidation.—

2791 (1) If a facility closes and ceases to operate as a result
 2792 of liquidation or pending liquidation and residents are forced
 2793 to relocate, the department shall become a creditor of the
 2794 facility for the purpose of providing entrance fee refunds due
 2795 to the cancellation of continuing care contracts of displaced
 2796 residents, moving expenses for displaced residents, and such
 2797 other care or services as is made possible by the unencumbered
 2798 assets of the facility. To the extent that another provider
 2799 provides, as approved by the office, direct assistance to such
 2800 residents, the cost of such direct assistance shall be offset

2801 against reserves pursuant to subsection (4). The department
2802 shall provide proportional reimbursements of such costs to the
2803 respective providers from such unencumbered assets.

2804 (2) If the moneys and direct assistance made available
2805 under subsection (1) are not sufficient to cover moving costs,
2806 the office may seek voluntary contributions from the reserves
2807 maintained by providers under ss. 651.034 and 651.035 ~~s. 651.035~~
2808 in amounts approved by the office to provide for the moving
2809 expenses of the residents in moving to another residence within
2810 the state.

2811 (3) If the moneys and direct assistance provided under
2812 subsections (1) and (2) are not sufficient to provide for
2813 entrance fee refunds due to the cancellation of continuing care
2814 contracts and the moving expenses of displaced residents in
2815 moving to other residences within the state, the office may levy
2816 pro rata assessments on the reserves of providers maintained
2817 under ss. 651.034 and 651.035 ~~s. 651.035~~ for such entrance fee
2818 refunds and moving expenses of any displaced resident ~~who lacks~~
2819 ~~sufficient assets to pay for such moving expenses~~. The
2820 assessments for such entrance fee refunds and moving expenses on
2821 any particular provider may not exceed for any 12-month period
2822 an aggregate of 5 ± percent of the unencumbered portion of the
2823 reserves maintained by the provider under ss. 651.034 and
2824 651.035 ~~s. 651.035~~. If the office determines that payment of an
2825 assessment under this subsection would impair the financial

2826 standing of a facility or its residents, the office may waive or
2827 temporarily defer all or part of the assessment with respect to
2828 that provider. The office shall apply any moneys voluntarily
2829 paid by a provider under subsection (1) or subsection (2) to
2830 satisfaction of assessments under this subsection.

2831 (4) The office shall ~~permanently~~ reduce the reserves
2832 required of a provider under s. 651.035 to the extent of the
2833 provider's costs under subsection (1), voluntary contributions
2834 under subsection (2), and assessments under subsection (3) for a
2835 period of 3 years. ~~However, the office shall thereafter raise~~
2836 ~~the reserve requirements of a provider to the extent of~~
2837 ~~reimbursements paid to the provider under subsection (1) unless~~
2838 ~~such increase would raise the reserve requirement above the~~
2839 ~~amount required under s. 651.035.~~

2840 (5) No payment, contribution, or assessment may be paid by
2841 a provider under this section if the release of funds from the
2842 reserves of the provider would violate a bond or lending
2843 commitment or covenant.

2844 (6) Moneys received under this section for the support of
2845 residents shall be kept in a separate fund maintained and
2846 administered by the department. The Continuing Care Advisory
2847 Council shall monitor the collection and use of such funds and
2848 shall advise the office or department on plans for resident
2849 relocation. The council shall seek the assistance of providers
2850 licensed under this chapter and other service providers in

2851 locating alternative housing and care arrangements.

2852 (7) The amount each displaced resident is entitled to
 2853 receive under this section must be prorated based on the amount
 2854 of available funds held by the department under this section and
 2855 the calculation of the total amount that would be due the
 2856 resident as a result of the cancellation of the resident's
 2857 continuing care contract. The refund amount paid to a displaced
 2858 resident may not exceed \$500,000 or the total amount due the
 2859 resident as an entrance fee refund under the resident's
 2860 continuing care contract as a result of cancellation of that
 2861 contract, whichever is lesser.

2862 (8)~~(7)~~ For the purposes of this section, "moving expenses"
 2863 means transportation expenses and the cost of packing and
 2864 relocating personal belongings.

2865 (9) For the purposes of this section, the term "entrance
 2866 fee refund" means the amount due the displaced resident under
 2867 the terms of the resident's continuing care contract as a result
 2868 of the cancellation of the contract.

2869 Section 34. Subsections (1) and (4) of section 651.125,
 2870 Florida Statutes, are amended to read:

2871 651.125 Criminal penalties; injunctive relief.—

2872 (1) Any person who maintains, enters into, or, as manager
 2873 or officer or in any other administrative capacity, assists in
 2874 entering into, maintaining, or performing any continuing care or
 2875 continuing care at-home contract subject to this chapter without

2876 | ~~doing so in pursuance of~~ a valid provisional certificate of
 2877 | authority or certificate of authority ~~or renewal thereof~~, as
 2878 | contemplated by or provided in this chapter, or who otherwise
 2879 | violates any provision of this chapter or rule adopted in
 2880 | pursuance of this chapter, commits a felony of the third degree,
 2881 | punishable as provided in s. 775.082 or s. 775.083. Each
 2882 | violation of this chapter constitutes a separate offense.

2883 | (4) Any action brought by the office against a provider
 2884 | shall not abate by reason of a sale or other transfer of
 2885 | ownership of the facility used to provide care, which provider
 2886 | is a party to the action, except with the express written
 2887 | consent of the ~~director of the~~ office.

2888 | Section 35. Subsection (1) of section 651.131, Florida
 2889 | Statutes, is amended to read:

2890 | 651.131 Actions under prior law.—

2891 | (1) With respect to any proceedings hereafter instituted
 2892 | by any person believing himself or herself to be aggrieved by a
 2893 | violation of any of the provisions of former s. 651.01, s.
 2894 | 651.014, s. 651.019, s. 651.02, s. 651.021, s. 651.022, s.
 2895 | 651.023, s. 651.024, s. 651.0261, s. 651.03, s. 651.033, s.
 2896 | 651.035, s. 651.04, s. 651.05, s. 651.051, s. 651.055, s.
 2897 | 651.06, s. 651.07, s. 651.071, s. 651.072, s. 651.074, s.
 2898 | 651.076, s. 651.08, s. 651.09, s. 651.091, s. 651.10, s.
 2899 | 651.105, s. 651.106, s. 651.107, s. 651.11, s. 651.114, s.
 2900 | 651.115, s. 651.1151, s. 651.119, or s. 651.12, or s. 651.125,

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2901 any resulting judgment shall be limited to the actual monetary
2902 loss suffered by such person plus reasonable attorney's fees.

2903 Section 36. Section 651.132, Florida Statutes, is
2904 repealed.

2905 Section 37. Section 651.012, Florida Statutes, is amended
2906 to read:

2907 651.012 Exempted facility; written disclosure of
2908 exemption.—Any facility exempted under ss. 632.637(1)(e) and
2909 651.011(17) ~~ss. 632.637(1)(e) and 651.011(12)~~ must provide
2910 written disclosure of such exemption to each person admitted to
2911 the facility after October 1, 1996. This disclosure must be
2912 written using language likely to be understood by the person and
2913 must briefly explain the exemption.

2914 Section 38. Except as otherwise expressly provided in this
2915 act, this act shall take effect July 1, 2017.