

By Senator Lee

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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

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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

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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

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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,

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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

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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;

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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 Florida  
198 Seniors from Financial Fraud Act."

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

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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



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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.

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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~~

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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

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320 only its members and their spouses as residents.

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

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

339 (1) Except as herein provided, providers of continuing care  
340 and continuing care at-home are governed by the provisions of  
341 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.

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

363       651.014 Other insurance business not authorized. ~~Nothing in~~  
364 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 to  
372 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~~

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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 financing  
400 or refinancing transaction, the provider shall also submit to  
401 the office copies of executed financing documents and a copy of  
402 all documents required to be submitted to the residents' council  
403 under paragraph (2) (a) within 30 days after the closing date.

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

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407 651.021 Certificate of authority required.-

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

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

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

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

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

434 651.022 Provisional certificate of authority; application.-

435 (2) The application for a provisional certificate of

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436 authority shall be on a form prescribed by the commission and  
437 shall contain the following information:

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

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

445 ~~1. The proprietor, if the applicant or provider is an~~  
446 ~~individual.~~

447 ~~2. Every partner or member, if the applicant or provider is~~  
448 ~~a partnership or other unincorporated association, however~~  
449 ~~organized, having fewer than 50 partners or members, together~~  
450 ~~with the business name and address of the partnership or other~~  
451 ~~organization.~~

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

461 ~~1.4. The corporation and each officer and director thereof,~~  
462 ~~if the applicant or provider is a corporation.~~

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



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465       ~~2.6.~~ The manager, whether an individual, corporation,  
466 partnership, or association.

467       ~~3.7.~~ Any stockholder holding at least a 10 percent interest  
468 in the operations of the facility in which the care is to be  
469 offered.

470       ~~4.8.~~ Any person whose name is required to be provided in  
471 the application under this paragraph and who owns any interest  
472 in or receives any remuneration from, directly or indirectly,  
473 any professional service firm, association, trust, partnership,  
474 or corporation providing goods, leases, or services to the  
475 facility for which the application is made, with a real or  
476 anticipated value of \$10,000 or more, and the name and address  
477 of the professional service firm, association, trust,  
478 partnership, or corporation in which such interest is held. The  
479 applicant shall describe such goods, leases, or services and the  
480 probable cost to the facility or provider and shall describe why  
481 such goods, leases, or services should not be purchased from an  
482 independent entity.

483       ~~5.9.~~ Any person, corporation, partnership, association, or  
484 trust owning land or property leased to the facility, along with  
485 a copy of the lease agreement.

486       ~~6.10.~~ Any affiliated parent or subsidiary corporation or  
487 partnership.

488       (c)1. Evidence that the persons named in paragraph (b) are  
489 competent and trustworthy ~~applicant is reputable and of~~  
490 ~~responsible character. If the applicant is a firm, association,~~  
491 ~~organization, partnership, business trust, corporation, or~~  
492 ~~company,~~ The form must further ~~shall~~ require evidence that the  
493 ~~members or shareholders are reputable and of responsible~~

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494 ~~character, and the person in charge of providing care under a~~  
495 ~~certificate of authority is competent and trustworthy shall~~  
496 ~~likewise be required to produce evidence of being reputable and~~  
497 ~~of responsible character.~~

498 2. Evidence satisfactory to the office of the ability of  
499 the applicant to comply with ~~the provisions of~~ this chapter and  
500 with rules adopted by the commission pursuant to this chapter.

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

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

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

516  
517 The statement must ~~shall~~ set forth the court or agency, the date  
518 of conviction or judgment, and the penalty imposed or damages  
519 assessed, or the date, nature, and issuer of the order. Before  
520 determining whether a provisional certificate of authority is to  
521 be issued, the office may make an inquiry to determine the  
522 accuracy of the information submitted pursuant to subparagraphs

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523 1., 2., and 3. ~~1. and 2.~~

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

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

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

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

548 (h) An actuarial study.

549

550 If any material change occurs in the facts set forth in an  
551 application filed with the office pursuant to this subsection,

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552 an amendment setting forth such changes must be immediately  
553 filed with the office, and a copy of the amendment must be sent  
554 by registered mail to the principal office of the facility and  
555 to the principal office of the controlling company.

556 (5)

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

570 (6) Within 90 ~~45~~ days after the date an application is  
571 deemed complete as set forth in paragraph (5) (b), the office  
572 shall complete its review and issue a provisional certificate of  
573 authority to the applicant based upon its review and a  
574 determination that the application meets all requirements of  
575 law, that the feasibility study was based on sufficient data and  
576 reasonable assumptions, and that the applicant will be able to  
577 provide continuing care or continuing care at-home as proposed  
578 and meet all financial and contractual obligations related to  
579 its operations, including the financial requirements of this  
580 chapter. If the application is denied, the office shall notify

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581 the applicant in writing, citing the specific failures to meet  
582 the provisions of this chapter. Such denial entitles the  
583 applicant to a hearing pursuant to chapter 120.

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

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

593 651.023 Certificate of authority; application.—

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

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

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

609 1. The study must also contain an independent evaluation

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610 and examination opinion, or a comparable opinion acceptable to  
611 the office, by the consultant who prepared the study, of the  
612 underlying assumptions used as a basis for the forecasts or  
613 projections in the study and that the assumptions are reasonable  
614 and proper and the project as proposed is feasible.

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

620 3. If the study is prepared by an independent certified  
621 public accountant, it must contain an examination opinion for  
622 the first 3 years of operations and financial projections having  
623 a compilation opinion for the next 3 years. ~~If the study is  
624 prepared by an independent consulting actuary, it must contain  
625 mortality and morbidity data and an actuary's signed opinion  
626 that the project as proposed is feasible and that the study has  
627 been prepared in accordance with standards adopted by the  
628 American Academy of Actuaries.~~

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

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639 appointed receiver pursuant to part II of chapter 631.

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

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

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

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

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

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668 (i) An actuarial study.

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

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

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



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697 holder of the provisional certificate in writing, citing the  
698 specific failures to satisfy the provisions of this chapter. If  
699 denied, the holder of the provisional certificate is entitled to  
700 an administrative hearing pursuant to chapter 120.

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

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

716 (10) ~~(9)~~ The office may not approve an application that  
717 includes in the plan of financing any encumbrance of the  
718 ~~operating~~ reserves required by this chapter.

719 Section 9. Section 651.024, Florida Statutes, is amended to  
720 read:

721 651.024 Acquisition.—

722 (1) A person who seeks to acquire a provider; assume the  
723 role of general partner of a provider; or otherwise assume  
724 ownership or possession of, or control over, 10 percent or more  
725 of a provider's assets is ~~issued a certificate of authority to~~

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726 ~~operate a continuing care facility or a provisional certificate~~  
727 ~~of authority shall be subject to the provisions of s. 628.4615~~  
728 ~~and is not required to make filings pursuant to s. 651.022 or s.~~  
729 ~~651.023.~~

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

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

747 Section 10. Section 651.0245, Florida Statutes, is created  
748 to read:

749 651.0245 Application for the simultaneous acquisition of a  
750 facility and issuance of a certificate of authority.-

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

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755 care, unless:

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

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

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

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

781 (a) A copy of the articles of incorporation and bylaws of  
782 the applicant.

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

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

785 2. The manager, whether an individual, corporation,  
786 partnership, or association.

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

790 4. Any person whose name is required to be provided in the  
791 application under this paragraph and who owns any interest in or  
792 receives any remuneration from, directly or indirectly, any  
793 professional service firm, association, trust, partnership, or  
794 corporation providing goods, leases, or services to the facility  
795 for which the application is made, with a real or anticipated  
796 value of \$10,000 or more, and the name and address of the  
797 professional service firm, association, trust, partnership, or  
798 corporation in which such interest is held. The applicant shall  
799 describe such goods, leases, or services and the probable cost  
800 to the facility or provider and shall describe why such goods,  
801 leases, or services should not be purchased from an independent  
802 entity.

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

806 6. Any affiliated parent or subsidiary corporation or  
807 partnership.

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

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

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813 authority is competent and trustworthy.

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

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

821 a. Has been convicted of a felony, has pleaded nolo  
822 contendere to a felony charge, or has been held liable or has  
823 been enjoined in a civil action by final judgment, if the felony  
824 or civil action involved fraud, embezzlement, fraudulent  
825 conversion, or misappropriation of property.

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

832

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

840 4. For each natural person about whom information is  
841 required to be furnished pursuant to paragraph (b), a statement

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842 describing:

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

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

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

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

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

866 f. Whether, during the past 10 years, the natural person  
867 has been enjoined, temporarily or permanently, by a court of  
868 competent jurisdiction from violating any federal or state law  
869 regulating the business of continuing care, insurance,  
870 securities, or banking or from carrying out any particular

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871 practice or practices in the course of the business of  
872 continuing care, insurance, securities, or banking, together  
873 with details as to any such event.

874  
875 Any person filing the statement required by this subparagraph  
876 must give all required information that is within the knowledge  
877 of the directors, officers, or trustees of the person making the  
878 filing and of any person directly or indirectly controlling such  
879 person.

880 5. Fingerprints of each person referred to in paragraph  
881 (b).

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

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

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

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

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

916       (i) An actuarial study.

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

919  
920 If any material change occurs in the facts set forth in the  
921 application filed with the office pursuant to this subsection,  
922 an amendment setting forth such changes must be filed  
923 immediately with the office and a copy of the amendment must be  
924 sent by registered mail to the principal office of the facility  
925 and to the principal office of the controlling company.

926       (3) (a) In addition to the information required in  
927 subsection (2), an applicant shall submit a feasibility study  
928 prepared by an independent consultant and financial forecasts or



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929 projections prepared in accordance with standards adopted by the  
930 American Institute of Certified Public Accountants. The  
931 feasibility study must include at least the following  
932 information:

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

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

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

944 4. Current assets and liabilities of the applicant.

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

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

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

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

957 (b)1. The study must also contain an independent evaluation

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958 and examination opinion, or a comparable opinion acceptable to  
959 the office, by the consultant who prepared the study, of the  
960 underlying assumptions used as a basis for the forecasts or  
961 projections in the study and that the assumptions are reasonable  
962 and proper and the project as proposed is feasible.

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

968 3. If the study is prepared by an independent certified  
969 public accountant, it must contain an examination opinion for  
970 the first 3 years of operations and financial projections having  
971 a compilation opinion for the next 3 years. If the study is  
972 prepared by an independent consulting actuary, it must contain  
973 mortality and morbidity data and an actuary's signed opinion  
974 that the project as proposed is feasible and that the study has  
975 been prepared in accordance with standards adopted by the  
976 American Academy of Actuaries.

977 (4) (a) The application must be reviewed in accordance with  
978 chapter 120. The office may conduct on its own initiative, or  
979 shall conduct if requested to do so in writing by a  
980 substantially affected person, a proceeding to consider the  
981 appropriateness of the proposed acquisition. Timeframes for  
982 purposes of chapter 120 are tolled during the pendency of the  
983 proceeding. Any written request for a proceeding must be filed  
984 with the office within 10 days after the date notice is given  
985 pursuant to paragraph (1) (a). During the pendency of the  
986 proceeding or review period by the office, any person or

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987 affiliated person complying with the filing requirements of this  
988 section may proceed and take all steps necessary to conclude the  
989 acquisition so long as the acquisition becoming final is  
990 conditioned upon obtaining office approval. However, at any time  
991 the office finds an immediate danger exists to the public  
992 health, safety, and welfare of the residents, the office shall  
993 immediately order, pursuant to s. 120.569(2) (n), the proposed  
994 acquisition disapproved and any further steps to conclude the  
995 acquisition ceased.

996 (b) If a request for a proceeding is filed, the proceeding  
997 must be conducted within 60 days after the date the written  
998 request for a proceeding is received by the office. A  
999 recommended order must be issued within 20 days after the date  
1000 the proceedings are closed. A final order must be issued within  
1001 20 days after the date of the recommended order or, if  
1002 exceptions to the recommended order are filed, within 20 days  
1003 after the date the exceptions are filed.

1004 (5) The office may disapprove any acquisition subject to  
1005 the provisions of this section by any person or any affiliated  
1006 person of such person who:

1007 (a) Willfully violates this section;

1008 (b) Fails to divest any ownership interest obtained in  
1009 violation of this section or fails to divest any direct or  
1010 indirect control of such ownership interest within 25 days after  
1011 the issuance of an order by the office; or

1012 (c) Acquires any ownership interest in a facility or  
1013 controlling company or direct or indirect control of such  
1014 ownership interest without complying with this section.

1015 (6) The office must approve any such acquisition and issue

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1016 a certificate of authority if it finds, on the basis of the  
1017 record made during any proceeding or on the basis of the filed  
1018 application if no proceeding is conducted, all of the following:

1019 (a) Upon completion of the acquisition, the applicant will  
1020 be able to satisfy the requirements for the issuance of a  
1021 certificate of authority to provide continuing care.

1022 (b) The financial condition of the acquiring person or  
1023 persons will not jeopardize the financial stability of the  
1024 facility or prejudice the interests of its residents or the  
1025 public.

1026 (c) Any plan or proposal that the acquiring person or  
1027 persons have made:

1028 1. To liquidate the facility, sell its assets, or merge or  
1029 consolidate it with any person, or to make any other major  
1030 change in its business or corporate structure or management is  
1031 fair and free of prejudice to the residents of the facility or  
1032 to the public; or

1033 2. To liquidate any controlling company, sell its assets,  
1034 or merge or consolidate it with any person, or to make any major  
1035 change in its business or corporate structure or management  
1036 which would have an effect upon the facility is fair and free of  
1037 prejudice to the residents of the facility or to the public.

1038 (d) The competence, experience, and integrity of those  
1039 persons who will control directly or indirectly the operation of  
1040 the applicant indicate that the acquisition is in the best  
1041 interest of the residents of the facility and in the public  
1042 interest.

1043 (e) The natural persons for whom background information is  
1044 required to be furnished pursuant to this section have such

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1045 backgrounds as to indicate that it is in the best interests of  
1046 the residents of the facility and in the public interest to  
1047 permit such persons to exercise control over the applicant.

1048 (f) The directors and officers or other persons performing  
1049 duties similar to those of persons to be employed after the  
1050 acquisition have sufficient continuing care experience and  
1051 ability to assure reasonable promise of successful operation.

1052 (g) The management of the applicant after the acquisition  
1053 will be competent and trustworthy, and will possess sufficient  
1054 managerial experience so as to make the proposed operation of  
1055 the facility not hazardous to the public.

1056 (h) The management of the applicant and facility after the  
1057 acquisition will not include any person who has directly or  
1058 indirectly through ownership, control, reinsurance transactions,  
1059 or other business relations unlawfully manipulated the assets,  
1060 accounts, finances, or books of any facility, insurer, provider,  
1061 or other entity or otherwise acted in bad faith with respect  
1062 thereto.

1063 (i) The acquisition is not likely to be hazardous or  
1064 prejudicial to the residents of the facility or to the public.

1065 (j) The effect of the acquisition would not substantially  
1066 lessen competition or would not tend to create a monopoly  
1067 therein.

1068  
1069 The applicant has the burden of proof for any finding made  
1070 pursuant to this subsection.

1071 (7) A vote by the stockholder of record, or by any other  
1072 person, of any security acquired in contravention of this  
1073 section is invalid. An acquisition contrary to this section is

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1074 void. Upon the petition of the office, the facility, or the  
1075 controlling company, the circuit court for the county in which  
1076 the principal office of the facility is located may, without  
1077 limiting the generality of its authority, order the issuance or  
1078 entry of an injunction or other order to enforce the provisions  
1079 of this section. A facility or controlling company has a private  
1080 right of action to enforce this section. The facility or  
1081 controlling company is not required to file a demand with the  
1082 office that it perform its functions as a prerequisite to a suit  
1083 by the facility or controlling company against another person,  
1084 and the office is not deemed a necessary party in any action by  
1085 the facility or controlling company to enforce this section. A  
1086 person who makes or proposes an acquisition requiring the filing  
1087 of an application pursuant to this section, or who files such an  
1088 application, is deemed to have thereby designated the Chief  
1089 Financial Officer, or his or her assistant or deputy or another  
1090 person in charge of his or her office, as such person's agent  
1091 for service of process under this section and is thereby deemed  
1092 to have submitted himself or herself to the administrative  
1093 jurisdiction of the office and to the jurisdiction of the  
1094 circuit court.

1095 (8) An approval by the office under this section does not  
1096 constitute a recommendation by the office of the tender offer or  
1097 exchange offer, or acquisition if no tender offer or exchange  
1098 offer is involved. It is unlawful for a person to represent that  
1099 the office's approval constitutes a recommendation. A person who  
1100 violates the provisions of this subsection commits a felony of  
1101 the third degree, punishable as provided in s. 775.082, s.  
1102 775.083, or s. 775.084. The statute of limitations period for

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1103 the prosecution of an offense committed under this subsection is  
1104 5 years.

1105 (9) The office may not approve any application that  
1106 includes in the plan of financing any encumbrance of the  
1107 reserves required by this chapter.

1108 (10) A facility acquired in violation of this section holds  
1109 no certificate of authority and is deemed to be in such  
1110 condition, or to be using or to have been subject to such  
1111 methods or practices in the conduct of its business, as to  
1112 render its further operation presently or prospectively  
1113 hazardous to its residents, creditors, or stockholders or to the  
1114 public.

1115 (11) A person may rebut a presumption of control by filing  
1116 a disclaimer of control with the office on a form prescribed by  
1117 the office. The disclaimer must fully disclose all material  
1118 relationships and bases for affiliation between the person and  
1119 the provider or facility as well as the basis for disclaiming  
1120 the affiliation. In lieu of such form, a person or acquiring  
1121 party may file with the office a copy of a Schedule 13G filed  
1122 with the Securities and Exchange Commission pursuant to Rule  
1123 13d-1(b) or (c) under the Securities Exchange Act of 1934 as  
1124 amended, 17 C.F.R. s. 240.13d-1.

1125 (12) For the purposes of this section:

1126 (a) The term "controlling company" means any corporation,  
1127 trust, or association owning, directly or indirectly, 25 percent  
1128 or more of the voting securities of one or more facilities that  
1129 are stock corporations, or 25 percent or more of the ownership  
1130 interest of one or more facilities that are not stock  
1131 corporations.

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1132 (b) The term "natural person" means an individual.

1133 (c) The term "person" includes a natural person,  
 1134 corporation, association, trust, general partnership, limited  
 1135 partnership, joint venture, firm, proprietorship, or any other  
 1136 entity that may hold a license or certificate as a facility.

1137 (13) The commission may adopt, amend, or repeal rules  
 1138 pursuant to chapter 120 which are necessary to implement this  
 1139 section.

1140 Section 11. Section 651.025, Florida Statutes, is created  
 1141 to read:

1142 651.025 Insolvent facilities or providers.—A person who was  
 1143 a proprietor, general partner, member, officer, director,  
 1144 trustee, or manager of a facility or provider doing business in  
 1145 this state and who served in that capacity within the 2-year  
 1146 period before the date the facility or provider became  
 1147 insolvent, for any insolvency that occurs on or after July 1,  
 1148 2017, may not thereafter serve as a proprietor, general partner,  
 1149 member, officer, director, trustee, or manager of a facility or  
 1150 provider authorized in this state unless such person  
 1151 demonstrates that his or her personal actions or omissions were  
 1152 not a significant contributing cause to the insolvency.

1153 Section 12. Section 651.0261, Florida Statutes, is amended  
 1154 to read:

1155 651.0261 Quarterly and monthly statements.—

1156 (1) Within 45 days after the end of each fiscal quarter,  
 1157 each provider shall file a quarterly unaudited financial  
 1158 statement of the provider or of the facility in the form  
 1159 prescribed by the commission by rule and a detailed listing of  
 1160 the assets maintained in the liquid reserve as required under s.



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1161 651.035. This requirement may be waived by the office upon  
1162 written request from a provider accredited under s. 651.028.

1163 (2) If the office finds, ~~pursuant to rules of the~~  
1164 ~~commission,~~ that such information is needed to properly monitor  
1165 the financial condition of a provider or facility or is  
1166 otherwise needed to protect the public interest, the office may  
1167 require the provider to file:7

1168 (a) Within 25 days after the end of each month, a monthly  
1169 unaudited financial statement of the provider or of the facility  
1170 in the form prescribed by the commission by rule and a detailed  
1171 listing of the assets maintained in the liquid reserve as  
1172 required under s. 651.035 ~~Within 45 days after the end of each~~  
1173 ~~fiscal quarter, a quarterly unaudited financial statement of the~~  
1174 ~~provider or of the facility in the form prescribed by the~~  
1175 ~~commission by rule. The commission may by rule require all or~~  
1176 ~~part of the statements or filings required under this section to~~  
1177 ~~be submitted by electronic means in a computer-readable form~~  
1178 ~~compatible with the electronic data format specified by the~~  
1179 ~~commission.~~

1180 (b) Such other data, financial statements, and pertinent  
1181 information as the commission or office may reasonably require  
1182 with respect to the provider or the facility, or its directors,  
1183 trustees, members, branches, subsidiaries, or affiliates, to  
1184 determine the financial status of the provider or of the  
1185 facility, and the management capabilities of its managers and  
1186 owners.

1187 (3) A filing under subsection (2) may be required if:

1188 (a) The provider has been in operation for less than 2  
1189 years since the date of issuance of its certificate of

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1190 authority.

1191 (b) The provider is subject to:

1192 1. Administrative supervision proceedings;

1193 2. A corrective action plan;

1194 3. Refinancing;

1195 4. An acquisition; or

1196 5. Delinquency or receivership proceedings.

1197 (c) The provider or facility displays a declining financial  
1198 position.

1199 (4) The commission may by rule require all or part of the  
1200 statements or filings required under this section to be  
1201 submitted by electronic means in a computer-readable form  
1202 compatible with the electronic data format specified by the  
1203 commission.

1204 Section 13. Section 651.0271, Florida Statutes, is created  
1205 to read:

1206 651.0271 Actuarial opinions.—

1207 (1) When required by the office pursuant to subsection (2),  
1208 a provider must submit an actuarial opinion for each facility  
1209 operated in this state which states whether the reserves and  
1210 related actuarial items held in support of the policies and  
1211 contracts are computed appropriately, are based on assumptions  
1212 that satisfy contractual provisions, are consistent with prior  
1213 reported amounts, and comply with applicable state law.

1214 (a) The actuarial opinion must state whether the provider  
1215 has adequate resources to meet all of its actuarial liabilities  
1216 and related statement items for each operated facility and  
1217 whether the provider's financial condition is actuarially sound.

1218 (b) The amount to be held in the reserve must be determined

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1219 and certified by an actuary pursuant to s. 651.034.

1220 (c) The opinion must be conducted within 1 year before the  
 1221 date of the office's request or completed within 90 days after  
 1222 the date of the office's request.

1223 (2) The office may require a provider to submit the  
 1224 actuarial opinion if the office finds that:

1225 (a) The provider has a negative net worth;

1226 (b) The provider is subject to quarterly or monthly  
 1227 reporting;

1228 (c) The average occupancy of the facility has declined by  
 1229 more than 5 percent from the prior year;

1230 (d) The provider is delinquent on the payment of refunds  
 1231 due pursuant to the terms of resident contracts; or

1232 (e) More than 20 percent of the contracts issued by the  
 1233 provider are refundable.

1234 Section 14. Section 651.033, Florida Statutes, is amended  
 1235 to read:

1236 651.033 Escrow accounts.—

1237 (1) When funds are required to be deposited in an escrow  
 1238 account pursuant to s. 651.022, s. 651.023, s. 651.035, or s.  
 1239 651.055:

1240 (a) The escrow account must ~~shall~~ be established in a  
 1241 Florida bank, Florida savings and loan association, or Florida  
 1242 trust company acceptable to the office or on deposit with the  
 1243 department; and the funds deposited therein must ~~shall~~ be kept  
 1244 and maintained in an account separate and apart from the  
 1245 provider's business accounts.

1246 (b) An escrow agreement must ~~shall~~ be entered into between  
 1247 the bank, savings and loan association, or trust company and the

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1248 provider of the facility; the agreement must ~~shall~~ state that  
1249 its purpose is to protect the resident or the prospective  
1250 resident; and, upon presentation of evidence of compliance with  
1251 applicable portions of this chapter, or upon order of a court of  
1252 competent jurisdiction, the escrow agent must ~~shall~~ release and  
1253 pay over the funds, or portions thereof, together with any  
1254 interest accrued thereon or earned from investment of the funds,  
1255 to the provider or resident as directed.

1256 (c) Any agreement establishing an escrow account required  
1257 under ~~the provisions of~~ this chapter is ~~shall be~~ subject to  
1258 approval by the office. The agreement must ~~shall~~ be in writing  
1259 and ~~shall~~ contain, in addition to any other provisions required  
1260 by law, a provision whereby the escrow agent agrees to abide by  
1261 the duties imposed by paragraphs (b) and (e), (2) (a), (2) (b),  
1262 and (4) (a) and subsection (5) under this section.

1263 (d) All funds deposited in an escrow account, if invested,  
1264 must ~~shall~~ be invested in cash, cash equivalents, mutual funds,  
1265 equities, or investment grade bonds ~~as set forth in part II of~~  
1266 ~~chapter 625~~; however, such investment may not diminish the funds  
1267 held in escrow below the amount required by this chapter. Funds  
1268 deposited in an escrow account are not subject to charges by the  
1269 escrow agent except escrow agent fees associated with  
1270 administering the accounts, or subject to any liens, judgments,  
1271 garnishments, creditor's claims, or other encumbrances against  
1272 the provider or facility except as provided in s. 651.035(1).

1273 (e) At the request of either the provider or the office,  
1274 the escrow agent shall issue a statement indicating the status  
1275 of the escrow account.

1276 (2) ~~In addition, the escrow agreement shall provide that~~

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1277 ~~the escrow agent or another person designated to act in the~~  
1278 ~~escrow agent's place and the provider, except as otherwise~~  
1279 ~~provided in s. 651.035, shall notify the office in writing at~~  
1280 ~~least 10 days before the withdrawal of any portion of any funds~~  
1281 ~~required to be escrowed under the provisions of s. 651.035.~~  
1282 ~~However, in the event of an emergency and upon petition by the~~  
1283 ~~provider, the office may waive the 10-day notification period~~  
1284 ~~and allow a withdrawal of up to 10 percent of the required~~  
1285 ~~minimum liquid reserve. The office shall have 3 working days to~~  
1286 ~~deny the petition for the emergency 10-percent withdrawal. If~~  
1287 ~~the office fails to deny the petition within 3 working days, the~~  
1288 ~~petition shall be deemed to have been granted by the office. For~~  
1289 ~~the purpose of this section, "working day" means each day that~~  
1290 ~~is not a Saturday, Sunday, or legal holiday as defined by~~  
1291 ~~Florida law. Also for the purpose of this section, the day the~~  
1292 ~~petition is received by the office shall not be counted as one~~  
1293 ~~of the 3 days.~~

1294 ~~(3) In addition,~~ When entrance fees are required to be  
1295 deposited in an escrow account pursuant to s. 651.022, s.  
1296 651.023, or s. 651.055:

1297 (a) The provider shall deliver to the resident a written  
1298 receipt. The receipt must show the payor's name and address, the  
1299 date, the price of the care contract, and the amount of money  
1300 paid. A copy of each receipt, together with the funds, must  
1301 ~~shall~~ be deposited with the escrow agent or as provided in  
1302 paragraph (c). The escrow agent must ~~shall~~ release such funds to  
1303 the provider 7 days after the date of receipt of the funds by  
1304 the escrow agent if the provider, operating under a certificate  
1305 of authority issued by the office, has met the requirements of

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1306 s. 651.023(6). However, if the resident rescinds the contract  
1307 within the 7-day period, the escrow agent must ~~shall~~ release the  
1308 escrowed fees to the resident.

1309 (b) At the request of an individual resident of a facility,  
1310 the escrow agent shall issue a statement indicating the status  
1311 of the resident's portion of the escrow account.

1312 (c) At the request of an individual resident of a facility,  
1313 the provider may hold the check for the 7-day period and may  
1314 ~~shall~~ not deposit it during this time period. If the resident  
1315 rescinds the contract within the 7-day period, the check must  
1316 ~~shall~~ be immediately returned to the resident. Upon the  
1317 expiration of the 7 days, the provider shall deposit the check.

1318 (d) A provider may assess a nonrefundable fee, which is  
1319 separate from the entrance fee, for processing a prospective  
1320 resident's application for continuing care or continuing care  
1321 at-home.

1322 (3) ~~(4)~~ Any fees of \$1,500 or less which are assessed with  
1323 respect to prospective residents to have their names placed on a  
1324 facility's waiting list are ~~shall~~ not be subject to the escrow  
1325 provisions of this section.

1326 (4) ~~(5)~~ When funds are required to be deposited in an escrow  
1327 account pursuant to s. 651.022 or, s. 651.023, ~~or s. 651.035,~~  
1328 the following ~~shall~~ apply:

1329 (a) The escrow agreement must ~~shall~~ require that the escrow  
1330 agent furnish the provider with a quarterly statement indicating  
1331 the amount of any disbursements from or deposits to the escrow  
1332 account and the condition of the account during the period  
1333 covered by the statement. The agreement must ~~shall~~ require that  
1334 the statement be furnished to the provider by the escrow agent

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1335 on or before the 10th day of the month following the end of the  
1336 quarter for which the statement is due. If the escrow agent does  
1337 not provide the quarterly statement to the provider on or before  
1338 the 10th day of the month following the month for which the  
1339 statement is due, the office may, in its discretion, levy  
1340 against the escrow agent a fine not to exceed \$25 a day for each  
1341 day of noncompliance with the provisions of this subsection.

1342 (b) If the escrow agent does not provide the quarterly  
1343 statement to the provider on or before the 10th day of the month  
1344 following the quarter for which the statement is due, the  
1345 provider must ~~shall~~, on or before the 15th day of the month  
1346 following the quarter for which the statement is due, send a  
1347 written request for the statement to the escrow agent by  
1348 certified mail return receipt requested.

1349 (c) On or before the 20th day of the month following the  
1350 quarter for which the statement is due, the provider shall file  
1351 with the office a copy of the escrow agent's statement or, if  
1352 the provider has not received the escrow agent's statement, a  
1353 copy of the written request to the escrow agent for the  
1354 statement.

1355 (d) The office may, in its discretion, in addition to any  
1356 other penalty that may be provided for under this chapter, levy  
1357 a fine against the provider not to exceed \$25 a day for each day  
1358 the provider fails to comply with the provisions of this  
1359 subsection.

1360 (e) Funds held on deposit with the department are exempt  
1361 from the reporting requirements of this subsection.

1362 (5) The escrow agent may not release or otherwise permit  
1363 the transfer of funds without the written approval of the

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1364 office, except as described in paragraph (2) (a).

1365 Section 15. Section 651.034, Florida Statutes, is created  
1366 to read:

1367 651.034 Contractual liability reserve.-

1368 (1) A provider shall maintain a reserve for the benefit of  
1369 residents in an amount determined by an actuary to be  
1370 appropriate given the amount of the provider's contractual  
1371 obligations to residents, including refunds and medical care.

1372 (2) The provider must revise the reserve amount annually  
1373 and submit the provider's calculation of the reserve amount to  
1374 the office concurrently with the annual report.

1375 (3) The reserve may be invested in any combination of the  
1376 following:

1377 (a) Cash or cash equivalents;

1378 (b) Mutual funds, equities, or investment grade bonds that  
1379 accumulate interest or earnings;

1380 (c) Clean, irrevocable, unconditional evergreen letters of  
1381 credit issued or confirmed by a qualified United States  
1382 financial institution that is regulated, supervised, and  
1383 examined by federal or state authorities having regulatory  
1384 authority over banks and trust companies; or

1385 (d) Real property, subject to all of the following  
1386 conditions:

1387 1. With the prior written approval of the office, up to 70  
1388 percent of the reserves may be held as net equity in the real  
1389 property of the facility.

1390 2. Not more than 50 percent of the provider's net equity in  
1391 the real property may be allocated as part of the reserve. The  
1392 net equity is the book value, assessed value, or current



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1393 appraised value within 12 months before the end of the fiscal  
1394 year, less any depreciation and encumbrances, as recorded on  
1395 audited financial statements acceptable to the office.

1396 (4) The provider shall submit to the office, at least once  
1397 every 3 years with the annual report, an actuarial opinion as to  
1398 the provider's actuarial financial condition, along with the  
1399 supporting actuarial study. The actuarial opinion must be based  
1400 on an actuarial study completed by the actuary. The actuarial  
1401 opinion and supporting actuarial study must examine, refer to,  
1402 and opine on the provider's actuarial financial condition as of  
1403 December 31 of the reporting year. The actuarial study must  
1404 demonstrate that fees for nonrefundable contracts are not  
1405 increased due to any portion of reserves held under this section  
1406 which are due to refund liability.

1407 (5) The office may suspend, revoke, or take other  
1408 administrative action against the certificate of authority of a  
1409 facility that violates this section.

1410 (6) The commission may adopt rules providing the standards  
1411 for the actuarial opinion which are consistent with standards  
1412 adopted by the Actuarial Standards Board on December 31, 2016,  
1413 and subsequent revisions thereto.

1414 Section 16. Effective January 1, 2018, section 651.035,  
1415 Florida Statutes, is amended to read:

1416 651.035 Minimum liquid reserve requirements.—

1417 (1) A provider shall maintain in escrow a minimum liquid  
1418 reserve consisting of the following reserves, as applicable:

1419 (a) Each provider shall maintain in escrow as a debt  
1420 service reserve the aggregate amount of all principal and  
1421 interest payments due during the fiscal year on any mortgage

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1422 loan or other long-term financing of the facility, including  
1423 property taxes as recorded in the audited financial statements  
1424 required under s. 651.026. The amount must include any leasehold  
1425 payments and all costs related to such payments. If principal  
1426 payments are not due during the fiscal year, the provider shall  
1427 maintain in escrow as a minimum liquid reserve an amount equal  
1428 to interest payments due during the next 12 months on any  
1429 mortgage loan or other long-term financing of the facility,  
1430 including property taxes.

1431 (b) A provider that has outstanding indebtedness that  
1432 requires a debt service reserve to be held in escrow pursuant to  
1433 a trust indenture or mortgage lien on the facility and for which  
1434 the debt service reserve may only be used to pay principal and  
1435 interest payments on the debt that the debtor is obligated to  
1436 pay, and which may include property taxes and insurance, may  
1437 include such debt service reserve in computing the minimum  
1438 liquid reserve needed to satisfy this subsection if the provider  
1439 furnishes to the office a copy of the agreement under which such  
1440 debt service is held, together with a statement of the amount  
1441 being held in escrow for the debt service reserve, certified by  
1442 the lender or trustee and the provider to be correct. The  
1443 trustee shall provide the office with any information concerning  
1444 the debt service reserve account upon request of the provider or  
1445 the office.

1446 (c) ~~A Each~~ provider shall at all times maintain a capital  
1447 reserve consisting of:

1448 1. For the first 12 months of operation, 25 percent of the  
1449 total operating expenses projected in the feasibility study  
1450 required by s. 651.023.

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1451 2. After the first 12 months of operation, 25 percent of  
1452 the total operating expenses in the most recent annual report  
1453 filed pursuant to s. 651.026.

1454  
1455 For purposes of this subsection, total annual operating expenses  
1456 include all expenses of the facility except depreciation and  
1457 amortization. Paragraphs (a) and (b) do not apply to obligations  
1458 undertaken after January 1, 2018 in escrow an operating reserve  
1459 equal to 30 percent of the total operating expenses projected in  
1460 the feasibility study required by s. 651.023 for the first 12  
1461 months of operation. Thereafter, each provider shall maintain in  
1462 escrow an operating reserve equal to 15 percent of the total  
1463 operating expenses in the annual report filed pursuant to s.  
1464 651.026. If a provider has been in operation for more than 12  
1465 months, the total annual operating expenses shall be determined  
1466 by averaging the total annual operating expenses reported to the  
1467 office by the number of annual reports filed with the office  
1468 within the preceding 3-year period subject to adjustment if  
1469 there is a change in the number of facilities owned. For  
1470 purposes of this subsection, total annual operating expenses  
1471 include all expenses of the facility except: depreciation and  
1472 amortization; interest and property taxes included in paragraph  
1473 (a); extraordinary expenses that are adequately explained and  
1474 documented in accordance with generally accepted accounting  
1475 principles; liability insurance premiums in excess of those paid  
1476 in calendar year 1999; and changes in the obligation to provide  
1477 future services to current residents. For providers initially  
1478 licensed during or after calendar year 1999, liability insurance  
1479 shall be included in the total operating expenses in an amount

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1480 ~~not to exceed the premium paid during the first 12 months of~~  
1481 ~~facility operation. Beginning January 1, 1993, the operating~~  
1482 ~~reserves required under this subsection shall be in an~~  
1483 ~~unencumbered account held in escrow for the benefit of the~~  
1484 ~~residents. Such funds may not be encumbered or subject to any~~  
1485 ~~liens or charges by the escrow agent or judgments, garnishments,~~  
1486 ~~or creditors' claims against the provider or facility. However,~~  
1487 ~~if a facility had a lien, mortgage, trust indenture, or similar~~  
1488 ~~debt instrument in place before January 1, 1993, which~~  
1489 ~~encumbered all or any part of the reserves required by this~~  
1490 ~~subsection and such funds were used to meet the requirements of~~  
1491 ~~this subsection, then such arrangement may be continued, unless~~  
1492 ~~a refinancing or acquisition has occurred, and the provider~~  
1493 ~~shall be in compliance with this subsection.~~

1494 ~~(d) Each provider shall maintain in escrow a renewal and~~  
1495 ~~replacement reserve equal to 15 percent of the total accumulated~~  
1496 ~~depreciation based on the audited financial statement required~~  
1497 ~~to be filed pursuant to s. 651.026, not to exceed 15 percent of~~  
1498 ~~the facility's average operating expenses for the past 3 fiscal~~  
1499 ~~years based on the audited financial statements for each of~~  
1500 ~~those years. For a provider who is an operator of a facility but~~  
1501 ~~is not the owner and depreciation is not included as part of the~~  
1502 ~~provider's financial statement, the renewal and replacement~~  
1503 ~~reserve required by this paragraph must equal 15 percent of the~~  
1504 ~~total operating expenses of the provider, as described in this~~  
1505 ~~section. Each provider licensed before October 1, 1983, shall~~  
1506 ~~fully fund the renewal and replacement reserve by October 1,~~  
1507 ~~2003, by multiplying the difference between the former escrow~~  
1508 ~~requirement and the present escrow requirement by the number of~~

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1509 ~~years the facility has been in operation after October 1, 1983.~~

1510 (2) (a) In facilities where not all residents are under  
1511 continuing care or continuing care at-home contracts, the  
1512 reserve requirements of subsection (1) must ~~shall~~ be computed  
1513 only with respect to the proportional share of operating  
1514 expenses that are applicable to residents. For purposes of this  
1515 calculation, the proportional share must ~~shall~~ be based upon the  
1516 ratio of residents under continuing care or continuing care at-  
1517 home contracts to those residents who do not hold such  
1518 contracts.

1519 (b) In facilities that have ~~voluntarily and~~ permanently  
1520 discontinued marketing continuing care and continuing care at-  
1521 home contracts, the office may allow a reduced ~~debt service~~  
1522 reserve as required in subsection (1) based upon the ratio of  
1523 residents under continuing care or continuing care at-home  
1524 contracts to those residents who do not hold such contracts if  
1525 the office finds that such reduction is not inconsistent with  
1526 the security protections intended by this chapter. In making  
1527 this determination, the office may consider such factors as the  
1528 financial condition of the facility, the provisions of  
1529 outstanding continuing care and continuing care at-home  
1530 contracts, the ratio of residents under continuing care or  
1531 continuing care at-home contracts to those residents who do not  
1532 hold such contracts, the current occupancy rates, the previous  
1533 sales and marketing efforts, the life expectancy of the  
1534 remaining residents, and the written policies of the board of  
1535 directors of the provider or a similar board.

1536 (3) The capital reserve must be held in a manner that  
1537 accumulates interest and earnings and be invested in cash, cash

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1538 equivalents, mutual funds, equities, or investment grade bonds.  
1539 However, the office may order the immediate transfer of up to  
1540 100 percent of the funds held in the capital reserve to the  
1541 custody of the department pursuant to part III of chapter 625 if  
1542 the office finds that any of the grounds enumerated in s.  
1543 651.106 exist. The office may order such transfer regardless of  
1544 whether the office has suspended or revoked, or intends to  
1545 suspend or revoke, the certificate of authority of the provider  
1546 ~~If principal and interest payments are paid to a trust that is~~  
1547 ~~beneficially held by the residents as described in s.~~  
1548 ~~651.023(7), the office may waive all or any portion of the~~  
1549 ~~escrow requirements for mortgage principal and interest~~  
1550 ~~contained in subsection (1) if the office finds that such waiver~~  
1551 ~~is not inconsistent with the security protections intended by~~  
1552 ~~this chapter.~~

1553 (4) A provider may withdraw funds from the debt service  
1554 reserve as provided in s. 625.62 with the written consent of the  
1555 office.

1556 (a) In order to receive the consent of the office, the  
1557 provider must file the following:

1558 1. The reason for such filing;

1559 2. Proof that the amount held on such reserve is in excess  
1560 of the amount required under this section, or documentation  
1561 showing why the withdrawal is necessary for the continued  
1562 operation of the facility; and

1563 3. Such additional information as the office reasonably  
1564 requires.

1565 (b) The office shall notify the provider when the file is  
1566 deemed complete. If the provider has complied with all prior

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1567 requests for information, the file is deemed complete after 30  
1568 days without communication from the office.

1569 (c) Within 30 days after the date a file is deemed  
1570 complete, the office shall provide the provider with written  
1571 notice of its approval or disapproval of the request. The office  
1572 may disapprove any request to withdraw such funds if it  
1573 determines that the withdrawal is not in the best interest of  
1574 the residents ~~The office, upon approval of a plan for fulfilling~~  
1575 ~~the requirements of this section and upon demonstration by the~~  
1576 ~~facility of an annual increase in liquid reserves, may extend~~  
1577 ~~the time for compliance.~~

1578 ~~(5) A provider may satisfy the minimum liquid reserve~~  
1579 ~~requirements of this section by acquiring from a financial~~  
1580 ~~institution, as specified in paragraph (b), a clean,~~  
1581 ~~unconditional irrevocable letter of credit equal to the~~  
1582 ~~requirements of this section.~~

1583 ~~(a) The letter of credit must be issued by a financial~~  
1584 ~~institution participating in the State of Florida Treasury~~  
1585 ~~Certificate of Deposit Program, and must be approved by the~~  
1586 ~~office before issuance and before any renewal or modification~~  
1587 ~~thereof. At a minimum, the letter of credit must provide for:~~

1588 ~~1. Ninety days' prior written notice to both the provider~~  
1589 ~~and the office of the financial institution's determination not~~  
1590 ~~to renew or extend the term of the letter of credit.~~

1591 ~~2. Unless otherwise arranged by the provider to the~~  
1592 ~~satisfaction of the office, deposit by the financial institution~~  
1593 ~~of letter of credit funds in an account designated by the office~~  
1594 ~~no later than 30 days before the expiration of the letter of~~  
1595 ~~credit.~~

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1596 ~~3. Deposit by the financial institution of letter of credit~~  
1597 ~~funds in an account designated by the office within 4 business~~  
1598 ~~days following written instructions from the office that, in the~~  
1599 ~~sole judgment of the office, funding of the minimum liquid~~  
1600 ~~reserve is required.~~

1601 ~~(b) The terms of the letter of credit must be approved by~~  
1602 ~~the office and the long-term debt of the financial institution~~  
1603 ~~providing such letter of credit must be rated in one of their~~  
1604 ~~top three long term debt rating categories by either Moody's~~  
1605 ~~Investors Service, Standard & Poor's Corporation, or a~~  
1606 ~~recognized securities rating agency acceptable to the office.~~

1607 ~~(c) The letter of credit must name the office as~~  
1608 ~~beneficiary.~~

1609 ~~(d) Notwithstanding any other provision of this section, a~~  
1610 ~~provider using a letter of credit pursuant to this subsection~~  
1611 ~~shall, at all times, have and maintain in escrow an operating~~  
1612 ~~cash reserve equal to 2 months' operating expenses as determined~~  
1613 ~~pursuant to s. 651.026.~~

1614 ~~(e) If the issuing financial institution no longer~~  
1615 ~~participates in the State of Florida Treasury Certificate of~~  
1616 ~~Deposit Program, such financial institution shall deposit as~~  
1617 ~~collateral with the department eligible securities, as~~  
1618 ~~prescribed by s. 625.52, having a market value equal to or~~  
1619 ~~greater than 100 percent of the stated amount of the letter of~~  
1620 ~~credit.~~

1621 ~~(6) Each fiscal year, a provider may withdraw up to 33~~  
1622 ~~percent of the total renewal and replacement reserve available.~~  
1623 ~~The reserve available is equal to the market value of the~~  
1624 ~~invested reserves at the end of the provider's prior fiscal~~



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1625 ~~year. The withdrawal must be used for capital items or major~~  
1626 ~~repairs.~~

1627 ~~(a) Before any funds are eligible for withdrawal, the~~  
1628 ~~provider must obtain written permission from the office by~~  
1629 ~~submitting the following:~~

1630 ~~1. The amount of the withdrawal and the intended use of the~~  
1631 ~~proceeds.~~

1632 ~~2. A board resolution and sworn affidavit signed by two~~  
1633 ~~officers or general partners of the provider which indicates~~  
1634 ~~approval of the withdrawal and use of the funds.~~

1635 ~~3. Proof that the provider has met all funding requirements~~  
1636 ~~for the operating, debt service, and renewal and replacement~~  
1637 ~~reserves computed for the previous fiscal year.~~

1638 ~~4. Anticipated payment schedule for refunding the renewal~~  
1639 ~~and replacement reserve fund.~~

1640 ~~(b) Within 30 days after the withdrawal of funds, the~~  
1641 ~~provider must begin refunding the reserve account in equal~~  
1642 ~~monthly payments that allow for a complete funding of the~~  
1643 ~~withdrawal within 36 months. If the payment schedule required~~  
1644 ~~under subparagraph (a)4. has changed, the provider must update~~  
1645 ~~the office with the new payment schedule. If the provider fails~~  
1646 ~~to make a required monthly payment or the payment is late, the~~  
1647 ~~provider must notify the office within 5 days after the due date~~  
1648 ~~of the payment. No additional withdrawals from the renewal and~~  
1649 ~~replacement reserve will be allowed until all scheduled payments~~  
1650 ~~are current.~~

1651 Section 17. Section 651.036, Florida Statutes, is created  
1652 to read:

1653 651.036 Dividends and other distributions of assets.-

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1654 (1) As used in this section, the term "extraordinary  
1655 dividend" means a dividend or distribution in excess of the  
1656 greater of the provider's entire net operating profit for the  
1657 prior fiscal year or 25 percent of the net equity in the  
1658 facility. As used in this subsection, the term "net operating  
1659 profit" means the total revenues of a provider less total  
1660 expenses, excluding amortization and depreciation.

1661 (2) A provider shall obtain the approval of the office  
1662 before paying any extraordinary dividend or distributing cash or  
1663 other property to stockholders, officers, directors, owners,  
1664 partners, or members.

1665 (3) A provider shall file notice of its intent to pay any  
1666 dividend or distribution with the office and provide a copy of  
1667 such notice to the chair of the residents' council at least 30  
1668 days before the payment of such dividend or distribution. If the  
1669 facility does not have a residents' council, the provider must  
1670 inform all residents of the intent to pay the dividend or  
1671 distribution.

1672 (4) The office may not approve an extraordinary dividend  
1673 unless, considering the following factors, it determines that  
1674 the distribution or dividend would not jeopardize the financial  
1675 condition of the facility:

1676 (a) The liquidity, quality, and diversification of the  
1677 facility's assets and the effect of the distribution or dividend  
1678 on its ability to meet its obligations.

1679 (b) Reduction of investment portfolio and investment  
1680 income.

1681 (c) Effects on the facility's ability to pay resident  
1682 refunds.

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- 1683       (d) Industrywide financial conditions.
- 1684       (e) Prior dividend distributions of the facility.
- 1685       (f) Whether the dividend is only a "pass-through" dividend  
1686 from a subsidiary or affiliate of the facility.
- 1687       (g) The ongoing maintenance obligations of the facility.
- 1688       (5) A director of a provider who knowingly votes for or  
1689 concurrs in declaration or payment of a dividend to stockholders  
1690 or members other than as authorized under this section commits a  
1691 misdemeanor of the second degree, punishable as provided in s.  
1692 775.082 or s. 775.083, and is jointly and severally liable,  
1693 together with other such directors likewise voting for or  
1694 concurring, for any loss thereby sustained by creditors of the  
1695 facility to the extent of such dividend.
- 1696       (6) A partner or stockholder receiving such an illegal  
1697 dividend is liable in the amount thereof to the facility.
- 1698       (7) A partner voting for, concurring in, or otherwise  
1699 facilitating or cooperating in the payment of a distribution  
1700 other than as authorized under this section commits a  
1701 misdemeanor of the second degree, punishable as provided in s.  
1702 775.082 or s. 775.083, and is jointly and severally liable,  
1703 together with other such partners likewise voting for,  
1704 concurring in, facilitating or cooperating in the payment, for  
1705 any loss thereby sustained by creditors of the facility to the  
1706 extent of such dividend.
- 1707       (8) The office may revoke or suspend or take other  
1708 administrative action against the certificate of authority of a  
1709 provider that has declared or paid such an illegal dividend or  
1710 distribution.

1711       Section 18. Section 651.043, Florida Statutes, is created

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1712 to read:

1713 651.043 Approval of change in management.-

1714 (1) For purposes of this section, the term "management"  
1715 means:

1716 (a) A manager or management company;

1717 (b) An officer or director of the provider or of the  
1718 manager or management company;

1719 (c) Any other person performing duties similar to those of  
1720 persons in paragraphs (a) or (b); or

1721 (d) A person who exercises or who has the ability to  
1722 exercise effective control of the organization, or who  
1723 influences or has the ability to influence the transaction of  
1724 the business of the provider.

1725 (2) Effective July 1, 2017, a contract for management must  
1726 be in writing and include a provision that the contract will be  
1727 canceled upon issuance of an order by the office pursuant to  
1728 this section without the application of any cancelation fee or  
1729 penalty.

1730 (3) A provider must file notice with the office of any  
1731 change in management within 5 days after the appointment of new  
1732 management or the removal of approved management, whichever is  
1733 sooner. For each new management appointment, the provider must  
1734 submit the information required by s. 651.022(2) and a copy of  
1735 the written management contract. The office shall complete its  
1736 review and issue an approval or disapproval of the management  
1737 contract within 30 days after the filing is deemed complete. A  
1738 filing is deemed complete upon receipt of all requested  
1739 information and correction of any error or omission for which  
1740 the applicant was timely notified.

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1741       (4) The office may disapprove new management and order the  
1742 provider to cancel the contract in accordance with the terms of  
1743 the contract and applicable law if the office:

1744       (a) Finds that the new management is incompetent or  
1745 untrustworthy;

1746       (b) Finds that the new management is so lacking in  
1747 continuing care retirement community managerial experience as to  
1748 make the proposed operation hazardous to the residents or  
1749 potential residents;

1750       (c) Finds that the new management is so lacking in  
1751 continuing care experience, ability, and standing as to  
1752 jeopardize the reasonable promise of successful operation; or

1753       (d) Has good reason to believe that the new management is  
1754 affiliated directly or indirectly through ownership, control,  
1755 reinsurance transactions, or other insurance or business  
1756 relations with any person or persons whose business operations  
1757 are or have been marked by manipulation of assets, accounts, or  
1758 reinsurance or by bad faith, to the detriment of policyholders,  
1759 stockholders, investors, creditors, or the public.

1760       (5) Management disapproved by the office must be removed  
1761 within 30 days after receipt by the provider of such  
1762 disapproval.

1763       (6) The office may revoke, suspend, or take other  
1764 administrative action against the certificate of authority of  
1765 the provider if the provider:

1766       (a) Fails to timely remove management disapproved by the  
1767 office;

1768       (b) Fails to timely notify the office of a change in  
1769 management;

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1770 (c) Appoints management without a written contract; or  
1771 (d) Repeatedly appoints management who were previously  
1772 disapproved by the office or who are not approvable pursuant to  
1773 subsection (4).

1774 (7) The provider shall remove any management immediately  
1775 upon discovery of any of the following conditions, if the  
1776 conditions were not disclosed in the notice to the office  
1777 required in subsection (3):

1778 (a) That any person who exercises or has the ability to  
1779 exercise effective control of the provider, or who influences or  
1780 has the ability to influence the transaction of the business of  
1781 the provider, has been found guilty of, or has pled guilty or no  
1782 contest to, any felony or crime punishable by imprisonment of 1  
1783 year or more under the laws of the United States or any state  
1784 thereof or under the laws of any other country, which involves  
1785 moral turpitude, without regard to whether a judgment or  
1786 conviction has been entered by the court having jurisdiction in  
1787 such case.

1788 (b) That any person who exercises or has the ability to  
1789 exercise effective control of the organization, or who  
1790 influences or has the ability to influence the transaction of  
1791 the business of the provider, is now or was in the past  
1792 affiliated, directly or indirectly, through ownership interest  
1793 of 10 percent or more in, control of, or reinsurance  
1794 transactions with any business, corporation, or other entity  
1795 that has been found guilty of or has pleaded guilty or nolo  
1796 contendere to any felony or crime punishable by imprisonment for  
1797 1 year or more under the laws of the United States, any state,  
1798 or any other country, regardless of adjudication.

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1799

1800 The failure to remove such management is grounds for revocation  
1801 or suspension of the provider's certificate of authority.

1802 Section 19. Section 651.051, Florida Statutes, is amended  
1803 to read:

1804 651.051 Maintenance of assets and records in this state.—  
1805 All records and assets of a provider must be maintained in this  
1806 state. No records or assets may be removed from this state by a  
1807 provider unless the office consents to such removal in writing  
1808 before such removal. Such consent must ~~shall~~ be based upon the  
1809 provider's submitting satisfactory evidence that the removal  
1810 will facilitate and make more economical the operations of the  
1811 provider and will not diminish the service or protection  
1812 thereafter to be given the provider's residents in this state.  
1813 Before ~~Prior to~~ such removal, the provider must ~~shall~~ give  
1814 notice to the president or chair of the facility's residents'  
1815 council. If such removal is part of a cash management system  
1816 which has been approved by the office, disclosure of the system  
1817 meets ~~shall meet~~ the notification requirements. The electronic  
1818 storage of records on a web-based, secured storage platform by  
1819 contract with a third party constitutes removal from the state  
1820 and requires prior approval by the office.

1821 Section 20. Paragraphs (h) and (l) of subsection (1),  
1822 subsection (2), and subsection (5) of section 651.055, Florida  
1823 Statutes, are amended, and a new paragraph (m) is added to  
1824 subsection (1) of that section, to read:

1825 651.055 Continuing care contracts; right to rescind.—

1826 (1) Each continuing care contract and each addendum to such  
1827 contract shall be submitted to and approved by the office before

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1828 its use in this state. Thereafter, no other form of contract  
1829 shall be used by the provider until it has been submitted to and  
1830 approved by the office. Each contract must:

1831 (h) Describe in clear and understandable language, in print  
1832 no smaller than the largest type used in the body of the  
1833 contract, the terms governing the refund of any portion of the  
1834 entrance fee.

1835 1. For a resident whose contract with the facility provides  
1836 that the resident does not receive a transferable membership or  
1837 ownership right in the facility, and who has occupied his or her  
1838 unit, the refund shall be calculated on a pro rata basis with  
1839 the facility retaining up to 2 percent per month of occupancy by  
1840 the resident and up to a 5 percent processing fee. Such refund  
1841 must be paid within 120 days after giving the notice of  
1842 intention to cancel. For contracts entered into on or after  
1843 January 1, 2016, refunds must be made within 90 days after the  
1844 contract is terminated and the unit is vacated. A resident who  
1845 enters into a contract before January 1, 2016, may voluntarily  
1846 sign a contract addendum approved by the office that provides  
1847 for such revised refund requirement.

1848 2. In addition to a processing fee not to exceed 5 percent,  
1849 if the contract provides for the facility to retain no more than  
1850 1 percent per month of occupancy by the resident and the  
1851 resident does not receive a transferable membership or ownership  
1852 right in the facility, the contract shall provide that such  
1853 refund will be paid from one of the following:

1854 a. The proceeds of the next entrance fees received by the  
1855 provider for units for which there are no prior claims by any  
1856 resident until paid in full;



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1857           b. The proceeds of the next entrance fee received by the  
1858 provider for a like or similar unit as specified in the  
1859 residency or reservation contract signed by the resident for  
1860 which there are no prior claims by any resident until paid in  
1861 full; ~~or~~

1862           c. The proceeds of the next entrance fee received by the  
1863 provider for the unit that is vacated if the contract is  
1864 approved by the office before October 1, 2015. Providers may not  
1865 use this refund option after October 1, 2016, and must submit a  
1866 new or amended contract with an alternative refund provision to  
1867 the office for approval by August 2, 2016; or-

1868           d. Unrestricted funds available to the provider within 90  
1869 days after the contract is terminated and the unit is vacated.

1870           3. For contracts entered into on or after January 1, 2016,  
1871 that provide for a refund in accordance with sub-subparagraph  
1872 2.b., the following provisions apply:

1873           a. Any refund that is due upon the resident's death or  
1874 relocation of the resident to another level of care that results  
1875 in the termination of the contract must be paid the earlier of:

1876           (I) Thirty days after receipt by the provider of the next  
1877 entrance fee received for a like or similar unit for which there  
1878 is no prior claim by any resident until paid in full; or

1879           (II) No later than a specified maximum number of months or  
1880 years, determined by the provider and specified in the contract,  
1881 after the contract is terminated and the unit is vacated.

1882           b. Any refund that is due to a resident who vacates the  
1883 unit and voluntarily terminates a contract after the 7-day  
1884 rescission period required in subsection (2) must be paid within  
1885 30 days after receipt by the provider of the next entrance fee

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1886 for a like or similar unit for which there are no prior claims  
1887 by any resident until paid in full and is not subject to the  
1888 provisions in sub-subparagraph a. A contract is voluntarily  
1889 terminated when a resident provides written notice of intent to  
1890 leave and moves out of the continuing care facility after the 7-  
1891 day rescission period.

1892 4. For purposes of this paragraph, the term "like or  
1893 similar unit" means a residential dwelling categorized into a  
1894 group of units which have similar characteristics such as  
1895 comparable square footage, number of bedrooms, location, age of  
1896 construction, or a combination of one or more of these features  
1897 as specified in the residency or reservation contract. Each  
1898 category must consist of at least 5 percent of the total number  
1899 of residential units designated for independent living or 10  
1900 residential units designated for independent living, whichever  
1901 is less. However, a group of units consisting of single family  
1902 homes may contain fewer than 10 units.

1903 5. If the provider has discontinued marketing continuing  
1904 care contracts, any refund due a resident must be paid within  
1905 200 days after the contract is terminated and the unit is  
1906 vacated.

1907 6. Unless subsection (5) applies, for any prospective  
1908 resident, regardless of whether or not such a resident receives  
1909 a transferable membership or ownership right in the facility,  
1910 who cancels the contract before occupancy of the unit, the  
1911 entire amount paid toward the entrance fee shall be refunded,  
1912 less a processing fee of up to 5 percent of the entire entrance  
1913 fee; however, the processing fee may not exceed the amount paid  
1914 by the prospective resident. Such refund must be paid within 60

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1915 days after the resident gives notice of intention to cancel. For  
1916 a resident who has occupied his or her unit and who has received  
1917 a transferable membership or ownership right in the facility,  
1918 the foregoing refund provisions do not apply but are deemed  
1919 satisfied by the acquisition or receipt of a transferable  
1920 membership or an ownership right in the facility. The provider  
1921 may not charge any fee for the transfer of membership or sale of  
1922 an ownership right.

1923 (1) Specify whether the facility is, or is affiliated with,  
1924 a religious, nonprofit, or proprietary organization or  
1925 management entity or whether other facilities are owned or  
1926 operated by a common provider; the extent to which the affiliate  
1927 organization will be responsible for the financial and  
1928 contractual obligations of the provider; and the provisions of  
1929 the federal Internal Revenue Code, if any, under which the  
1930 provider or affiliate is exempt from the payment of federal  
1931 income tax.

1932 (m) Be marked with a combination of letters or figures  
1933 identifying the contract and differentiating that contract from  
1934 other contracts issued by the same provider. Whenever a change  
1935 is made to a contract, the designating letters or figures  
1936 thereon must be correspondingly changed.

1937 (2) A resident has the right to rescind a continuing care  
1938 contract and receive a full refund of any funds paid, without  
1939 penalty or forfeiture, within 7 days after executing the  
1940 contract. A resident may not be required to move into the  
1941 facility designated in the contract before the expiration of the  
1942 7-day period. During the 7-day period, the resident's funds must  
1943 be held in an escrow account unless otherwise requested by the

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1944 resident pursuant to s. 651.033(2)(c) ~~s. 651.033(3)(c)~~.

1945 (5) Except for a resident who postpones moving into the  
1946 facility but is deemed to have occupied a unit as described in  
1947 paragraph (1)(d), if a prospective resident dies before  
1948 occupying the facility or, through illness, injury, or  
1949 incapacity, is precluded from becoming a resident under the  
1950 terms of the continuing care contract, the contract is  
1951 automatically canceled, and the prospective resident or his or  
1952 her legal representative shall receive a full refund of all  
1953 moneys paid to the facility, except those costs specifically  
1954 incurred by the facility at the request of the prospective  
1955 resident and set forth in writing in a separate addendum, signed  
1956 by both parties, to the contract. Such refund must be paid  
1957 within 60 days after the provider receives notice of the  
1958 prospective resident's death, illness, injury, or incapacity.

1959 Section 21. Section 651.058, Florida Statutes, is created  
1960 to read:

1961 651.058 Grounds for continuing care contract disapproval.-  
1962 The office may disapprove any contract filed under s. 651.055 or  
1963 s. 651.057, or withdraw any previous approval thereof, only if  
1964 the contract:

1965 (1) Is in any respect in violation of, or does not comply  
1966 with, this chapter or any section herein incorporated by  
1967 reference;

1968 (2) Contains or incorporates by reference, where such  
1969 incorporation is otherwise permissible, any inconsistent,  
1970 ambiguous, or misleading clauses, exceptions, or conditions;

1971 (3) Has a title, heading, or other indication of its  
1972 provisions which is misleading; or

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1973       (4) Is printed or otherwise reproduced in such manner as to  
1974 render any material provision of the form substantially  
1975 illegible.

1976       Section 22. Section 651.064, Florida Statutes, is created  
1977 to read:

1978       651.064 Unfair and deceptive trade practices prohibited.—

1979       (1) A person may not engage in this state in a trade  
1980 practice that is defined in this section as, or that is  
1981 determined by the office to be, an unfair method of competition  
1982 or an unfair or deceptive act or practice involving the business  
1983 of continuing care.

1984       (2) A person who violates this part is subject to a fine of  
1985 up to \$5,000 for each nonwillful violation and up to \$40,000 for  
1986 each willful violation. Fines under this subsection imposed  
1987 against a provider may not exceed an aggregate amount of \$20,000  
1988 for all nonwillful violations arising out of the same action or  
1989 an aggregate amount of \$200,000 for all willful violations  
1990 arising out of the same action. The fines may be imposed in  
1991 addition to any other applicable penalty, including revocation  
1992 or suspension of the provider's certificate of authority. Such  
1993 finances may not be used as justification for a rate increase.

1994       (3) The following are defined as unfair methods of  
1995 competition and unfair or deceptive acts or practices:

1996       (a) Misrepresentations and false advertising of continuing  
1997 care contracts.—Knowingly making, issuing, circulating, or  
1998 causing to be made, issued, or circulated an estimate,  
1999 illustration, circular, statement, sales presentation, omission,  
2000 comparison, or continuing care contract altered after being  
2001 issued which:

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2002        1. Misrepresents the benefits, advantages, conditions, or  
2003 terms of a continuing care contract;

2004        2. Misrepresents the dividends or share of the surplus to  
2005 be received on a continuing care contract;

2006        3. Makes a false or misleading statement as to the  
2007 dividends or share of surplus previously paid on a continuing  
2008 care contract;

2009        4. Is misleading, or is a misrepresentation, as to the  
2010 financial condition of a person;

2011        5. Uses a name or title of a continuing care contract or  
2012 continuing care contracts which misrepresents the true nature  
2013 thereof;

2014        6. Is a misrepresentation for the purpose of inducing, or  
2015 tending to induce, the lapse, forfeiture, exchange, conversion,  
2016 or surrender of a continuing care contract;

2017        7. Is a misrepresentation for the purpose of effecting a  
2018 pledge or assignment of, or effecting a loan against, a  
2019 continuing care contract;

2020        8. Misrepresents a continuing care contract as being shares  
2021 of stock or misrepresents ownership interest in the provider or  
2022 facility; or

2023        9. Uses an advertisement that would mislead or otherwise  
2024 cause a reasonable person to believe mistakenly that the state  
2025 or the Federal Government is responsible for the continuing care  
2026 sales activities of a person or stands behind a person's credit  
2027 or that a person, the state, or the Federal Government  
2028 guarantees any returns on a continuing care contract or is a  
2029 source of payment of a continuing care obligation of or sold by  
2030 a person.

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2031       (b) False information and advertising generally.—Knowingly  
2032 making, publishing, disseminating, circulating, or placing  
2033 before the public or causing, directly or indirectly, to be  
2034 made, published, disseminated, circulated, or placed before the  
2035 public:

2036       1. In a newspaper, magazine, or other publication;

2037       2. In the form of a notice, circular, pamphlet, letter, or  
2038 poster;

2039       3. Over a radio or television station; or

2040       4. In any other way,

2041  
2042 an advertisement, an announcement, or a statement containing an  
2043 assertion, a representation, or a statement with respect to the  
2044 business of continuing care which is untrue, deceptive, or  
2045 misleading.

2046       (c) Defamation.—Knowingly making, publishing,  
2047 disseminating, or circulating, directly or indirectly, or  
2048 aiding, abetting, or encouraging the making, publishing,  
2049 disseminating, or circulating, of an oral or written statement  
2050 or a pamphlet, circular, article, or literature which is false  
2051 or maliciously critical of, or derogatory to, a person and which  
2052 is calculated to injure that person.

2053       (d) Boycott, coercion, and intimidation.—Entering into an  
2054 agreement to commit, or by a concerted action committing, an act  
2055 of boycott, coercion, or intimidation resulting in, or tending  
2056 to result in, unreasonable restraint of, or monopoly in, the  
2057 business of continuing care.

2058       (e) False statements and entries.—

2059       1. Knowingly:

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- 2060       a. Filing with a supervisory or other public official;  
2061       b. Making, publishing, disseminating, or circulating;  
2062       c. Delivering to a person;  
2063       d. Placing before the public; or  
2064       e. Causing, directly or indirectly, to be made, published,  
2065 disseminated, circulated, delivered to a person, or placed  
2066 before the public,  
2067  
2068 a false material statement.
- 2069       2. Knowingly making a false entry of a material fact in a  
2070 book, report, or statement of a person, or knowingly omitting to  
2071 make a true entry of a material fact pertaining to the business  
2072 of such person in a book, report, or statement of such person.
- 2073       (f) Stock operations and advisory board contracts.—Issuing  
2074 or delivering, promising to issue or deliver, or permitting  
2075 officers or employees to issue or deliver capital stock, benefit  
2076 certificates or shares in a common-law corporation, or  
2077 securities or any special or advisory board contracts or other  
2078 contracts of any kind promising returns or profits as an  
2079 inducement to a continuing care contract.
- 2080       (g) Unfair discrimination.—
- 2081       1. Knowingly making or permitting unfair discrimination  
2082 between individuals of the same actuarially supportable class  
2083 and equal expectation of life in the rates charged for a  
2084 continuing care contract, in the dividends or other benefits  
2085 payable thereon, or in any other term or condition of such  
2086 contract.
- 2087       2. Knowingly making or permitting unfair discrimination  
2088 between individuals of the same actuarially supportable class,



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2089 as determined at the time of initial issuance of the coverage,  
2090 and essentially the same hazard in the amount of premium, policy  
2091 fees, or rates charged for a policy or contract of accident,  
2092 disability, or health insurance, in the benefits payable  
2093 thereunder, in the terms or conditions of such contract, or in  
2094 any other manner.

2095 3. Knowingly refusing to issue, canceling, or otherwise  
2096 terminating a continuing care contract based upon the fact that  
2097 a resident or potential resident has sought or should have  
2098 sought medical or psychological treatment in the past for abuse.  
2099 A provider may refuse to issue a contract based on the potential  
2100 resident's medical condition but may not consider whether such  
2101 condition was caused by an act of abuse. For purposes of this  
2102 subparagraph, the term "abuse" means the occurrence of one or  
2103 more of the following acts:

2104 a. Attempting or committing assault, battery, sexual  
2105 assault, or sexual battery;

2106 b. Placing another in fear of imminent serious bodily  
2107 injury by physical menace;

2108 c. False imprisonment;

2109 d. Physically or sexually abusing a minor child; or

2110 e. An act of domestic violence as defined in s. 741.28.

2111 (h) Failure to maintain complaint-handling procedures.—

2112 Failure of any person to maintain a complete record of all the  
2113 complaints received since the date of the last examination. For  
2114 purposes of this paragraph, "complaint" means a written  
2115 communication primarily expressing a grievance.

2116 (i) Misrepresentation in applications.—

2117 1. Knowingly making a false or fraudulent written or oral

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2118 statement or representation on, or relative to, an application  
2119 or negotiation for a continuing care contract for the purpose of  
2120 obtaining a fee, commission, money, or other benefit from an  
2121 insurer, agent, broker, or individual.

2122 2. Knowingly making a material omission in the comparison  
2123 of a continuing care contract with the contract it replaces for  
2124 the purpose of obtaining a fee, commission, money, or other  
2125 benefit from an insurer, agent, broker, or individual. For the  
2126 purposes of this subparagraph, a "material omission" includes  
2127 the failure to advise the resident or potential resident of the  
2128 existence and operation of a preexisting condition clause in the  
2129 replacement contract.

2130 (j) *Twisting.*—Knowingly making a misleading representation,  
2131 incomplete or fraudulent comparison, or fraudulent material  
2132 omission of or with respect to a continuing care contract,  
2133 facility, or provider for the purpose of inducing, or tending to  
2134 induce, a person to lapse, forfeit, surrender, terminate,  
2135 retain, pledge, assign, borrow on, or convert a continuing care  
2136 contract or to buy a continuing care contract in another  
2137 facility.

2138 (k) *Advertising gifts permitted.*—Paragraphs (f) and (g) do  
2139 not prohibit a licensed provider or facility from giving to a  
2140 resident, a potential resident, or another person, for the  
2141 purpose of advertising, an article of merchandise having a value  
2142 of not more than \$25.

2143 (l) *Free care prohibited.*—

2144 1. Advertising, offering, or providing free continuing care  
2145 as an inducement to the purchase or sale of real or personal  
2146 property or of services directly or indirectly connected with

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2147 such real or personal property.

2148 2. For the purposes of this paragraph, "free" continuing  
2149 care is:

2150 a. Continuing care for which no identifiable and additional  
2151 charge is made to the purchaser of such real property, personal  
2152 property, or services.

2153 b. Continuing care for which an identifiable or additional  
2154 charge is made in an amount less than the cost of such  
2155 continuing care as to the seller or other person, other than the  
2156 provider or facility, providing the same.

2157 (m) *Illegal dealings in charges for care.*

2158 1. Knowingly collecting any sum for continuing care, which  
2159 is not then provided, or is not in due course to be provided,  
2160 under a continuing care contract as permitted by this code.

2161 2. Knowingly collecting any sum for continuing care in  
2162 excess of or less than the charge applicable to continuing care  
2163 as specified in the continuing care contract and as fixed by the  
2164 provider.

2165 3. A provider may not cancel or otherwise terminate a  
2166 continuing care contract, or require execution of a consent to  
2167 rate endorsement, during the stated contract term for the  
2168 purpose of offering to issue, or issuing, a similar or identical  
2169 contract to the same resident at a higher cost or continuing an  
2170 existing contract at an increased cost.

2171 4. A provider may not cancel or issue a nonrenewal notice  
2172 on any continuing care contract without complying with any  
2173 applicable cancellation or nonrenewal provision required under  
2174 the Florida Insurance Code.

2175 (n) *Interlocking ownership and management.*

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2176 1. A provider may retain, invest in, or acquire the whole  
2177 or any part of the capital stock of any other provider or  
2178 providers, or have a common management with any other provider  
2179 or providers, unless such retention, investment, acquisition, or  
2180 common management is inconsistent with this code or unless by  
2181 reason thereof the business of such providers with the public is  
2182 conducted in a manner that substantially lessens competition  
2183 generally in the continuing care business.

2184 2. A person otherwise qualified may be a director of two or  
2185 more providers that are competitors unless the effect thereof is  
2186 substantially to lessen competition between providers generally  
2187 or materially tends to create a monopoly.

2188 3. The limitations contained in this paragraph do not apply  
2189 to a person who is a director of two or more providers under  
2190 common control or management.

2191 (o) Prohibited arrangements as to funerals.-

2192 1. A provider may not designate in a continuing care  
2193 contract the person to conduct the funeral of the resident, or  
2194 organize, promote, or operate an enterprise or plan to enter  
2195 into a contract with a resident under which the freedom of  
2196 choice in the open market of the person having the legal right  
2197 to such choice is restricted as to the purchase, arrangement,  
2198 and conduct of a funeral service or any part thereof for a  
2199 resident.

2200 2. A provider may not contract or agree to furnish funeral  
2201 merchandise or services in connection with the disposition of a  
2202 person upon the death of a resident.

2203 3. A provider may not contract or agree with a funeral  
2204 director or direct disposer to the effect that such funeral

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2205 director or direct disposer conducts the funeral of a resident.

2206 (p) *Certain relations with funeral directors prohibited.*

2207 1. A provider may not:

2208 a. Affix, or permit to be affixed, advertising matter of  
2209 any kind or character of a licensed funeral director or direct  
2210 disposer to a continuing care contract.

2211 b. Circulate, or permit to be circulated, any such  
2212 advertising matter with a continuing care contract.

2213 c. Attempt in any manner or form to influence residents to  
2214 employ the services of a particular licensed funeral director or  
2215 direct disposer.

2216 2. A provider may not maintain, or permit its agent to  
2217 maintain, an office or place of business in the office,  
2218 establishment, or place of business of a funeral director or  
2219 direct disposer in this state.

2220 (q) *False claims; obtaining or retaining money*  
2221 *dishonestly.*

2222 1. An agent, physician, resident, or other person who  
2223 causes to be presented to a provider a false claim for payment,  
2224 knowing the same to be false; or

2225 2. An agent, collector, or other person who represents a  
2226 provider or collects or does business without the authority of  
2227 the provider, secures cash advances by false statements, or  
2228 fails to turn over when required, or satisfactorily account for,  
2229 all collections of such provider,

2230  
2231 in addition to the other penalties provided in this act, commits  
2232 a misdemeanor of the second degree and, upon conviction thereof,  
2233 is subject to the penalties provided by s. 775.082 or s.

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2234 775.083.

2235 (r) Refusal to contract.—In addition to other provisions of  
2236 this code, the refusal to issue a continuing care contract to an  
2237 individual solely because of:

2238 1. Race, color, creed, marital status, sex, or national  
2239 origin;

2240 2. The age or lawful occupation of the individual, unless  
2241 there is a reasonable relationship between the age or lawful  
2242 occupation of the individual and the continuing care contract;

2243 3. The resident's or potential resident's failure to agree  
2244 to place collateral business with an insurer;

2245 4. The resident's or potential resident's failure to  
2246 purchase noninsurance services or commodities;

2247 5. The fact that the resident or potential resident is a  
2248 public official; or

2249 6. The fact that the resident or potential resident had  
2250 been previously refused a continuing care contract by a  
2251 provider, when such refusal for this reason occurs with such  
2252 frequency as to indicate a general business practice.

2253 (s) Powers of attorney.—Except as provided in s.  
2254 627.842(2):

2255 1. Requiring, as a condition to issuance of a continuing  
2256 care contract, that a resident or potential resident execute a  
2257 power of attorney in favor of the provider, facility, or an  
2258 employee thereof; or

2259 2. Presenting to the resident or potential resident, as a  
2260 routine business practice, a form that authorizes the provider  
2261 or facility to sign the resident's or potential resident's name  
2262 on any continuing care document. To be valid, a power of

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2263 attorney must be an act or practice other than as described in  
2264 this paragraph, must be a separate writing in a separate  
2265 document, must be executed with the full knowledge and consent  
2266 of the resident or potential resident who grants the power of  
2267 attorney, must be in the best interests of the resident or  
2268 potential resident, and a copy of the power of attorney must be  
2269 provided to the resident or potential resident at the time of  
2270 the transaction.

2271 (t) *Sliding.*—Sliding is the act or practice of:

2272 1. Representing to the applicant that a specific ancillary  
2273 coverage or product is required by law in conjunction with the  
2274 purchase of a continuing care contract when such coverage or  
2275 product is not required;

2276 2. Representing to the applicant that a specific ancillary  
2277 coverage or product is included in the continuing care contract  
2278 applied for without an additional charge when such charge is  
2279 required; or

2280 3. Charging an applicant for a specific ancillary coverage  
2281 or product, in addition to the cost of the continuing care  
2282 contract applied for, without the informed consent of the  
2283 applicant.

2284 (u) *Deceptive use of name.*—Using the name or logo of a  
2285 financial institution, as defined in s. 655.005(1), or its  
2286 affiliates or subsidiaries when marketing to or soliciting  
2287 existing or prospective residents if such name or logo is used  
2288 without the written consent of the financial institution and in  
2289 a manner that would lead a reasonable person to believe that the  
2290 material or solicitation originated from, was endorsed by, or is  
2291 related to or the responsibility of the financial institution or

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2292 its affiliates or subsidiaries.

2293 (v) *Fraudulent signatures on an application or policy-*  
2294 *related document.*—Willfully submitting to an insurer or provider  
2295 on behalf of a consumer an insurance application, continuing  
2296 care contract, or policy-related document bearing a false or  
2297 fraudulent signature.

2298 (4) This section does not prohibit a provider from  
2299 negotiating or entering into a contract with a licensed health  
2300 care provider for alternative rates of payment, or from limiting  
2301 payments under a policy pursuant to an agreement with a  
2302 resident, as long as the continuing care provider offers the  
2303 benefit of such alternative rates to residents who select  
2304 designated health care providers.

2305 (5) (a) *Participation in a wellness or health improvement*  
2306 *program.*—A provider may offer a voluntary wellness or health  
2307 improvement program and may encourage or reward participation in  
2308 the program by authorizing rewards or incentives, including, but  
2309 not limited to, merchandise, gift cards, debit cards, or  
2310 discounts on fees. An advertisement of the program is not  
2311 subject to the limitations set forth in paragraph (1)(m).

2312 (b) *Verification of medical condition by nonparticipants*  
2313 *due to medical condition.*—A provider may require a resident to  
2314 provide verification, such as an affirming statement from the  
2315 resident's physician, that the resident's medical condition  
2316 makes it unreasonably difficult or inadvisable to participate in  
2317 the wellness or health improvement program in order for that  
2318 nonparticipant to receive the reward or incentive.

2319 (c) *Disclosure requirement.*—A reward or incentive offered  
2320 under this subsection must be disclosed in the contract.



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2321 (d) Other incentives.—This subsection does not prohibit  
2322 providers from offering other incentives or rewards for  
2323 adherence to a wellness or health improvement program if  
2324 otherwise authorized by state or federal law.

2325 Section 23. Subsection (1) of section 651.071, Florida  
2326 Statutes, is amended to read:

2327 651.071 Contracts as preferred claims on liquidation or  
2328 receivership.—

2329 (1) In the event of receivership or liquidation proceedings  
2330 against a provider, all continuing care and continuing care at-  
2331 home contracts executed by a provider are ~~shall be~~ deemed  
2332 policyholder loss preferred claims pursuant to s. 631.271  
2333 against all assets owned by the provider; however, such claims  
2334 are subordinate to any secured claim.

2335 Section 24. Present paragraphs (c) through (h) of  
2336 subsection (2) of section 651.091, Florida Statutes, are  
2337 redesignated as paragraphs (d) through (i), respectively, new  
2338 paragraphs (c), (j), and (k) are added to that subsection,  
2339 present paragraph (e) of subsection (2) and paragraphs (c) and  
2340 (g) of subsection (3) of that section are amended, paragraphs  
2341 (j) through (m) are added to subsection (3) of that section, and  
2342 paragraph (d) of subsection (3) of that section is republished,  
2343 to read:

2344 651.091 Availability, distribution, and posting of reports  
2345 and records; requirement of full disclosure.—

2346 (2) Every continuing care facility shall:

2347 (c) Provide notice to the president or chair of the  
2348 residents' council within 3 business days of issuance of an  
2349 examination report or the initiation of any legal or

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2350 administrative proceeding by the office or the department and  
2351 include a copy of such document.

2352 (f)(e) Deliver the information described in s. 651.085(4)  
2353 in writing to the president or chair of the residents' council  
2354 and make supporting documentation available upon request ~~Notify~~  
2355 ~~the residents' council of any plans filed with the office to~~  
2356 ~~obtain new financing, additional financing, or refinancing for~~  
2357 ~~the facility and of any applications to the office for any~~  
2358 ~~expansion of the facility.~~

2359 (j) Provide to the president or chair of the residents'  
2360 council a copy of any notice filed with the office relating to  
2361 any change in ownership within 3 business days after the receipt  
2362 of such filing by the provider.

2363 (k) Make the information available to prospective residents  
2364 pursuant to paragraph (3) (d) available to current residents and  
2365 provide notice of changes to that information to the president  
2366 or chair of the residents' council within 3 business days.

2367 (3) Before entering into a contract to furnish continuing  
2368 care or continuing care at-home, the provider undertaking to  
2369 furnish the care, or the agent of the provider, shall make full  
2370 disclosure, and provide copies of the disclosure documents to  
2371 the prospective resident or his or her legal representative, of  
2372 the following information:

2373 (c) All ownership interests and lease agreements, including  
2374 information specified in s. 651.022(2)(b)4. ~~s. 651.022(2)(b)8.~~

2375 (d) In keeping with the intent of this subsection relating  
2376 to disclosure, the provider shall make available for review  
2377 master plans approved by the provider's governing board and any  
2378 plans for expansion or phased development, to the extent that

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2379 the availability of such plans does not put at risk real estate,  
2380 financing, acquisition, negotiations, or other implementation of  
2381 operational plans and thus jeopardize the success of  
2382 negotiations, operations, and development.

2383 (g) A statement of the reserve requirements of ss. 651.034  
2384 and 651.035 and the amounts required to be held for each reserve  
2385 as of the date of the last annual statement to the office ~~The~~  
2386 ~~amount and location of any reserve funds required by this~~  
2387 ~~chapter, and the name of the person or entity having a claim to~~  
2388 ~~such funds in the event of a bankruptcy, foreclosure, or~~  
2389 ~~rehabilitation proceeding.~~

2390 (j) Notice of the issuance of an examination report or the  
2391 initiation of any legal or administrative proceeding by the  
2392 office or the department, including a copy of such document.

2393 (k) Notice that the entrance fee is the property of the  
2394 provider after the expiration of the 7-day escrow requirement  
2395 under s. 651.055(2).

2396 (l) If the provider operates multiple facilities, a  
2397 disclosure of any distribution of assets or income between  
2398 facilities that may occur and the manner in which such  
2399 distributions would be made, or a statement that such  
2400 distributions will not occur.

2401 (m) Notice of any holding company system or obligated group  
2402 of which the provider is a member.

2403 Section 25. Subsection (1) of section 651.105, Florida  
2404 Statutes, is amended, and subsection (7) is added to that  
2405 section, to read:

2406 651.105 Examination and inspections.—

2407 (1) The office may at any time, and shall at least once

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2408 every 3 years, examine the business of any applicant for a  
2409 certificate of authority and any provider engaged in the  
2410 execution of care contracts or engaged in the performance of  
2411 obligations under such contracts, in the same manner as is  
2412 provided for the examination of insurance companies pursuant to  
2413 ss. 624.316 and 624.318 ~~s. 624.316~~. For a provider as described  
2414 ~~defined~~ in s. 651.028, such examinations shall take place at  
2415 least once every 5 years. Such examinations shall be made by a  
2416 representative or examiner designated by the office whose  
2417 compensation will be fixed by the office pursuant to s. 624.320.  
2418 Routine examinations may be made by having the necessary  
2419 documents submitted to the office; and, for this purpose,  
2420 financial documents and records conforming to commonly accepted  
2421 accounting principles and practices, as required under s.  
2422 651.026, are deemed adequate. The final written report of each  
2423 examination must be filed with the office and, when so filed,  
2424 constitutes a public record. Any provider being examined shall,  
2425 upon request, give reasonable and timely access to all of its  
2426 records. The representative or examiner designated by the office  
2427 may at any time examine the records and affairs and inspect the  
2428 physical property of any provider, whether in connection with a  
2429 formal examination or not.

2430 (7) (a) Effective January 1, 2018, the office may examine a  
2431 provider and its affiliates to ascertain the financial condition  
2432 of the provider, including the enterprise risk to the provider  
2433 by the ultimate controlling party, or by any entity or  
2434 combination of entities within the holding company system, or by  
2435 the holding company system on a consolidated basis.

2436 (b) As used in this subsection, the term "enterprise risk"

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2437 means an activity, circumstance, event, or series of events  
2438 involving one or more affiliates of a provider which, if not  
2439 remedied promptly, is likely to have a materially adverse effect  
2440 upon the financial condition or liquidity of the provider or its  
2441 holding company system as a whole, including anything that would  
2442 cause the provider to be in a hazardous financial condition.

2443 Section 26. Section 651.1055, Florida Statutes, is created  
2444 to read:

2445 651.1055 Duty of provider to cooperate.—A provider has a  
2446 duty to cooperate with the office, including responding to  
2447 written correspondence and providing data, financial statements,  
2448 and pertinent information as requested by the office.

2449 Section 27. Section 651.106, Florida Statutes, is amended  
2450 to read:

2451 651.106 Grounds for discretionary denial ~~refusal~~,  
2452 suspension, or revocation of certificate of authority.—The  
2453 office may deny an application or ~~7~~ suspend ~~7~~ or revoke the  
2454 provisional certificate of authority or the certificate of  
2455 authority of any applicant or provider if it finds that any one  
2456 or more of the following grounds applicable to the applicant or  
2457 provider exist:

2458 (1) Failure by the provider to continue to meet the  
2459 requirements for the authority originally granted.

2460 (2) Failure by the provider to meet one or more of the  
2461 qualifications for the authority specified by this chapter.

2462 (3) Material misstatement, misrepresentation, or fraud in  
2463 obtaining the authority, or in attempting to obtain the same.

2464 (4) Demonstrated lack of fitness or trustworthiness.

2465 (5) Fraudulent or dishonest practices of management in the

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2466 conduct of business.

2467 (6) Misappropriation, conversion, or withholding of moneys.

2468 (7) Failure to comply with, or violation of, any proper  
2469 order or rule of the office or commission or violation of any  
2470 provision of this chapter.

2471 (8) The insolvent or impaired condition of the provider or  
2472 the provider's being in such condition or using such methods and  
2473 practices in the conduct of its business as to render its  
2474 further transactions in this state hazardous or injurious to the  
2475 public.

2476 (9) Refusal by the provider to be examined or to produce  
2477 its accounts, records, and files for examination, or refusal by  
2478 any of its officers to give information with respect to its  
2479 affairs or to perform any other legal obligation under this  
2480 chapter when required by the office.

2481 (10) Failure by the provider to comply with the  
2482 requirements of s. 651.026 or s. 651.033.

2483 (11) Failure by the provider to maintain escrow accounts or  
2484 funds as required by this chapter.

2485 (12) Failure by the provider to meet the requirements of  
2486 this chapter for disclosure of information to residents  
2487 concerning the facility, its ownership, its management, its  
2488 development, or its financial condition or failure to honor its  
2489 continuing care or continuing care at-home contracts.

2490 (13) Any cause for which issuance of the license could have  
2491 been refused had it then existed and been known to the office.

2492 (14) Having been found guilty of, or having pleaded guilty  
2493 or nolo contendere to, a felony in this state or any other  
2494 state, without regard to whether a judgment or conviction has

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2495 been entered by the court having jurisdiction of such cases.

2496 (15) In the conduct of business under the license, engaging  
2497 in unfair methods of competition or in unfair or deceptive acts  
2498 or practices prohibited under s. 651.064 ~~part IX of chapter 626~~.

2499 (16) A pattern of bankrupt enterprises.

2500 (17) (a) The ownership, control, or management of the  
2501 organization includes any person:

2502 1. Who is incompetent or untrustworthy;

2503 2. Who is so lacking in continuing care expertise as to  
2504 make the operation of the provider hazardous to potential and  
2505 existing residents;

2506 3. Who is so lacking in continuing care experience,  
2507 ability, and standing as to jeopardize the reasonable promise of  
2508 successful operation;

2509 4. Who is affiliated, directly or indirectly, through  
2510 ownership, control, reinsurance transactions, or other business  
2511 relations, with any person whose business operations are or have  
2512 been marked by business practices or conduct that is to the  
2513 detriment of the public, stockholders, investors, or creditors;  
2514 or

2515 5. Whose business operations are or have been marked by  
2516 business practices or conduct that is to the detriment of the  
2517 public, stockholders, investors, or creditors;

2518 (b) Any person, including any stock subscriber,  
2519 stockholder, or incorporator, who exercises or has the ability  
2520 to exercise effective control of the organization, or who  
2521 influences or has the ability to influence the transaction of  
2522 the provider's business, does not possess the financial standing  
2523 and business experience for the successful operation of the

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2524 provider.

2525 (18) The provider has not filed a notice of change in  
 2526 management, fails to remove a disapproved manager, or persists  
 2527 in appointing disapproved or unapprovable managers.

2528  
 2529 Revocation of a certificate of authority under this section does  
 2530 not relieve a provider from the provider's obligation to  
 2531 residents under the terms and conditions of any continuing care  
 2532 or continuing care at-home contract between the provider and  
 2533 residents or the provisions of this chapter. The provider shall  
 2534 continue to file its annual statement and pay license fees to  
 2535 the office as required under this chapter as if the certificate  
 2536 of authority had continued in full force, but the provider shall  
 2537 not issue any new contracts. The office may seek an action in  
 2538 the circuit court of Leon County to enforce the office's order  
 2539 and the provisions of this section.

2540 Section 28. Section 651.1065, Florida Statutes, is created  
 2541 to read:

2542 651.1065 Soliciting or accepting new continuing care  
 2543 contracts by impaired or insolvent facilities or providers.-

2544 (1) Whether or not delinquency proceedings as to a  
 2545 continuing care retirement community have been or are to be  
 2546 initiated, a proprietor, general partner, member, officer,  
 2547 director, trustee, or manager of a continuing care retirement  
 2548 community, except with the written permission of the office, may  
 2549 not permit the continuing care retirement community to solicit  
 2550 or accept new continuing care contracts in this state after the  
 2551 proprietor, general partner, member, officer, director, trustee,  
 2552 or manager knew, or reasonably should have known, that the



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2553 continuing care retirement community was impaired or insolvent.

2554 (2) A proprietor, general partner, member, officer,  
2555 director, trustee, or manager who violates this section commits  
2556 a felony of the third degree, punishable as provided in s.  
2557 775.082, s. 775.083, or s. 775.084.

2558 Section 29. Subsection (1) of section 651.107, Florida  
2559 Statutes, is amended, and subsection (4) is added to that  
2560 section, to read:

2561 651.107 Duration of suspension; obligations during  
2562 suspension period; reinstatement.—

2563 (1) Suspension of a certificate of authority shall be for  
2564 such period, not to exceed 2 years ~~1 year~~, as is fixed by the  
2565 office in the order of suspension or until the occurrence of a  
2566 specific event necessary for remedying the reasons for  
2567 suspension, unless the office shortens or rescinds such  
2568 suspension or the order of suspension is modified, rescinded, or  
2569 reversed.

2570 (4) If the suspension of the certificate of authority was  
2571 until the occurrence of a specific event or events and the  
2572 certificate of authority has not been otherwise terminated, upon  
2573 the presentation of evidence satisfactory to the office that the  
2574 specific event or events have occurred, the provider's  
2575 certificate of authority must be reinstated unless the office  
2576 finds that the provider is otherwise not in compliance with the  
2577 requirements of this chapter. The office shall promptly notify  
2578 the provider of such reinstatement, but the provider may not  
2579 consider its certificate of authority reinstated until so  
2580 notified by the office. If satisfactory evidence as to the  
2581 occurrence of the specific event or events has not been

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2582 presented to the office within 2 years of the date of such  
2583 suspension, the certificate of authority is deemed to have  
2584 expired as of 2 years from the date of suspension or upon  
2585 failure of the provider to continue the certificate during the  
2586 suspension period in accordance with subsection (2), whichever  
2587 first occurs.

2588 Section 30. Section 651.114, Florida Statutes, is amended  
2589 to read:

2590 651.114 Delinquency proceedings; remedial rights.—

2591 (1) Upon determination by the office that a provider is not  
2592 in compliance with this chapter, the office may notify the chair  
2593 of the Continuing Care Advisory Council, who may assist the  
2594 office in formulating a corrective action plan.

2595 (2) Within 30 days after a request by either the advisory  
2596 council or the office, a provider shall make a plan for  
2597 obtaining compliance or solvency available to the advisory  
2598 council and the office, ~~within 30 days after being requested to~~  
2599 ~~do so by the council, a plan for obtaining compliance or~~  
2600 ~~solvency.~~

2601 (3) Within 30 days after receipt of a plan for obtaining  
2602 compliance or solvency, the office or notification, the advisory  
2603 council, at the request of the office, shall:

2604 (a) Consider and evaluate the plan submitted by the  
2605 provider.

2606 (b) Discuss the problem and solutions with the provider.

2607 (c) Conduct such other business as is necessary.

2608 (d) Report its findings and recommendations to the office,  
2609 which may require additional modification of the plan.

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2611 This subsection may not be interpreted so as to delay or prevent  
2612 the office from taking any regulatory measures it deems  
2613 necessary regarding the provider that submitted the plan.

2614 (4) If the financial condition of the continuing care  
2615 facility or provider is impaired or is such that if not modified  
2616 or corrected, its continued operation would result in  
2617 insolvency, the office may direct the provider to formulate and  
2618 file with the office a corrective action plan. If the provider  
2619 fails to submit a plan within 30 days after the office's  
2620 directive, or submits a plan that is insufficient to correct the  
2621 condition, the office may specify a plan and direct the provider  
2622 to implement the plan.

2623 (5)~~(4)~~ After receiving approval of a plan by the office,  
2624 the provider shall submit a progress report monthly to the  
2625 advisory council and ~~or~~ the office, ~~or both,~~ in a manner  
2626 prescribed by the office. After 3 months, or at any earlier time  
2627 deemed necessary, the council shall evaluate the progress by the  
2628 provider and shall advise the office of its findings.

2629 (6) Supervision by the office under ss. 624.80-624.87  
2630 constitutes the exclusive means of supervising a provider  
2631 licensed under this chapter.

2632 (7)~~(5)~~ ~~If should~~ the office finds ~~find~~ that sufficient  
2633 grounds exist for rehabilitation, liquidation, conservation,  
2634 reorganization, seizure, or summary proceedings of an insurer as  
2635 set forth in ss. 631.051, 631.061, and 631.071, the department  
2636 ~~office~~ may petition for an appropriate court order or may pursue  
2637 such other relief as is afforded in part I of chapter 631.  
2638 Before invoking its powers under part I of chapter 631, the  
2639 department ~~office~~ shall notify the chair of the advisory

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2640 council.

2641 (8) A delinquency proceeding under part I of chapter 631  
2642 constitutes the sole and exclusive means of conserving,  
2643 rehabilitating, liquidating, or seizing a provider licensed  
2644 under this chapter. Notwithstanding s. 631.011, impairment of a  
2645 provider for the purposes of s. 631.051 is defined according to  
2646 the term "impaired" in s. 651.011.

2647 (9)~~(6)~~ In the event an order of conservation,  
2648 rehabilitation, liquidation, or ~~conservation, reorganization,~~  
2649 seizure, ~~or summary proceeding~~ has been entered against a  
2650 provider, the department and office are vested with all of the  
2651 powers and duties they have under the provisions of part I of  
2652 chapter 631 in regard to delinquency proceedings of insurance  
2653 companies. A provider shall give written notice of the  
2654 proceeding to its residents within 3 business days after the  
2655 initiation of a delinquency proceeding under chapter 631 and  
2656 shall include a notice of the delinquency proceeding in any  
2657 written materials provided to prospective residents.

2658 ~~(7) If the financial condition of the continuing care~~  
2659 ~~facility or provider is such that, if not modified or corrected,~~  
2660 ~~its continued operation would result in insolvency, the office~~  
2661 ~~may direct the provider to formulate and file with the office a~~  
2662 ~~corrective action plan. If the provider fails to submit a plan~~  
2663 ~~within 30 days after the office's directive or submits a plan~~  
2664 ~~that is insufficient to correct the condition, the office may~~  
2665 ~~specify a plan and direct the provider to implement the plan.~~

2666 ~~(8) (a) The rights of the office described in this section~~  
2667 ~~are subordinate to the rights of a trustee or lender pursuant to~~  
2668 ~~the terms of a resolution, ordinance, loan agreement, indenture~~

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2669 ~~of trust, mortgage, lease, security agreement, or other~~  
2670 ~~instrument creating or securing bonds or notes issued to finance~~  
2671 ~~a facility, and the office, subject to the provisions of~~  
2672 ~~paragraph (c), shall not exercise its remedial rights provided~~  
2673 ~~under this section and ss. 651.018, 651.106, 651.108, and~~  
2674 ~~651.116 with respect to a facility that is subject to a lien,~~  
2675 ~~mortgage, lease, or other encumbrance or trust indenture~~  
2676 ~~securing bonds or notes issued in connection with the financing~~  
2677 ~~of the facility, if the trustee or lender, by inclusion or by~~  
2678 ~~amendment to the loan documents or by a separate contract with~~  
2679 ~~the office, agrees that the rights of residents under a~~  
2680 ~~continuing care or continuing care at home contract will be~~  
2681 ~~honored and will not be disturbed by a foreclosure or conveyance~~  
2682 ~~in lieu thereof as long as the resident:~~

2683 ~~1. Is current in the payment of all monetary obligations~~  
2684 ~~required by the contract;~~

2685 ~~2. Is in compliance and continues to comply with all~~  
2686 ~~provisions of the contract; and~~

2687 ~~3. Has asserted no claim inconsistent with the rights of~~  
2688 ~~the trustee or lender.~~

2689 ~~(b) This subsection does not require a trustee or lender~~  
2690 ~~to:~~

2691 ~~1. Continue to engage in the marketing or resale of new~~  
2692 ~~continuing care or continuing care at home contracts;~~

2693 ~~2. Pay any rebate of entrance fees as may be required by a~~  
2694 ~~resident's continuing care or continuing care at home contract~~  
2695 ~~as of the date of acquisition of the facility by the trustee or~~  
2696 ~~lender and until expiration of the period described in paragraph~~  
2697 ~~(d);~~

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2698 ~~3. Be responsible for any act or omission of any owner or~~  
2699 ~~operator of the facility arising before the acquisition of the~~  
2700 ~~facility by the trustee or lender; or~~

2701 ~~4. Provide services to the residents to the extent that the~~  
2702 ~~trustee or lender would be required to advance or expend funds~~  
2703 ~~that have not been designated or set aside for such purposes.~~

2704 ~~(c) Should the office determine, at any time during the~~  
2705 ~~suspension of its remedial rights as provided in paragraph (a),~~  
2706 ~~that the trustee or lender is not in compliance with paragraph~~  
2707 ~~(a), or that a lender or trustee has assigned or has agreed to~~  
2708 ~~assign all or a portion of a delinquent or defaulted loan to a~~  
2709 ~~third party without the office's written consent, the office~~  
2710 ~~shall notify the trustee or lender in writing of its~~  
2711 ~~determination, setting forth the reasons giving rise to the~~  
2712 ~~determination and specifying those remedial rights afforded to~~  
2713 ~~the office which the office shall then reinstate.~~

2714 ~~(d) Upon acquisition of a facility by a trustee or lender~~  
2715 ~~and evidence satisfactory to the office that the requirements of~~  
2716 ~~paragraph (a) have been met, the office shall issue a 90-day~~  
2717 ~~temporary certificate of authority granting the trustee or~~  
2718 ~~lender the authority to engage in the business of providing~~  
2719 ~~continuing care or continuing care at-home and to issue~~  
2720 ~~continuing care or continuing care at-home contracts subject to~~  
2721 ~~the office's right to immediately suspend or revoke the~~  
2722 ~~temporary certificate of authority if the office determines that~~  
2723 ~~any of the grounds described in s. 651.106 apply to the trustee~~  
2724 ~~or lender or that the terms of the contract used as the basis~~  
2725 ~~for the issuance of the temporary certificate of authority by~~  
2726 ~~the office have not been or are not being met by the trustee or~~

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2727 ~~lender since the date of acquisition.~~

2728 Section 31. Section 651.1141, Florida Statutes, is created  
2729 to read:

2730 651.1141 Immediate final orders.—The Legislature finds that  
2731 a violation of s. 651.024, s. 651.0245, s. 651.025, s.  
2732 651.035(3), s. 651.036, s. 651.043, s. 651.083, or s. 651.105  
2733 constitutes an immediate danger to the public health, safety, or  
2734 welfare. Pursuant to s. 120.569, the office may issue an  
2735 immediate final order to cease and desist if it finds that a  
2736 provider is in violation of such sections.

2737 Section 32. Section 651.1151, Florida Statutes, is amended  
2738 to read:

2739 651.1151 Administrative, vendor, and management contracts.—

2740 (1) ~~The office may require~~ A provider must ~~to~~ submit to the  
2741 office any contract for administrative, vendor, or management  
2742 services ~~if the office has information and belief that a~~  
2743 ~~provider has entered into a contract~~ with an affiliate, an  
2744 entity controlled by the provider, or an entity controlled by an  
2745 affiliate of the provider, ~~which has not been disclosed to the~~  
2746 ~~office or which contract requires the provider to pay a fee that~~  
2747 ~~is unreasonably high in relation to the service provided.~~

2748 (2) The office may disapprove a contract for  
2749 administrative, vendor, or management services if it finds that  
2750 the fees to be paid are so unreasonably high as compared with  
2751 similar contracts entered into by other providers in similar  
2752 circumstances that the contract is detrimental to the facility  
2753 or its residents.

2754 (3) ~~(2)~~ After review of the contract, the office may order  
2755 the provider to cancel the contract in accordance with the terms

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2756 of the contract and applicable law if it determines that the  
2757 fees to be paid are so unreasonably high as compared with  
2758 similar contracts entered into by other providers in similar  
2759 circumstances that the contract is detrimental to the facility  
2760 or its residents.

2761 ~~(4)~~<sup>(3)</sup> Any contract with an affiliate, an entity controlled  
2762 by the provider, or an entity controlled by an affiliate of the  
2763 provider for administrative, vendor, or management services  
2764 ~~entered into or renewed after October 1, 1991,~~ must include a  
2765 provision that the contract will be canceled upon issuance of an  
2766 order by the office pursuant to this section. A copy of the  
2767 current management services contract, pursuant to this section,  
2768 if any, must be on file in the marketing office or other area  
2769 accessible to residents and the appropriate residents' council.

2770 ~~(5)~~<sup>(4)</sup> Any action of the office under this section is  
2771 subject to review pursuant to the procedures provided in chapter  
2772 120.

2773 Section 33. Section 651.119, Florida Statutes, is amended  
2774 to read:

2775 651.119 Assistance to persons affected by closure due to  
2776 liquidation or pending liquidation.—

2777 (1) If a facility closes and ceases to operate as a result  
2778 of liquidation or pending liquidation and residents are forced  
2779 to relocate, the department shall become a creditor of the  
2780 facility for the purpose of providing entrance fee refunds due  
2781 to the cancellation of continuing care contracts of displaced  
2782 residents, moving expenses for displaced residents, and such  
2783 other care or services as is made possible by the unencumbered  
2784 assets of the facility. To the extent that another provider



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2785 provides, as approved by the office, direct assistance to such  
2786 residents, the cost of such direct assistance shall be offset  
2787 against reserves pursuant to subsection (4). The department  
2788 shall provide proportional reimbursements of such costs to the  
2789 respective providers from such unencumbered assets.

2790 (2) If the moneys and direct assistance made available  
2791 under subsection (1) are not sufficient to cover moving costs,  
2792 the office may seek voluntary contributions from the reserves  
2793 maintained by providers under ss. 651.034 and 651.035 ~~s. 651.035~~  
2794 in amounts approved by the office to provide for the moving  
2795 expenses of the residents in moving to another residence within  
2796 the state.

2797 (3) If the moneys and direct assistance provided under  
2798 subsections (1) and (2) are not sufficient to provide for  
2799 entrance fee refunds due to the cancellation of continuing care  
2800 contracts and the moving expenses of displaced residents in  
2801 moving to other residences within the state, the office may levy  
2802 pro rata assessments on the reserves of providers maintained  
2803 under ss. 651.034 and 651.035 ~~s. 651.035~~ for such entrance fee  
2804 refunds and moving expenses of any displaced resident ~~who lacks~~  
2805 ~~sufficient assets to pay for such moving expenses~~. The  
2806 assessments for such entrance fee refunds and moving expenses on  
2807 any particular provider may not exceed for any 12-month period  
2808 an aggregate of 5 ± percent of the unencumbered portion of the  
2809 reserves maintained by the provider under ss. 651.034 and  
2810 651.035 ~~s. 651.035~~. If the office determines that payment of an  
2811 assessment under this subsection would impair the financial  
2812 standing of a facility or its residents, the office may waive or  
2813 temporarily defer all or part of the assessment with respect to

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2814 that provider. The office shall apply any moneys voluntarily  
2815 paid by a provider under subsection (1) or subsection (2) to  
2816 satisfaction of assessments under this subsection.

2817 (4) The office shall ~~permanently~~ reduce the reserves  
2818 required of a provider under s. 651.035 to the extent of the  
2819 provider's costs under subsection (1), voluntary contributions  
2820 under subsection (2), and assessments under subsection (3) for a  
2821 period of 3 years. ~~However, the office shall thereafter raise~~  
2822 ~~the reserve requirements of a provider to the extent of~~  
2823 ~~reimbursements paid to the provider under subsection (1) unless~~  
2824 ~~such increase would raise the reserve requirement above the~~  
2825 ~~amount required under s. 651.035.~~

2826 (5) No payment, contribution, or assessment may be paid by  
2827 a provider under this section if the release of funds from the  
2828 reserves of the provider would violate a bond or lending  
2829 commitment or covenant.

2830 (6) Moneys received under this section for the support of  
2831 residents shall be kept in a separate fund maintained and  
2832 administered by the department. The Continuing Care Advisory  
2833 Council shall monitor the collection and use of such funds and  
2834 shall advise the office or department on plans for resident  
2835 relocation. The council shall seek the assistance of providers  
2836 licensed under this chapter and other service providers in  
2837 locating alternative housing and care arrangements.

2838 (7) The amount each displaced resident is entitled to  
2839 receive under this section must be prorated based on the amount  
2840 of available funds held by the department under this section and  
2841 the calculation of the total amount that would be due the  
2842 resident as a result of the cancellation of the resident's

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2843 continuing care contract. The refund amount paid to a displaced  
2844 resident may not exceed \$500,000 or the total amount due the  
2845 resident as an entrance fee refund under the resident's  
2846 continuing care contract as a result of cancellation of that  
2847 contract, whichever is lesser.

2848 (8)~~(7)~~ For the purposes of this section, "moving expenses"  
2849 means transportation expenses and the cost of packing and  
2850 relocating personal belongings.

2851 (9) For the purposes of this section, the term "entrance  
2852 fee refund" means the amount due the displaced resident under  
2853 the terms of the resident's continuing care contract as a result  
2854 of the cancellation of the contract.

2855 Section 34. Subsections (1) and (4) of section 651.125,  
2856 Florida Statutes, are amended to read:

2857 651.125 Criminal penalties; injunctive relief.—

2858 (1) Any person who maintains, enters into, or, as manager  
2859 or officer or in any other administrative capacity, assists in  
2860 entering into, maintaining, or performing any continuing care or  
2861 continuing care at-home contract subject to this chapter without  
2862 ~~doing so in pursuance of a valid~~ provisional certificate of  
2863 authority or certificate of authority ~~or renewal thereof~~, as  
2864 contemplated by or provided in this chapter, or who otherwise  
2865 violates any provision of this chapter or rule adopted in  
2866 pursuance of this chapter, commits a felony of the third degree,  
2867 punishable as provided in s. 775.082 or s. 775.083. Each  
2868 violation of this chapter constitutes a separate offense.

2869 (4) Any action brought by the office against a provider  
2870 shall not abate by reason of a sale or other transfer of  
2871 ownership of the facility used to provide care, which provider

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2872 is a party to the action, except with the express written  
2873 consent of the ~~director of the~~ office.

2874 Section 35. Subsection (1) of section 651.131, Florida  
2875 Statutes, is amended to read:

2876 651.131 Actions under prior law.—

2877 (1) With respect to any proceedings hereafter instituted by  
2878 any person believing himself or herself to be aggrieved by a  
2879 violation of any of the provisions of former s. 651.01, s.  
2880 651.014, s. 651.019, s. 651.02, s. 651.021, s. 651.022, s.  
2881 651.023, s. 651.024, s. 651.0261, s. 651.03, s. 651.033, s.  
2882 651.035, s. 651.04, s. 651.05, s. 651.051, s. 651.055, s.  
2883 651.06, s. 651.07, s. 651.071, s. 651.072, s. 651.074, s.  
2884 651.076, s. 651.08, s. 651.09, s. 651.091, s. 651.10, s.  
2885 651.105, s. 651.106, s. 651.107, s. 651.11, s. 651.114, s.  
2886 651.115, s. 651.1151, s. 651.119, ~~or~~ s. 651.12, or s. 651.125,  
2887 any resulting judgment shall be limited to the actual monetary  
2888 loss suffered by such person plus reasonable attorney's fees.

2889 Section 36. Section 651.132, Florida Statutes, is repealed.

2890 Section 37. Section 651.012, Florida Statutes, is amended  
2891 to read:

2892 651.012 Exempted facility; written disclosure of  
2893 exemption.—Any facility exempted under ss. 632.637(1)(e) and  
2894 651.011(17) ~~ss. 632.637(1)(e) and 651.011(12)~~ must provide  
2895 written disclosure of such exemption to each person admitted to  
2896 the facility after October 1, 1996. This disclosure must be  
2897 written using language likely to be understood by the person and  
2898 must briefly explain the exemption.

2899 Section 38. Except as otherwise expressly provided in this  
2900 act, this act shall take effect July 1, 2017.