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Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to continuing care contracts; amending s. 651.011, F.S.; defining and redefining terms; amending s. 651.012, F.S.; conforming a cross-reference; deleting an obsolete date; amending s. 651.013, F.S.; revising applicability of specified provisions of the Florida Insurance Code to the Office of Insurance Regulation's authority to regulate providers of continuing care and continuing care at-home; amending s. 651.019, F.S.; revising notice and filing requirements for providers and facilities with respect to new and additional financing and refinancing; amending s. 651.021, F.S.; conforming provisions to changes made by the act; creating s. 651.0215, F.S.; specifying conditions that qualify an applicant for a certificate of authority without first obtaining a provisional certificate of authority; specifying requirements for the consolidated application; requiring an applicant to obtain separate certificates of authority for multiple facilities; specifying procedures and requirements for the office's review of such applications and issuance or denial of certificates of authority; providing requirements for reservation contracts, entrance fees, and reservation deposits; authorizing a provider to secure release of moneys held in escrow under specified circumstances; providing construction



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28 relating to the release of escrow funds; amending s.
29 651.022, F.S.; revising the office's authority to make
30 certain inquiries in the review of applications for
31 provisional certificates of authority; specifying
32 requirements for application amendments if material
33 changes occur; requiring applicants to submit a
34 specified feasibility study; revising procedures and
35 requirements for the office's review of such
36 applications; conforming a provision to changes made
37 by the act; making a technical change; conforming
38 cross-references; amending s. 651.023, F.S.; revising
39 requirements for an application for a certificate of
40 authority; specifying requirements for application
41 amendments if material changes occur; revising
42 procedures and requirements for the office's review of
43 such applications; revising minimum unit reservation
44 and minimum deposit requirements; revising conditions
45 under which a provider is entitled to secure release
46 of certain moneys held in escrow; conforming
47 provisions to changes made by the act; conforming
48 cross-references; amending s. 651.024, F.S.; providing
49 and revising applicability of certain provisions to a
50 person seeking to assume the role of general partner
51 of a provider or seeking specified ownership,
52 possession, or control of a provider's assets;
53 providing applicability of certain provisions to a
54 person seeking to acquire and become the provider for
55 a facility; providing procedures for filing a
56 disclaimer of control; defining terms; providing



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57 standing to the office to petition a circuit court in
58 certain proceedings; creating s. 651.0245, F.S.;

59 prohibiting a person, without the office's prior
60 written approval, from acquiring a facility operating
61 under a subsisting certificate of authority and
62 engaging in the business of providing continuing care;

63 providing requirements for an applicant seeking
64 simultaneous acquisition of a facility and issuance of
65 a certificate of authority; requiring the Financial
66 Services Commission to adopt by rule certain
67 application requirements; requiring the office to
68 review applications and issue approvals or
69 disapprovals of filings in accordance with specified
70 provisions; defining terms; providing standing to the
71 office to petition a specified circuit court under
72 certain circumstances; providing procedures for filing
73 a disclaimer of control; providing construction;

74 authorizing the commission to adopt, amend, and repeal
75 rules; creating s. 651.0246, F.S.; requiring a
76 provider to obtain written approval from the office
77 before commencing construction or marketing for
78 specified expansions of a certificated facility;

79 providing that a provider is automatically granted
80 approval for certain expansions under specified
81 circumstances; defining the term "existing units";
82 providing applicability; specifying requirements for
83 applying for such approval; requiring the office to
84 consider certain factors in reviewing such
85 applications; providing procedures and requirements



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86 for the office's review of applications and approval
87 or denial of expansions; specifying requirements for
88 escrowed moneys and for the release of the moneys;
89 defining the term "initial entrance fee"; providing
90 construction; amending s. 651.026, F.S.; revising
91 requirements for annual reports that providers file
92 with the office; revising guidelines for commission
93 rulemaking; requiring the office to publish, within
94 specified timeframes, a specified annual report;
95 amending s. 651.0261, F.S.; revising requirements for
96 quarterly statements filed by providers and facilities
97 with the office; authorizing the office to waive
98 certain filing requirements under certain
99 circumstances; authorizing the office to require,
100 under certain circumstances, providers or facilities
101 to file monthly unaudited financial statements and
102 certain other information; authorizing the commission
103 to adopt certain rules; amending s. 651.028, F.S.;
104 authorizing the office, under certain circumstances,
105 to waive any requirement of ch. 651, F.S., for
106 providers or obligated groups having certain
107 accreditations or credit ratings; amending s. 651.033,
108 F.S.; revising requirements for escrow accounts and
109 escrow agreements; revising requirements for, and
110 restrictions on, agents of escrow accounts; revising
111 permissible investments for funds in an escrow
112 account; revising requirements for the withdrawal of
113 escrowed funds under certain circumstances; creating
114 s. 651.034, F.S.; specifying requirements and



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115 procedures for the office if a regulatory action level
116 event occurs; authorizing the office to use members of
117 the Continuing Care Advisory Council or retain
118 consultants for specified purposes; requiring affected
119 providers to bear fees, costs, and expenses for such
120 consultants; requiring the office to take certain
121 actions if an impairment occurs; authorizing the
122 office to forego taking action for a certain timeframe
123 under certain circumstances; providing immunity from
124 liability to the commission, the Department of
125 Financial Services, the office, and their employees or
126 agents for certain actions; requiring the office to
127 transmit any notice that may result in regulatory
128 action by certain methods; authorizing the office to
129 exempt a provider from specified requirements under
130 certain circumstances and for a specified timeframe;
131 authorizing the commission to adopt rules; providing
132 construction; amending s. 651.035, F.S.; revising
133 provider minimum liquid reserve requirements under
134 specified circumstances; deleting an obsolete date;
135 authorizing providers, under certain circumstances, to
136 withdraw funds held in escrow without the office's
137 approval; providing procedures and requirements to
138 request approval for certain withdrawals; providing
139 procedures and requirements for the office's review of
140 such requests; authorizing the office, under certain
141 circumstances, to order the immediate transfer of
142 funds in the minimum liquid reserve to the custody of
143 the department; providing that certain debt service



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144 reserves of a provider are not subject to such
145 transfer provision; requiring facilities to file
146 annual calculations of their minimum liquid reserves
147 with the office and maintain such reserves beginning
148 at specified periods; requiring providers to fund
149 reserve shortfalls within a specified timeframe;
150 providing construction; creating s. 651.043, F.S.;
151 defining the term "management"; providing requirements
152 for a contract for management made after a certain
153 date; specifying procedures and requirements for
154 providers filing notices of change in management with
155 the office; specifying procedures, requirements, and
156 factors for the office's review of such changes and
157 approval or disapproval of the new management;
158 requiring management disapproved by the office to be
159 removed within a specified timeframe; authorizing the
160 office to take certain disciplinary actions under
161 certain circumstances; requiring providers to
162 immediately remove management under certain
163 circumstances; amending s. 651.051, F.S.; revising
164 requirements for the maintenance of a provider's
165 records and assets; amending s. 651.057, F.S.;
166 conforming cross-references; amending s. 651.071,
167 F.S.; revising construction as to the priority of
168 continuing care and continuing care at-home contracts
169 in the event of receivership or liquidation
170 proceedings against a provider; amending s. 651.091,
171 F.S.; revising requirements for continuing care
172 facilities and providers relating to the availability,



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173 distribution, and posting of reports and records;
174 amending s. 651.105, F.S.; providing applicability of
175 a provision of the Insurance Code relating to
176 examinations and investigations to the office's
177 authority in examining certain applicants and
178 providers; requiring providers to respond to written
179 correspondence from the office and provide certain
180 information; declaring that the office has standing to
181 petition a circuit court for certain injunctive
182 relief; specifying venue; deleting a requirement for
183 the office to determine if certain disclosures have
184 been made; providing that a provider's or facility's
185 parent, subsidiary, or affiliate is not subject to
186 routine examination by the office except under certain
187 circumstances; authorizing the office to examine
188 certain parents, subsidiaries, or affiliates to
189 ascertain the financial condition of a provider under
190 certain circumstances; prohibiting the office, when
191 conducting an examination or inspection, from using
192 certain actuary recommendations for a certain purpose
193 or requesting certain documents under certain
194 circumstances; amending s. 651.106, F.S.; authorizing
195 the office to deny an application for a provisional
196 certificate of authority or a certificate of authority
197 on certain grounds; revising and adding grounds for
198 application denial or disciplinary action by the
199 office; creating s. 651.1065, F.S.; prohibiting
200 certain persons of a continuing care retirement
201 community, except with the office's written



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202 permission, from actively soliciting, approving the
203 solicitation or acceptance of, or accepting new
204 continuing care contracts if they knew or should have
205 known that the retirement community was impaired or
206 insolvent; providing an exception; requiring the
207 office to approve or disapprove the continued
208 marketing of new contracts within a specified
209 timeframe; providing a criminal penalty; amending s.
210 651.111, F.S.; revising procedures and requirements
211 for the office's review of complaints requesting
212 inspections of records and related financial affairs
213 of a provider; amending s. 651.114, F.S.; providing
214 that certain duties relating to a certain compliance
215 or solvency plan must be performed by the office, or
216 the Continuing Care Advisory Council at the request of
217 the office, rather than solely by the council;
218 providing construction relating to the office's
219 authority to take certain measures; authorizing the
220 office to seek a recommended plan from the advisory
221 council; replacing the office with the department as
222 the entity taking certain actions under ch. 631, F.S.;
223 providing construction; revising circumstances under
224 which the department and office are vested with
225 certain powers and duties in regard to delinquency
226 proceedings; specifying requirements for providers to
227 notify residents and prospective residents of
228 delinquency proceedings; specifying procedures
229 relating to orders to show cause and hearings pursuant
230 to ch. 631, F.S.; revising facilities with respect to



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231 which the office may not exercise certain remedial
232 rights; creating s. 651.1141, F.S.; authorizing the
233 office to issue an immediate final order for a
234 provider to cease and desist from specified
235 violations; amending s. 651.121, F.S.; revising the
236 composition of the Continuing Care Advisory Council;
237 amending s. 651.125, F.S.; providing a criminal
238 penalty for certain actions performed without a valid
239 provisional certificate of authority; making a
240 technical change; providing an appropriation;
241 providing an effective date.

242

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

244

245 Section 1. Section 651.011, Florida Statutes, is amended to
246 read:

247 651.011 Definitions.—As used in this chapter, the term:

248 (1) "Actuarial opinion" means an opinion issued by an
249 actuary in accordance with Actuarial Standards of Practice No. 3
250 for Continuing Care Retirement Communities, Revised Edition,
251 effective May 1, 2011, or any future amendments or replacements
252 to this standard which may be adopted by the Actuarial Standards
253 Board.

254 (2) "Actuarial study" means an analysis prepared for an
255 individual facility, or consolidated for multiple facilities,
256 for either a certified provider, as of a current valuation date
257 or the most recent fiscal year, or for an applicant, as of a
258 projected future valuation date, which includes an actuary's
259 opinion as to whether such provider or applicant is in



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260 satisfactory actuarial balance in accordance with Actuarial
261 Standards of Practice No. 3 for Continuing Care Retirement
262 Communities, Revised Edition, effective May 1, 2011, or any
263 future amendments or replacements to this standard which may be
264 adopted by the Actuarial Standards Board.

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

269 (4)~~(1)~~ "Advertising" means the dissemination of written,
270 visual, or electronic information by a provider, or any person
271 affiliated with or controlled by a provider, to potential
272 residents or their representatives for the purpose of inducing
273 such persons to subscribe to or enter into a contract for
274 continuing care or continuing care at-home.

275 (5)~~(2)~~ "Continuing care" or "care" means, pursuant to a
276 contract, furnishing shelter and nursing care or personal
277 services to a resident who resides in a facility, whether such
278 nursing care or personal services are provided in the facility
279 or in another setting designated in the contract for continuing
280 care, by an individual not related by consanguinity or affinity
281 to the resident, upon payment of an entrance fee. The terms may
282 also be referred to as a "life plan."

283 (6)~~(3)~~ "Continuing Care Advisory Council" or "advisory
284 council" means the council established in s. 651.121.

285 (7)~~(4)~~ "Continuing care at-home" means, pursuant to a
286 contract other than a contract described in subsection (5) ~~(2)~~,
287 furnishing to a resident who resides outside the facility the
288 right to future access to shelter and nursing care or personal



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289 services, whether such services are provided in the facility or
290 in another setting designated in the contract, by an individual
291 not related by consanguinity or affinity to the resident, upon
292 payment of an entrance fee. The term may also be referred to as
293 a "life plan at-home."

294 (8) "Corrective order" means an order issued by the office
295 which specifies corrective actions the office has determined are
296 required.

297 (9) "Days cash on hand" means, for a facility or obligated
298 group, the quotient obtained by dividing the value of paragraph
299 (a) by the value of paragraph (b).

300 (a) The sum of unrestricted cash, unrestricted short-term
301 and long-term investments, provider restricted funds, and the
302 minimum liquid reserve as of the reporting period.

303 (b) Operating expenses less depreciation, amortization, and
304 other noncash expenses and nonoperating losses, divided by 365.
305 Operating expenses, depreciation, amortization, and other
306 noncash expenses and nonoperating losses are each the sum of
307 their respective values over the 12-month period immediately
308 preceding the reporting date.

309
310 With prior written approval of the office, a demand note or
311 other parental guarantee may be considered a short-term or long-
312 term investment for the purposes of paragraph (a). However, the
313 total of all demand notes issued by the parent may not, at any
314 time, be more than the sum of unrestricted cash and unrestricted
315 short-term and long-term investments held by the parent.

316 (10) "Debt service coverage ratio" means, for a facility or
317 obligated group, the quotient obtained by dividing the value of



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318 paragraph (a) by the value of paragraph (b).

319 (a) The sum of total expenses less interest expense on the
320 facility, depreciation, amortization, and other noncash expenses
321 and nonoperating losses, subtracted from the sum of total
322 revenues and gross entrance fees received less earned entrance
323 fees and refunds paid. Expenses, interest expense on the
324 facility, depreciation, amortization, other noncash expenses and
325 nonoperating losses, revenues, noncash revenues, nonoperating
326 gains, gross entrance fees, earned entrance fees, and refunds
327 are each the sum of their respective values over the 12-month
328 period immediately preceding the reporting date.

329 (b) Total annual principal and interest expense due on the
330 facility or obligated group over the 12-month period immediately
331 preceding the reporting date. For purposes of this paragraph,
332 principal excludes any balloon principal payment amounts, and
333 interest expense due is the sum of the interest over the 12-
334 month period immediately preceding the reporting date which is
335 reflected in the provider's audit.

336 (11)~~(5)~~ "Entrance fee" means an initial or deferred payment
337 of a sum of money or property made as full or partial payment
338 for continuing care or continuing care at-home. An accommodation
339 fee, admission fee, member fee, or other fee of similar form and
340 application are considered to be an entrance fee.

341 (12)~~(6)~~ "Facility" means a place where continuing care is
342 furnished and may include one or more physical plants on a
343 primary or contiguous site or an immediately accessible site. As
344 used in this subsection, the term "immediately accessible site"
345 means a parcel of real property separated by a reasonable
346 distance from the facility as measured along public



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347 thoroughfares, and the term "primary or contiguous site" means
348 the real property contemplated in the feasibility study required
349 by this chapter.

350 ~~(7) "Generally accepted accounting principles" means those~~
351 ~~accounting principles and practices adopted by the Financial~~
352 ~~Accounting Standards Board and the American Institute of~~
353 ~~Certified Public Accountants, including Statement of Position~~
354 ~~90-8 with respect to any full year to which the statement~~
355 ~~applies.~~

356 (13) "Impaired" means that any of the following have
357 occurred:

358 (a) A provider has failed to maintain its minimum liquid
359 reserve as required in s. 651.035, unless the provider has
360 received prior written approval from the office for a withdrawal
361 pursuant to s. 651.035(6) and is compliant with the approved
362 payment schedule; or

363 (b) Beginning July 1, 2019:

364 1. For a provider with mortgage financing from a third-
365 party lender or public bond issue, the provider's debt service
366 coverage ratio is less than 1.00:1 and the provider's days cash
367 on hand is less than 90; or

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

371 ~~(14)(8)~~ "Insolvency" means the condition in which a ~~the~~
372 provider is unable to pay its obligations as they come due in
373 the normal course of business.

374 ~~(15)(9)~~ "Licensed" means that a ~~the~~ provider has obtained a
375 certificate of authority from the office ~~department~~.



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376 (16) "Manager" or "management company" means a person who
377 administers the day-to-day business operations of a facility for
378 a provider, subject to the policies, directives, and oversight
379 of the provider.

380 ~~(17)-(10)~~ "Nursing care" means those services or acts
381 rendered to a resident by an individual licensed or certified
382 pursuant to chapter 464.

383 (18) "Obligated group" means one or more entities that
384 jointly agree to be bound by a financing structure containing
385 security provisions and covenants applicable to the group. For
386 purposes of this subsection, debt issued under such a financing
387 structure must be a joint and several obligation of each member
388 of the group.

389 (19) "Occupancy" means the total number of occupied
390 independent living, assisted living, and skilled nursing units
391 in a facility divided by the total number of units in that
392 facility, excluding units that are unavailable to market or
393 reserve, as of the most recent annual report.

394 ~~(20)-(11)~~ "Personal services" has the same meaning as in s.
395 429.02.

396 ~~(21)-(12)~~ "Provider" means the owner or operator, whether a
397 natural person, partnership or other unincorporated association,
398 however organized, trust, or corporation, of an institution,
399 building, residence, or other place, whether operated for profit
400 or not, which owner or operator provides continuing care or
401 continuing care at-home for a fixed or variable fee, or for any
402 other remuneration of any type, whether fixed or variable, for
403 the period of care, payable in a lump sum or lump sum and
404 monthly maintenance charges or in installments. The term does



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405 not apply to an entity that has existed and continuously
406 operated a facility located on at least 63 acres in this state
407 providing residential lodging to members and their spouses for
408 at least 66 years on or before July 1, 1989, and has the
409 residential capacity of 500 persons, is directly or indirectly
410 owned or operated by a nationally recognized fraternal
411 organization, is not open to the public, and accepts only its
412 members and their spouses as residents.

413 (22) ~~(13)~~ "Records" means all documents, correspondence, and
414 the permanent financial, directory, and personnel information
415 and data maintained by a provider pursuant to this chapter,
416 regardless of the physical form, characteristics, or means of
417 transmission.

418 (23) "Regulatory action level event" means that any two of
419 the following have occurred:

420 (a) The provider's debt service coverage ratio is less than
421 the minimum ratio specified in the provider's bond covenants or
422 lending agreement for long-term financing, or, if the provider
423 does not have a debt service coverage ratio required by its
424 lending institution, the provider's debt service coverage ratio
425 is less than 1.20:1 as of the most recent annual report filed
426 with the office. If the provider is a member of an obligated
427 group having cross-collateralized debt and the obligated group
428 has obtained an investment grade credit rating from a nationally
429 recognized credit rating agency, as applicable, from Moody's
430 Investors Service, Standard & Poor's, or Fitch Ratings, the
431 obligated group's debt service coverage ratio will be used as
432 the provider's debt service coverage ratio.

433 (b) The provider's days cash on hand is less than the



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434 minimum number of days cash on hand specified in the provider's
435 bond covenants or lending agreement for long-term financing. If
436 the provider does not have a days cash on hand required by its
437 lending institution, the days cash on hand may not be less than
438 100 as of the most recent annual report filed with the office.
439 If the provider is a member of an obligated group having cross-
440 collateralized debt and the obligated group has obtained an
441 investment grade credit rating from a nationally recognized
442 credit rating agency, as applicable, from Moody's Investors
443 Service, Standard & Poor's, or Fitch Ratings, the days cash on
444 hand of the obligated group will be used as the provider's days
445 cash on hand.

446 (c) The occupancy at the provider's facility is less than
447 80 percent, averaged over the 12-month period immediately
448 preceding the reporting date.

449 (24)-(14) "Resident" means a purchaser of, a nominee of, or
450 a subscriber to a continuing care or continuing care at-home
451 contract. Such contract does not give the resident a part
452 ownership of the facility in which the resident is to reside,
453 unless expressly provided in the contract.

454 (25)-(15) "Shelter" means an independent living unit, room,
455 apartment, cottage, villa, personal care unit, nursing bed, or
456 other living area within a facility set aside for the exclusive
457 use of one or more identified residents.

458 Section 2. Section 651.012, Florida Statutes, is amended to
459 read:

460 651.012 Exempted facility; written disclosure of
461 exemption.—Any facility exempted under ss. 632.637(1)(e) and
462 651.011(21) ~~651.011(12)~~ must provide written disclosure of such



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463 exemption to each person admitted to the facility ~~after October~~
464 ~~1, 1996~~. This disclosure must be written using language likely
465 to be understood by the person and must briefly explain the
466 exemption.

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

469 651.013 Chapter exclusive; applicability of other laws.-

470 (2) In addition to other applicable provisions cited in
471 this chapter, the office has the authority granted under ss.
472 624.302 and 624.303, 624.307-624.312, 624.318 ~~624.308-624.312,~~
473 624.319(1)-(3), 624.320-624.321, 624.324, ~~and~~ 624.34, and
474 624.422 of the Florida Insurance Code to regulate providers of
475 continuing care and continuing care at-home.

476 Section 4. Section 651.019, Florida Statutes, is amended to
477 read:

478 651.019 New financing, additional financing, or
479 refinancing.-

480 (1) (a) A provider shall provide notice to the residents'
481 council of any new financing or refinancing at least 30 days
482 before the closing date of the financing or refinancing
483 transaction. The notice must include a general outline of the
484 amount and terms of the financing or refinancing and the
485 intended use of proceeds.

486 (b) If the facility does not have a residents' council, the
487 facility must make available, in the same manner as other
488 community notices, the information required by paragraph (a)
489 ~~After issuance of a certificate of authority, the provider shall~~
490 ~~submit to the office a general outline, including intended use~~
491 ~~of proceeds, with respect to any new financing, additional~~



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492 ~~financing, or refinancing at least 30 days before the closing~~
493 ~~date of such financing transaction.~~

494 (2) Within 30 days after the closing date of such financing
495 or refinancing transaction, The provider shall furnish any
496 information the office may reasonably request in connection with
497 any new financing, additional financing, or refinancing,
498 including, but not limited to, the financing agreements and any
499 related documents, escrow or trust agreements, and statistical
500 or financial data. the provider shall also submit to the office
501 copies of executed financing documents and escrow or trust
502 agreements prepared in support of such financing or refinancing
503 transaction, and a copy of all documents required to be
504 submitted to the residents' council under paragraph (1) (a)
505 within 30 days after the closing date.

506 Section 5. Section 651.021, Florida Statutes, is amended to
507 read:

508 651.021 Certificate of authority required.-

509 ~~(1)~~ A No person may not engage in the business of providing
510 continuing care, issuing contracts for continuing care or
511 continuing care at-home, or constructing a facility for the
512 purpose of providing continuing care in this state without a
513 certificate of authority obtained from the office as provided in
514 this chapter. This section ~~subsection~~ does not prohibit the
515 preparation of a construction site or construction of a model
516 residence unit for marketing purposes, or both. The office may
517 allow the purchase of an existing building for the purpose of
518 providing continuing care if the office determines that the
519 purchase is not being made to circumvent the prohibitions in
520 this section.



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521 ~~(2) Written approval must be obtained from the office~~
522 ~~before commencing construction or marketing for an expansion of~~
523 ~~a certificated facility equivalent to the addition of at least~~
524 ~~20 percent of existing units or 20 percent or more in the number~~
525 ~~of continuing care at-home contracts. This provision does not~~
526 ~~apply to construction for which a certificate of need from the~~
527 ~~Agency for Health Care Administration is required.~~

528 ~~(a) For providers that offer both continuing care and~~
529 ~~continuing care at-home, the 20 percent is based on the total of~~
530 ~~both existing units and existing contracts for continuing care~~
531 ~~at-home. For purposes of this subsection, an expansion includes~~
532 ~~increases in the number of constructed units or continuing care~~
533 ~~at-home contracts or a combination of both.~~

534 ~~(b) The application for such approval shall be on forms~~
535 ~~adopted by the commission and provided by the office. The~~
536 ~~application must include the feasibility study required by s.~~
537 ~~651.022(3) or s. 651.023(1)(b) and such other information as~~
538 ~~required by s. 651.023. If the expansion is only for continuing~~
539 ~~care at-home contracts, an actuarial study prepared by an~~
540 ~~independent actuary in accordance with standards adopted by the~~
541 ~~American Academy of Actuaries which presents the financial~~
542 ~~impact of the expansion may be substituted for the feasibility~~
543 ~~study.~~

544 ~~(c) In determining whether an expansion should be approved,~~
545 ~~the office shall use the criteria provided in ss. 651.022(6) and~~
546 ~~651.023(4).~~

547 Section 6. Section 651.0215, Florida Statutes, is created
548 to read:

549 651.0215 Consolidated application for provisional



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550 certificate of authority and certificate of authority; required
551 restrictions on use of entrance fees.-

552 (1) For an applicant to qualify for a certificate of
553 authority without first obtaining a provisional certificate of
554 authority, the following conditions must be met:

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

560 (b) The reservation deposit may not exceed \$5,000 upon a
561 resident's selection of a unit and must be refundable at any
562 time before the resident takes occupancy of the selected unit.

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

567 (2) The consolidated application must be on a form
568 prescribed by the commission and must contain all of the
569 following information:

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

571 (b) A feasibility study prepared by an independent
572 consultant which contains all of the information required by s.
573 651.022(3) and financial forecasts or projections prepared in
574 accordance with standards adopted by the American Institute of
575 Certified Public Accountants or in accordance with standards for
576 feasibility studies for continuing care retirement communities
577 adopted by the Actuarial Standards Board.

578 1. The feasibility study must take into account project



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579 costs, actual marketing results to date and marketing
580 projections, resident fees and charges, competition, resident
581 contract provisions, and other factors that affect the
582 feasibility of operating the facility.

583 2. If the feasibility study is prepared by an independent
584 certified public accountant, it must contain an examination
585 report, or a compilation report acceptable to the office,
586 containing a financial forecast or projections for the first 5
587 years of operations which take into account an actuary's
588 mortality and morbidity assumptions as the study relates to
589 turnover, rates, fees, and charges. If the study is prepared by
590 an independent consulting actuary, it must contain mortality and
591 morbidity assumptions as it relates to turnover, rates, fees,
592 and charges and an actuary's signed opinion that the project as
593 proposed is feasible and that the study has been prepared in
594 accordance with Actuarial Standards of Practice No. 3 for
595 Continuing Care Retirement Communities, Revised Edition,
596 effective May 1, 2011.

597 (c) Documents evidencing that commitments have been secured
598 for construction financing and long-term financing or that a
599 documented plan acceptable to the office has been adopted by the
600 applicant for long-term financing.

601 (d) Documents evidencing that all conditions of the lender
602 have been satisfied to activate the commitment to disburse
603 funds, other than the obtaining of the certificate of authority,
604 the completion of construction, or the closing of the purchase
605 of realty or buildings for the facility.

606 (e) Documents evidencing that the aggregate amount of
607 entrance fees received by or pledged to the applicant, plus



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608 anticipated proceeds from any long-term financing commitment and
609 funds from all other sources in the actual possession of the
610 applicant, equal at least 100 percent of the aggregate cost of
611 constructing or purchasing, equipping, and furnishing the
612 facility plus 100 percent of the anticipated startup losses of
613 the facility.

614 (f) A complete audited financial report of the applicant,
615 prepared by an independent certified public accountant in
616 accordance with generally accepted accounting principles, as of
617 the date the applicant commenced business operations or for the
618 fiscal year that ended immediately preceding the date of
619 application, whichever is later, and complete unaudited
620 quarterly financial statements attested to by the applicant
621 after the date of the last audit.

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

624 (h) Such other reasonable data, financial statements, and
625 pertinent information as the commission or office may require
626 with respect to the applicant or the facility to determine the
627 financial status of the facility and the management capabilities
628 of its managers and owners.

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

633 (4) Within 45 days after receipt of the information
634 required under subsection (2), the office shall examine the
635 information and notify the applicant in writing, specifically
636 requesting any additional information that the office is



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637 authorized to require. An application is deemed complete when
638 the office receives all requested information and the applicant
639 corrects any error or omission of which the applicant was timely
640 notified or when the time for such notification has expired.
641 Within 15 days after receipt of all of the requested additional
642 information, the office shall notify the applicant in writing
643 that all of the requested information has been received and that
644 the application is deemed to be complete as of the date of the
645 notice. Failure to notify the applicant in writing within the
646 15-day period constitutes acknowledgment by the office that it
647 has received all requested additional information, and the
648 application is deemed complete for purposes of review on the
649 date the applicant files all of the required additional
650 information.

651 (5) Within 45 days after an application is deemed complete
652 as set forth in subsection (4) and upon completion of the
653 remaining requirements of this section, the office shall
654 complete its review and issue or deny a certificate of authority
655 to the applicant. The period for review by the office may not be
656 tolled if the office requests additional information and the
657 applicant provides the requested information within 5 business
658 days. If a certificate of authority is denied, the office must
659 notify the applicant in writing, citing the specific failures to
660 satisfy this chapter, and the applicant is entitled to an
661 administrative hearing pursuant to chapter 120.

662 (6) The office shall issue a certificate of authority upon
663 determining that the applicant meets all requirements of law and
664 has submitted all of the information required under this
665 section, that all escrow requirements have been satisfied, and



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666 that the fees prescribed in s. 651.015(2) have been paid.

667 (7) The issuance of a certificate of authority entitles the
668 applicant to begin construction and collect reservation deposits
669 and entrance fees from prospective residents. The reservation
670 contract must state the cancellation policy and the terms of the
671 continuing care contract to be entered into. All or any part of
672 an entrance fee or reservation deposit collected must be placed
673 in an escrow account or on deposit with the department pursuant
674 to s. 651.033.

675 (8) The provider is entitled to secure release of the
676 moneys held in escrow within 7 days after the office receives an
677 affidavit from the provider, along with appropriate
678 documentation to verify, and notification is provided to the
679 escrow agent by certified mail, that the following conditions
680 have been satisfied:

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

682 (b) Payment in full has been received for at least 70
683 percent of the total units of a phase or of the total of the
684 combined phases constructed. If a provider offering continuing
685 care at-home is applying for a release of escrowed entrance
686 fees, the same minimum requirement must be met for the
687 continuing care and continuing care at-home contracts
688 independently of each other.

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

692 (d) Documents evidencing the intended application of the
693 proceeds upon release and documents evidencing that the entrance
694 fees, when released, will be applied as represented to the



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695 office.

696

697 Notwithstanding chapter 120, a person, other than the provider,
698 the escrow agent, and the office, may not have a substantial
699 interest in any decision by the office regarding the release of
700 escrow funds in any proceeding under chapter 120 or this
701 chapter.

702 (9) The office may not approve any application that
703 includes in the plan of financing any encumbrance of the
704 operating reserves or renewal and replacement reserves required
705 by this chapter.

706 (10) The office may not issue a certificate of authority to
707 a facility that does not have a component that is to be licensed
708 pursuant to part II of chapter 400 or part I of chapter 429, or
709 that does not offer personal services or nursing services
710 through written contractual agreement. A written contractual
711 agreement must be disclosed in the contract for continuing care
712 or continuing care at-home and is subject to s. 651.1151.

713 Section 7. Subsection (2) and present subsections (6) and
714 (8) of section 651.022, Florida Statutes, are amended, present
715 subsections (3) through (8) of that section are redesignated as
716 subsections (4) through (9), respectively, and a new subsection
717 (3) is added to that section, to read:

718 651.022 Provisional certificate of authority; application.-

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

722 (a) If the applicant or provider is a corporation, a copy
723 of the articles of incorporation and bylaws; if the applicant or



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724 provider is a partnership or other unincorporated association, a
725 copy of the partnership agreement, articles of association, or
726 other membership agreement; and, if the applicant or provider is
727 a trust, a copy of the trust agreement or instrument.

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

729 1. The proprietor, if the applicant or provider is an
730 individual.

731 2. Every partner or member, if the applicant or provider is
732 a partnership or other unincorporated association, however
733 organized, having fewer than 50 partners or members, together
734 with the business name and address of the partnership or other
735 organization.

736 3. The principal partners or members, if the applicant or
737 provider is a partnership or other unincorporated association,
738 however organized, having 50 or more partners or members,
739 together with the business name and business address of the
740 partnership or other organization. If such unincorporated
741 organization has officers and a board of directors, the full
742 name and business address of each officer and director may be
743 set forth in lieu of the full name and business address of its
744 principal members.

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

747 5. Every trustee and officer, if the applicant or provider
748 is a trust.

749 6. The manager, whether an individual, corporation,
750 partnership, or association.

751 7. Any stockholder holding at least a 10 percent interest
752 in the operations of the facility in which the care is to be



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753 offered.

754 8. Any person whose name is required to be provided in the
755 application under this paragraph and who owns any interest in or
756 receives any remuneration from, directly or indirectly, any
757 professional service firm, association, trust, partnership, or
758 corporation providing goods, leases, or services to the facility
759 for which the application is made, with a real or anticipated
760 value of \$10,000 or more, and the name and address of the
761 professional service firm, association, trust, partnership, or
762 corporation in which such interest is held. The applicant shall
763 describe such goods, leases, or services and the probable cost
764 to the facility or provider and shall describe why such goods,
765 leases, or services should not be purchased from an independent
766 entity.

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

770 10. Any affiliated parent or subsidiary corporation or
771 partnership.

772 (c)1. Evidence that the applicant is reputable and of
773 responsible character. If the applicant is a firm, association,
774 organization, partnership, business trust, corporation, or
775 company, the form must ~~shall~~ require evidence that the members
776 or shareholders ~~are reputable and of responsible character,~~ and
777 the person in charge of providing care under a certificate of
778 authority are ~~shall likewise be required to produce evidence of~~
779 ~~being~~ reputable and of responsible character.

780 2. Evidence satisfactory to the office of the ability of
781 the applicant to comply with ~~the provisions of~~ this chapter and



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782 with rules adopted by the commission pursuant to this chapter.

783 3. A statement of whether a person identified in the
784 application for a provisional certificate of authority or the
785 administrator or manager of the facility, if such person has
786 been designated, or any such person living in the same location:

787 a. Has been convicted of a felony or has pleaded nolo
788 contendere to a felony charge, or has been held liable or has
789 been enjoined in a civil action by final judgment, if the felony
790 or civil action involved fraud, embezzlement, fraudulent
791 conversion, or misappropriation of property.

792 b. Is subject to a currently effective injunctive or
793 restrictive order or federal or state administrative order
794 relating to business activity or health care as a result of an
795 action brought by a public agency or department, including,
796 without limitation, an action affecting a license under chapter
797 400 or chapter 429.

798

799 The statement must ~~shall~~ set forth the court or agency, the date
800 of conviction or judgment, and the penalty imposed or damages
801 assessed, or the date, nature, and issuer of the order. Before
802 determining whether a provisional certificate of authority is to
803 be issued, the office may make an inquiry to determine the
804 accuracy of the information submitted pursuant to subparagraphs
805 1., 2., and 3. ~~1. and 2.~~

806 (d) The contracts for continuing care and continuing care
807 at-home to be entered into between the provider and residents
808 which meet the minimum requirements of s. 651.055 or s. 651.057
809 and which include a statement describing the procedures required
810 by law relating to the release of escrowed entrance fees. Such



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811 statement may be furnished through an addendum.

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

814 (f) Such other reasonable data, financial statements, and
815 pertinent information as the commission or office may reasonably
816 require with respect to the provider or the facility, including
817 the most recent audited financial report statements of
818 comparable facilities currently or previously owned, managed, or
819 developed by the applicant or its principal, to assist in
820 determining the financial viability of the project and the
821 management capabilities of its managers and owners.

822 (g) The forms of the residency contracts, reservation
823 contracts, escrow agreements, and wait list contracts, if
824 applicable, which are proposed to be used by the provider in the
825 furnishing of care. The office shall approve contracts and
826 escrow agreements that comply with ss. 651.023(1)(c), 651.033,
827 651.055, and 651.057. Thereafter, no other form of contract or
828 agreement may be used by the provider until it has been
829 submitted to the office and approved.

830
831 If any material change occurs in the facts set forth in an
832 application filed with the office pursuant to this subsection,
833 an amendment setting forth such change must be filed with the
834 office within 10 business days after the applicant becomes aware
835 of such change, and a copy of the amendment must be sent by
836 registered mail to the principal office of the facility and to
837 the principal office of the controlling company.

838 (3) In addition to the information required in subsection
839 (2), an applicant for a provisional certificate of authority



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840 must submit a feasibility study with appropriate financial,
841 marketing, and actuarial assumptions for the first 5 years of
842 operations. The feasibility study must include at least the
843 following information:

844 (a) A description of the proposed facility, including the
845 location, size, anticipated completion date, and the proposed
846 construction program.

847 (b) Identification and an evaluation of the primary and, if
848 appropriate, the secondary market areas of the facility and the
849 projected unit sales per month.

850 (c) Projected revenues, including anticipated entrance
851 fees; monthly service fees; nursing care revenues, if
852 applicable; and all other sources of revenue.

853 (d) Projected expenses, including staffing requirements and
854 salaries; cost of property, plant, and equipment, including
855 depreciation expense; interest expense; marketing expense; and
856 other operating expenses.

857 (e) A projected balance sheet of the applicant.

858 (f) Expectations of the financial condition of the project,
859 including the projected cash flow, and an estimate of the funds
860 anticipated to be necessary to cover startup losses.

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

864 (h) Project costs and the total amount of debt financing
865 required, marketing projections, resident fees and charges, the
866 competition, resident contract provisions, and other factors
867 that affect the feasibility of the facility.

868 (i) Appropriate population projections, including morbidity



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869 and mortality assumptions.

870 (j) The name of the person who prepared the feasibility
871 study and the experience of such person in preparing similar
872 studies or otherwise consulting in the field of continuing care.
873 The preparer of the feasibility study may be the provider or a
874 contracted third party.

875 (k) Any other information that the applicant deems relevant
876 and appropriate to enable the office to make a more informed
877 determination.

878 (7)-(6) Within 45 days after the date an application is
879 deemed complete as set forth in paragraph (6) (b) -(5)-(b), the
880 office shall complete its review and issue a provisional
881 certificate of authority to the applicant based upon its review
882 and a determination that the application meets all requirements
883 of law, that the feasibility study was based on sufficient data
884 and reasonable assumptions, and that the applicant will be able
885 to provide continuing care or continuing care at-home as
886 proposed and meet all financial and contractual obligations
887 related to its operations, including the financial requirements
888 of this chapter. The period for review by the office may not be
889 tolled if the office requests additional information and the
890 applicant provides the requested information within 5 business
891 days. If the application is denied, the office shall notify the
892 applicant in writing, citing the specific failures to meet the
893 provisions of this chapter. Such denial entitles the applicant
894 to a hearing pursuant to chapter 120.

895 (9)-(8) The office may shall not approve any application
896 that which includes in the plan of financing any encumbrance of
897 the operating reserves or renewal and replacement reserves



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898 required by this chapter.

899 Section 8. Subsections (1) through (4), paragraph (b) of
900 subsection (5), and subsections (6), (8), and (9) of section
901 651.023, Florida Statutes, are amended to read:

902 651.023 Certificate of authority; application.—

903 (1) After issuance of a provisional certificate of
904 authority, the office shall issue to the holder of such
905 provisional certificate a certificate of authority if the holder
906 of the provisional certificate provides the office with the
907 following information:

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

911 (b) A feasibility study prepared by an independent
912 consultant which contains all of the information required by s.
913 651.022(4) ~~s. 651.022(3)~~ and financial forecasts or projections
914 prepared in accordance with standards adopted by the American
915 Institute of Certified Public Accountants or in accordance with
916 standards for feasibility studies or continuing care retirement
917 communities adopted by the Actuarial Standards Board.

918 ~~1. The study must also contain an independent evaluation~~
919 ~~and examination opinion, or a comparable opinion acceptable to~~
920 ~~the office, by the consultant who prepared the study, of the~~
921 ~~underlying assumptions used as a basis for the forecasts or~~
922 ~~projections in the study and that the assumptions are reasonable~~
923 ~~and proper and the project as proposed is feasible.~~

924 1.2. The study must take into account project costs, actual
925 marketing results to date and marketing projections, resident
926 fees and charges, competition, resident contract provisions, and



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927 any other factors which affect the feasibility of operating the
928 facility.

929 ~~2.3-~~ If the study is prepared by an independent certified
930 public accountant, it must contain an examination opinion, or a
931 compilation report acceptable to the office, containing a
932 financial forecast or projections for the first ~~5~~ 3 years of
933 operations which take into account an actuary's mortality and
934 morbidity assumptions as the study relates to turnover, rates,
935 fees, and charges ~~and financial projections having a compilation~~
936 ~~opinion for the next 3 years.~~ If the study is prepared by an
937 independent consulting actuary, it must contain mortality and
938 morbidity assumptions as the study relates to turnover, rates,
939 fees, and charges, ~~data~~ and an actuary's signed opinion that the
940 project as proposed is feasible and that the study has been
941 prepared in accordance with standards adopted by the American
942 Academy of Actuaries.

943 (c) Subject to subsection (4), a provider may submit an
944 application for a certificate of authority and any required
945 exhibits upon submission of documents evidencing proof that the
946 project has a minimum of 30 percent of the units reserved for
947 which the provider is charging an entrance fee. ~~This does not~~
948 ~~apply to an application for a certificate of authority for the~~
949 ~~acquisition of a facility for which a certificate of authority~~
950 ~~was issued before October 1, 1983, to a provider who~~
951 ~~subsequently becomes a debtor in a case under the United States~~
952 ~~Bankruptcy Code, 11 U.S.C. ss. 101 et seq., or to a provider for~~
953 ~~which the department has been appointed receiver pursuant to~~
954 ~~part II of chapter 631.~~

955 (d) Documents evidencing Proof that commitments have been



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956 secured for both construction financing and long-term financing
957 or a documented plan acceptable to the office has been adopted
958 by the applicant for long-term financing.

959 (e) Documents evidencing Proof that all conditions of the
960 lender have been satisfied to activate the commitment to
961 disburse funds other than the obtaining of the certificate of
962 authority, the completion of construction, or the closing of the
963 purchase of realty or buildings for the facility.

964 (f) Documents evidencing Proof that the aggregate amount of
965 entrance fees received by or pledged to the applicant, plus
966 anticipated proceeds from any long-term financing commitment,
967 plus funds from all other sources in the actual possession of
968 the applicant, equal at least 100 percent of the aggregate cost
969 of constructing or purchasing, equipping, and furnishing the
970 facility plus 100 percent of the anticipated startup losses of
971 the facility.

972 (g) A complete audited financial report statements of the
973 applicant, prepared by an independent certified public
974 accountant in accordance with generally accepted accounting
975 principles, as of the date the applicant commenced business
976 operations or for the fiscal year that ended immediately
977 preceding the date of application, whichever is later, and
978 complete unaudited quarterly financial statements attested to by
979 the applicant after the date of the last audit.

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

983 (i) Such other reasonable data, financial statements, and
984 pertinent information as the commission or office may require



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985 with respect to the applicant or the facility, to determine the
986 financial status of the facility and the management capabilities
987 of its managers and owners.

988
989 If any material change occurs in the facts set forth in an
990 application filed with the office pursuant to this subsection,
991 an amendment setting forth such change must be filed with the
992 office within 10 business days, and a copy of the amendment must
993 be sent by registered mail to the principal office of the
994 facility and to the principal office of the controlling company.

995 (2) Within 30 days after receipt of the information
996 required under subsection (1), the office shall examine such
997 information and notify the provider in writing, specifically
998 requesting any additional information the office is permitted by
999 law to require. Within 15 days after receipt of all of the
1000 requested additional information, the office shall notify the
1001 provider in writing that all of the requested information has
1002 been received, and the application is deemed to be complete as
1003 of the date of the notice. Failure to notify the provider in
1004 writing within the 15-day period constitutes acknowledgment by
1005 the office that it has received all requested additional
1006 information, and the application is deemed complete for purposes
1007 of review on the date of filing all of the required additional
1008 information ~~Within 15 days after receipt of all of the requested~~
1009 ~~additional information, the office shall notify the provider in~~
1010 ~~writing that all of the requested information has been received~~
1011 ~~and the application is deemed to be complete as of the date of~~
1012 ~~the notice. Failure to notify the applicant in writing within~~
1013 ~~the 15-day period constitutes acknowledgment by the office that~~



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1014 ~~it has received all requested additional information, and the~~
1015 ~~application shall be deemed complete for purposes of review on~~
1016 ~~the date of filing all of the required additional information.~~

1017 (3) Within 45 days after an application is deemed complete
1018 as set forth in subsection (2), and upon completion of the
1019 remaining requirements of this section, the office shall
1020 complete its review and issue or deny a certificate of authority
1021 to the holder of a provisional certificate of authority. If a
1022 certificate of authority is denied, the office must notify the
1023 holder of the provisional certificate in writing, citing the
1024 specific failures to satisfy the provisions of this chapter. The
1025 period for review by the office may not be tolled if the office
1026 requests additional information and the applicant provides the
1027 requested information within 5 business days. If denied, the
1028 holder of the provisional certificate is entitled to an
1029 administrative hearing pursuant to chapter 120.

1030 (4) The office shall issue a certificate of authority upon
1031 determining that the applicant meets all requirements of law and
1032 has submitted all of the information required by this section,
1033 that all escrow requirements have been satisfied, and that the
1034 fees prescribed in s. 651.015(2) have been paid.

1035 (a) A ~~Notwithstanding satisfaction of the 30 percent~~
1036 ~~minimum reservation requirement of paragraph (1)(c), no~~
1037 ~~certificate of authority may not shall~~ be issued until
1038 documentation evidencing that the project has a minimum of 50
1039 percent of the units reserved for which the provider is charging
1040 an entrance fee, ~~and proof~~ is provided to the office. If a
1041 provider offering continuing care at-home is applying for a
1042 certificate of authority ~~or approval of an expansion pursuant to~~



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1043 ~~s. 651.021(2)~~, the same minimum reservation requirements must be
1044 met for the continuing care and continuing care at-home
1045 contracts, independently of each other.

1046 (b) In order for a unit to be considered reserved under
1047 this section, the provider must collect a minimum deposit of the
1048 lesser of \$40,000 or 10 percent of the then-current entrance fee
1049 for that unit, and may assess a forfeiture penalty of 2 percent
1050 of the entrance fee due to termination of the reservation
1051 contract after 30 days for any reason other than the death or
1052 serious illness of the resident, the failure of the provider to
1053 meet its obligations under the reservation contract, or other
1054 circumstances beyond the control of the resident that equitably
1055 entitle the resident to a refund of the resident's deposit. The
1056 reservation contract must state the cancellation policy and the
1057 terms of the continuing care or continuing care at-home contract
1058 to be entered into.

1059 (5) Up to 25 percent of the moneys paid for all or any part
1060 of an initial entrance fee may be included or pledged for the
1061 construction or purchase of the facility or as security for
1062 long-term financing. The term "initial entrance fee" means the
1063 total entrance fee charged by the facility to the first occupant
1064 of a unit.

1065 (b) For an expansion as provided in s. 651.0246 ~~s.~~
1066 ~~651.021(2)~~, a minimum of 75 percent of the moneys paid for all
1067 or any part of an initial entrance fee collected for continuing
1068 care and 50 percent of the moneys paid for all or any part of an
1069 initial fee collected for continuing care at-home shall be
1070 placed in an escrow account or on deposit with the department as
1071 prescribed in s. 651.033.



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1072 (6) The provider is entitled to secure release of the
1073 moneys held in escrow within 7 days after receipt by the office
1074 of an affidavit from the provider, along with appropriate copies
1075 to verify, and notification to the escrow agent by certified
1076 mail, that the following conditions have been satisfied:

1077 (a) A certificate of occupancy has been issued.

1078 (b) Payment in full has been received for at least 70
1079 percent of the total units of a phase or of the total of the
1080 combined phases constructed. If a provider offering continuing
1081 care at-home is applying for a release of escrowed entrance
1082 fees, the same minimum requirement must be met for the
1083 continuing care and continuing care at-home contracts,
1084 independently of each other.

1085 ~~(c) The consultant who prepared the feasibility study~~
1086 ~~required by this section or a substitute approved by the office~~
1087 ~~certifies within 12 months before the date of filing for office~~
1088 ~~approval that there has been no material adverse change in~~
1089 ~~status with regard to the feasibility study. If a material~~
1090 ~~adverse change exists at the time of submission, sufficient~~
1091 ~~information acceptable to the office and the feasibility~~
1092 ~~consultant must be submitted which remedies the adverse~~
1093 ~~condition.~~

1094 (c)-(d) Documents evidencing Proof that commitments have
1095 been secured or a documented plan adopted by the applicant has
1096 been approved by the office for long-term financing.

1097 (d)-(e) Documents evidencing Proof that the provider has
1098 sufficient funds to meet the requirements of s. 651.035, which
1099 may include funds deposited in the initial entrance fee account.

1100 (e)-(f) Documents evidencing Proof as to the intended



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1101 application of the proceeds upon release and documentation ~~proof~~
1102 that the entrance fees when released will be applied as
1103 represented to the office.

1104 (f) If any material change occurred in the facts set forth
1105 in the application filed with the office pursuant to subsection
1106 (1), the applicant timely filed the amendment setting forth such
1107 change with the office and sent copies of the amendment to the
1108 principal office of the facility and to the principal office of
1109 the controlling company as required under that subsection.

1110
1111 Notwithstanding chapter 120, no person, other than the provider,
1112 the escrow agent, and the office, may have a substantial
1113 interest in any office decision regarding release of escrow
1114 funds in any proceedings under chapter 120 or this chapter
1115 regarding release of escrow funds.

1116 ~~(8) The timeframes provided under s. 651.022(5) and (6)~~
1117 ~~apply to applications submitted under s. 651.021(2).~~ The office
1118 may not issue a certificate of authority to a facility that does
1119 not have a component that is to be licensed pursuant to part II
1120 of chapter 400 or to part I of chapter 429 or that does not
1121 offer personal services or nursing services through written
1122 contractual agreement. A written contractual agreement must be
1123 disclosed in the contract for continuing care or continuing care
1124 at-home and is subject to ~~the provisions of~~ s. 651.1151,
1125 relating to administrative, vendor, and management contracts.

1126 (9) The office may not approve an application that includes
1127 in the plan of financing any encumbrance of the operating
1128 reserves or renewal and replacement reserves required by this
1129 chapter.



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1130 Section 9. Section 651.024, Florida Statutes, is amended to
1131 read:

1132 651.024 Acquisition.—

1133 (1) A person who seeks to assume the role of general
1134 partner of a provider or otherwise assume ownership or
1135 possession of, or control over, 10 percent or more of a
1136 provider's assets, based on the balance sheet from the most
1137 recent financial audit filed with the office, is issued a
1138 certificate of authority to operate a continuing care facility
1139 or a provisional certificate of authority shall be subject to
1140 the provisions of s. 628.4615 and is not required to make
1141 filings pursuant to s. 651.022, s. 651.023, or s. 651.0245.

1142 (2) A person who seeks to acquire and become the provider
1143 for a facility is subject to s. 651.0245 and is not required to
1144 make filings pursuant to ss. 628.4615, 651.022, and 651.023.

1145 (3) A person may rebut a presumption of control by filing a
1146 disclaimer of control with the office on a form prescribed by
1147 the commission. The disclaimer must fully disclose all material
1148 relationships and bases for affiliation between the person and
1149 the provider or facility, as well as the basis for disclaiming
1150 the affiliation. In lieu of such form, a person or acquiring
1151 party may file with the office a copy of a Schedule 13G filed
1152 with the Securities and Exchange Commission pursuant to Rule
1153 13d-1(b) or (c), 17 C.F.R. s. 240.13d-1, under the Securities
1154 Exchange Act of 1934, as amended. After a disclaimer has been
1155 filed, the provider or facility is relieved of any duty to
1156 register or report under this section which may arise out of the
1157 provider's or facility's relationship with the person, unless
1158 the office disallows the disclaimer.



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1159 (4) As used in this section, the term:

1160 (a) "Controlling company" means any corporation, trust, or
1161 association that directly or indirectly owns 25 percent or more
1162 of the voting securities of one or more facilities that are
1163 stock corporations, or 25 percent or more of the ownership
1164 interest of one or more facilities that are not stock
1165 corporations.

1166 (b) "Natural person" means an individual.

1167 (c) "Person" includes a natural person, corporation,
1168 association, trust, general partnership, limited partnership,
1169 joint venture, firm, proprietorship, or any other entity that
1170 may hold a license or certificate as a facility.

1171 (5) In addition to the facility or the controlling company,
1172 the office has standing to petition a circuit court as described
1173 in s. 628.4615(9).

1174 Section 10. Section 651.0245, Florida Statutes, is created
1175 to read:

1176 651.0245 Application for the simultaneous acquisition of a
1177 facility and issuance of a certificate of authority.-

1178 (1) Except with the prior written approval of the office, a
1179 person may not, individually or in conjunction with any
1180 affiliated person of such person, directly or indirectly acquire
1181 a facility operating under a subsisting certificate of authority
1182 and engage in the business of providing continuing care.

1183 (2) An applicant seeking simultaneous acquisition of a
1184 facility and issuance of a certificate of authority must:

1185 (a) Comply with the notice requirements of s.
1186 628.4615(2) (a); and

1187 (b) File an application in the form required by the office



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1188 and cooperate with the office's review of the application.

1189 (3) The commission shall adopt by rule application
1190 requirements equivalent to those described in ss. 628.4615(4)
1191 and (5), 651.022(2)(a)-(g), and 651.023(1)(b). The office shall
1192 review the application and issue an approval or disapproval of
1193 the filing in accordance with ss. 628.4615(6)(a) and (c), (7)-
1194 (10), and (14); 651.022(9); and 651.023(1)(b).

1195 (4) As used in this section, the term:

1196 (a) "Controlling company" means any corporation, trust, or
1197 association that directly or indirectly owns 25 percent or more
1198 of the voting securities of one or more facilities that are
1199 stock corporations, or 25 percent or more of the ownership
1200 interest of one or more facilities that are not stock
1201 corporations.

1202 (b) "Natural person" means an individual.

1203 (c) "Person" includes a natural person, corporation,
1204 association, trust, general partnership, limited partnership,
1205 joint venture, firm, proprietorship, or any other entity that
1206 may hold a license or certificate as a facility.

1207 (5) In addition to the facility or the controlling company,
1208 the office has standing to petition a circuit court as described
1209 in s. 628.4615(9).

1210 (6) A person may rebut a presumption of control by filing a
1211 disclaimer of control with the office on a form prescribed by
1212 the commission. The disclaimer must fully disclose all material
1213 relationships and bases for affiliation between the person and
1214 the provider or facility, as well as the basis for disclaiming
1215 the affiliation. In lieu of such form, a person or acquiring
1216 party may file with the office a copy of a Schedule 13G filed



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1217 with the Securities and Exchange Commission pursuant to Rule
1218 13d-1(b) or (c), 17 C.F.R. s. 240.13d-1, under the Securities
1219 Exchange Act of 1934, as amended. After a disclaimer has been
1220 filed, the provider or facility is relieved of any duty to
1221 register or report under this section which may arise out of the
1222 provider's or facility's relationship with the person, unless
1223 the office disallows the disclaimer.

1224 (7) The commission may adopt, amend, or repeal rules as
1225 necessary to administer this section.

1226 Section 11. Section 651.0246, Florida Statutes, is created
1227 to read:

1228 651.0246 Expansions.—

1229 (1) (a) A provider must obtain written approval from the
1230 office before commencing construction or marketing for an
1231 expansion of a certificated facility equivalent to the addition
1232 of at least 20 percent of existing units or 20 percent or more
1233 in the number of continuing care at-home contracts. If the
1234 provider has exceeded the current statewide median for days cash
1235 on hand, debt service coverage ratio, and total campus occupancy
1236 for two consecutive annual reporting periods, the provider is
1237 automatically granted approval to expand the total number of
1238 existing units by up to 35 percent upon submitting a letter to
1239 the office indicating the total number of planned units in the
1240 expansion, the proposed sources and uses of funds, and an
1241 attestation that the provider understands and pledges to comply
1242 with all minimum liquid reserve and escrow account requirements.
1243 As used in this section, the term "existing units" means the sum
1244 of the total number of independent living units and assisted
1245 living units identified in the most recent annual report filed



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1246 with the office pursuant to s. 651.026. For purposes of this
1247 section, the statewide median for days cash on hand, debt
1248 service coverage ratio, and total campus occupancy is the median
1249 calculated in the most recent annual report submitted by the
1250 office to the Continuing Care Advisory Council pursuant to s.
1251 651.121(8). This section does not apply to construction for
1252 which a certificate of need from the Agency for Health Care
1253 Administration is required.

1254 (b) The application for such approval must be on forms
1255 adopted by the commission and provided by the office. The
1256 application must include the feasibility study required by this
1257 section and such other information as reasonably requested by
1258 the office. If the expansion is only for continuing care at-home
1259 contracts, an actuarial study prepared by an independent actuary
1260 in accordance with standards adopted by the American Academy of
1261 Actuaries which presents the financial impact of the expansion
1262 may be substituted for the feasibility study.

1263 (c) In determining whether an expansion should be approved,
1264 the office shall consider:

1265 1. Whether the application meets all requirements of law;

1266 2. Whether the feasibility study was based on sufficient
1267 data and reasonable assumptions; and

1268 3. Whether the applicant will be able to provide continuing
1269 care or continuing care at-home as proposed and meet all
1270 financial obligations related to its operations, including the
1271 financial requirements of this chapter.

1272

1273 If the application is denied, the office must notify the
1274 applicant in writing, citing the specific failures to meet the



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1275 provisions of this chapter. A denial entitles the applicant to a
1276 hearing pursuant to chapter 120.

1277 (2) A provider applying for expansion of a certificated
1278 facility must submit all of the following:

1279 (a) A feasibility study prepared by an independent
1280 certified public accountant. The feasibility study must include
1281 at least the following information:

1282 1. A description of the facility and proposed expansion,
1283 including the location, size, anticipated completion date, and
1284 the proposed construction program.

1285 2. An identification and evaluation of the primary and, if
1286 applicable, secondary market areas of the facility and the
1287 projected unit sales per month.

1288 3. Projected revenues, including anticipated entrance fees;
1289 monthly service fees; nursing care rates, if applicable; and all
1290 other sources of revenue.

1291 4. Projected expenses, including for staffing requirements
1292 and salaries; the cost of property, plant, and equipment,
1293 including depreciation expense; interest expense; marketing
1294 expense; and other operating expenses.

1295 5. A projected balance sheet of the applicant.

1296 6. Expectations of the financial condition of the project,
1297 including the projected cash flow and an estimate of the funds
1298 anticipated to be necessary to cover startup losses.

1299 7. The inflation factor, if any, assumed in the study for
1300 the proposed expansion and how and where it is applied.

1301 8. Project costs, the total amount of debt financing
1302 required, marketing projections, resident fees and charges, the
1303 competition, resident contract provisions, and other factors



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1304 that affect the feasibility of the facility.

1305 9. Appropriate population projections, including morbidity
1306 and mortality assumptions.

1307 10. The name of the person who prepared the feasibility
1308 study and his or her experience in preparing similar studies or
1309 otherwise consulting in the field of continuing care.

1310 11. Financial forecasts or projections prepared in
1311 accordance with standards adopted by the American Institute of
1312 Certified Public Accountants or in accordance with standards for
1313 feasibility studies for continuing care retirement communities
1314 adopted by the Actuarial Standards Board.

1315 12. An independent evaluation and examination opinion for
1316 the first 5 years of operations, or a comparable opinion
1317 acceptable to the office, by the consultant who prepared the
1318 study, of the underlying assumptions used as a basis for the
1319 forecasts or projections in the study and that the assumptions
1320 are reasonable and proper and the project as proposed is
1321 feasible.

1322 13. Any other information that the provider deems relevant
1323 and appropriate to provide to enable the office to make a more
1324 informed determination.

1325 (b) Such other reasonable data, financial statements, and
1326 pertinent information as the commission or office may require
1327 with respect to the applicant or the facility to determine the
1328 financial status of the facility and the management capabilities
1329 of its managers and owners.

1330 (3) A minimum of 75 percent of the moneys paid for all or
1331 any part of an initial entrance fee or reservation deposit
1332 collected for continuing care and 50 percent of the moneys paid



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1333 for all or any part of an initial fee collected for continuing
1334 care at-home must be placed in an escrow account or on deposit
1335 with the department as prescribed in s. 651.033. Up to 25
1336 percent of the moneys paid for all or any part of an initial
1337 entrance fee or reservation deposit may be included or pledged
1338 for the construction or purchase of the facility or as security
1339 for long-term financing. As used in this section, the term
1340 "initial entrance fee" means the total entrance fee charged by
1341 the facility to the first occupant of a unit.

1342
1343 Entrance fees and reservation deposits collected for expansions
1344 must be held pursuant to the escrow requirements of s.
1345 651.023(5) and (6).

1346 (4) The provider is entitled to secure release of the
1347 moneys held in escrow within 7 days after receipt by the office
1348 of an affidavit from the provider, along with appropriate copies
1349 to verify, and notification to the escrow agent by certified
1350 mail that the following conditions have been satisfied:

1351 (a) A certificate of occupancy has been issued.

1352 (b) Payment in full has been received for at least 50
1353 percent of the total units of a phase or of the total of the
1354 combined phases constructed. If a provider offering continuing
1355 care at-home is applying for a release of escrowed entrance
1356 fees, the same minimum requirement must be met for the
1357 continuing care and continuing care at-home contracts
1358 independently of each other.

1359 (c) Documents evidencing that commitments have been secured
1360 or that a documented plan adopted by the applicant has been
1361 approved by the office for long-term financing.



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1362 (d) Documents evidencing that the provider has sufficient
1363 funds to meet the requirements of s. 651.035, which may include
1364 funds deposited in the initial entrance fee account.

1365 (e) Documents evidencing the intended application of the
1366 proceeds upon release and documentation that the entrance fees,
1367 when released, will be applied as represented to the office.

1368
1369 Notwithstanding chapter 120, only the provider, the escrow
1370 agent, and the office have a substantial interest in any office
1371 decision regarding release of escrow funds in any proceedings
1372 under chapter 120 or this chapter.

1373 (5) (a) Within 30 days after receipt of an application for
1374 expansion, the office shall examine the application and shall
1375 notify the applicant in writing, specifically setting forth and
1376 specifically requesting any additional information that the
1377 office is authorized to require. Within 15 days after the office
1378 receives all the requested additional information, the office
1379 shall notify the applicant in writing that the requested
1380 information has been received and that the application is deemed
1381 to be complete as of the date of the notice. If the office
1382 chooses not to notify the applicant within the 15-day period,
1383 then the application is deemed complete for purposes of review
1384 on the date the applicant files the additional requested
1385 information. If the application submitted is determined by the
1386 office to be substantially incomplete so as to require
1387 substantial additional information, including biographical
1388 information, the office may return the application to the
1389 applicant with a written notice that the application as received
1390 is substantially incomplete and therefore unacceptable for



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1391 filing without further action required by the office. Any filing
1392 fee received must be refunded to the applicant.

1393 (b) An application is deemed complete upon the office
1394 receiving all requested information and the applicant correcting
1395 any error or omission of which the applicant was timely notified
1396 or when the time for such notification has expired. The office
1397 shall notify the applicant in writing of the date on which the
1398 application was deemed complete.

1399 (6) Within 45 days after the date on which an application
1400 is deemed complete as set forth in paragraph (5)(b), the office
1401 shall complete its review and, based upon its review, approve an
1402 expansion by the applicant and issue a determination that the
1403 application meets all requirements of law, that the feasibility
1404 study was based on sufficient data and reasonable assumptions,
1405 and that the applicant will be able to provide continuing care
1406 or continuing care at-home as proposed and meet all financial
1407 and contractual obligations related to its operations, including
1408 the financial requirements of this chapter. The period for
1409 review by the office may not be tolled if the office requests
1410 additional information and the applicant provides information
1411 acceptable to the office within 5 business days. If the
1412 application is denied, the office must notify the applicant in
1413 writing, citing the specific failures to meet the provisions of
1414 this chapter. The denial entitles the applicant to a hearing
1415 pursuant to chapter 120.

1416 Section 12. Paragraph (c) of subsection (2) and subsection
1417 (3) of section 651.026, Florida Statutes, are amended,
1418 subsection (10) is added to that section, and paragraph (a) of
1419 subsection (2) of that section is republished, to read:



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1420 651.026 Annual reports.-
1421 (2) The annual report shall be in such form as the
1422 commission prescribes and shall contain at least the following:
1423 (a) Any change in status with respect to the information
1424 required to be filed under s. 651.022(2).
1425 (c) The following financial information:
1426 1. A detailed listing of the assets maintained in the
1427 liquid reserve as required under s. 651.035 and in accordance
1428 with part II of chapter 625;
1429 2. A schedule giving additional information relating to
1430 property, plant, and equipment having an original cost of at
1431 least \$25,000, so as to show in reasonable detail with respect
1432 to each separate facility original costs, accumulated
1433 depreciation, net book value, appraised value or insurable value
1434 and date thereof, insurance coverage, encumbrances, and net
1435 equity of appraised or insured value over encumbrances. Any
1436 property not used in continuing care must be shown separately
1437 from property used in continuing care;
1438 3. The level of participation in Medicare or Medicaid
1439 programs, or both;
1440 4. A statement of all fees required of residents,
1441 including, but not limited to, a statement of the entrance fee
1442 charged, the monthly service charges, the proposed application
1443 of the proceeds of the entrance fee by the provider, and the
1444 plan by which the amount of the entrance fee is determined if
1445 the entrance fee is not the same in all cases; and
1446 5. Any change or increase in fees if the provider changes
1447 the scope of, or the rates for, care or services, regardless of
1448 whether the change involves the basic rate or only those



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1449 services available at additional costs to the resident.

1450 6. If the provider has more than one certificated facility,
1451 or has operations that are not licensed under this chapter, it
1452 shall submit a balance sheet, statement of income and expenses,
1453 statement of equity or fund balances, and statement of cash
1454 flows for each facility licensed under this chapter as
1455 supplemental information to the audited financial report
1456 ~~statements~~ required under paragraph (b).

1457 7. The management's calculation of the provider's debt
1458 service coverage ratio and days cash on hand for the current
1459 reporting period, and an opinion from an independent certified
1460 public accountant of the management's calculations.

1461 (3) The commission shall adopt by rule additional
1462 ~~meaningful~~ measures of assessing the financial viability of a
1463 provider. ~~The rule may include the following factors:~~

- 1464 ~~(a) Debt service coverage ratios.~~
- 1465 ~~(b) Current ratios.~~
- 1466 ~~(c) Adjusted current ratios.~~
- 1467 ~~(d) Cash flows.~~
- 1468 ~~(e) Occupancy rates.~~
- 1469 ~~(f) Other measures, ratios, or trends.~~
- 1470 ~~(g) Other factors as may be appropriate.~~

1471 (10) Within 90 days after the conclusion of each annual
1472 reporting period, the office shall publish an industry
1473 benchmarking report that contains all of the following:

- 1474 (a) The median days cash on hand for all providers.
- 1475 (b) The median debt service coverage ratio for all
1476 providers.
- 1477 (c) The median occupancy rate for all providers by setting,



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1478 including independent living, assisted living, skilled nursing,
1479 and the entire campus.

1480 Section 13. Section 651.0261, Florida Statutes, is amended
1481 to read:

1482 651.0261 Quarterly and monthly statements.-

1483 (1) Within 45 days after the end of each fiscal quarter,
1484 each provider shall file a quarterly unaudited financial
1485 statement of the provider or of the facility in the form
1486 prescribed by rule of the commission and a detailed listing of
1487 the assets maintained in the liquid reserve as required under s.
1488 651.035. This requirement may be waived by the office upon
1489 written request from a provider that is accredited or that has
1490 obtained an investment grade credit rating from a United States
1491 credit rating agency as authorized under s. 651.028. The last
1492 quarterly statement for a fiscal year is not required if a
1493 provider does not have pending a regulatory action level event
1494 or corrective action plan.

1495 (2) If the office finds, ~~pursuant to rules of the~~
1496 ~~commission,~~ that such information is needed to properly monitor
1497 the financial condition of a provider or facility or is
1498 otherwise needed to protect the public interest, the office may
1499 require the provider to file:

1500 (a) Within 25 days after the end of each month, a monthly
1501 unaudited financial statement of the provider or of the facility
1502 in the form prescribed by the commission by rule and a detailed
1503 listing of the assets maintained in the liquid reserve as
1504 required under s. 651.035, ~~within 45 days after the end of each~~
1505 ~~fiscal quarter, a quarterly unaudited financial statement of the~~
1506 ~~provider or of the facility in the form prescribed by the~~



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1507 ~~commission by rule. The commission may by rule require all or~~
1508 ~~part of the statements or filings required under this section to~~
1509 ~~be submitted by electronic means in a computer readable form~~
1510 ~~compatible with the electronic data format specified by the~~
1511 ~~commission.~~

1512 (b) Such other data, financial statements, and pertinent
1513 information as the commission or office may reasonably require
1514 with respect to the provider or the facility, or its directors,
1515 trustees, members, branches, subsidiaries, or affiliates, to
1516 determine the financial status of the provider or of the
1517 facility and the management capabilities of its managers and
1518 owners.

1519 (3) A filing under subsection (2) may be required if any of
1520 the following apply:

1521 (a) The facility has been operational for less than 2
1522 years.

1523 (b) The provider is:

1524 1. Subject to administrative supervision proceedings;

1525 2. Subject to a corrective action plan resulting from a
1526 regulatory action level event for up to 2 years after the
1527 factors that caused the regulatory action level event have been
1528 corrected; or

1529 3. Subject to delinquency or receivership proceedings.

1530 (c) The provider or facility displays a declining financial
1531 position.

1532 (d) A change of ownership of the provider or facility has
1533 occurred within the previous 2 years.

1534 (e) The facility is deemed to be impaired.

1535 (4) The commission may by rule require all or part of the



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1536 statements or filings required under this section to be
1537 submitted by electronic means in a computer-readable form
1538 compatible with an electronic data format specified by the
1539 commission.

1540 Section 14. Section 651.028, Florida Statutes, is amended
1541 to read:

1542 651.028 Accredited or certain credit-rated facilities.—If a
1543 provider or obligated group is accredited without stipulations
1544 or conditions by a process found by the office to be acceptable
1545 and substantially equivalent to the provisions of this chapter
1546 or has obtained an investment grade credit rating from a
1547 nationally recognized credit rating agency, as applicable, from
1548 Moody's Investors Service, Standard & Poor's, or Fitch Ratings,
1549 the office may, pursuant to rule of the commission, waive any
1550 requirements of this chapter with respect to the provider if the
1551 office finds that such waivers are not inconsistent with the
1552 security protections intended by this chapter.

1553 Section 15. Paragraphs (a), (c), and (d) of subsection (1)
1554 and subsections (2) and (3) of section 651.033, Florida
1555 Statutes, are amended, and subsection (6) is added to that
1556 section, to read:

1557 651.033 Escrow accounts.—

1558 (1) When funds are required to be deposited in an escrow
1559 account pursuant to s. 651.022, s. 651.023, s. 651.035, or s.
1560 651.055:

1561 (a) The escrow account must ~~shall~~ be established in a
1562 Florida bank, Florida savings and loan association, ~~or~~ Florida
1563 trust company, or a national bank that is chartered and
1564 supervised by the Office of the Comptroller of the Currency



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1565 within the United States Department of the Treasury and that has
1566 either a branch or a license to operate in this state which is
1567 acceptable to the office, or such funds must be deposited on
1568 deposit with the department, and the funds deposited therein
1569 shall be kept and maintained in an account separate and apart
1570 from the provider's business accounts.

1571 (c) Any agreement establishing an escrow account required
1572 under ~~the provisions of~~ this chapter is ~~shall be~~ subject to
1573 approval by the office. The agreement must ~~shall~~ be in writing
1574 and ~~shall~~ contain, in addition to any other provisions required
1575 by law, a provision whereby the escrow agent agrees to abide by
1576 the duties imposed by paragraphs (b) and (e), (3)(a), (3)(b),
1577 and (5)(a) and subsection (6) under this section.

1578 (d) All funds deposited in an escrow account, if invested,
1579 must ~~shall~~ be invested in cash, cash equivalents, mutual funds,
1580 equities, or investment grade bonds as set forth in part II of
1581 chapter 625; however, such investment may not diminish the funds
1582 held in escrow below the amount required by this chapter. Funds
1583 deposited in an escrow account are not subject to charges by the
1584 escrow agent except escrow agent fees associated with
1585 administering the accounts, or subject to any liens, judgments,
1586 garnishments, creditor's claims, or other encumbrances against
1587 the provider or facility except as provided in s. 651.035(1).

1588 (2) Notwithstanding s. 651.035(7), In addition, the escrow
1589 agreement shall provide that the escrow agent or another person
1590 designated to act in the escrow agent's place and the provider,
1591 except as otherwise provided in s. 651.035, shall notify the
1592 office in writing at least 10 days before the withdrawal of any
1593 portion of any funds required to be escrowed under the



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1594 ~~provisions of s. 651.035. However,~~ in the event of an emergency
1595 and upon petition by the provider, the office may ~~waive the 10-~~
1596 ~~day notification period and~~ allow a withdrawal of up to 10
1597 percent of the required minimum liquid reserve. The office shall
1598 have 3 working days to deny the petition for the emergency 10-
1599 percent withdrawal. If the office fails to deny the petition
1600 within 3 working days, the petition is ~~shall be~~ deemed to have
1601 been granted by the office. For purposes ~~the purpose~~ of this
1602 section, "working day" means each day that is not a Saturday,
1603 Sunday, or legal holiday as defined by Florida law. Also, for
1604 purposes ~~the purpose~~ of this section, the day the petition is
1605 received by the office is ~~shall~~ not ~~be~~ counted as one of the 3
1606 days.

1607 (3) ~~In addition,~~ When entrance fees are required to be
1608 deposited in an escrow account pursuant to s. 651.022, s.
1609 651.023, or s. 651.055:

1610 (a) The provider shall deliver to the resident a written
1611 receipt. The receipt must show the payor's name and address, the
1612 date, the price of the care contract, and the amount of money
1613 paid. A copy of each receipt, together with the funds, must
1614 ~~shall~~ be deposited with the escrow agent or as provided in
1615 paragraph (c). The escrow agent must ~~shall~~ release such funds to
1616 the provider 7 days after the date of receipt of the funds by
1617 the escrow agent if the provider, operating under a certificate
1618 of authority issued by the office, has met the requirements of
1619 s. 651.023(6). However, if the resident rescinds the contract
1620 within the 7-day period, the escrow agent must ~~shall~~ release the
1621 escrowed fees to the resident.

1622 (b) At the request of an individual resident of a facility,



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1623 the escrow agent shall issue a statement indicating the status
1624 of the resident's portion of the escrow account.

1625 (c) At the request of an individual resident of a facility,
1626 the provider may hold the check for the 7-day period and may
1627 ~~shall~~ not deposit it during this time period. If the resident
1628 rescinds the contract within the 7-day period, the check must
1629 ~~shall~~ be immediately returned to the resident. Upon the
1630 expiration of the 7 days, the provider shall deposit the check.

1631 (d) A provider may assess a nonrefundable fee, which is
1632 separate from the entrance fee, for processing a prospective
1633 resident's application for continuing care or continuing care
1634 at-home.

1635 (6) Except as described in paragraph (3) (a), the escrow
1636 agent may not release or otherwise allow the transfer of funds
1637 without the written approval of the office, unless the
1638 withdrawal is from funds in excess of the amounts required by
1639 ss. 651.022, 651.023, 651.035, and 651.055.

1640 Section 16. Section 651.034, Florida Statutes, is created
1641 to read:

1642 651.034 Financial and operating requirements for
1643 providers.—

1644 (1) (a) If a regulatory action level event occurs, the
1645 office must:

1646 1. Require the provider to prepare and submit a corrective
1647 action plan or, if applicable, a revised corrective action plan;

1648 2. Perform an examination pursuant to s. 651.105 or an
1649 analysis, as the office considers necessary, of the assets,
1650 liabilities, and operations of the provider, including a review
1651 of the corrective action plan or the revised corrective action



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1652 plan; and

1653 3. After the examination or analysis, issue a corrective
1654 order specifying any corrective actions that the office
1655 determines are required.

1656 (b) In determining corrective actions, the office shall
1657 consider any factor relevant to the provider based upon the
1658 office's examination or analysis of the assets, liabilities, and
1659 operations of the provider. The provider must submit the
1660 corrective action plan or the revised corrective action plan
1661 within 30 days after the occurrence of the regulatory action
1662 level event. The office shall review and approve or disapprove
1663 the corrective action plan within 15 business days.

1664 (c) The office may use members of the Continuing Care
1665 Advisory Council, individually or as a group, or may retain
1666 actuaries, investment experts, and other consultants to review a
1667 provider's corrective action plan or revised corrective action
1668 plan, examine or analyze the assets, liabilities, and operations
1669 of a provider, and formulate the corrective order with respect
1670 to the provider. The fees, costs, and expenses relating to
1671 consultants must be borne by the affected provider.

1672 (2) If an impairment occurs, the office must take any
1673 action necessary to place the provider under regulatory control,
1674 including any remedy available under chapter 631. An impairment
1675 is sufficient grounds for the department to be appointed as
1676 receiver as provided in chapter 631. Notwithstanding s. 631.011,
1677 impairment of a provider, for purposes of s. 631.051, is defined
1678 according to the term "impaired" under s. 651.011. The office
1679 may forego taking action for up to 180 days after the impairment
1680 if the office finds there is a reasonable expectation that the



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1681 impairment may be eliminated within the 180-day period.

1682 (3) There is no liability on the part of, and a cause of
1683 action may not arise against, the commission, department, or
1684 office, or their employees or agents, for any action they take
1685 in the performance of their powers and duties under this
1686 section.

1687 (4) The office shall transmit any notice that may result in
1688 regulatory action by registered mail, certified mail, or any
1689 other method of transmission which includes documentation of
1690 receipt by the provider. Notice is effective when the provider
1691 receives it.

1692 (5) This section is supplemental to the other laws of this
1693 state and does not preclude or limit any power or duty of the
1694 department or office under those laws or under the rules adopted
1695 pursuant to those laws.

1696 (6) The office may exempt a provider from subsection (1) or
1697 subsection (2) until stabilized occupancy is reached or until
1698 the time projected to achieve stabilized occupancy as reported
1699 in the last feasibility study required by the office as part of
1700 an application filing under s. 651.023, s. 651.024, s. 651.0245,
1701 or s. 651.0246 has elapsed, but for no longer than 5 years from
1702 the date of issuance of the certificate of occupancy.

1703 (7) The commission may adopt rules to administer this
1704 section, including, but not limited to, rules regarding
1705 corrective action plans, revised corrective action plans,
1706 corrective orders, and procedures to be followed in the event of
1707 a regulatory action level event or an impairment.

1708 Section 17. Paragraphs (a), (b), and (c) of subsection (1)
1709 of section 651.035, Florida Statutes, are amended, and



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1710 subsections (7) through (10) are added to that section, to read:

1711 651.035 Minimum liquid reserve requirements.—

1712 (1) A provider shall maintain in escrow a minimum liquid
1713 reserve consisting of the following reserves, as applicable:

1714 (a) Each provider shall maintain in escrow as a debt
1715 service reserve the aggregate amount of all principal and
1716 interest payments due during the fiscal year on any mortgage
1717 loan or other long-term financing of the facility, including
1718 property taxes as recorded in the audited financial report
1719 ~~statements~~ required under s. 651.026. The amount must include
1720 any leasehold payments and all costs related to such payments.
1721 If principal payments are not due during the fiscal year, the
1722 provider must ~~shall~~ maintain in escrow as a minimum liquid
1723 reserve an amount equal to interest payments due during the next
1724 12 months on any mortgage loan or other long-term financing of
1725 the facility, including property taxes. If a provider does not
1726 have a mortgage loan or other financing on the facility, the
1727 provider must deposit monthly in escrow as a minimum liquid
1728 reserve an amount equal to one-twelfth of the annual property
1729 tax liability as indicated in the most recent tax notice
1730 provided pursuant to s. 197.322(3).

1731 (b) A provider that has outstanding indebtedness that
1732 requires a debt service reserve to be held in escrow pursuant to
1733 a trust indenture or mortgage lien on the facility and for which
1734 the debt service reserve may only be used to pay principal and
1735 interest payments on the debt that the debtor is obligated to
1736 pay, and which may include property taxes and insurance, may
1737 include such debt service reserve in computing the minimum
1738 liquid reserve needed to satisfy this subsection if the provider



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1739 furnishes to the office a copy of the agreement under which such
1740 debt service is held, together with a statement of the amount
1741 being held in escrow for the debt service reserve, certified by
1742 the lender or trustee and the provider to be correct. The
1743 trustee shall provide the office with any information concerning
1744 the debt service reserve account upon request of the provider or
1745 the office. Such separate debt service reserves, if any, are not
1746 subject to the transfer provisions set forth in subsection (8).

1747 (c) Each provider shall maintain in escrow an operating
1748 reserve equal to 30 percent of the total operating expenses
1749 projected in the feasibility study required by s. 651.023 for
1750 the first 12 months of operation. Thereafter, each provider
1751 shall maintain in escrow an operating reserve equal to 15
1752 percent of the total operating expenses in the annual report
1753 filed pursuant to s. 651.026. If a provider has been in
1754 operation for more than 12 months, the total annual operating
1755 expenses must ~~shall~~ be determined by averaging the total annual
1756 operating expenses reported to the office by the number of
1757 annual reports filed with the office within the preceding 3-year
1758 period subject to adjustment if there is a change in the number
1759 of facilities owned. For purposes of this subsection, total
1760 annual operating expenses include all expenses of the facility
1761 except: depreciation and amortization; interest and property
1762 taxes included in paragraph (a); extraordinary expenses that are
1763 adequately explained and documented in accordance with generally
1764 accepted accounting principles; liability insurance premiums in
1765 excess of those paid in calendar year 1999; and changes in the
1766 obligation to provide future services to current residents. For
1767 providers initially licensed during or after calendar year 1999,



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1768 liability insurance must ~~shall~~ be included in the total
1769 operating expenses in an amount not to exceed the premium paid
1770 during the first 12 months of facility operation. ~~Beginning~~
1771 ~~January 1, 1993,~~ The operating reserves required under this
1772 subsection must ~~shall~~ be in an unencumbered account held in
1773 escrow for the benefit of the residents. Such funds may not be
1774 encumbered or subject to any liens or charges by the escrow
1775 agent or judgments, garnishments, or creditors' claims against
1776 the provider or facility. However, if a facility had a lien,
1777 mortgage, trust indenture, or similar debt instrument in place
1778 before January 1, 1993, which encumbered all or any part of the
1779 reserves required by this subsection and such funds were used to
1780 meet the requirements of this subsection, then such arrangement
1781 may be continued, unless a refinancing or acquisition has
1782 occurred, and the provider is ~~shall be~~ in compliance with this
1783 subsection.

1784 (7) (a) A provider may withdraw funds held in escrow without
1785 the approval of the office if the amount held in escrow exceeds
1786 the requirements of this section and if the withdrawal will not
1787 affect compliance with this section.

1788 (b)1. For all other proposed withdrawals, in order to
1789 receive the consent of the office, the provider must file
1790 documentation showing why the withdrawal is necessary for the
1791 continued operation of the facility and such additional
1792 information as the office reasonably requires.

1793 2. The office shall notify the provider when the filing is
1794 deemed complete. If the provider has complied with all prior
1795 requests for information, the filing is deemed complete after 30
1796 days without communication from the office.



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1797 3. Within 30 days after the date a file is deemed complete,
1798 the office shall provide the provider with written notice of its
1799 approval or disapproval of the request. The office may
1800 disapprove any request to withdraw such funds if it determines
1801 that the withdrawal is not in the best interest of the
1802 residents.

1803 (8) The office may order the immediate transfer of up to
1804 100 percent of the funds held in the minimum liquid reserve to
1805 the custody of the department pursuant to part III of chapter
1806 625 if the office finds that the provider is impaired or
1807 insolvent. The office may order such a transfer regardless of
1808 whether the office has suspended or revoked, or intends to
1809 suspend or revoke, the certificate of authority of the provider.

1810 (9) Each facility shall file with the office annually,
1811 together with the annual report required by s. 651.026, a
1812 calculation of its minimum liquid reserve, determined in
1813 accordance with this section, on a form prescribed by the
1814 commission. The minimum liquid reserve must be maintained at the
1815 calculated level within 60 days after filing the annual report.

1816 (10) If the balance of the minimum liquid reserve is below
1817 the required amount at the end of any month, the provider must
1818 fund the shortfall in the reserve within 10 business days after
1819 the beginning of the following month. If the balance of the
1820 minimum liquid reserve is not restored to the required amount
1821 within such time, the provider will be deemed out of compliance
1822 with this section.

1823 Section 18. Section 651.043, Florida Statutes, is created
1824 to read:

1825 651.043 Approval of change in management.-



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1826 (1) As used in this section, the term "management" means:

1827 (a) A manager or management company; or

1828 (b) A person who exercises or who has the ability to
1829 exercise effective control of the provider or organization, or
1830 who influences or has the ability to influence the transaction
1831 of the business of the provider.

1832 (2) A contract for management entered into after July 1,
1833 2018, must be in writing and include a provision that the
1834 contract will be canceled upon issuance of an order by the
1835 office pursuant to this section without the application of any
1836 cancellation fee or penalty. If a provider contracts with a
1837 management company, a separate written contract is not required
1838 for the individual manager employed by the management company to
1839 oversee a facility.

1840 (3) A provider must notify the office, in writing or
1841 electronically, of any change in management within 10 business
1842 days. For each new management appointment, the provider must
1843 submit the information required by s. 651.022(2) and a copy of
1844 the written management contract, if applicable.

1845 (4) For a provider that is deemed to be impaired or that
1846 has a regulatory action level event pending, the office may
1847 disapprove new management and order the provider to remove the
1848 new management after reviewing the information required in
1849 subsection (3).

1850 (5) For a provider other than that specified in subsection
1851 (4), the office may disapprove new management and order the
1852 provider to remove the new management after receiving the
1853 required information in subsection (3) if the office:

1854 (a) Finds that the new management is incompetent or



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1855 untrustworthy;

1856 (b) Finds that the new management is so lacking in relevant
1857 managerial experience as to make the proposed operation
1858 hazardous to the residents or potential residents;

1859 (c) Finds that the new management is so lacking in relevant
1860 experience, ability, and standing as to jeopardize the
1861 reasonable promise of successful operation; or

1862 (d) Has good reason to believe that the new management is
1863 affiliated directly or indirectly through ownership, control, or
1864 business relations with any person or persons whose business
1865 operations are or have been marked by manipulation of assets or
1866 accounts or by bad faith, to the detriment of residents,
1867 stockholders, investors, creditors, or the public.

1868
1869 The office shall complete its review as required under
1870 subsections (4) and (5) and, if applicable, issue notice of
1871 disapproval of the new management within 15 business days after
1872 the filing is deemed complete. A filing is deemed complete upon
1873 the office's receipt of all requested information and the
1874 provider's correction of any error or omission for which the
1875 provider was timely notified. If the office does not issue
1876 notice of disapproval of the new management within 15 business
1877 days after the filing is deemed complete, then the new
1878 management is deemed approved.

1879 (6) Management disapproved by the office must be removed
1880 within 30 days after receipt by the provider of notice of such
1881 disapproval.

1882 (7) The office may revoke, suspend, or take other
1883 administrative action against the certificate of authority of



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1884 the provider if the provider:

1885 (a) Fails to timely remove management disapproved by the
1886 office;

1887 (b) Fails to timely notify the office of a change in
1888 management;

1889 (c) Appoints new management without a written contract; or

1890 (d) Repeatedly appoints management that was previously
1891 disapproved by the office or that is not approvable pursuant to
1892 subsection (5).

1893 (8) The provider shall remove any management immediately
1894 upon discovery of any of the following conditions, if the
1895 conditions were not disclosed in the notice to the office
1896 required in subsection (3):

1897 (a) That any person who exercises or has the ability to
1898 exercise effective control of the provider, or who influences or
1899 has the ability to influence the transaction of the business of
1900 the provider, has been found guilty of, or has pled guilty or no
1901 contest to, any felony or crime punishable by imprisonment of 1
1902 year or more under the laws of the United States or any state
1903 thereof or under the laws of any other country which involves
1904 moral turpitude, without regard to whether a judgment or
1905 conviction has been entered by the court having jurisdiction in
1906 such case.

1907 (b) That any person who exercises or has the ability to
1908 exercise effective control of the organization, or who
1909 influences or has the ability to influence the transaction of
1910 the business of the provider, is now or was in the past
1911 affiliated, directly or indirectly, through ownership interest
1912 of 10 percent or more in, or control of, any business,



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1913 corporation, or other entity that has been found guilty of or
1914 has pled guilty or no contest to any felony or crime punishable
1915 by imprisonment for 1 year or more under the laws of the United
1916 States, any state, or any other country, regardless of
1917 adjudication.

1918
1919 The failure to remove such management is grounds for revocation
1920 or suspension of the provider's certificate of authority.

1921 Section 19. Section 651.051, Florida Statutes, is amended
1922 to read:

1923 651.051 Maintenance of assets and records in state.—All
1924 records and assets of a provider must be maintained in this
1925 state, or, if the provider's corporate office is located in
1926 another state, must be electronically stored in a manner that
1927 will ensure that the records are readily accessible to the
1928 office. No records or assets may be removed from this state by a
1929 provider unless the office consents to such removal in writing
1930 before such removal. Such consent must ~~shall~~ be based upon the
1931 provider's submitting satisfactory evidence that the removal
1932 will facilitate and make more economical the operations of the
1933 provider and will not diminish the service or protection
1934 thereafter to be given the provider's residents in this state.
1935 Before ~~Prior to~~ such removal, the provider shall give notice to
1936 the president or chair of the facility's residents' council. If
1937 such removal is part of a cash management system which has been
1938 approved by the office, disclosure of the system must ~~shall~~ meet
1939 the notification requirements. The electronic storage of records
1940 on a web-based, secured storage platform by contract with a
1941 third party is acceptable if the records are readily accessible



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1942 to the office.

1943 Section 20. Subsection (2) of section 651.057, Florida
1944 Statutes, is amended to read:

1945 651.057 Continuing care at-home contracts.-

1946 (2) A provider that holds a certificate of authority and
1947 wishes to offer continuing care at-home must also:

1948 (a) Submit a business plan to the office with the following
1949 information:

1950 1. A description of the continuing care at-home services
1951 that will be provided, the market to be served, and the fees to
1952 be charged;

1953 2. A copy of the proposed continuing care at-home contract;

1954 3. An actuarial study prepared by an independent actuary in
1955 accordance with the standards adopted by the American Academy of
1956 Actuaries which presents the impact of providing continuing care
1957 at-home on the overall operation of the facility; and

1958 4. A market feasibility study that meets the requirements
1959 of s. 651.022(4) ~~s. 651.022(3)~~ and documents that there is
1960 sufficient interest in continuing care at-home contracts to
1961 support such a program;

1962 (b) Demonstrate to the office that the proposal to offer
1963 continuing care at-home contracts to individuals who do not
1964 immediately move into the facility will not place the provider
1965 in an unsound financial condition;

1966 (c) Comply with the requirements of s. 651.0246(1) ~~s.~~
1967 ~~651.021(2)~~, except that an actuarial study may be substituted
1968 for the feasibility study; and

1969 (d) Comply with the requirements of this chapter.

1970 Section 21. Subsection (1) of section 651.071, Florida



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1971 Statutes, is amended to read:

1972 651.071 Contracts as preferred claims on liquidation or
1973 receivership.—

1974 (1) In the event of receivership or liquidation proceedings
1975 against a provider, all continuing care and continuing care at-
1976 home contracts executed by a provider are ~~shall be~~ deemed
1977 preferred claims or policyholder loss preferred claims pursuant
1978 to s. 631.271(1)(b) against all assets owned by the provider;
1979 however, such claims are subordinate to any secured claim.

1980 Section 22. Subsection (2) and present paragraph (g) of
1981 subsection (3) of section 651.091, Florida Statutes, are
1982 amended, present paragraphs (h) and (i) of subsection (3) of
1983 that section are redesignated as paragraphs (g) and (h),
1984 respectively, a new paragraph (i) and paragraphs (j), (k), and
1985 (l) are added to that subsection, and paragraph (d) of
1986 subsection (3) and subsection (4) of that section are
1987 republished, to read:

1988 651.091 Availability, distribution, and posting of reports
1989 and records; requirement of full disclosure.—

1990 (2) Every continuing care facility shall:

1991 (a) Display the certificate of authority in a conspicuous
1992 place inside the facility.

1993 (b) Post in a prominent position in the facility which is
1994 accessible to all residents and the general public a concise
1995 summary of the last examination report issued by the office,
1996 with references to the page numbers of the full report noting
1997 any deficiencies found by the office, and the actions taken by
1998 the provider to rectify such deficiencies, indicating in such
1999 summary where the full report may be inspected in the facility.



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2000 (c) Provide notice to the president or chair of the
2001 residents' council within 10 business days after issuance of a
2002 final examination report or the initiation of any legal or
2003 administrative proceeding by the office or the department and
2004 include a copy of such document.

2005 (d)~~(e)~~ Post in a prominent position in the facility which
2006 is accessible to all residents and the general public a summary
2007 of the latest annual statement, indicating in the summary where
2008 the full annual statement may be inspected in the facility. A
2009 listing of any proposed changes in policies, programs, and
2010 services must also be posted.

2011 (e)~~(d)~~ Distribute a copy of the full annual statement and a
2012 copy of the most recent third-party ~~third party~~ financial audit
2013 filed with the annual report to the president or chair of the
2014 residents' council within 30 days after filing the annual report
2015 with the office, and designate a staff person to provide
2016 explanation thereof.

2017 (f)~~(e)~~ Deliver the information described in s. 651.085(4)
2018 in writing to the president or chair of the residents' council
2019 and make supporting documentation available upon request ~~Notify~~
2020 ~~the residents' council of any plans filed with the office to~~
2021 ~~obtain new financing, additional financing, or refinancing for~~
2022 ~~the facility and of any applications to the office for any~~
2023 ~~expansion of the facility.~~

2024 (g)~~(f)~~ Deliver to the president or chair of the residents'
2025 council a summary of entrance fees collected and refunds made
2026 during the time period covered in the annual report and the
2027 refund balances due at the end of the report period.

2028 (h)~~(g)~~ Deliver to the president or chair of the residents'



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2029 council a copy of each quarterly statement within 30 days after
2030 the quarterly statement is filed with the office if the facility
2031 is required to file quarterly.

2032 (i)~~(h)~~ Upon request, deliver to the president or chair of
2033 the residents' council a copy of any newly approved continuing
2034 care or continuing care at-home contract within 30 days after
2035 approval by the office.

2036 (j) Provide to the president or chair of the residents'
2037 council a copy of any notice filed with the office relating to
2038 any change in ownership within 10 business days after such
2039 filing by the provider.

2040 (k) Make the information available to prospective residents
2041 pursuant to paragraph (3) (d) available to current residents and
2042 provide notice of changes to that information to the president
2043 or chair of the residents' council within 3 business days.

2044 (3) Before entering into a contract to furnish continuing
2045 care or continuing care at-home, the provider undertaking to
2046 furnish the care, or the agent of the provider, shall make full
2047 disclosure, and provide copies of the disclosure documents to
2048 the prospective resident or his or her legal representative, of
2049 the following information:

2050 (d) In keeping with the intent of this subsection relating
2051 to disclosure, the provider shall make available for review
2052 master plans approved by the provider's governing board and any
2053 plans for expansion or phased development, to the extent that
2054 the availability of such plans does not put at risk real estate,
2055 financing, acquisition, negotiations, or other implementation of
2056 operational plans and thus jeopardize the success of
2057 negotiations, operations, and development.



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2058 ~~(g) The amount and location of any reserve funds required~~
2059 ~~by this chapter, and the name of the person or entity having a~~
2060 ~~claim to such funds in the event of a bankruptcy, foreclosure,~~
2061 ~~or rehabilitation proceeding.~~

2062 (i) Notice of the issuance of a final examination report or
2063 the initiation of any legal or administrative proceeding by the
2064 office or the department, including where the report or filing
2065 may be inspected in the facility, and that upon request, an
2066 electronic copy or specific website address will be provided
2067 where the document can be downloaded at no cost.

2068 (j) Notice that the entrance fee is the property of the
2069 provider after the expiration of the 7-day escrow requirement
2070 under s. 651.055(2).

2071 (k) If the provider operates multiple facilities, a
2072 disclosure of any distribution of assets or income between
2073 facilities that may occur and the manner in which such
2074 distributions would be made, or a statement that such
2075 distributions will not occur.

2076 (l) Notice of any holding company system or obligated group
2077 of which the provider is a member.

2078 (4) A true and complete copy of the full disclosure
2079 document to be used must be filed with the office before use. A
2080 resident or prospective resident or his or her legal
2081 representative may inspect the full reports referred to in
2082 paragraph (2) (b); the charter or other agreement or instrument
2083 required to be filed with the office pursuant to s. 651.022(2),
2084 together with all amendments thereto; and the bylaws of the
2085 corporation or association, if any. Upon request, copies of the
2086 reports and information shall be provided to the individual



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2087 requesting them if the individual agrees to pay a reasonable
2088 charge to cover copying costs.

2089 Section 23. Subsections (1) and (5) of section 651.105,
2090 Florida Statutes, are amended, and subsections (7) and (8) are
2091 added to that section, to read:

2092 651.105 Examination and inspections.—

2093 (1) The office may at any time, and shall at least once
2094 every 3 years, examine the business of any applicant for a
2095 certificate of authority and any provider engaged in the
2096 execution of care contracts or engaged in the performance of
2097 obligations under such contracts, in the same manner as is
2098 provided for the examination of insurance companies pursuant to
2099 ss. 624.316 and 624.318 ~~s. 624.316~~. For a provider as described
2100 ~~defined~~ in s. 651.028, such examinations must ~~shall~~ take place
2101 at least once every 5 years. Such examinations must ~~shall~~ be
2102 made by a representative or examiner designated by the office
2103 whose compensation will be fixed by the office pursuant to s.
2104 624.320. Routine examinations may be made by having the
2105 necessary documents submitted to the office; and, for this
2106 purpose, financial documents and records conforming to commonly
2107 accepted accounting principles and practices, as required under
2108 s. 651.026, are deemed adequate. The final written report of
2109 each examination must be filed with the office and, when so
2110 filed, constitutes a public record. Any provider being examined
2111 shall, upon request, give reasonable and timely access to all of
2112 its records. The representative or examiner designated by the
2113 office may at any time examine the records and affairs and
2114 inspect the physical property of any provider, whether in
2115 connection with a formal examination or not.



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2116 (5) A provider must respond to written correspondence from
2117 the office and provide data, financial statements, and pertinent
2118 information as requested by the office or by the office's
2119 investigators, examiners, or inspectors. The office has standing
2120 to petition a circuit court for mandatory injunctive relief to
2121 compel access to and require the provider to produce the
2122 documents, data, records, and other information requested by the
2123 office or its investigators, examiners, or inspectors. The
2124 office may petition the circuit court in the county in which the
2125 facility is situated or the Circuit Court of Leon County to
2126 enforce this section ~~At the time of the routine examination, the~~
2127 ~~office shall determine if all disclosures required under this~~
2128 ~~chapter have been made to the president or chair of the~~
2129 ~~residents' council and the executive officer of the governing~~
2130 ~~body of the provider.~~

2131 (7) Unless a provider or facility is impaired or subject to
2132 a regulatory action level event, any parent, subsidiary, or
2133 affiliate is not subject to examination by the office as part of
2134 a routine examination. However, if a provider or facility relies
2135 on a contractual or financial relationship with a parent,
2136 subsidiary, or affiliate in order to demonstrate the provider or
2137 facility's financial condition is in compliance with this
2138 chapter, the office may examine any parent, subsidiary, or
2139 affiliate that has a contractual or financial relationship with
2140 the provider or facility to the extent necessary to ascertain
2141 the financial condition of the provider.

2142 (8) If a provider voluntarily contracts with an actuary for
2143 an actuarial study or review at regular intervals, the office
2144 may not use any recommendations made by the actuary as a measure



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2145 of performance when conducting an examination or inspection. The
2146 office may not request, as part of the examination or
2147 inspection, documents associated with an actuarial study or
2148 review marked "restricted distribution" if the study or review
2149 is not required by this chapter.

2150 Section 24. Section 651.106, Florida Statutes, is amended
2151 to read:

2152 651.106 Grounds for discretionary refusal, suspension, or
2153 revocation of certificate of authority.—The office may deny an
2154 application or~~7~~ suspend~~7~~ or revoke the provisional certificate
2155 of authority or the certificate of authority of any applicant or
2156 provider if it finds that any one or more of the following
2157 grounds applicable to the applicant or provider exist:

2158 (1) Failure by the provider to continue to meet the
2159 requirements for the authority originally granted.

2160 (2) Failure by the provider to meet one or more of the
2161 qualifications for the authority specified by this chapter.

2162 (3) Material misstatement, misrepresentation, or fraud in
2163 obtaining the authority, or in attempting to obtain the same.

2164 (4) Demonstrated lack of fitness or trustworthiness.

2165 (5) Fraudulent or dishonest practices of management in the
2166 conduct of business.

2167 (6) Misappropriation, conversion, or withholding of moneys.

2168 (7) Failure to comply with, or violation of, any proper
2169 order or rule of the office or commission or violation of any
2170 provision of this chapter.

2171 (8) The insolvent or impaired condition of the provider or
2172 the provider's being in such condition or using such methods and
2173 practices in the conduct of its business as to render its



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2174 further transactions in this state hazardous or injurious to the
2175 public.

2176 (9) Refusal by the provider to be examined or to produce
2177 its accounts, records, and files for examination, or refusal by
2178 any of its officers to give information with respect to its
2179 affairs or to perform any other legal obligation under this
2180 chapter when required by the office.

2181 (10) Failure by the provider to comply with the
2182 requirements of s. 651.026 or s. 651.033.

2183 (11) Failure by the provider to maintain escrow accounts or
2184 funds as required by this chapter.

2185 (12) Failure by the provider to meet the requirements of
2186 this chapter for disclosure of information to residents
2187 concerning the facility, its ownership, its management, its
2188 development, or its financial condition or failure to honor its
2189 continuing care or continuing care at-home contracts.

2190 (13) Any cause for which issuance of the license could have
2191 been refused had it then existed and been known to the office.

2192 (14) Having been found guilty of, or having pleaded guilty
2193 or nolo contendere to, a felony in this state or any other
2194 state, without regard to whether a judgment or conviction has
2195 been entered by the court having jurisdiction of such cases.

2196 (15) In the conduct of business under the license, engaging
2197 in unfair methods of competition or in unfair or deceptive acts
2198 or practices prohibited under part IX of chapter 626.

2199 (16) A pattern of bankrupt enterprises.

2200 (17) The ownership, control, or management of the
2201 organization includes any person:

2202 (a) Who is not reputable and of responsible character;



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2203 (b) Who is so lacking in management expertise as to make
2204 the operation of the provider hazardous to potential and
2205 existing residents;

2206 (c) Who is so lacking in management experience, ability,
2207 and standing as to jeopardize the reasonable promise of
2208 successful operation;

2209 (d) Who is affiliated, directly or indirectly, through
2210 ownership or control, with any person whose business operations
2211 are or have been marked by business practices or conduct that is
2212 detrimental to the public, stockholders, investors, or
2213 creditors; or

2214 (e) Whose business operations are or have been marked by
2215 business practices or conduct that is detrimental to the public,
2216 stockholders, investors, or creditors.

2217 (18) The provider has not filed a notice of change in
2218 management, fails to remove a disapproved manager, or persists
2219 in appointing disapproved managers.

2220
2221 Revocation of a certificate of authority under this section does
2222 not relieve a provider from the provider's obligation to
2223 residents under the terms and conditions of any continuing care
2224 or continuing care at-home contract between the provider and
2225 residents or the provisions of this chapter. The provider shall
2226 continue to file its annual statement and pay license fees to
2227 the office as required under this chapter as if the certificate
2228 of authority had continued in full force, but the provider shall
2229 not issue any new contracts. The office may seek an action in
2230 the Circuit Court of Leon County to enforce the office's order
2231 and the provisions of this section.



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2232 Section 25. Section 651.1065, Florida Statutes, is created
2233 to read:

2234 651.1065 Soliciting or accepting new continuing care
2235 contracts by impaired or insolvent facilities or providers.-

2236 (1) Regardless of whether delinquency proceedings as to a
2237 continuing care retirement community have been or are to be
2238 initiated, a proprietor, general partner, member, officer,
2239 director, trustee, or manager of a continuing care retirement
2240 community may not actively solicit, approve the solicitation or
2241 acceptance of, or accept new continuing care contracts in this
2242 state after the proprietor, general partner, member, officer,
2243 director, trustee, or manager knew, or reasonably should have
2244 known, that the continuing care retirement community was
2245 impaired or insolvent, except with the written permission of the
2246 office, unless the facility has declared bankruptcy, in which
2247 case the bankruptcy court or trustee appointed by the court has
2248 jurisdiction over such matters. The office must approve or
2249 disapprove the continued marketing of new contracts within 15
2250 days after receiving a request from a provider.

2251 (2) A proprietor, general partner, member, officer,
2252 director, trustee, or manager who violates this section commits
2253 a felony of the third degree, punishable as provided in s.
2254 775.082, s. 775.083, or s. 775.084.

2255 Section 26. Section 651.111, Florida Statutes, is amended
2256 to read:

2257 651.111 Requests for inspections.-

2258 (1) Any interested party may request an inspection of the
2259 records and related financial affairs of a provider providing
2260 care in accordance with ~~the provisions of~~ this chapter by



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2261 transmitting to the office notice of an alleged violation of
2262 applicable requirements prescribed by statute or by rule,
2263 specifying to a reasonable extent the details of the alleged
2264 violation, which notice must ~~shall~~ be signed by the complainant.

2265 (2) The substance of the complaint must ~~shall~~ be given to
2266 the provider no earlier than the time of the inspection. Unless
2267 the complainant specifically requests otherwise, neither the
2268 substance of the complaint which is provided to the provider nor
2269 any copy of the complaint, closure statement, or any record
2270 which is published, released, or otherwise made available to the
2271 provider may ~~shall~~ disclose the name of any person mentioned in
2272 the complaint except the name of any duly authorized officer,
2273 employee, or agent of the office conducting the investigation or
2274 inspection pursuant to this chapter.

2275 (3) Upon receipt of a complaint, the office shall make a
2276 preliminary review; and, unless the office determines that the
2277 complaint is without any reasonable basis or the complaint does
2278 not request an inspection, the office shall make an inspection.
2279 The office shall provide the complainant with a written
2280 acknowledgment of the complaint within 15 days after receipt by
2281 the office. Such acknowledgment must include the case number
2282 assigned by the office to the complaint and the name and contact
2283 information of any duly authorized officer, employee, or agent
2284 of the office conducting the investigation or inspection
2285 pursuant to this chapter. The complainant must ~~shall~~ be advised,
2286 within 30 days after the receipt of the complaint by the office,
2287 of the proposed course of action of the office, including an
2288 estimated timeframe for the handling of the complaint. If the
2289 office does not conclude its inspection or investigation within



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2290 the office's estimated timeframe, the office must advise the
2291 complainant in writing within 15 days after any revised course
2292 of action, including a revised estimated timeframe for the
2293 handling of the complaint. Within 15 days after the office
2294 completes its inspection or concludes its investigation, the
2295 office shall provide the complainant and the provider a written
2296 closure statement specifying the office's findings and the
2297 results of any inspection or investigation.

2298 (4) A ~~Ne~~ provider operating under a certificate of
2299 authority under this chapter may not discriminate or retaliate
2300 in any manner against a resident or an employee of a facility
2301 providing care because such resident or employee or any other
2302 person has initiated a complaint pursuant to this section.

2303 Section 27. Section 651.114, Florida Statutes, is amended
2304 to read:

2305 651.114 Delinquency proceedings; remedial rights.—

2306 (1) Upon determination by the office that a provider is not
2307 in compliance with this chapter, the office may notify the chair
2308 of the Continuing Care Advisory Council, who may assist the
2309 office in formulating a corrective action plan.

2310 (2) Within 30 days after a request by either the advisory
2311 council or the office, a provider shall make a plan for
2312 obtaining compliance or solvency available to the advisory
2313 council and the office, within 30 days after being requested to
2314 do so by the council, a plan for obtaining compliance or
2315 solvency.

2316 (3) Within 30 days after receipt of a plan for obtaining
2317 compliance or solvency, the office, or notification, the
2318 advisory council at the request of the office, shall:



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- 2319 (a) Consider and evaluate the plan submitted by the
2320 provider.
2321 (b) Discuss the problem and solutions with the provider.
2322 (c) Conduct such other business as is necessary.
2323 (d) Report its findings and recommendations to the office,
2324 which may require additional modification of the plan.

2325
2326 This subsection may not be interpreted so as to delay or prevent
2327 the office from taking any regulatory measures it deems
2328 necessary regarding the provider that submitted the plan.

2329 (4) If the financial condition of a continuing care
2330 facility or provider is impaired or is such that if not modified
2331 or corrected, its continued operation would result in
2332 insolvency, the office may direct the provider to formulate and
2333 file with the office a corrective action plan. If the provider
2334 fails to submit a plan within 30 days after the office's
2335 directive, or submits a plan that is insufficient to correct the
2336 condition, the office may specify a plan and direct the provider
2337 to implement the plan. Before specifying a plan, the office may
2338 seek a recommended plan from the advisory council.

2339 (5)-(4) After receiving approval of a plan by the office,
2340 the provider shall submit a progress report monthly to the
2341 advisory council or the office, or both, in a manner prescribed
2342 by the office. After 3 months, or at any earlier time deemed
2343 necessary, the council shall evaluate the progress by the
2344 provider and shall advise the office of its findings.

2345 (6)-(5) If ~~Should~~ the office finds ~~find~~ that sufficient
2346 grounds exist for rehabilitation, liquidation, conservation,
2347 reorganization, seizure, or summary proceedings of an insurer as



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2348 set forth in ss. 631.051, 631.061, and 631.071, the department
2349 ~~office~~ may petition for an appropriate court order or may pursue
2350 such other relief as is afforded in part I of chapter 631.
2351 Before invoking its powers under part I of chapter 631, the
2352 department ~~office~~ shall notify the chair of the advisory
2353 council.

2354 (7) Notwithstanding s. 631.011, impairment of a provider,
2355 for purposes of s. 631.051, is defined according to the term
2356 "impaired" in s. 651.011.

2357 (8)(6) In the event an order of conservation,
2358 rehabilitation, liquidation, or conservation, reorganization,
2359 seizure, or summary proceeding has been entered against a
2360 provider, the department and office are vested with all of the
2361 powers and duties they have under the provisions of part I of
2362 chapter 631 in regard to delinquency proceedings of insurance
2363 companies. A provider shall give written notice of the
2364 proceeding to its residents within 3 business days after the
2365 initiation of a delinquency proceeding under chapter 631 and
2366 shall include a notice of the delinquency proceeding in any
2367 written materials provided to prospective residents.

2368 ~~(7) If the financial condition of the continuing care~~
2369 ~~facility or provider is such that, if not modified or corrected,~~
2370 ~~its continued operation would result in insolvency, the office~~
2371 ~~may direct the provider to formulate and file with the office a~~
2372 ~~corrective action plan. If the provider fails to submit a plan~~
2373 ~~within 30 days after the office's directive or submits a plan~~
2374 ~~that is insufficient to correct the condition, the office may~~
2375 ~~specify a plan and direct the provider to implement the plan.~~

2376 (9) A provider subject to an order to show cause entered



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2377 pursuant to chapter 631 must file its written response to the
2378 order, together with any defenses it may have to the
2379 department's allegations, no later than 20 days after service of
2380 the order to show cause, but no less than 15 days before the
2381 date of the hearing set by the order to show cause.

2382 (10) A hearing held pursuant to chapter 631 to determine
2383 whether cause exists for the department to be appointed receiver
2384 must be commenced within 60 days after an order directing a
2385 provider to show cause.

2386 (11) (a) ~~(8)~~ (a) The rights of the office described in this
2387 section are subordinate to the rights of a trustee or lender
2388 pursuant to the terms of a resolution, ordinance, loan
2389 agreement, indenture of trust, mortgage, lease, security
2390 agreement, or other instrument creating or securing bonds or
2391 notes issued to finance a facility, and the office, subject to
2392 ~~the provisions of~~ paragraph (c), may ~~shall~~ not exercise its
2393 remedial rights provided under this section and ss. 651.018,
2394 651.106, 651.108, and 651.116 with respect to a facility that is
2395 not in default of any financial or contractual obligation other
2396 than ~~subject to~~ a lien, mortgage, lease, or other encumbrance or
2397 trust indenture securing bonds or notes issued in connection
2398 with the financing of the facility, if the trustee or lender, by
2399 inclusion or by amendment to the loan documents or by a separate
2400 contract with the office, agrees that the rights of residents
2401 under a continuing care or continuing care at-home contract will
2402 be honored and will not be disturbed by a foreclosure or
2403 conveyance in lieu thereof as long as the resident:

2404 1. Is current in the payment of all monetary obligations
2405 required by the contract;



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2406 2. Is in compliance and continues to comply with all
2407 provisions of the contract; and
2408 3. Has asserted no claim inconsistent with the rights of
2409 the trustee or lender.
2410 (b) This subsection does not require a trustee or lender
2411 to:
2412 1. Continue to engage in the marketing or resale of new
2413 continuing care or continuing care at-home contracts;
2414 2. Pay any rebate of entrance fees as may be required by a
2415 resident's continuing care or continuing care at-home contract
2416 as of the date of acquisition of the facility by the trustee or
2417 lender and until expiration of the period described in paragraph
2418 (d);
2419 3. Be responsible for any act or omission of any owner or
2420 operator of the facility arising before the acquisition of the
2421 facility by the trustee or lender; or
2422 4. Provide services to the residents to the extent that the
2423 trustee or lender would be required to advance or expend funds
2424 that have not been designated or set aside for such purposes.
2425 (c) Should the office determine, at any time during the
2426 suspension of its remedial rights as provided in paragraph (a),
2427 that the trustee or lender is not in compliance with paragraph
2428 (a), or that a lender or trustee has assigned or has agreed to
2429 assign all or a portion of a delinquent or defaulted loan to a
2430 third party without the office's written consent, the office
2431 shall notify the trustee or lender in writing of its
2432 determination, setting forth the reasons giving rise to the
2433 determination and specifying those remedial rights afforded to
2434 the office which the office shall then reinstate.



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2435 (d) Upon acquisition of a facility by a trustee or lender
2436 and evidence satisfactory to the office that the requirements of
2437 paragraph (a) have been met, the office shall issue a 90-day
2438 temporary certificate of authority granting the trustee or
2439 lender the authority to engage in the business of providing
2440 continuing care or continuing care at-home and to issue
2441 continuing care or continuing care at-home contracts subject to
2442 the office's right to immediately suspend or revoke the
2443 temporary certificate of authority if the office determines that
2444 any of the grounds described in s. 651.106 apply to the trustee
2445 or lender or that the terms of the contract used as the basis
2446 for the issuance of the temporary certificate of authority by
2447 the office have not been or are not being met by the trustee or
2448 lender since the date of acquisition.

2449 Section 28. Section 651.1141, Florida Statutes, is created
2450 to read:

2451 651.1141 Immediate final orders.—The office may issue an
2452 immediate final order to cease and desist if the office finds
2453 that installation of a general partner of a provider or
2454 assumption of ownership or possession or control of 10 percent
2455 or more of a provider's assets in violation of s. 651.024 or s.
2456 651.0245, the removal or commitment of 10 percent or more of the
2457 required minimum liquid reserve funds in violation of s.
2458 651.035, or the assumption of control over a facility's
2459 operations in violation of s. 651.043 has occurred.

2460 Section 29. Paragraphs (d) and (e) of subsection (1) of
2461 section 651.121, Florida Statutes, are amended to read:

2462 651.121 Continuing Care Advisory Council.—

2463 (1) The Continuing Care Advisory Council to the office is



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2464 created consisting of 10 members who are residents of this state
2465 appointed by the Governor and geographically representative of
2466 this state. Three members shall be administrators of facilities
2467 that hold valid certificates of authority under this chapter and
2468 shall have been actively engaged in the offering of continuing
2469 care contracts in this state for 5 years before appointment. The
2470 remaining members include:

2471 ~~(d) An attorney.~~

2472 (d)(e) Four ~~Three~~ residents who hold continuing care or
2473 continuing care at-home contracts with a facility certified in
2474 this state.

2475 Section 30. Subsections (1) and (4) of section 651.125,
2476 Florida Statutes, are amended to read:

2477 651.125 Criminal penalties; injunctive relief.—

2478 (1) Any person who maintains, enters into, or, as manager
2479 or officer or in any other administrative capacity, assists in
2480 entering into, maintaining, or performing any continuing care or
2481 continuing care at-home contract subject to this chapter without
2482 ~~doing so in pursuance of~~ a valid provisional certificate of
2483 authority or certificate of authority ~~or renewal thereof~~, as
2484 contemplated by or provided in this chapter, or who otherwise
2485 violates any provision of this chapter or rule adopted in
2486 pursuance of this chapter, commits a felony of the third degree,
2487 punishable as provided in s. 775.082 or s. 775.083. Each
2488 violation of this chapter constitutes a separate offense.

2489 (4) Any action brought by the office against a provider
2490 shall not abate by reason of a sale or other transfer of
2491 ownership of the facility used to provide care, which provider
2492 is a party to the action, except with the express written



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2493 consent of the ~~director of the~~ office.

2494 Section 31. Effective July 1, 2018, the sum of \$74,141 in
2495 recurring funds from the Insurance Regulatory Trust Fund is
2496 appropriated to the Office of Insurance Regulation, and one
2497 full-time equivalent position with associated salary rate of
2498 45,043 is authorized, for the purpose of administering this act.

2499 Section 32. This act shall take effect July 1, 2018.