

1 A bill to be entitled
2 An act relating to continuing care contracts; amending
3 s. 651.011, F.S.; providing and amending terms;
4 amending s. 651.012, F.S.; conforming a cross-
5 reference; deleting an obsolete date; amending s.
6 651.013, F.S.; revising applicability of specified
7 provisions of the Florida Insurance Code as to the
8 Office of Insurance Regulation's authority to regulate
9 providers of continuing care and continuing care at-
10 home; amending s. 651.019, F.S.; revising notice and
11 filing requirements for providers and facilities with
12 respect to new and additional financing and
13 refinancing; amending s. 651.021, F.S.; conforming
14 provisions to changes made by the act; creating s.
15 651.0215; providing restrictions for deposits and
16 entrance fees; providing a consolidated application
17 for certificate of authority; providing application
18 requirements; providing duties of the office;
19 providing requirements related to reservation
20 contracts; requiring escrow of reservation deposits
21 and entrance fees; providing restrictions as to
22 deposits and entrance fees; providing construction;
23 amending s. 651.022, F.S.; revising information
24 required in an application for a provisional
25 certificate of authority; specifying requirements for

26 application amendments if material changes occur;
27 revising procedures and requirements for the review of
28 such applications; amending s. 651.023, F.S.; revising
29 requirements for an application for a certificate of
30 authority; revising procedures and requirements for
31 the office's review of such applications; conforming
32 provisions to changes made by the act; conforming
33 cross-references; amending s. 651.024, F.S.; providing
34 and revising applicability of certain requirements for
35 a person seeking to acquire or assume a specified role
36 of a provider or seeking specified ownership,
37 possession, or control of a provider's assets;
38 providing applicability of certain requirements for a
39 person seeking to acquire and become the provider for
40 a facility; providing procedures for filing a
41 disclaimer of control; providing construction;
42 creating s. 651.0245, F.S.; prohibiting a person,
43 without the office's prior written approval, from
44 acquiring a facility operating under a subsisting
45 certificate of authority and engaging in the business
46 of providing continuing care; specifying requirements
47 for an application for the simultaneous acquisition of
48 a facility and issuance of a certificate of authority
49 and for the applicant; defining terms; providing
50 standing to the office to petition a specified circuit

51 court under certain circumstances; providing
52 procedures for filing a disclaimer of control;
53 providing construction; requiring and authorizing the
54 Financial Services Commission to adopt, amend, and
55 repeal rules; creating s. 651.0246, F.S.; requiring
56 written approval from the office before construction
57 or marketing for specified expansions of a
58 certificated facility may commence; providing
59 applicability; specifying application requirements;
60 requiring the office to consider certain factors in
61 reviewing such applications; specifying requirements
62 for moneys to be escrowed and for the release of the
63 moneys; defining the term "initial entrance fee";
64 providing procedures and requirements for the office's
65 review of applications; providing construction;
66 amending s. 651.026, F.S.; revising requirements for
67 annual reports filed with the office by providers and
68 facilities; amending s. 651.0261, F.S.; revising
69 requirements for quarterly statements filed with the
70 office by providers and facilities; authorizing the
71 office to require, under certain circumstances,
72 providers or facilities to file monthly statements and
73 certain other information; authorizing the commission
74 to adopt rules; amending s. 651.028, F.S.; revising
75 requirements for waiver of accreditation requirements

76 | by rule; amending s. 651.033, F.S.; revising
77 | requirements for and restrictions on agents of escrow
78 | accounts; revising permissible investments for funds
79 | in an escrow account; creating s. 651.034, F.S.;
80 | requiring the office to take specified actions if a
81 | regulatory action level event occurs; authorizing the
82 | office to retain consultants for specified purposes;
83 | requiring affected providers or parties directed by
84 | the office to bear fees, costs, and expenses for such
85 | consultants; requiring and authorizing the office to
86 | take certain actions if an impairment occurs;
87 | requiring the office to transmit any notice that may
88 | result in regulatory action; providing construction;
89 | authorizing the commission to adopt rules; authorizing
90 | the office to exempt a provider from specified
91 | requirements under certain circumstances; amending s.
92 | 651.035, F.S.; revising provider minimum liquid
93 | reserve requirements under specified circumstances;
94 | deleting an obsolete date; authorizing providers to
95 | withdraw funds from specified reserves with the
96 | office's consent with one exception to the requirement
97 | for approval; providing procedures and requirements to
98 | request approval for certain withdrawals; providing
99 | procedures and requirements for the office's review of
100 | such requests; authorizing the office, under certain

101 | circumstances, to order the immediate transfer of
102 | funds in the minimum liquid reserve to the custody of
103 | the Department of Financial Services; requiring
104 | facilities to file annual calculations of their
105 | minimum liquid reserves with the office and maintain
106 | such reserves beginning at specified periods;
107 | requiring facilities to fund shortfalls in minimum
108 | liquid reserves within specified time period; creating
109 | s. 651.043, F.S.; defining the term "management";
110 | providing requirements for a contract for management;
111 | specifying procedures and requirements for providers
112 | filing notices of change in management with the
113 | office; specifying procedures and requirements for the
114 | office's review of such changes; requiring management
115 | disapproved by the office to be removed within a
116 | specified timeframe; authorizing the office to take
117 | certain disciplinary actions; requiring providers to
118 | immediately remove management under certain
119 | circumstances; amending s. 651.051, F.S.; providing
120 | requirements for records storage; amending s. 651.057,
121 | F.S.; conforming a cross-reference; amending s.
122 | 651.071, F.S.; revising construction as to the
123 | priority of continuing care and continuing care at-
124 | home contracts in the event of receivership or
125 | liquidation proceedings against a provider; amending

126 s. 651.091, F.S.; revising requirements for continuing
127 care facilities and providers relating to the
128 availability, distribution, and posting of reports and
129 records; amending s. 651.105, F.S.; providing
130 applicability of a provision of the Insurance Code
131 relating to examinations and investigations to the
132 office's authority in examining certain applicants and
133 providers; authorizing the office to examine certain
134 parents, subsidiaries, or affiliates to ascertain the
135 financial condition of a provider; providing that that
136 the office may not use actuary recommendations to
137 ascertain such financial condition; creating s.
138 651.1055, F.S.; requiring providers to cooperate with
139 the office; amending s. 651.106, F.S.; authorizing the
140 office to deny an application on certain grounds;
141 revising and adding grounds for application denial or
142 disciplinary action by the office; creating s.
143 651.1065, F.S.; prohibiting employees, officers,
144 management or similar persons of a continuing care
145 retirement community from permitting the retirement
146 community to solicit or accept new continuing care
147 contracts if they knew or should have known that the
148 retirement community was impaired or insolvent, except
149 with the office's written permission; providing
150 procedures for the office to approve or disapprove

151 continued marketing upon request; providing a criminal
152 penalty; amending s. 651.111, F.S.; revising
153 procedures of and requirements for the review and
154 response to requests for inspections; amending s.
155 651.114, F.S.; authorizing the office to request that
156 a provider make a plan for obtaining compliance or
157 solvency in delinquency proceedings; providing
158 construction; defining the term "impaired"; requiring
159 a provider to provide, within a specified timeframe, a
160 certain notice to residents after the initiation of a
161 delinquency proceeding; providing procedures and
162 requirements for providers in delinquency proceedings;
163 revising conditions under which the office's rights
164 are subordinate to the rights of a trustee or lender
165 pursuant to certain instruments; creating s. 651.1141,
166 F.S.; authorizing the office to issue an immediate
167 final order to cease and desist from violations of
168 specified provisions; amending s. 651.121, F.S.;
169 revising the composition of the Continuing Care
170 Advisory Council; amending s. 651.125, F.S.; providing
171 a criminal penalty for certain actions performed
172 without a valid provisional certificate of authority;
173 making a technical change; providing an effective
174 date.
175

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

177

178 Section 1. Section 651.011, Florida Statutes, is amended
179 to read:

180 651.011 Definitions.—As used in this chapter, the term:

181 (1) "Actuarial opinion" means an opinion issued by an
182 actuary in accordance with Actuarial Standards of Practice No. 3
183 for Continuing Care Retirement Communities, revised edition
184 effective May 1, 2011, or any future amendments or replacements
185 to this standard that may be adopted by the Actuarial Standards
186 Board.

187 (2) "Actuarial study" means an analysis prepared for an
188 individual facility, or consolidated for multiple facilities,
189 for either a certified provider as of a current valuation date
190 or most recent fiscal year or for an applicant as of a projected
191 future valuation date with an actuary's opinion as to whether
192 such provider or applicant is in satisfactory actuarial balance
193 in accordance with Actuarial Standards of Practice No. 3 for
194 Continuing Care Retirement Communities, revised edition
195 effective May 1, 2011, or any future amendments or replacements
196 to this standard that may be adopted by the Actuarial Standards
197 Board.

198 (3) "Actuary" means an individual who is qualified to sign
199 an actuarial opinion in accordance with the American Academy of
200 Actuaries' qualification standards and who is a member in good

201 standing of the American Academy of Actuaries.

202 (4)~~(1)~~ "Advertising" means the dissemination of written,
203 visual, or electronic information by a provider, or any person
204 affiliated with or controlled by a provider, to potential
205 residents or their representatives for the purpose of inducing
206 such persons to subscribe to or enter into a contract for
207 continuing care or continuing care at-home.

208 (5)~~(2)~~ "Continuing care" or "care" means, pursuant to a
209 contract, furnishing shelter and nursing care or personal
210 services to a resident who resides in a facility, whether such
211 nursing care or personal services are provided in the facility
212 or in another setting designated in the contract for continuing
213 care, by an individual not related by consanguinity or affinity
214 to the resident, upon payment of an entrance fee.

215 (6)~~(3)~~ "Continuing Care Advisory Council" or "advisory
216 council" means the council established in s. 651.121.

217 (7)~~(4)~~ "Continuing care at-home" means, pursuant to a
218 contract other than a contract described in subsection (6) ~~(2)~~,
219 furnishing to a resident who resides outside the facility the
220 right to future access to shelter and nursing care or personal
221 services, whether such services are provided in the facility or
222 in another setting designated in the contract, by an individual
223 not related by consanguinity or affinity to the resident, upon
224 payment of an entrance fee.

225 (8) "Corrective order" means an order issued by the office

226 which specifies corrective actions the office has determined are
227 required.

228 (9) "Days cash on hand" means the quotient reached by
229 dividing the value of (a) by the value of (b).

230 (a) The sum of unrestricted cash, unrestricted short-term
231 and long-term investments, and the minimum liquid reserve,
232 unrestricted cash, unrestricted short-term and long-term
233 investments, and minimum liquid reserve during the past 12
234 months ending with the reporting date.

235 (b) Operating expenses less depreciation, amortization,
236 and other noncash expenses and nonoperating losses divided by
237 365. Operating expenses, depreciation, and amortization, and
238 other noncash expenses and nonoperating losses are each the sum
239 of their respective values over the prior 12 months, ending with
240 the reporting date.

241
242 With prior written approval of the office, a demand note or
243 other parental guarantee may be considered a short-term or long-
244 term investment for the purposes of paragraph (a). However, the
245 total of all demand notes issued by the parent may not, at any
246 time, be more than the sum of unrestricted cash and unrestricted
247 short-term and long-term investments held by the parent.

248 (10) "Debt service coverage ratio" means the quotient
249 reached by dividing the value of (a) by the value of (b).

250 (a) The sum of total expenses less interest expense on the

251 facility, depreciation, amortization and other noncash expenses
252 and nonoperating losses subtracted from the sum of total
253 revenues, and gross entrance fees received less earned entrance
254 fees and refunds paid. Expenses, interest expense on the
255 facility, depreciation, amortization, other noncash expenses and
256 nonoperating losses, revenues, noncash revenues, nonoperating
257 gains, gross entrance fees, earned entrance fees, and refunds
258 are each the sum of their respective values over the prior 12
259 months, ending with the reporting date.

260 (b) Total annual principal and interest expense due on the
261 facility or obligated group over the prior 12 months, ending
262 with the reporting date. Principal excludes any balloon
263 principal payment amounts. Interest due is the sum of the
264 interest over the prior 12 months, ending with the reporting
265 date and reflected in the provider's audit.

266 (11)(5) "Entrance fee" means an initial or deferred
267 payment of a sum of money or property made as full or partial
268 payment for continuing care or continuing care at-home. An
269 accommodation fee, admission fee, member fee, or other fee of
270 similar form and application are considered to be an entrance
271 fee.

272 (12)(6) "Facility" means a place where continuing care is
273 furnished and may include one or more physical plants on a
274 primary or contiguous site or an immediately accessible site. As
275 used in this subsection, the term "immediately accessible site"

276 means a parcel of real property separated by a reasonable
 277 distance from the facility as measured along public
 278 thoroughfares, and the term "primary or contiguous site" means
 279 the real property contemplated in the feasibility study required
 280 by this chapter.

281 (13)~~(7)~~ "Generally accepted accounting principles" means
 282 those accounting principles and practices adopted by the
 283 Financial Accounting Standards Board and the American Institute
 284 of Certified Public Accountants, including Statement of Position
 285 90-8 with respect to any full year to which the statement
 286 applies.

287 (14) "Impaired" means that at least one of the following
 288 has occurred:

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

294 (b) Beginning July 1, 2019:

295 1. A provider's debt service coverage ratio is less than
 296 1.1:1; or

297 2. A provider's days cash on hand is less than 70.

298 (15)~~(8)~~ "Insolvency" means the condition in which a ~~the~~
 299 provider is unable to pay its obligations as they come due in
 300 the normal course of business.

301 (16)~~(9)~~ "Licensed" means that a ~~the~~ provider has obtained
 302 a certificate of authority from the office ~~department~~.

303 (17) "Manager" or "management company" means a person who
 304 administers the day-to-day business operations of a facility for
 305 a provider, subject to the policies, directives, and oversight
 306 of the provider.

307 (18)~~(10)~~ "Nursing care" means those services or acts
 308 rendered to a resident by an individual licensed or certified
 309 pursuant to chapter 464.

310 (19) "Obligated group" means one or more entities who
 311 jointly agree to be bound by a financing structure containing
 312 security provisions and covenants applicable to the group. Debt
 313 issued under the financing structure is a joint and several
 314 obligation of each member of such group.

315 (20) "Occupancy" means the total number of occupied
 316 independent living, assisted living, and skilled nursing units
 317 in a facility divided by the total number of units in that
 318 facility, excluding units that are unavailable to market or
 319 reserve, as of the most recent annual report.

320 (21)~~(11)~~ "Personal services" has the same meaning as in s.
 321 429.02.

322 (22)~~(12)~~ "Provider" means the owner or operator, whether a
 323 natural person, partnership or other unincorporated association,
 324 however organized, trust, or corporation, of an institution,
 325 building, residence, or other place, whether operated for profit

326 or not, which owner or operator provides continuing care or
327 continuing care at-home for a fixed or variable fee, or for any
328 other remuneration of any type, whether fixed or variable, for
329 the period of care, payable in a lump sum or lump sum and
330 monthly maintenance charges or in installments. The term does
331 not apply to an entity that has existed and continuously
332 operated a facility located on at least 63 acres in this state
333 providing residential lodging to members and their spouses for
334 at least 66 years on or before July 1, 1989, and has the
335 residential capacity of 500 persons, is directly or indirectly
336 owned or operated by a nationally recognized fraternal
337 organization, is not open to the public, and accepts only its
338 members and their spouses as residents.

339 ~~(23)-(13)~~ "Records" means all documents, correspondence,
340 and the permanent financial, directory, and personnel
341 information and data maintained by a provider pursuant to this
342 chapter, regardless of the physical form, characteristics, or
343 means of transmission.

344 (24) "Regulatory action level event" means that any two of
345 the following have occurred:

346 (a) The provider's debt service coverage ratio is less
347 than the minimum ratio specified in the provider's bond
348 covenants or lending agreement for long-term financing, or if
349 the provider does not have a debt service coverage ratio
350 required by its lending institution, a debt service coverage

351 ratio of less than 1.2:1 as of the most recent annual report
352 filed with the office. If the provider is a member of an
353 obligated group that has cross collateralized debt, provided
354 that the obligated group has a B or higher bond rating, the debt
355 service coverage ratio of the obligated group shall be used as
356 the provider's debt service coverage ratio.

357 (b) The provider's days cash-on-hand ratio is less than
358 the minimum ratio specified in the provider's bond covenants or
359 lending agreement for long-term financing. If the provider does
360 not have a days cash-on-hand ratio required by its lending
361 institution, the days cash on hand must not be less than 125 as
362 of the most recent annual report filed with the office. If the
363 provider is a member of an obligated group that has cross
364 collateralized debt, provided that the obligated group has a B
365 or higher bond rating, the days cash-on-hand ratio of the
366 obligated group will be used as the provider's days cash-on-hand
367 ratio.

368 (c) The occupancy at the provider's facility is less than
369 80 percent.

370 (25)-(14) "Resident" means a purchaser of, a nominee of, or
371 a subscriber to a continuing care or continuing care at-home
372 contract. Such contract does not give the resident a part
373 ownership of the facility in which the resident is to reside,
374 unless expressly provided in the contract.

375 (26)-(15) "Shelter" means an independent living unit, room,

376 apartment, cottage, villa, personal care unit, nursing bed, or
377 other living area within a facility set aside for the exclusive
378 use of one or more identified residents.

379 Section 2. Section 651.012, Florida Statutes, is amended
380 to read:

381 651.012 Exempted facility; written disclosure of
382 exemption.—Any facility exempted under ss. 632.637(1)(e) and
383 651.011(22) ~~651.011(12)~~ must provide written disclosure of such
384 exemption to each person admitted to the facility ~~after October~~
385 ~~1, 1996~~. This disclosure must be written using language likely
386 to be understood by the person and must briefly explain the
387 exemption.

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

390 651.013 Chapter exclusive; applicability of other laws.—

391 (2) In addition to other applicable provisions cited in
392 this chapter, the office has the authority granted under ss.
393 624.302 and 624.303, 624.307-624.312, 624.318 ~~624.308-624.312,~~
394 624.319(1)-(3), 624.320-624.321, 624.324, ~~and~~ 624.34, and
395 624.422 of the Florida Insurance Code to regulate providers of
396 continuing care and continuing care at-home.

397 Section 4. Section 651.019, Florida Statutes, is amended
398 to read:

399 651.019 New financing, additional financing, or
400 refinancing.—

401 (1) (a) A provider must provide notice to the residents'
402 council of any new financing or refinancing at least 30 days
403 before the closing date of the financing or refinancing
404 transaction. The notice must include a general outline of the
405 amount and terms of the financing or refinancing and the
406 intended use of proceeds.

407 (b) If the facility does not have a residents' council,
408 the facility must make available, in the same manner as other
409 community notices, the information required by paragraph (a)
410 ~~After issuance of a certificate of authority, the provider shall~~
411 ~~submit to the office a general outline, including intended use~~
412 ~~of proceeds, with respect to any new financing, additional~~
413 ~~financing, or refinancing at least 30 days before the closing~~
414 ~~date of such financing transaction.~~

415 (2) Within 30 days after the closing date of such
416 financing or refinancing transaction, The provider shall furnish
417 ~~any information the office may reasonably request in connection~~
418 ~~with any new financing, additional financing, or refinancing,~~
419 ~~including, but not limited to, the financing agreements and any~~
420 ~~related documents, escrow or trust agreements, and statistical~~
421 ~~or financial data. the provider must shall also submit to the~~
422 office copies of executed financing documents, escrow or trust
423 agreements prepared in support of such financing or refinancing
424 transaction, and a copy of all documents required to be
425 submitted to the residents' council under paragraph (1) (a)

426 ~~within 30 days after the closing date.~~

427 Section 5. Section 651.021, Florida Statutes, is amended
428 to read:

429 651.021 Certificate of authority required.—

430 ~~(1)~~ A ~~No~~ person may not engage in the business of
431 providing continuing care, issuing contracts for continuing care
432 or continuing care at-home, or constructing a facility for the
433 purpose of providing continuing care in this state without a
434 certificate of authority obtained from the office as provided in
435 this chapter. This section ~~subsection~~ does not prohibit the
436 preparation of a construction site or construction of a model
437 residence unit for marketing purposes, or both. The office may
438 allow the purchase of an existing building for the purpose of
439 providing continuing care if the office determines that the
440 purchase is not being made to circumvent the prohibitions in
441 this section.

442 ~~(2) Written approval must be obtained from the office~~
443 ~~before commencing construction or marketing for an expansion of~~
444 ~~a certificated facility equivalent to the addition of at least~~
445 ~~20 percent of existing units or 20 percent or more in the number~~
446 ~~of continuing care at-home contracts. This provision does not~~
447 ~~apply to construction for which a certificate of need from the~~
448 ~~Agency for Health Care Administration is required.~~

449 ~~(a) For providers that offer both continuing care and~~
450 ~~continuing care at-home, the 20 percent is based on the total of~~

451 ~~both existing units and existing contracts for continuing care~~
452 ~~at home. For purposes of this subsection, an expansion includes~~
453 ~~increases in the number of constructed units or continuing care~~
454 ~~at-home contracts or a combination of both.~~

455 ~~(b) The application for such approval shall be on forms~~
456 ~~adopted by the commission and provided by the office. The~~
457 ~~application must include the feasibility study required by s.~~
458 ~~651.022(3) or s. 651.023(1)(b) and such other information as~~
459 ~~required by s. 651.023. If the expansion is only for continuing~~
460 ~~care at-home contracts, an actuarial study prepared by an~~
461 ~~independent actuary in accordance with standards adopted by the~~
462 ~~American Academy of Actuaries which presents the financial~~
463 ~~impact of the expansion may be substituted for the feasibility~~
464 ~~study.~~

465 ~~(c) In determining whether an expansion should be~~
466 ~~approved, the office shall use the criteria provided in ss.~~
467 ~~651.022(6) and 651.023(4).~~

468 Section 6. Section 651.0215, Florida Statutes, is created
469 to read:

470 651.0215 Consolidated application for certificate of
471 authority; restrictions as to deposits and entrance fees.-

472 (1) (a) All reservation deposits and entrance fees must be
473 placed in escrow in accordance with s. 651.033. The applicant
474 may not use or pledge any part of an initial entrance fee for
475 the construction or purchase of the facility or as security for

476 long-term financing.

477 (b) The reservation deposit due upon a resident's
478 selection of a unit may not exceed \$5,000 and is refundable at
479 any time before taking occupancy of the selected unit.

480 (c) The resident contract must state that collection of
481 the balance of the entrance fee shall occur after notification
482 of the availability of the resident's selected unit for
483 occupancy and on or before the occupancy date.

484 (2) The consolidated application must be on a form
485 prescribed by the commission and shall contain, at a minimum,
486 the following:

487 (a) The information required by s. 651.022(2).

488 (b) A feasibility study prepared by an independent
489 consultant that contains all of the information required by s.
490 651.022(3) and financial forecasts or projections prepared in
491 accordance with standards adopted by the American Institute of
492 Certified Public Accountants. A study that is prepared by an
493 independent certified public accountant must contain an
494 examination opinion for the first 5 years of operation. A study
495 that is prepared by an independent consulting actuary must
496 contain mortality and morbidity data and an actuary's signed
497 opinion that the project as proposed is feasible and that the
498 study has been prepared in accordance with standards adopted by
499 the American Academy of Actuaries.

500 (c) Proof that commitments have been secured for both

501 construction financing and long-term financing or a documented
502 plan acceptable to the office has been adopted by the applicant
503 for long-term financing.

504 (d) Proof that all conditions of the lender have been
505 satisfied to activate the commitment to disburse funds other
506 than the obtaining of the certificate of authority, the
507 completion of construction, or the closing of the purchase of
508 realty or buildings for the facility.

509 (e) Proof that the aggregate amount of entrance fees
510 received by or pledged to the applicant, plus anticipated
511 proceeds from any long-term financing commitment, plus funds
512 from all other sources in the actual possession of the
513 applicant, are equal to at least 100 percent of the aggregate
514 cost of constructing or purchasing, equipping, and furnishing
515 the facility plus 100 percent of the anticipated startup losses
516 of the facility.

517 (f) Complete audited financial statements of the
518 applicant, prepared by an independent certified public
519 accountant in accordance with generally accepted accounting
520 principles, as of the date the applicant commenced business
521 operations or for the fiscal year that ended immediately
522 preceding the date of application, whichever is later, and
523 complete unaudited quarterly financial statements attested to by
524 the applicant after the last audit.

525 (g) Proof that the applicant will be able to comply with

526 s. 651.035.

527 (h) An actuarial study, except that, for facilities
528 offering, as the only health care, priority admission to a
529 nursing facility licensed under part II of chapter 400 or an
530 assisted living facility licensed under part I of chapter 429,
531 such applicant must submit the projection of future population
532 flows and health care bed need projections prepared by an
533 actuary for the first 5 years of operation, using appropriate
534 mortality, morbidity, withdrawal, and other demographic
535 assumptions.

536 (i) Such other reasonable data, financial statements, and
537 pertinent information as the commission or office may require
538 with respect to the applicant or the facility, to determine the
539 financial status of the facility and the management capabilities
540 of its managers and owners.

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

545 (4) Within 45 days after receipt of the information
546 required under subsection (2), the office must examine such
547 information and notify the provider in writing, specifically
548 requesting any additional information the office is permitted by
549 law to require. An application is deemed complete upon receipt
550 of all requested information and correction of any error or

551 omission for which the applicant was timely notified or when the
552 time for such notification has expired. Within 15 days after
553 receipt of all of the requested additional information, the
554 office must notify the provider in writing that all of the
555 requested information has been received and the application is
556 deemed complete on the date of the notice. Failure to notify the
557 applicant in writing within the 15-day period constitutes
558 acknowledgment by the office that it has received all requested
559 additional information, and the application must be deemed
560 complete for purposes of review on the date of filing all of the
561 required additional information.

562 (5) Within 45 days after an application is deemed complete
563 under subsection (4), and upon completion of the remaining
564 requirements of this section, the office must complete its
565 review and issue or deny a certificate of authority to the
566 applicant. If a certificate of authority is denied, the office
567 must notify the holder of the applicant in writing, citing the
568 specific failures to satisfy the provisions of this chapter. If
569 denied, the applicant is entitled to an administrative hearing
570 pursuant to chapter 120.

571 (6) The office must issue a certificate of authority upon
572 determining that the applicant meets all requirements of law and
573 has submitted all of the information required by this section,
574 that all escrow requirements have been satisfied, and that the
575 fees prescribed in s. 651.015(2) have been paid.

576 (7) The issuance of a certificate of authority entitles
577 the applicant to begin construction and collect reservation
578 deposits and entrance fees from prospective residents. The
579 reservation contract must state the cancellation policy and the
580 terms of the continuing care contract. All or any part of an
581 entrance fee or reservation deposit collected must be placed in
582 an escrow account or on deposit with the department, pursuant to
583 s. 651.033.

584 (8) The provider is entitled to secure release of the
585 moneys held in escrow within 7 days after receipt by the office
586 of an affidavit from the provider, along with appropriate
587 copies, and notification to the escrow agent by certified mail,
588 that the following conditions have been satisfied:

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

590 (b) Payment in full has been received for at least 70
591 percent of the total units of a phase or of the total of the
592 combined phases constructed. If a provider offering continuing
593 care at-home is applying for a release of escrowed entrance
594 fees, the same minimum requirement must be met for the
595 continuing care and continuing care at-home contracts,
596 independently of each other.

597 (c) Proof that the provider has sufficient funds to meet
598 the requirements of s. 651.035, which may include funds
599 deposited in the initial entrance fee account.

600 (d) Proof as to the intended application of the proceeds

601 upon release and proof that the entrance fees when released will
602 be applied as represented to the office.

603
604 Notwithstanding chapter 120, no person, other than the provider,
605 the escrow agent, and the office, may have a substantial
606 interest in any office decision regarding release of escrow
607 funds in any proceedings under chapter 120 or this chapter
608 regarding release of escrow funds.

609 (9) The office may not approve any application that
610 includes in the plan of financing any encumbrance of the
611 operating reserves required by this chapter.

612 (10) The office may not issue a certificate of authority
613 to a facility that does not have a component that is to be
614 licensed pursuant to part II of chapter 400 or to part I of
615 chapter 429 or that does not offer personal services or nursing
616 services through a written contractual agreement. A written
617 contractual agreement must be disclosed in the contract for
618 continuing care or continuing care at-home and is subject to the
619 provisions of s. 651.1151, relating to administrative, vendor,
620 and management contracts.

621 Section 7. Subsections (2), (3), (6) and (8) of section
622 651.022, Florida Statutes, are amended to read:

623 651.022 Provisional certificate of authority;
624 application.—

625 (2) The application for a provisional certificate of

626 authority must ~~shall~~ be on a form prescribed by the commission
627 and must ~~shall~~ contain the following information:

628 (a) If the applicant or provider is a corporation, a copy
629 of the articles of incorporation and bylaws; if the applicant or
630 provider is a partnership or other unincorporated association, a
631 copy of the partnership agreement, articles of association, or
632 other membership agreement; and, if the applicant or provider is
633 a trust, a copy of the trust agreement or instrument.

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

635 1. The proprietor, if the applicant or provider is an
636 individual.

637 2. Every partner or member, if the applicant or provider
638 is a partnership or other unincorporated association, however
639 organized, having fewer than 50 partners or members, together
640 with the business name and address of the partnership or other
641 organization.

642 3. The principal partners or members, if the applicant or
643 provider is a partnership or other unincorporated association,
644 however organized, having 50 or more partners or members,
645 together with the business name and business address of the
646 partnership or other organization. If such unincorporated
647 organization has officers and a board of directors, the full
648 name and business address of each officer and director may be
649 set forth in lieu of the full name and business address of its
650 principal members.

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

653 5. Every trustee and officer, if the applicant or provider
654 is a trust.

655 6. The manager, whether an individual, corporation,
656 partnership, or association.

657 7. Any stockholder holding at least a 10 percent interest
658 in the operations of the facility in which the care is to be
659 offered.

660 8. Any person whose name is required to be provided in the
661 application under this paragraph and who owns any interest in or
662 receives any remuneration from, directly or indirectly, any
663 professional service firm, association, trust, partnership, or
664 corporation providing goods, leases, or services to the facility
665 for which the application is made, with a real or anticipated
666 value of \$10,000 or more, and the name and address of the
667 professional service firm, association, trust, partnership, or
668 corporation in which such interest is held. The applicant must
669 ~~shall~~ describe such goods, leases, or services and the probable
670 cost to the facility or provider and must ~~shall~~ describe why
671 such goods, leases, or services should not be purchased from an
672 independent entity.

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

676 10. Any affiliated parent or subsidiary corporation or
677 partnership.

678 (c)1. Evidence that the applicant is reputable and of
679 responsible character. If the applicant is a firm, association,
680 organization, partnership, business trust, corporation, or
681 company, the form must also ~~shall~~ require evidence that the
682 members or shareholders are reputable and of responsible
683 character, and the person in charge of providing care under a
684 certificate of authority must ~~shall~~ likewise be required to
685 produce evidence of being reputable and of responsible
686 character.

687 2. Evidence satisfactory to the office of the ability of
688 the applicant to comply with ~~the provisions of~~ this chapter and
689 with rules adopted by the commission pursuant to this chapter.

690 3. A statement of whether a person identified in the
691 application for a provisional certificate of authority or the
692 administrator or manager of the facility, if such person has
693 been designated, or any such person living in the same location:

694 a. Has been convicted of a felony or has pleaded nolo
695 contendere to a felony charge, or has been held liable or has
696 been enjoined in a civil action by final judgment, if the felony
697 or civil action involved fraud, embezzlement, fraudulent
698 conversion, or misappropriation of property.

699 b. Is subject to a currently effective injunctive or
700 restrictive order or federal or state administrative order

701 relating to business activity or health care as a result of an
702 action brought by a public agency or department, including,
703 without limitation, an action affecting a license under chapter
704 400 or chapter 429.

705

706 The statement must ~~shall~~ set forth the court or agency, the date
707 of conviction or judgment, and the penalty imposed or damages
708 assessed, or the date, nature, and issuer of the order. Before
709 determining whether a provisional certificate of authority is to
710 be issued, the office may make an inquiry to determine the
711 accuracy of the information submitted pursuant to subparagraphs
712 1. and 2.

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

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

721 (f) Such other reasonable data, financial statements, and
722 pertinent information as the commission or office may reasonably
723 require with respect to the provider or the facility, including
724 the most recent audited financial statements of comparable
725 facilities currently or previously owned, managed, or developed

726 by the applicant or its principal, to assist in determining the
727 financial viability of the project and the management
728 capabilities of its managers and owners.

729 (g) The forms of the residency contracts, reservation
730 contracts, escrow agreements, and wait list contracts, if
731 applicable, which are proposed to be used by the provider in the
732 furnishing of care. The office must ~~shall~~ approve contracts and
733 escrow agreements that comply with ss. 651.023(1)(c), 651.033,
734 651.055, and 651.057. Thereafter, no other form of contract or
735 agreement may be used by the provider until it has been
736 submitted to the office and approved.

737

738 If any material change occurs in the facts set forth in an
739 application filed with the office pursuant to this subsection,
740 an amendment setting forth such changes must be immediately
741 filed with the office, and a copy of the amendment must be sent
742 by registered mail to the principal office of the facility and
743 to the principal office of the controlling company.

744 (3) In addition to the information required in subsection
745 (2), an applicant for a provisional certificate of authority
746 shall submit a market feasibility study for the first 5 years of
747 operation. The market feasibility study shall include at least
748 the following information:

749 (a) A description of the proposed facility, including the
750 location, size, anticipated completion date, and the proposed

751 construction program.

752 (b) An identification and evaluation of the primary and,
753 if appropriate, secondary market areas of the facility and the
754 projected unit sales per month.

755 (c) Projected revenues, including anticipated entrance
756 fees; monthly service fees; nursing care rates, if applicable;
757 and all other sources of revenue, including the total amount of
758 debt financing required.

759 (d) Projected expenses, including staffing requirements
760 and salaries; cost of property, plant, and equipment, including
761 depreciation expense; interest expense; marketing expense; and
762 other operating expenses.

763 (e) Current assets and liabilities of the applicant.

764 (f) Expectations of the financial condition of the
765 project, including the projected cash flow and a projected
766 balance sheet and an estimate of the funds anticipated to be
767 necessary to cover startup losses.

768 (g) The inflation factor, if any, assumed in the study for
769 the proposed facility and how and where it is applied.

770 (h) Project costs, total amount of debt financing
771 required, marketing projections, resident fees and charges, the
772 competition, resident contract provisions, and other factors
773 that ~~which~~ affect the feasibility of the facility.

774 (i) The name of the person who prepared the feasibility
775 study and the experience of such person in preparing similar

776 studies or otherwise consulting in the field of continuing care.

777 (6) Within 45 days after the date an application is deemed
 778 complete as set forth in paragraph (5)(b), the office must ~~shall~~
 779 complete its review and issue a provisional certificate of
 780 authority to the applicant based upon its review and a
 781 determination that the application meets all requirements of
 782 law, that the feasibility study was based on sufficient data and
 783 reasonable assumptions, and that the applicant will be able to
 784 provide continuing care or continuing care at-home as proposed
 785 and meet all financial and contractual obligations related to
 786 its operations, including the financial requirements of this
 787 chapter. The time period for review by the office may not be
 788 tolled if the office requests additional information and the
 789 applicant provides the requested information within 5 business
 790 days after the request. If the application is denied, the office
 791 must ~~shall~~ notify the applicant in writing, citing the specific
 792 failures to meet the provisions of this chapter. Such denial
 793 entitles the applicant to a hearing pursuant to chapter 120.

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

797 Section 8. Paragraphs (b) and (c) of subsection (1),
 798 subsections (2) and (3), paragraphs (a) and (b) of subsection
 799 (4), paragraph (b) of subsection (5), paragraph (c) of
 800 subsection(6), and subsections (8) and (9) of section 651.023,

801 Florida Statutes, are amended, paragraph (i) is added to
802 subsection (1), and paragraph (a) of subsection (1) of that
803 section is republished, to read:

804 651.023 Certificate of authority; application.—

805 (1) After issuance of a provisional certificate of
806 authority, the office shall issue to the holder of such
807 provisional certificate a certificate of authority if the holder
808 of the provisional certificate provides the office with the
809 following information:

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

813 (b) A feasibility study prepared by an independent
814 consultant which contains all of the information required by s.
815 651.022(3) and financial forecasts or projections prepared in
816 accordance with standards adopted by the American Institute of
817 Certified Public Accountants or in accordance with standards for
818 feasibility studies or continuing care retirement communities
819 adopted by the Actuarial Standards Board.

820 ~~1. The study must also contain an independent evaluation~~
821 ~~and examination opinion, or a comparable opinion acceptable to~~
822 ~~the office, by the consultant who prepared the study, of the~~
823 ~~underlying assumptions used as a basis for the forecasts or~~
824 ~~projections in the study and that the assumptions are reasonable~~
825 ~~and proper and the project as proposed is feasible.~~

826 ~~1.2.~~ The study must take into account project costs,
827 actual marketing results to date and marketing projections,
828 resident fees and charges, competition, resident contract
829 provisions, and any other factors which affect the feasibility
830 of operating the facility.

831 ~~2.3.~~ If the study is prepared by an independent certified
832 public accountant, it must contain an examination opinion for
833 the first 5 ~~3~~ years of operations ~~and financial projections~~
834 ~~having a compilation opinion for the next 3 years.~~ If the study
835 is prepared by an independent consulting actuary, it must
836 contain mortality and morbidity data and an actuary's signed
837 opinion that the project as proposed is in actuarial balance
838 ~~feasible~~ and that the study has been prepared in accordance with
839 standards adopted by the American Academy of Actuaries.

840 (c) Subject to subsection (4), a provider may submit an
841 application for a certificate of authority and any required
842 exhibits upon submission of proof that the project has a minimum
843 of 30 percent of the units reserved for which the provider is
844 charging an entrance fee. ~~This does not apply to an application~~
845 ~~for a certificate of authority for the acquisition of a facility~~
846 ~~for which a certificate of authority was issued before October~~
847 ~~1, 1983, to a provider who subsequently becomes a debtor in a~~
848 ~~ease under the United States Bankruptcy Code, 11 U.S.C. ss. 101~~
849 ~~et seq., or to a provider for which the department has been~~
850 ~~appointed receiver pursuant to part II of chapter 631.~~

851 (i) An actuarial study, unless the applicant intends to
852 offer, as its only health care benefit, priority admission to a
853 nursing facility licensed under part II of chapter 400 or part I
854 of chapter 429, in which case such applicant must submit future
855 projected population flows and nursing facility bed need
856 projections prepared by an actuary for the first 5 years of
857 operation using appropriate mortality, morbidity, withdrawal,
858 and other demographic assumptions.

859 (2) Within 30 days after receipt of the information
860 required under subsection (1), the office must ~~shall~~ examine
861 such information and notify the provider in writing,
862 specifically requesting any additional information the office is
863 permitted by law to require. An application is deemed complete
864 upon receipt of all requested information and correction of any
865 error or omission of which the applicant was timely notified or
866 when the time for such notification has expired. The office must
867 notify the applicant in writing of the date on which the
868 application is deemed complete ~~Within 15 days after receipt of~~
869 ~~all of the requested additional information, the office shall~~
870 ~~notify the provider in writing that all of the requested~~
871 ~~information has been received and the application is deemed to~~
872 ~~be complete as of the date of the notice. Failure to notify the~~
873 ~~applicant in writing within the 15-day period constitutes~~
874 ~~acknowledgment by the office that it has received all requested~~
875 ~~additional information, and the application shall be deemed~~

876 ~~complete for purposes of review on the date of filing all of the~~
877 ~~required additional information.~~

878 (3) Within 45 days after an application is deemed complete
879 as set forth in subsection (2), and upon completion of the
880 remaining requirements of this section, the office must ~~shall~~
881 complete its review and issue or deny a certificate of authority
882 to the holder of a provisional certificate of authority. If a
883 certificate of authority is denied, the office must notify the
884 holder of the provisional certificate in writing, citing the
885 specific failures to satisfy the provisions of this chapter. The
886 time period for review by the office may not be tolled if the
887 office requests additional information and the applicant
888 provides the requested information within 5 business days after
889 such request. If denied, the holder of the provisional
890 certificate is entitled to an administrative hearing pursuant to
891 chapter 120.

892 (4) The office must ~~shall~~ issue a certificate of authority
893 upon determining that the applicant meets all requirements of
894 law and has submitted all of the information required by this
895 section, that all escrow requirements have been satisfied, and
896 that the fees prescribed in s. 651.015(2) have been paid.

897 (a) A ~~Notwithstanding satisfaction of the 30-percent~~
898 ~~minimum reservation requirement of paragraph (1)(c), no~~
899 certificate of authority may not ~~shall~~ be issued until the
900 project has a minimum of 50 percent of the units reserved for

901 | which the provider is charging an entrance fee, and proof is
902 | provided to the office. If a provider offering continuing care
903 | at-home is applying for a certificate of authority ~~or approval~~
904 | ~~of an expansion pursuant to s. 651.021(2)~~, the same minimum
905 | reservation requirements must be met for the continuing care and
906 | continuing care at-home contracts, independently of each other.

907 | (b) In order for a unit to be considered reserved under
908 | this section, the provider must collect a minimum deposit of
909 | \$40,000 or 10 percent of the then-current entrance fee for that
910 | unit, whichever is less, and may assess a forfeiture penalty of
911 | 2 percent of the entrance fee due to termination of the
912 | reservation contract after 30 days for any reason other than the
913 | death or serious illness of the resident, the failure of the
914 | provider to meet its obligations under the reservation contract,
915 | or other circumstances beyond the control of the resident that
916 | equitably entitle the resident to a refund of the resident's
917 | deposit. The reservation contract must state the cancellation
918 | policy and the terms of the continuing care or continuing care
919 | at-home contract to be entered into.

920 | (5) Up to 25 percent of the moneys paid for all or any
921 | part of an initial entrance fee may be included or pledged for
922 | the construction or purchase of the facility or as security for
923 | long-term financing. The term "initial entrance fee" means the
924 | total entrance fee charged by the facility to the first occupant
925 | of a unit.

926 (b) For an expansion as provided in s. 651.0246 ~~s.~~
927 ~~651.021(2)~~, a minimum of 75 percent of the moneys paid for all
928 or any part of an initial entrance fee collected for continuing
929 care and 50 percent of the moneys paid for all or any part of an
930 initial fee collected for continuing care at-home must ~~shall~~ be
931 placed in an escrow account or on deposit with the department as
932 prescribed in s. 651.033.

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

938 (c) If any material change occurs in the facts set forth
939 in an application filed with the office pursuant to this
940 subsection, an amendment setting forth such changes must be
941 immediately filed with the office, and a copy of the amendment
942 must be sent by registered mail to the principal office of the
943 facility and to the principal office of the controlling company.
944 ~~The consultant who prepared the feasibility study required by~~
945 ~~this section or a substitute approved by the office certifies~~
946 ~~within 12 months before the date of filing for office approval~~
947 ~~that there has been no material adverse change in status with~~
948 ~~regard to the feasibility study. If a material adverse change~~
949 ~~exists at the time of submission, sufficient information~~
950 ~~acceptable to the office and the feasibility consultant must be~~

951 ~~submitted which remedies the adverse condition.~~

952

953 Notwithstanding chapter 120, no person, other than the provider,
954 the escrow agent, and the office, may have a substantial
955 interest in any office decision regarding release of escrow
956 funds in any proceedings under chapter 120 or this chapter
957 regarding release of escrow funds.

958 (8) ~~The timeframes provided under s. 651.022(5) and (6)~~
959 ~~apply to applications submitted under s. 651.021(2).~~ The office
960 may not issue a certificate of authority to a facility that does
961 not have a component that is to be licensed pursuant to part II
962 of chapter 400 or to part I of chapter 429 or that does not
963 offer personal services or nursing services through written
964 contractual agreement. A written contractual agreement must be
965 disclosed in the contract for continuing care or continuing care
966 at-home and is subject to ~~the provisions of~~ s. 651.1151,
967 relating to administrative, vendor, and management contracts.

968 (9) The office may not approve an application that
969 includes in the plan of financing any encumbrance of the
970 ~~operating~~ reserves required by this chapter.

971 Section 9. Section 651.024, Florida Statutes, is amended
972 to read:

973 651.024 Acquisition.—

974 (1) A person who seeks to assume the role of general
975 partner of a provider, or otherwise assume ownership or

976 possession of, or control over, 10 percent or more of a
977 provider's assets based on the balance sheet from the most
978 recent financial audit filed with the office, is ~~issued a~~
979 ~~certificate of authority to operate a continuing care facility~~
980 ~~or a provisional certificate of authority shall be subject to~~
981 ~~the provisions of s. 628.4615 and is not required to file under~~
982 s. 651.0245.

983 (2) A person who seeks to acquire, and become the provider
984 for, a facility is subject to s. 651.0245 and is not required to
985 file under ss. 628.4615, 651.022, and 651.023.

986 (3) A person may rebut a presumption of control by filing
987 a disclaimer of control with the office on a form prescribed by
988 the commission. The disclaimer must fully disclose all material
989 relationships and bases for affiliation between the person and
990 the provider or facility, as well as the basis for disclaiming
991 the affiliation. In lieu of such form, a person or acquiring
992 party may file with the office a copy of a Schedule 13G filed
993 with the Securities and Exchange Commission pursuant to Rule
994 13d-1(b) or (c), 17 C.F.R. s. 240.13d-1, under the Securities
995 Exchange Act of 1934, as amended. After a disclaimer is filed,
996 the provider or facility is relieved of any duty to register or
997 report under this section which may arise out of the provider's
998 or facility's relationship with the person, unless the office
999 disallows the disclaimer.

1000 Section 10. Section 651.0245, Florida Statutes, is created

1001 to read:

1002 651.0245 Application for the simultaneous acquisition of a
 1003 facility and issuance of a certificate of authority.-

1004 (1) Except with the prior written approval of the office,
 1005 a person may not, individually or in conjunction with an
 1006 affiliated person of such person, directly or indirectly acquire
 1007 a facility operating under a subsisting certificate of authority
 1008 and engage in the business of providing continuing care.

1009 (2) An applicant must:

1010 (a) Comply with the notice requirements of s.
 1011 628.4615(2) (a).

1012 (b) File an application in the form required by the office
 1013 and cooperate with the office's review of the application.

1014 (3) The commission shall adopt by rule application
 1015 requirements equivalent to those described in ss. 628.4615(4)
 1016 and (5), 651.022(2) (a)-(g) and (3), and 651.023(1) (b). The
 1017 office must review the application and issue an approval or
 1018 disapproval of the filing in accordance with ss. 628.4615(6) (a)
 1019 and (c), (7)-(12), (13) (c)-(e), and (14); 651.022(8); and
 1020 651.023(1) (b).

1021 (4) As used in this section, the term:

1022 (a) "Controlling company" means any corporation, trust, or
 1023 association that directly or indirectly owns 25 percent or more
 1024 of the voting securities of one or more facilities that are
 1025 stock corporations, or 25 percent or more of the ownership

1026 interest of one or more facilities that are not stock
1027 corporations.

1028 (b) "Natural person" means an individual.

1029 (c) "Person" includes a natural person, corporation,
1030 association, trust, general partnership, limited partnership,
1031 joint venture, firm, proprietorship, or any other entity that
1032 may hold a license or certificate as a facility.

1033 (5) In addition to the facility or the controlling party,
1034 the office has standing to petition a circuit court as described
1035 in s. 628.4615(9).

1036 (6) A person may rebut a presumption of control by filing
1037 a disclaimer of control with the office on a form prescribed by
1038 the commission. The disclaimer must fully disclose all material
1039 relationships and bases for affiliation between the person and
1040 the provider or facility, as well as the basis for disclaiming
1041 the affiliation. In lieu of such form, a person or acquiring
1042 party may file with the office a copy of a Schedule 13G filed
1043 with the Securities and Exchange Commission pursuant to Rule
1044 13d-1(b) or (c), 17 C.F.R. s. 240.13d-1, under the Securities
1045 Exchange Act of 1934, as amended. After a disclaimer is filed,
1046 the provider or facility is relieved of any duty to register or
1047 report under this section which may arise out of the provider's
1048 or facility's relationship with the person, unless the office
1049 disallows the disclaimer.

1050 (7) The commission may adopt, amend, or repeal rules

1051 pursuant to chapter 120 as necessary to administer this section.

1052 Section 11. Section 651.0246, Florida Statutes, is created
1053 to read:

1054 651.0246 Expansions.—

1055 (1) (a) A provider must obtain written approval from the
1056 office before commencing construction or marketing for an
1057 expansion of a certificated facility equivalent to the addition
1058 of at least 20 percent of existing units or 20 percent or more
1059 in the number of continuing care at-home contracts. If the
1060 provider has exceeded the current statewide median for days cash
1061 on hand, debt service coverage ratio, and total campus occupancy
1062 for two consecutive annual reporting periods, the provider is
1063 automatically granted approval to expand the total number of
1064 existing units by up to 35 percent if the provider submits a
1065 letter to the office indicating the total number of planned
1066 units of the expansion, the proposed sources and uses of funds,
1067 and an attestation that the provider understands and pledges to
1068 comply with all minimum liquid reserve and escrow account
1069 requirements. For the purposes of this section, the statewide
1070 median for days cash on hand, debt service coverage ratio, and
1071 total campus occupancy is the median calculated in the most
1072 recent annual report submitted by the office to the Continuing
1073 Care Advisory Council, pursuant to 651.121(8). This section does
1074 not apply to construction for which a certificate of need from
1075 the Agency for Health Care Administration is required.

1076 (b) The application for such approval must be on forms
1077 adopted by the commission and provided by the office. The
1078 application must include the feasibility study required by this
1079 section and such other information as required by s. 651.023 or
1080 as reasonably requested by the office. If the expansion is only
1081 for continuing care at-home contracts, an actuarial study
1082 prepared by an independent actuary in accordance with standards
1083 adopted by the American Academy of Actuaries which presents the
1084 financial impact of the expansion may be substituted for the
1085 feasibility study.

1086 (c) In determining whether an expansion should be
1087 approved, the office must consider:

- 1088 1. Whether the application meets all requirements of law.
1089 2. Whether the feasibility study was based on sufficient
1090 data and reasonable assumptions.
1091 3. Whether the applicant will be able to provide
1092 continuing care or continuing care at-home as proposed and meet
1093 all financial obligations related to its operations, including
1094 the financial requirements of this chapter.

1095
1096 If the application is denied, the office must notify the
1097 applicant in writing, citing the specific failures to meet the
1098 provisions of this chapter. Such denial entitles the applicant
1099 to a hearing pursuant to chapter 120.

1100 (2) A provider applying for expansion of a certificated

1101 facility must submit all of the following:

1102 (a) An actuarial study, unless the applicant intends to
1103 offer as its only health care benefit, priority admission to a
1104 nursing facility licensed under part II of ch. 400 or part I of
1105 ch. 429, in which case such applicant must submit future
1106 projected population flows and nursing facility bed need
1107 projections prepared by an actuary for the first 5 years of
1108 operation using appropriate mortality, morbidity, withdrawal,
1109 and other demographic assumptions.

1110 (b) A feasibility study prepared by an independent
1111 certified public accountant. The feasibility study must include,
1112 at a minimum, the following information:

1113 1. A description of the facility and proposed expansion,
1114 including the location, size, anticipated completion date, and
1115 the proposed construction program.

1116 2. An identification and evaluation of the primary and
1117 secondary market areas of the facility and the projected unit
1118 sales per month.

1119 3. Projected revenues, including anticipated entrance
1120 fees; monthly service fees; nursing care rates, if applicable;
1121 and all other sources of revenue.

1122 4. Projected expenses, including for staffing requirements
1123 and salaries; the cost of property, plant, and equipment,
1124 including depreciation expense; interest expense; marketing
1125 expense; and other operating expenses.

- 1126 5. Projected balance sheet of the applicant.
- 1127 6. Expectations of the financial condition of the project,
 1128 including the projected cash flow and an estimate of the funds
 1129 anticipated to be necessary to cover startup losses.
- 1130 7. The inflation factor, if any, assumed in the study for
 1131 the proposed expansion and how and where it is applied.
- 1132 8. Project costs, marketing projections, resident fees and
 1133 charges, the competition, resident contract provisions, and
 1134 other factors that affect the feasibility of the facility.
- 1135 9. The name of the person who prepared the feasibility
 1136 study and the experience of such person in preparing similar
 1137 studies or otherwise consulting in the field of continuing care.
- 1138 10. Financial forecasts or projections prepared in
 1139 accordance with standards adopted by the American Institute of
 1140 Certified Public Accountants or in accordance with standards for
 1141 feasibility studies for continuing care retirement communities
 1142 adopted by the Actuarial Standards Board.
- 1143 11. The study must contain an independent evaluation and
 1144 examination opinion for the first 5 years of operation, or a
 1145 comparable opinion acceptable to the office, by the independent
 1146 certified public accountant who prepared the study of the
 1147 underlying assumptions used as a basis for the forecasts or
 1148 projections in the study, opining that the assumptions are
 1149 reasonable and proper and the project as proposed is feasible.
- 1150 (c) Such other reasonable data, financial statements, and

1151 pertinent information as the commission or office may require
1152 with respect to the applicant or the facility to determine the
1153 financial status of the facility and the management capabilities
1154 of its managers and owners.

1155 (3) At least 75 percent of the moneys paid for all or any
1156 part of an initial entrance fee or reservation deposit collected
1157 for continuing care and 50 percent of the moneys paid for all or
1158 any part of an initial fee collected for continuing care at-home
1159 must be placed in an escrow account or on deposit with the
1160 department as prescribed in s. 651.033. Up to 25 percent of the
1161 moneys paid for all or any part of an initial entrance fee or
1162 reservation deposit may be included or pledged for the
1163 construction or purchase of the facility or as security for
1164 long-term financing. As used in this section, the term "initial
1165 entrance fee" has the meaning provided in s. 651.023. Initial
1166 entrance fees and reservation deposits collected for expansions
1167 must be held pursuant to the escrow requirements of s.
1168 651.023(5) and (6).

1169 (4) The provider is entitled to secure release of the
1170 moneys held in escrow within 7 days after receipt by the office
1171 of an affidavit from the provider, along with appropriate
1172 copies, and notification to the escrow agent by certified mail,
1173 that the following conditions have been satisfied:

- 1174 (a) A certificate of occupancy has been issued.
1175 (b) Payment in full has been received for at least 50

1176 percent of the total units of a phase or of the total of the
1177 combined phases constructed. If a provider offering continuing
1178 care at-home is applying for a release of escrowed entrance
1179 fees, the same minimum requirement must be met for the
1180 continuing care and continuing care at-home contracts
1181 independently of each other.

1182 (c) Proof that commitments have been secured or that a
1183 documented plan adopted by the applicant has been approved by
1184 the office for long-term financing.

1185 (d) Proof that the provider has sufficient funds to meet
1186 the requirements of s. 651.035, which may include funds
1187 deposited in the initial entrance fee account.

1188 (e) Proof as to the intended application of the proceeds
1189 upon release and proof that the entrance fees, when released,
1190 will be applied as represented to the office.

1191
1192 Notwithstanding chapter 120, only the provider, the escrow
1193 agent, and the office have a substantial interest in any office
1194 decision regarding release of escrow funds in any proceedings
1195 under chapter 120 or this chapter regarding the release of
1196 escrow funds.

1197 (5) (a) Within 30 days after receipt of an application for
1198 expansion, the office must examine the application and notify
1199 the applicant in writing, specifically setting forth and
1200 specifically requesting any additional information the office is

1201 permitted by law to require. Within 15 days after receipt of the
1202 requested additional information, the office must notify the
1203 applicant in writing that the requested information has been
1204 received and the application is deemed complete on the date of
1205 the notice. If the office does not notify the applicant within
1206 the 15-day period, the application is deemed complete for
1207 purposes of review on the date of filing of the additional
1208 requested information. If the application submitted is
1209 determined by the office to be substantially incomplete so as to
1210 require substantial additional information, including
1211 biographical information, the office may return the application
1212 to the applicant with a written notice that the application as
1213 received is substantially incomplete and therefore unacceptable
1214 for filing without further action required by the office. Any
1215 filing fee received must be refunded to the applicant.

1216 (b) An application is deemed complete upon receipt of all
1217 requested information and the correction of any error or
1218 omission for which the applicant was timely notified or when the
1219 time for such notification has expired. The office must notify
1220 the applicant in writing of the date on which the application is
1221 deemed complete.

1222 (6) Within 45 days after the date on which an application
1223 is deemed complete under paragraph (5)(b), the office must
1224 complete its review and, based upon its review, approve an
1225 expansion by the applicant and issue a determination that the

1226 application meets all requirements of law, that the feasibility
1227 study was based on sufficient data and reasonable assumptions,
1228 and that the applicant will be able to provide continuing care
1229 or continuing care at-home as proposed and meet all financial
1230 and contractual obligations related to its operations, including
1231 the financial requirements of this chapter. The time period for
1232 review by the office is not tolled if the office requests
1233 additional information and the applicant provides information
1234 acceptable to the office within 5 business days after such
1235 request. If the application is denied, the office must notify
1236 the applicant in writing, citing the specific failures to meet
1237 the provisions of this chapter. Such denial entitles the
1238 applicant to a hearing pursuant to chapter 120.

1239 Section 12. Paragraphs (c) and (e) of subsection (2) and
1240 subsection (3) of section 651.026, Florida Statutes, are
1241 amended, and subsection (10) is added to that section, to read:

1242 651.026 Annual reports.—

1243 (2) The annual report must ~~shall~~ be in such form as the
1244 commission prescribes and must ~~shall~~ contain at least the
1245 following:

1246 (c) The following financial information:

1247 1. A detailed listing of the assets maintained in the
1248 liquid reserve as required under s. 651.035 and in accordance
1249 with part II of chapter 625;

1250 2. A schedule giving additional information relating to

1251 property, plant, and equipment having an original cost of at
1252 least \$25,000, so as to show in reasonable detail with respect
1253 to each separate facility original costs, accumulated
1254 depreciation, net book value, appraised value or insurable value
1255 and date thereof, insurance coverage, encumbrances, and net
1256 equity of appraised or insured value over encumbrances. Any
1257 property not used in continuing care must be shown separately
1258 from property used in continuing care;

1259 3. The level of participation in Medicare or Medicaid
1260 programs, or both;

1261 4. A statement of all fees required of residents,
1262 including, but not limited to, a statement of the entrance fee
1263 charged, the monthly service charges, the proposed application
1264 of the proceeds of the entrance fee by the provider, and the
1265 plan by which the amount of the entrance fee is determined if
1266 the entrance fee is not the same in all cases; ~~and~~

1267 5. Any change or increase in fees if the provider changes
1268 the scope of, or the rates for, care or services, regardless of
1269 whether the change involves the basic rate or only those
1270 services available at additional costs to the resident.

1271 6. If the provider has more than one certificated
1272 facility, or has operations that are not licensed under this
1273 chapter, it shall submit a balance sheet, statement of income
1274 and expenses, statement of equity or fund balances, and
1275 statement of cash flows for each facility licensed under this

1276 chapter as supplemental information to the audited financial
1277 statements required under paragraph (b); and—

1278 7. Management's calculation of the provider's debt service
1279 coverage ratio and days cash on hand for the current reporting
1280 period, and an opinion from an independent certified public
1281 accountant of management's calculations.

1282 ~~(c) Each facility shall file with the office annually,~~
1283 ~~together with the annual report required by this section, a~~
1284 ~~computation of its minimum liquid reserve calculated in~~
1285 ~~accordance with s. 651.035 on a form prescribed by the~~
1286 ~~commission.~~

1287 (e) ~~(f)~~ If, due to a change in generally accepted
1288 accounting principles, the balance sheet, statement of income
1289 and expenses, statement of equity or fund balances, or statement
1290 of cash flows is known by any other name or title, the annual
1291 report must contain financial statements using the changed names
1292 or titles that most closely correspond to a balance sheet,
1293 statement of income and expenses, statement of equity or fund
1294 balances, and statement of changes in cash flows.

1295 (3) The commission must ~~shall~~ adopt by rule additional
1296 ~~meaningful~~ measures of assessing the financial viability of a
1297 provider. ~~The rule may include the following factors:~~

1298 ~~(a) Debt service coverage ratios.~~

1299 ~~(b) Current ratios.~~

1300 ~~(c) Adjusted current ratios.~~

1301 ~~(d) Cash flows.~~
 1302 ~~(e) Occupancy rates.~~
 1303 ~~(f) Other measures, ratios, or trends.~~
 1304 ~~(g) Other factors as may be appropriate.~~
 1305 (10) The office must publish annually, within 90 days
 1306 after the conclusion of the annual reporting period, an industry
 1307 benchmarking report that contains the following:
 1308 (a) Median days cash on hand for all providers.
 1309 (b) Median debt service coverage ratio for all providers.
 1310 (c) Median occupancy rate for all providers by setting to
 1311 include independent living, assisted living, skilled nursing,
 1312 and the entire campus.
 1313 Section 13. Section 651.0261, Florida Statutes, is amended
 1314 to read:
 1315 651.0261 Quarterly and monthly statements.—
 1316 (1) Within 45 days after the end of each fiscal quarter,
 1317 each provider must file a quarterly unaudited financial
 1318 statement of the provider or of the facility in the form
 1319 prescribed by rule of the commission and a detailed listing of
 1320 the assets maintained in the liquid reserve as required under s.
 1321 651.035. This requirement may be waived by the office upon
 1322 written request from a provider that is accredited or has
 1323 obtained an investment grade credit rating from a nationally
 1324 recognized credit rating agency under s. 651.028. The last
 1325 quarterly statement for a fiscal year is not required if a

1326 provider does not have a regulatory action level event or
1327 corrective action plan pending.

1328 (2) If the office finds, ~~pursuant to rules of the~~
1329 ~~commission,~~ that such information is needed to properly monitor
1330 the financial condition of a provider or facility or is
1331 otherwise needed to protect the public interest, the office may
1332 require the provider to file:

1333 (a) Within 25 days after the end of each month, a monthly
1334 unaudited financial statement of the provider or of the facility
1335 in the form prescribed by the commission by rule and a detailed
1336 listing of the assets maintained in the liquid reserve as
1337 required under s. 651.035, ~~within 45 days after the end of each~~
1338 ~~fiscal quarter, a quarterly unaudited financial statement of the~~
1339 ~~provider or of the facility in the form prescribed by the~~
1340 ~~commission by rule. The commission may by rule require all or~~
1341 ~~part of the statements or filings required under this section to~~
1342 ~~be submitted by electronic means in a computer-readable form~~
1343 ~~compatible with the electronic data format specified by the~~
1344 ~~commission.~~

1345 (b) Such other data, financial statements, and pertinent
1346 information as the commission or office may reasonably require
1347 with respect to the provider or the facility, or its directors,
1348 trustees, members, branches, subsidiaries, or affiliates, to
1349 determine the financial status of the provider or of the
1350 facility and the management capabilities of its managers and

HB 783

2018

1351 owners.

1352 (3) A filing under subsection (2) may be required if any

1353 of the following apply:

1354 (a) The facility has been operational for fewer than 2

1355 years;

1356 (b) The provider is:

1357 1. Subject to administrative supervision proceedings;

1358 2. Subject to a corrective action plan;

1359 3. Subject to refinancing;

1360 4. Subject to an acquisition; or

1361 5. Subject to delinquency or receivership proceedings;

1362 (c) The provider or facility displays a declining

1363 financial position;

1364 (d) A change of ownership of the provider or facility has

1365 occurred; or

1366 (e) The facility is deemed to be impaired.

1367 (4) The commission may by rule require all or part of the

1368 statements or filings required under this section to be

1369 submitted by electronic means in a computer-readable form

1370 compatible with an electronic data format specified by the

1371 commission.

1372 Section 14. Section 651.028, Florida Statutes, is amended

1373 to read:

1374 651.028 Accredited or credit-rated facilities.—If a

1375 provider or obligated group is accredited without stipulations

HB 783

2018

1376 or conditions by a process found by the office to be acceptable
1377 and substantially equivalent to the provisions of this chapter,
1378 or has obtained an investment grade credit rating from a
1379 nationally recognized credit rating agency, the office may,
1380 pursuant to rule of the commission, waive any requirements of
1381 this chapter with respect to the provider if the office finds
1382 that such waivers are not inconsistent with the security
1383 protections intended by this chapter.

1384 Section 15. Paragraphs (a), (c), and (d) of subsection (1)
1385 and subsections (2) and (3) of section 651.033, Florida
1386 Statutes, are amended, and subsection (6) is added to that
1387 section, to read:

1388 651.033 Escrow accounts.—

1389 (1) When funds are required to be deposited in an escrow
1390 account pursuant to s. 651.022, s. 651.023, s. 651.035, or s.
1391 651.055:

1392 (a) The escrow account must ~~shall~~ be established in a
1393 Florida bank, Florida savings and loan association, or Florida
1394 trust company, or a national bank chartered and supervised by
1395 the Office of the Comptroller of the Currency with either a
1396 branch location or a license to operate in the state acceptable
1397 to the office or deposited on deposit with the department; and
1398 the funds deposited therein must ~~shall~~ be kept and maintained in
1399 an account separate and apart from the provider's business
1400 accounts.

1401 (c) Any agreement establishing an escrow account required
1402 under ~~the provisions of this chapter~~ is ~~shall be~~ subject to
1403 approval by the office. The agreement must ~~shall~~ be in writing
1404 and must ~~shall~~ contain, in addition to any other provisions
1405 required by law, a provision whereby the escrow agent agrees to
1406 abide by the duties imposed by paragraphs (b) and (e), (3) (a)
1407 and (b), and (5) (a) and subsection (6) under this section.

1408 (d) All funds deposited in an escrow account, if invested,
1409 must ~~shall~~ be invested in cash, cash equivalents, mutual funds,
1410 equities, or investment grade bonds ~~as set forth in part II of~~
1411 ~~chapter 625;~~ however, such investment may not diminish the funds
1412 held in escrow below the amount required by this chapter. Funds
1413 deposited in an escrow account are not subject to charges by the
1414 escrow agent except escrow agent fees associated with
1415 administering the accounts, or subject to any liens, judgments,
1416 garnishments, creditor's claims, or other encumbrances against
1417 the provider or facility except as provided in s. 651.035(1).

1418 (2) Notwithstanding s. 651.035(7), ~~In addition, the escrow~~
1419 ~~agreement shall provide that the escrow agent or another person~~
1420 ~~designated to act in the escrow agent's place and the provider,~~
1421 ~~except as otherwise provided in s. 651.035, shall notify the~~
1422 ~~office in writing at least 10 days before the withdrawal of any~~
1423 ~~portion of any funds required to be escrowed under the~~
1424 ~~provisions of s. 651.035. However, in the event of an emergency~~
1425 ~~and upon petition by the provider, the office may waive the 10-~~

1426 ~~day notification period and~~ allow a withdrawal of up to 10
1427 percent of the required minimum liquid reserve. The office has
1428 ~~shall have~~ 3 working days to deny the petition for the emergency
1429 10-percent withdrawal. If the office fails to deny the petition
1430 within 3 working days, the petition is ~~shall be~~ deemed to have
1431 been granted by the office. For purposes ~~the purpose~~ of this
1432 section, "working day" means each day that is not a Saturday,
1433 Sunday, or legal holiday as defined by Florida law. Also, for
1434 purposes ~~the purpose~~ of this section, the day the petition is
1435 received by the office is ~~shall~~ not be counted as one of the 3
1436 days.

1437 (3) ~~In addition,~~ When entrance fees are required to be
1438 deposited in an escrow account pursuant to s. 651.022, s.
1439 651.023, or s. 651.055:

1440 (a) The provider must ~~shall~~ deliver to the resident a
1441 written receipt. The receipt must show the payor's name and
1442 address, the date, the price of the care contract, and the
1443 amount of money paid. A copy of each receipt, together with the
1444 funds, must ~~shall~~ be deposited with the escrow agent or as
1445 provided in paragraph (c). The escrow agent must ~~shall~~ release
1446 such funds to the provider 7 days after the date of receipt of
1447 the funds by the escrow agent if the provider, operating under a
1448 certificate of authority issued by the office, has met the
1449 requirements of s. 651.023(6). However, if the resident rescinds
1450 the contract within the 7-day period, the escrow agent must

1451 ~~shall~~ release the escrowed fees to the resident.

1452 (b) At the request of an individual resident of a
1453 facility, the escrow agent must ~~shall~~ issue a statement
1454 indicating the status of the resident's portion of the escrow
1455 account.

1456 (c) At the request of an individual resident of a
1457 facility, the provider may hold the check for the 7-day period
1458 and may ~~shall~~ not deposit it during this time period. If the
1459 resident rescinds the contract within the 7-day period, the
1460 check must ~~shall~~ be immediately returned to the resident. Upon
1461 the expiration of the 7 days, the provider must ~~shall~~ deposit
1462 the check.

1463 (d) A provider may assess a nonrefundable fee, which is
1464 separate from the entrance fee, for processing a prospective
1465 resident's application for continuing care or continuing care
1466 at-home.

1467 (6) Except as described in paragraph (3)(a), the escrow
1468 agent may not release or otherwise permit the transfer of funds
1469 without the written approval of the office, unless the
1470 withdrawal is from funds in excess of the amounts required by s.
1471 651.022, s. 651.023, s. 651.035, or s. 651.055.

1472 Section 16. Section 651.034, Florida Statutes, is created
1473 to read:

1474 651.034 Financial and operating requirements for
1475 providers.-

1476 (1) (a) If a regulatory action level event occurs, the
1477 office must:

1478 1. Require the provider to prepare and submit a corrective
1479 action plan or, if applicable, a revised corrective action plan.

1480 2. Perform an examination pursuant to s. 651.105 or an
1481 analysis, as the office considers necessary, of the assets,
1482 liabilities, and operations of the provider, including a review
1483 of the corrective action plan or the revised corrective action
1484 plan.

1485 3. After the examination or analysis, issue a corrective
1486 order specifying any corrective actions that the office
1487 determines are required.

1488 (b) In determining corrective actions, the office must
1489 consider any factor relevant to the provider based upon the
1490 office's examination or analysis of the assets, liabilities, and
1491 operations of the provider. The corrective action plan or the
1492 revised corrective action plan must be submitted within 30 days
1493 after the occurrence of the regulatory action level event. The
1494 office must review and approve or disapprove the corrective
1495 action plan within 15 business days after receipt.

1496 (c) The office may use members of the Governor's
1497 Continuing Care Advisory Council individually or as a group or
1498 retain actuaries, investment experts, and other consultants to
1499 review a provider's corrective action plan or revised corrective
1500 action plan, examine or analyze the assets, liabilities, and

1501 operations of a provider, and formulate the corrective order
1502 with respect to the provider. The fees, costs, and expenses
1503 relating to consultants must be borne by the affected provider.

1504 (2) If an impairment occurs, the office must take any
1505 action necessary to place the provider under regulatory control,
1506 including any remedy available under chapter 631. An impairment
1507 is sufficient grounds for the department to be appointed as
1508 receiver as provided in chapter 631. Notwithstanding s. 651.011,
1509 impairment of a provider for purposes of s. 631.051 is defined
1510 according to the term "impaired" under s. 651.011. The office
1511 may forego taking action for up to 60 days after the impairment
1512 if the office finds there is a reasonable expectation that the
1513 impairment may be eliminated within the 60-day period.

1514 (3) There is no liability on the part of, and a cause of
1515 action may not arise against, the commission, department, or
1516 office, or their employees or agents, for any action taken by
1517 them in the performance of their powers and duties under this
1518 section.

1519 (4) The office must transmit any notice that may result in
1520 regulatory action by registered mail, certified mail, or any
1521 other method of transmission that includes documentation of
1522 receipt by the provider. Notice is effective when received by
1523 the provider.

1524 (5) This section is supplemental to the other laws of this
1525 state and does not preclude or limit any power or duty of the

1526 | department or office under those laws or under the rules adopted
 1527 | pursuant to those laws.

1528 | (6) The commission may adopt rules to administer this
 1529 | section, including, but not limited to, rules regarding
 1530 | corrective action plans, adjusted corrective action plans,
 1531 | corrective orders, and procedures to be followed in the event of
 1532 | a triggering of a regulatory action level event, or an
 1533 | impairment.

1534 | (7) The office may exempt a provider from subsection (2)
 1535 | until stabilized occupancy is reached or until the time
 1536 | projected to achieve stabilized occupancy as reported in the
 1537 | last actuarial study required by the office as part of an
 1538 | application filing under s. 651.023, s. 651.024, s. 651.0245, or
 1539 | s. 651.0246 has elapsed, but for no longer than 5 years from the
 1540 | date of issuance of the certificate of occupancy.

1541 | Section 17. Paragraphs (a) and (c) of subsection (1) of
 1542 | section 651.035, Florida Statutes, are amended, and subsections
 1543 | (7), (8), (9), and (10) are added to that section, to read:

1544 | 651.035 Minimum liquid reserve requirements.—

1545 | (1) A provider shall maintain in escrow a minimum liquid
 1546 | reserve consisting of the following reserves, as applicable:

1547 | (a) Each provider must ~~shall~~ maintain in escrow as a debt
 1548 | service reserve the aggregate amount of all principal and
 1549 | interest payments due during the fiscal year on any mortgage
 1550 | loan or other long-term financing of the facility, including

1551 property taxes as recorded in the audited financial statements
1552 required under s. 651.026. The amount must include any leasehold
1553 payments and all costs related to such payments. If principal
1554 payments are not due during the fiscal year, the provider must
1555 ~~shall~~ maintain in escrow as a minimum liquid reserve an amount
1556 equal to interest payments due during the next 12 months on any
1557 mortgage loan or other long-term financing of the facility,
1558 including property taxes. If a provider does not have a mortgage
1559 loan or other financing on the facility, the provider must
1560 deposit monthly in escrow as a minimum liquid reserve an amount
1561 equal to one-twelfth of the annual property tax liability as
1562 indicated in the most recent tax notice provided pursuant to s.
1563 197.322(3).

1564 (c) Each provider must ~~shall~~ maintain in escrow an
1565 operating reserve equal to 30 percent of the total operating
1566 expenses projected in the feasibility study required by s.
1567 651.023 for the first 12 months of operation. Thereafter, each
1568 provider must ~~shall~~ maintain in escrow an operating reserve
1569 equal to 15 percent of the total operating expenses in the
1570 annual report filed pursuant to s. 651.026. If a provider has
1571 been in operation for more than 12 months, the total annual
1572 operating expenses must ~~shall~~ be determined by averaging the
1573 total annual operating expenses reported to the office by the
1574 number of annual reports filed with the office within the
1575 preceding 3-year period subject to adjustment if there is a

1576 change in the number of facilities owned. For purposes of this
1577 subsection, total annual operating expenses include all expenses
1578 of the facility except+ depreciation and amortization; interest
1579 and property taxes included in paragraph (a); extraordinary
1580 expenses that are adequately explained and documented in
1581 accordance with generally accepted accounting principles;
1582 liability insurance premiums in excess of those paid in calendar
1583 year 1999; and changes in the obligation to provide future
1584 services to current residents. For providers initially licensed
1585 during or after calendar year 1999, liability insurance must
1586 ~~shall~~ be included in the total operating expenses in an amount
1587 not to exceed the premium paid during the first 12 months of
1588 facility operation. ~~Beginning January 1, 1993,~~ The operating
1589 reserves required under this subsection must ~~shall~~ be in an
1590 unencumbered account held in escrow for the benefit of the
1591 residents. Such funds may not be encumbered or subject to any
1592 liens or charges by the escrow agent or judgments, garnishments,
1593 or creditors' claims against the provider or facility. However,
1594 if a facility had a lien, mortgage, trust indenture, or similar
1595 debt instrument in place before January 1, 1993, which
1596 encumbered all or any part of the reserves required by this
1597 subsection and such funds were used to meet the requirements of
1598 this subsection, then such arrangement may be continued, unless
1599 a refinancing or acquisition has occurred, and the provider is
1600 ~~shall be~~ in compliance with this subsection.

1601 (7) (a) A provider may withdraw funds held in escrow
1602 without the approval of the office, provided the amount held in
1603 escrow exceeds the requirements of this section and the
1604 withdrawal will not affect compliance with such requirements.

1605 (b)1. For all other proposed withdrawals, in order to
1606 receive the consent of the office, the provider must file
1607 documentation demonstrating that the withdrawal is necessary for
1608 the continued operation of the facility and such additional
1609 information as the office reasonably requires.

1610 2. The office must notify the provider when the file is
1611 deemed complete. If the provider has complied with all prior
1612 requests for information, the file is deemed complete after 30
1613 days without communication from the office.

1614 3. Within 30 days after the date a file is deemed
1615 complete, the office must provide the provider with written
1616 notice of its approval or disapproval of the request. The office
1617 may disapprove a request to withdraw such funds if it determines
1618 that the withdrawal is not in the best interest of the
1619 residents.

1620 (8) The office may order the immediate transfer of up to
1621 100 percent of the funds held in the minimum liquid reserve to
1622 the custody of the department pursuant to part III of chapter
1623 625 if the office finds that the provider is impaired or
1624 insolvent. The office may order such a transfer regardless of
1625 whether the office has suspended or revoked, or intends to

1626 suspend or revoke, the certificate of authority of the provider.

1627 (9) Each facility must file with the office annually, no
1628 later than 60 days before the end of the provider's fiscal year,
1629 a calculation of its minimum liquid reserve, determined in
1630 accordance with this section, on a form prescribed by the
1631 commission. The minimum liquid reserve must be maintained at the
1632 calculated level within 60 days after filing the annual report.

1633 (10) If the balance of the minimum liquid reserve is below
1634 the required amount at the end of any month the provider has 10
1635 business days from the beginning of the following month to fund
1636 the shortfall in the reserve. If the balance of minimum liquid
1637 reserve is not restored to the required amount within 10
1638 business days, the provider will be deemed out of compliance
1639 with this section.

1640 Section 18. Section 651.043, Florida Statutes, is created
1641 to read:

1642 651.043 Approval of change in management.-

1643 (1) As used in this section, the term "management" means:

1644 (a) A manager or management company;

1645 (b) An officer or director of the provider or of the
1646 manager or management company;

1647 (c) Any other person performing duties similar to those of
1648 persons in paragraph (a) or paragraph (b); or

1649 (d) A person who exercises or who has the ability to
1650 exercise effective control of the organization, or who

1651 influences or has the ability to influence the transaction of
1652 the business of the provider.

1653 (2) A contract for management entered into after July 1,
1654 2018, must be in writing and include a provision that the
1655 contract will be canceled upon issuance of an order by the
1656 office pursuant to this section without the application of any
1657 cancellation fee or penalty.

1658 (3) A provider must notify the office in writing or
1659 electronically within 5 business days after a change in
1660 management. For each new management appointment, the provider
1661 must submit the information required by s. 651.022(2) and a copy
1662 of the written management contract.

1663 (4) For a provider that is deemed to be impaired or has a
1664 regulatory action level pending, the office must complete its
1665 review and issue an approval or disapproval of the management
1666 contract within 15 business days after the filing is deemed
1667 complete. A filing is deemed complete upon receipt of all
1668 requested information and correction of any error or omission
1669 for which the applicant was timely notified.

1670 (5) The office may disapprove new management and order the
1671 provider to cancel the contract in accordance with the terms of
1672 the contract and applicable law if the office:

1673 (a) Finds that the new management is incompetent or
1674 untrustworthy;

1675 (b) Finds that the new management is so lacking in

1676 relevant managerial experience as to make the proposed operation
1677 hazardous to the residents or potential residents;

1678 (c) Finds that the new management is so lacking in
1679 relevant experience, ability, and standing as to jeopardize the
1680 reasonable promise of successful operation; or

1681 (d) Has good reason to believe that the new management is
1682 affiliated directly or indirectly through ownership, control, or
1683 business relations with any person or persons whose business
1684 operations are or have been marked by manipulation of assets,
1685 accounts, or reinsurance or by bad faith, to the detriment of
1686 policyholders, residents, stockholders, investors, creditors, or
1687 the public.

1688 (6) Management disapproved by the office must be removed
1689 within 30 days after receipt by the provider of notice of such
1690 disapproval.

1691 (7) The office may revoke, suspend, or take other
1692 administrative action against the certificate of authority of
1693 the provider if the provider:

1694 (a) Fails to timely remove management disapproved by the
1695 office;

1696 (b) Fails to timely notify the office of a change in
1697 management;

1698 (c) Appoints management without a written contract; or

1699 (d) Repeatedly appoints management that was previously
1700 disapproved by the office or that is not approvable pursuant to

1701 subsection (4).

1702 (8) The provider must remove any management immediately
1703 upon discovery of any of the following conditions, if the
1704 conditions were not disclosed in the notice to the office
1705 required in subsection (3):

1706 (a) That any person who exercises or has the ability to
1707 exercise effective control of the provider, or who influences or
1708 has the ability to influence the transaction of the business of
1709 the provider, has been found guilty of, or has pled guilty or no
1710 contest to, any felony or crime punishable by imprisonment of 1
1711 year or more under federal law or the law of any state,
1712 territory, or country, which involves moral turpitude, whether
1713 or not judgment or conviction has been entered by the court
1714 having jurisdiction in such case.

1715 (b) That any person who exercises or has the ability to
1716 exercise effective control of the organization, or who
1717 influences or has the ability to influence the transaction of
1718 the business of the provider, is now or was in the past
1719 affiliated, directly or indirectly, through ownership interest
1720 of 10 percent or more in, control of any business, corporation,
1721 or other entity that has been found guilty of or has pled guilty
1722 or no contest to any felony or crime punishable by imprisonment
1723 for 1 year or more under the laws of the United States, any
1724 state, or any other country, regardless of adjudication.

1725

1726 The failure to remove such management is grounds for revocation
1727 or suspension of the provider's certificate of authority.

1728 Section 19. Section 651.051, Florida Statutes, is amended
1729 to read:

1730 651.051 Maintenance of assets and records in state.—All
1731 records and assets of a provider must be maintained in this
1732 state, or electronically stored in a manner that ensures records
1733 are readily accessible to the office if the provider's corporate
1734 office is located in another state. No records or assets may be
1735 removed from this state by a provider unless the office consents
1736 to such removal in writing before such removal. Such consent
1737 must ~~shall~~ be based upon the provider's submitting satisfactory
1738 evidence that the removal will facilitate and make more
1739 economical the operations of the provider and will not diminish
1740 the service or protection thereafter to be given the provider's
1741 residents in this state. Before ~~Prior to~~ such removal, the
1742 provider must ~~shall~~ give notice to the president or chair of the
1743 facility's residents' council. If such removal is part of a cash
1744 management system which has been approved by the office,
1745 disclosure of the system must ~~shall~~ meet the notification
1746 requirements. A provider may contract with a third party for the
1747 electronic storage of records on a web-based, secured storage
1748 platform that ensures the records are readily accessible to the
1749 office.

1750 Section 20. Subsection (2) of section 651.057, Florida

1751 Statutes, is amended to read:

1752 651.057 Continuing care at-home contracts.—

1753 (2) A provider that holds a certificate of authority and
1754 wishes to offer continuing care at-home must also:

1755 (a) Submit a business plan to the office with the
1756 following information:

1757 1. A description of the continuing care at-home services
1758 that will be provided, the market to be served, and the fees to
1759 be charged;

1760 2. A copy of the proposed continuing care at-home
1761 contract;

1762 3. An actuarial study prepared by an independent actuary
1763 in accordance with the standards adopted by the American Academy
1764 of Actuaries which presents the impact of providing continuing
1765 care at-home on the overall operation of the facility; and

1766 4. A market feasibility study that meets the requirements
1767 of s. 651.022(3) and documents that there is sufficient interest
1768 in continuing care at-home contracts to support such a program;

1769 (b) Demonstrate to the office that the proposal to offer
1770 continuing care at-home contracts to individuals who do not
1771 immediately move into the facility will not place the provider
1772 in an unsound financial condition;

1773 (c) Comply with the requirements of s. 651.0246(1) ~~s.~~
1774 ~~651.021(2)~~, except that an actuarial study may be substituted
1775 for the feasibility study; and

1776 (d) Comply with the requirements of this chapter.

1777 Section 21. Subsection (1) of section 651.071, Florida
 1778 Statutes, is amended to read:

1779 651.071 Contracts as preferred claims on liquidation or
 1780 receivership.—

1781 (1) In the event of receivership or liquidation
 1782 proceedings against a provider, all continuing care and
 1783 continuing care at-home contracts executed by a provider are
 1784 ~~shall be~~ deemed preferred claims or policyholder loss preferred
 1785 claims pursuant to s. 631.271(1)(b) against all assets owned by
 1786 the provider; however, such claims are subordinate to any
 1787 secured claim.

1788 Section 22. Paragraphs (h) and (i) of subsection (3) of
 1789 section 651.091, Florida Statutes, are redesignated as
 1790 paragraphs (g) and (h), respectively, subsection (2) and
 1791 paragraphs (c) and (g) of subsection (3) are amended, new
 1792 paragraphs (i), (j), (k), and (l) are added to subsection (3),
 1793 and paragraph (d) of subsection (3) and subsection (4) of that
 1794 section are republished, to read:

1795 651.091 Availability, distribution, and posting of reports
 1796 and records; requirement of full disclosure.—

1797 (2) Every continuing care facility must ~~shall~~:

1798 (a) Display the certificate of authority in a conspicuous
 1799 place inside the facility.

1800 (b) Post in a prominent position in the facility which is

1801 accessible to all residents and the general public a concise
1802 summary of the last examination report issued by the office,
1803 with references to the page numbers of the full report noting
1804 any deficiencies found by the office, and the actions taken by
1805 the provider to rectify such deficiencies, indicating in such
1806 summary where the full report may be inspected in the facility.

1807 (c) Provide notice to the president or chair of the
1808 residents' council within 10 business days after issuance of a
1809 final examination report or the initiation of any legal or
1810 administrative proceeding by the office or the department and
1811 include a copy of such document.

1812 (d)~~(e)~~ Post in a prominent position in the facility which
1813 is accessible to all residents and the general public a summary
1814 of the latest annual statement, indicating in the summary where
1815 the full annual statement may be inspected in the facility. A
1816 listing of any proposed changes in policies, programs, and
1817 services must also be posted.

1818 (e)~~(d)~~ Distribute a copy of the full annual statement and
1819 a copy of the most recent third-party ~~third party~~ financial
1820 audit filed with the annual report to the president or chair of
1821 the residents' council within 30 days after filing the annual
1822 report with the office, and designate a staff person to provide
1823 explanation thereof.

1824 (f)~~(e)~~ Deliver the information described in s. 651.085(4)
1825 in writing to the president or chair of the residents' council

1826 and make supporting documentation available upon request ~~Notify~~
1827 ~~the residents' council of any plans filed with the office to~~
1828 ~~obtain new financing, additional financing, or refinancing for~~
1829 ~~the facility and of any applications to the office for any~~
1830 ~~expansion of the facility.~~

1831 (g) ~~(f)~~ Deliver to the president or chair of the residents'
1832 council a summary of entrance fees collected and refunds made
1833 during the time period covered in the annual report and the
1834 refund balances due at the end of the report period.

1835 (h) ~~(g)~~ Deliver to the president or chair of the residents'
1836 council a copy of each quarterly statement within 30 days after
1837 the quarterly statement is filed with the office if the facility
1838 is required to file quarterly.

1839 (i) ~~(h)~~ Upon request, deliver to the president or chair of
1840 the residents' council a copy of any newly approved continuing
1841 care or continuing care at-home contract within 30 days after
1842 approval by the office.

1843 (j) Provide to the president or chair of the residents'
1844 council a copy of any notice filed with the office relating to
1845 any change in ownership within 5 business days after the receipt
1846 of such filing by the provider.

1847 (k) Make the information available to prospective
1848 residents pursuant to paragraph (3) (d) available to current
1849 residents and provide notice of changes to that information to
1850 the president or chair of the residents' council within 3

1851 business days.

1852 (3) Before entering into a contract to furnish continuing
1853 care or continuing care at-home, the provider undertaking to
1854 furnish the care, or the agent of the provider, must ~~shall~~ make
1855 full disclosure, and provide copies of the disclosure documents
1856 to the prospective resident or his or her legal representative,
1857 of the following information:

1858 (c) All ownership interests and lease agreements,
1859 including information specified in s. 651.022(2)(b)4. ~~s.~~
1860 ~~651.022(2)(b)8.~~

1861 (d) In keeping with the intent of this subsection relating
1862 to disclosure, the provider shall make available for review
1863 master plans approved by the provider's governing board and any
1864 plans for expansion or phased development, to the extent that
1865 the availability of such plans does not put at risk real estate,
1866 financing, acquisition, negotiations, or other implementation of
1867 operational plans and thus jeopardize the success of
1868 negotiations, operations, and development.

1869 ~~(g) The amount and location of any reserve funds required~~
1870 ~~by this chapter, and the name of the person or entity having a~~
1871 ~~claim to such funds in the event of a bankruptcy, foreclosure,~~
1872 ~~or rehabilitation proceeding.~~

1873 (i) Notice of the issuance of an examination report or the
1874 initiation of any legal or administrative proceeding by the
1875 office or the department, including the name and contact

1876 information of the person from whom the prospective resident may
 1877 obtain a copy of such document.

1878 (j) Notice that the entrance fee is the property of the
 1879 provider after the expiration of the 7-day escrow requirement
 1880 under s. 651.055(2).

1881 (k) If the provider operates multiple facilities, a
 1882 disclosure of any distribution of assets or income between
 1883 facilities that may occur and the manner in which such
 1884 distributions would be made, or a statement that such
 1885 distributions will not occur.

1886 (l) Notice of any holding company system or obligated
 1887 group of which the provider is a member.

1888 (4) A true and complete copy of the full disclosure
 1889 document to be used must be filed with the office before use. A
 1890 resident or prospective resident or his or her legal
 1891 representative may inspect the full reports referred to in
 1892 paragraph (2) (b); the charter or other agreement or instrument
 1893 required to be filed with the office pursuant to s. 651.022(2),
 1894 together with all amendments thereto; and the bylaws of the
 1895 corporation or association, if any. Upon request, copies of the
 1896 reports and information shall be provided to the individual
 1897 requesting them if the individual agrees to pay a reasonable
 1898 charge to cover copying costs.

1899 Section 23. Subsection (1) of section 651.105, Florida
 1900 Statutes, is amended, and subsections (7) and (8) are added to

1901 that section, to read:

1902 651.105 Examination and inspections.—

1903 (1) The office may at any time, and must ~~shall~~ at least
1904 once every 3 years, examine the business of any applicant for a
1905 certificate of authority and any provider engaged in the
1906 execution of care contracts or engaged in the performance of
1907 obligations under such contracts, in the same manner as is
1908 provided for the examination of insurance companies pursuant to
1909 ss. 624.316 and 624.318 ~~s. 624.316~~. For a provider as described
1910 ~~defined~~ in s. 651.028, such examinations must ~~shall~~ take place
1911 at least once every 5 years. Such examinations must ~~shall~~ be
1912 made by a representative or examiner designated by the office
1913 whose compensation will be fixed by the office pursuant to s.
1914 624.320. Routine examinations may be made by having the
1915 necessary documents submitted to the office; and, for this
1916 purpose, financial documents and records conforming to commonly
1917 accepted accounting principles and practices, as required under
1918 s. 651.026, are deemed adequate. The final written report of
1919 each examination must be filed with the office and, when so
1920 filed, constitutes a public record. Any provider being examined
1921 must ~~shall~~, upon request, give reasonable and timely access to
1922 all of its records. The representative or examiner designated by
1923 the office may at any time examine the records and affairs and
1924 inspect the physical property of any provider, whether in
1925 connection with a formal examination or not.

1926 (7) To the extent necessary to ascertain the financial
 1927 condition of a provider, the office may examine any parent,
 1928 subsidiary, or affiliate that has a contractual or financial
 1929 relationship with the provider.

1930 (8) If a provider voluntarily contracts with an actuary
 1931 for an actuarial study or review at regular intervals, any
 1932 recommendations made by the actuary should not be used by the
 1933 office as a measure of performance when conducting an
 1934 examination or inspection. Documents associated with an
 1935 actuarial study or review marked as restricted distribution may
 1936 not be requested as part of the examination or inspection if
 1937 such study or review is not required by this chapter.

1938 Section 24. Section 651.1055, Florida Statutes, is created
 1939 to read:

1940 651.1055 A provider must respond to written correspondence
 1941 from the office and provide data, financial statements, and
 1942 pertinent information as requested by the office or by the
 1943 office's investigators, examiners or inspectors. The office has
 1944 standing to petition a circuit court for mandatory injunctive
 1945 relief to compel access to and require the provider to produce
 1946 the documents, data, records, and other information requested by
 1947 the office or its investigators, examiners, or inspectors. The
 1948 office may petition the circuit court in the county in which the
 1949 facility is situated or the Circuit Court of Leon County to
 1950 enforce the provisions of this section.

1951 Section 25. Section 651.106, Florida Statutes, is amended
 1952 to read:

1953 651.106 Grounds for discretionary refusal, suspension, or
 1954 revocation of certificate of authority.—The office may deny an
 1955 application or~~7~~ suspend~~7~~ or revoke the provisional certificate
 1956 of authority or the certificate of authority of any applicant or
 1957 provider if it finds that any one or more of the following
 1958 grounds applicable to the applicant or provider exist:

1959 (1) Failure by the provider to continue to meet the
 1960 requirements for the authority originally granted.

1961 (2) Failure by the provider to meet one or more of the
 1962 qualifications for the authority specified by this chapter.

1963 (3) Material misstatement, misrepresentation, or fraud in
 1964 obtaining the authority, or in attempting to obtain the same.

1965 (4) Demonstrated lack of fitness or trustworthiness.

1966 (5) Fraudulent or dishonest practices of management in the
 1967 conduct of business.

1968 (6) Misappropriation, conversion, or withholding of
 1969 moneys.

1970 (7) Failure to comply with, or violation of, any proper
 1971 order or rule of the office or commission or violation of any
 1972 provision of this chapter.

1973 (8) The insolvent or impaired condition of the provider or
 1974 the provider's being in such condition or using such methods and
 1975 practices in the conduct of its business as to render its

1976 further transactions in this state hazardous or injurious to the
 1977 public.

1978 (9) Refusal by the provider to be examined or to produce
 1979 its accounts, records, and files for examination, or refusal by
 1980 any of its officers to give information with respect to its
 1981 affairs or to perform any other legal obligation under this
 1982 chapter when required by the office.

1983 (10) Failure by the provider to comply with the
 1984 requirements of s. 651.026 or s. 651.033.

1985 (11) Failure by the provider to maintain escrow accounts
 1986 or funds as required by this chapter.

1987 (12) Failure by the provider to meet the requirements of
 1988 this chapter for disclosure of information to residents
 1989 concerning the facility, its ownership, its management, its
 1990 development, or its financial condition or failure to honor its
 1991 continuing care or continuing care at-home contracts.

1992 (13) Any cause for which issuance of the license could
 1993 have been refused had it then existed and been known to the
 1994 office.

1995 (14) Having been found guilty of, or having pleaded guilty
 1996 or nolo contendere to, a felony in this state or any other
 1997 state, without regard to whether a judgment or conviction has
 1998 been entered by the court having jurisdiction of such cases.

1999 (15) In the conduct of business under the license,
 2000 engaging in unfair methods of competition or in unfair or

2001 | deceptive acts or practices prohibited under part IX of chapter
2002 | 626.

2003 | (16) A pattern of bankrupt enterprises.

2004 | (17) The ownership, control, or management of the
2005 | organization includes a person:

2006 | (a) Who is not reputable and not of responsible character;

2007 | (b) Who is so lacking in management expertise as to make
2008 | the operation of the provider hazardous to potential and
2009 | existing residents;

2010 | (c) Who is so lacking in management experience, ability,
2011 | and standing as to jeopardize the reasonable promise of
2012 | successful operation;

2013 | (d) Who is affiliated, directly or indirectly, through
2014 | ownership or control, with a person whose business operations
2015 | are or have been marked by business practices or conduct that is
2016 | detrimental to the public, stockholders, investors, or
2017 | creditors; or

2018 | (e) Whose business operations are or have been marked by
2019 | business practices or conduct that is detrimental to the public,
2020 | stockholders, investors, or creditors.

2021 | (18) The provider has not filed a notice of change in
2022 | management, fails to remove a disapproved manager, or persists
2023 | in appointing disapproved managers.

2024 |
2025 | Revocation of a certificate of authority under this section does

2026 | not relieve a provider from the provider's obligation to
 2027 | residents under the terms and conditions of any continuing care
 2028 | or continuing care at-home contract between the provider and
 2029 | residents or the provisions of this chapter. The provider must
 2030 | ~~shall~~ continue to file its annual statement and pay license fees
 2031 | to the office as required under this chapter as if the
 2032 | certificate of authority had continued in full force, but the
 2033 | provider must ~~shall~~ not issue any new contracts. The office may
 2034 | seek an action in the circuit court of Leon County to enforce
 2035 | the office's order and the provisions of this section.

2036 | Section 26. Section 651.1065, Florida Statutes, is created
 2037 | to read:

2038 | 651.1065 Soliciting or accepting new continuing care
 2039 | contracts by impaired or insolvent facilities or providers.-

2040 | (1) Regardless of whether delinquency proceedings as to a
 2041 | continuing care retirement community have been or are to be
 2042 | initiated, a proprietor, general partner, member, officer,
 2043 | director, trustee, or manager of a continuing care retirement
 2044 | community, except with the written permission of the office, may
 2045 | not permit the continuing care retirement community to solicit
 2046 | or accept new continuing care contracts in this state after the
 2047 | proprietor, general partner, member, officer, director, trustee,
 2048 | or manager knew, or reasonably should have known, that the
 2049 | continuing care retirement community was impaired or insolvent.
 2050 | The office must approve or disapprove the continued marketing of

2051 new contracts within 15 days after receiving a request from a
2052 provider.

2053 (2) A proprietor, general partner, member, officer,
2054 director, trustee, or manager who violates this section commits
2055 a felony of the third degree, punishable as provided in s.
2056 775.082, s. 775.083, or s. 775.084.

2057 Section 27. Section 651.111, Florida Statutes, is amended
2058 to read:

2059 651.111 Requests for inspections.—

2060 (1) Any interested party may request an inspection of the
2061 records and related financial affairs of a provider providing
2062 care in accordance with ~~the provisions of~~ this chapter by
2063 transmitting to the office notice of an alleged violation of
2064 applicable requirements prescribed by statute or by rule,
2065 specifying to a reasonable extent the details of the alleged
2066 violation, which notice must ~~shall~~ be signed by the complainant.

2067 (2) The substance of the complaint must ~~shall~~ be given to
2068 the provider no earlier than the time of the inspection. Unless
2069 the complainant specifically requests otherwise, neither the
2070 substance of the complaint which is provided to the provider nor
2071 any copy of the complaint, closure statement, or any record that
2072 ~~which~~ is published, released, or otherwise made available to the
2073 provider may ~~shall~~ disclose the name of any person mentioned in
2074 the complaint except the name of any duly authorized officer,
2075 employee, or agent of the office conducting the investigation or

2076 inspection pursuant to this chapter.

2077 (3) Upon receipt of a complaint, the office must ~~shall~~
2078 make a preliminary review; and, unless the office determines
2079 that the complaint is without any reasonable basis or the
2080 complaint does not request an inspection, the office must ~~shall~~
2081 make an inspection. The office must provide the complainant with
2082 a written acknowledgment of the complaint within 15 days after
2083 receipt by the office. Such acknowledgment must include the case
2084 number assigned by the office to the complaint and the name and
2085 contact information of the duly authorized officer, employee, or
2086 agent of the office conducting the investigation or inspection
2087 pursuant to this chapter. The complainant must ~~shall~~ be advised,
2088 within 30 days after the receipt of the complaint by the office,
2089 of the proposed course of action of the office, including an
2090 estimated timeframe for the handling of the complaint. If the
2091 office does not conclude the inspection or investigation within
2092 the estimated timeframe, the office must advise the complainant
2093 in writing within 15 days after any revised course of action is
2094 proposed, including a revised estimated timeframe for the
2095 handling of the complaint. Within 15 days after the office
2096 completes its inspection or concludes its investigation, the
2097 office must provide to the complainant and the provider a
2098 written closure statement specifying the findings of the office
2099 and the results of the inspection or investigation.

2100 (4) A ~~No~~ provider operating under a certificate of

2101 authority under this chapter may not discriminate or retaliate
 2102 in any manner against a resident or an employee of a facility
 2103 providing care because such resident or employee or any other
 2104 person has initiated a complaint pursuant to this section.

2105 Section 28. Section 651.114, Florida Statutes, is amended
 2106 to read:

2107 651.114 Delinquency proceedings; remedial rights.—

2108 (1) Upon determination by the office that a provider is
 2109 not in compliance with this chapter, the office may notify the
 2110 chair of the Continuing Care Advisory Council, who may assist
 2111 the office in formulating a corrective action plan.

2112 (2) Within 30 days after a request by either the advisory
 2113 council or the office, a provider must ~~shall~~ make a plan for
 2114 obtaining compliance or solvency available to the advisory
 2115 council and the office, ~~within 30 days after being requested to~~
 2116 ~~do so by the council,~~ a plan for obtaining compliance or
 2117 solvency.

2118 (3) Within 30 days after receipt of a plan for obtaining
 2119 compliance or solvency, the office, or notification, the
 2120 advisory council at the request of the office, must ~~shall~~:

- 2121 (a) Consider and evaluate the plan submitted by the
 2122 provider.
- 2123 (b) Discuss the problem and solutions with the provider.
- 2124 (c) Conduct such other business as is necessary.
- 2125 (d) Report its findings and recommendations to the office,

2126 | which may require additional modification of the plan.

2127 |

2128 | This subsection may not be interpreted so as to delay or prevent
 2129 | the office from taking necessary regulatory measures regarding
 2130 | the provider that submitted the plan.

2131 | (4) When the financial condition of a continuing care
 2132 | facility or provider is impaired or is such that if not modified
 2133 | or corrected, the continued operation would result in
 2134 | insolvency, the office may direct the provider to formulate and
 2135 | file with the office a corrective action plan. If the provider
 2136 | fails to submit a plan within 30 days after the office's
 2137 | directive, or submits a plan that is insufficient to correct the
 2138 | condition, the office may specify a plan and direct the provider
 2139 | to implement the plan.

2140 | (5)~~(4)~~ After receiving approval of a plan by the office,
 2141 | the provider must ~~shall~~ submit a progress report monthly to the
 2142 | advisory council or the office, or both, in a manner prescribed
 2143 | by the office. After 3 months, or at any earlier time deemed
 2144 | necessary, the council must ~~shall~~ evaluate the progress by the
 2145 | provider and must ~~shall~~ advise the office of its findings.

2146 | (6)~~(5)~~ If ~~Should~~ the office finds ~~find~~ that sufficient
 2147 | grounds exist for rehabilitation, liquidation, conservation,
 2148 | reorganization, seizure, or summary proceedings of an insurer as
 2149 | set forth in ss. 631.051, 631.061, and 631.071, the department
 2150 | ~~office~~ may petition for an appropriate court order or may pursue

2151 such other relief as is afforded in part I of chapter 631.
2152 Before invoking its powers under part I of chapter 631, the
2153 department must ~~office shall~~ notify the chair of the advisory
2154 council.

2155 (7) Notwithstanding s. 651.011, for purposes of s.
2156 631.051, impairment of a provider is defined according to the
2157 term "impaired" in s. 651.011.

2158 (8)(6) In the event an order of conservation,
2159 rehabilitation, liquidation, or ~~conservation, reorganization,~~
2160 ~~seizure, or summary proceeding~~ has been entered against a
2161 provider, the department and office are vested with all of the
2162 powers and duties they have under the provisions of part I of
2163 chapter 631 in regard to delinquency proceedings of insurance
2164 companies. A provider must give written notice of the proceeding
2165 to its residents within 3 business days after the initiation of
2166 a delinquency proceeding under chapter 631 and must include a
2167 notice of the delinquency proceeding in any written materials
2168 provided to prospective residents.

2169 ~~(7) If the financial condition of the continuing care~~
2170 ~~facility or provider is such that, if not modified or corrected,~~
2171 ~~its continued operation would result in insolvency, the office~~
2172 ~~may direct the provider to formulate and file with the office a~~
2173 ~~corrective action plan. If the provider fails to submit a plan~~
2174 ~~within 30 days after the office's directive or submits a plan~~
2175 ~~that is insufficient to correct the condition, the office may~~

2176 ~~specify a plan and direct the provider to implement the plan.~~

2177 (9) A provider subject to an order to show cause entered
2178 pursuant to chapter 631 must file its written response to the
2179 order, together with any defenses it may have to the
2180 department's allegations, no later than 20 days after service of
2181 the order to show cause, but no fewer than 15 days before the
2182 date of the hearing set by the order to show cause.

2183 (10) A hearing held pursuant to chapter 631 to determine
2184 whether cause exists for the department to be appointed receiver
2185 must be commenced within 60 days after an order directing a
2186 provider to show cause.

2187 (11) (a) ~~(8) (a)~~ The rights of the office described in this
2188 section are subordinate to the rights of a trustee or lender
2189 pursuant to the terms of the instrument, a resolution,
2190 ordinance, loan agreement, indenture of trust, mortgage, lease,
2191 security agreement, or other instrument creating or securing
2192 bonds or notes issued to finance a facility, and the office,
2193 subject to the provisions of paragraph (c), may ~~shall~~ not
2194 exercise its remedial rights provided under this section and ss.
2195 651.018, 651.106, 651.108, and 651.116 with respect to a
2196 facility that is not in default of any financial or contractual
2197 obligation other than ~~subject to~~ a lien, mortgage, lease, or
2198 other encumbrance or trust indenture securing bonds or notes
2199 issued in connection with the financing of the facility, if the
2200 trustee or lender, by inclusion or by amendment to the loan

2201 documents or by a separate contract with the office, agrees that
 2202 the rights of residents under a continuing care or continuing
 2203 care at-home contract will be honored and will not be disturbed
 2204 by a foreclosure or conveyance in lieu thereof as long as the
 2205 resident:

2206 1. Is current in the payment of all monetary obligations
 2207 required by the contract;

2208 2. Is in compliance and continues to comply with all
 2209 provisions of the contract; and

2210 3. Has asserted no claim inconsistent with the rights of
 2211 the trustee or lender.

2212 (b) This subsection does not require a trustee or lender
 2213 to:

2214 1. Continue to engage in the marketing or resale of new
 2215 continuing care or continuing care at-home contracts;

2216 2. Pay any rebate of entrance fees as may be required by a
 2217 resident's continuing care or continuing care at-home contract
 2218 as of the date of acquisition of the facility by the trustee or
 2219 lender and until expiration of the period described in paragraph
 2220 (d);

2221 3. Be responsible for any act or omission of any owner or
 2222 operator of the facility arising before the acquisition of the
 2223 facility by the trustee or lender; or

2224 4. Provide services to the residents to the extent that
 2225 the trustee or lender would be required to advance or expend

2226 funds that have not been designated or set aside for such
 2227 purposes.

2228 (c) Should the office determine, at any time during the
 2229 suspension of its remedial rights as provided in paragraph (a),
 2230 that the trustee or lender is not in compliance with paragraph
 2231 (a), or that a lender or trustee has assigned or has agreed to
 2232 assign all or a portion of a delinquent or defaulted loan to a
 2233 third party without the office's written consent, the office
 2234 must ~~shall~~ notify the trustee or lender in writing of its
 2235 determination, setting forth the reasons giving rise to the
 2236 determination and specifying those remedial rights afforded to
 2237 the office which the office must ~~shall~~ then reinstate.

2238 (d) Upon acquisition of a facility by a trustee or lender
 2239 and evidence satisfactory to the office that the requirements of
 2240 paragraph (a) have been met, the office must ~~shall~~ issue a 90-
 2241 day temporary certificate of authority granting the trustee or
 2242 lender the authority to engage in the business of providing
 2243 continuing care or continuing care at-home and to issue
 2244 continuing care or continuing care at-home contracts subject to
 2245 the office's right to immediately suspend or revoke the
 2246 temporary certificate of authority if the office determines that
 2247 any of the grounds described in s. 651.106 apply to the trustee
 2248 or lender or that the terms of the contract used as the basis
 2249 for the issuance of the temporary certificate of authority by
 2250 the office have not been or are not being met by the trustee or

2251 lender since the date of acquisition.

2252 Section 29. Section 651.1141, Florida Statutes, is created
2253 to read:

2254 651.1141 Immediate final orders.—The office may issue an
2255 immediate final order to cease and desist if the office finds
2256 any one of the following has occurred:

2257 (a) Installation of a general partner of a provider or
2258 assumption of ownership or possession or control of 10 percent
2259 or more of a provider's assets in violation of s. 651.024 or s.
2260 651.0245.

2261 (b) The removal or commitment of 10 percent or more of the
2262 required minimum liquid reserve funds in violation of s.
2263 651.035.

2264 (c) The assumption of control over a facility's operations
2265 in violation of s. 651.043.

2266 Section 30. Paragraphs (d) and (e) of subsection (1) of
2267 section 651.121, Florida Statutes, are amended to read:

2268 651.121 Continuing Care Advisory Council.—

2269 (1) The Continuing Care Advisory Council to the office is
2270 created consisting of 10 members who are residents of this state
2271 appointed by the Governor and geographically representative of
2272 this state. Three members shall be administrators of facilities
2273 that hold valid certificates of authority under this chapter and
2274 shall have been actively engaged in the offering of continuing
2275 care contracts in this state for 5 years before appointment. The

2276 remaining members include:

2277 ~~(d) An attorney.~~

2278 ~~(d)-(e)~~ Four ~~Three~~ residents who hold continuing care or
 2279 continuing care at-home contracts with a facility certified in
 2280 this state.

2281 Section 31. Subsections (1) and (4) of section 651.125,
 2282 Florida Statutes, are amended to read:

2283 651.125 Criminal penalties; injunctive relief.-

2284 (1) Any person who maintains, enters into, or, as manager
 2285 or officer or in any other administrative capacity, assists in
 2286 entering into, maintaining, or performing any continuing care or
 2287 continuing care at-home contract subject to this chapter without
 2288 ~~doing so in pursuance of~~ a valid provisional certificate of
 2289 authority or certificate of authority ~~or renewal thereof~~, as
 2290 contemplated by or provided in this chapter, or who otherwise
 2291 violates any provision of this chapter or rule adopted in
 2292 pursuance of this chapter, commits a felony of the third degree,
 2293 punishable as provided in s. 775.082 or s. 775.083. Each
 2294 violation of this chapter constitutes a separate offense.

2295 (4) Any action brought by the office against a provider is
 2296 ~~shall~~ not abated ~~abate~~ by reason of a sale or other transfer of
 2297 ownership of the facility used to provide care, which provider
 2298 is a party to the action, except with the express written
 2299 consent of the ~~director of the office~~.

2300 Section 32. This act shall take effect July 1, 2018.