

1                   A bill to be entitled  
2           An act relating to continuing care contracts; amending  
3           s. 415.1055, F.S.; revising a notification to an  
4           administrative entity relating to vulnerable adults;  
5           amending s. 651.011, F.S.; providing and amending  
6           definitions; amending s. 651.012, F.S.; conforming a  
7           cross-reference; deleting an obsolete date; amending  
8           s. 651.013, F.S.; revising applicability of specified  
9           provisions of the Florida Insurance Code as to the  
10          Office of Insurance Regulation's authority to regulate  
11          providers of continuing care and continuing care at-  
12          home; creating s. 651.0215, F.S.; providing  
13          requirements and procedures for submission and  
14          issuance of applications for certificates of  
15          authority; providing for a consolidated application  
16          and requirements and procedures for material changes  
17          to the application; providing restrictions for  
18          entrance fees, reservation deposits, and release of  
19          escrow moneys; providing that specified persons may  
20          not have a substantial interest in any decision by the  
21          office regarding the release of certain escrow funds;  
22          amending s. 651.022, F.S.; revising information  
23          required in an application for a provisional  
24          certificate of authority; specifying requirements for  
25          review of such applications and for application

26 amendments if material changes occur; amending s.  
27 651.023, F.S.; revising requirements for an  
28 application for a certificate of authority; revising  
29 procedures and requirements for the office's review of  
30 such applications and for application amendments if  
31 material changes occur; amending s. 651.024, F.S.;  
32 providing and revising applicability of certain  
33 requirements for a person seeking to acquire or assume  
34 a specified role of a provider or seeking specified  
35 ownership, possession, or control of a provider's  
36 assets; providing procedures for filing a disclaimer  
37 of control; providing construction; creating s.  
38 651.0245, F.S.; providing requirements and procedures  
39 for submission and review of applications for  
40 simultaneous acquisition of a facility and issuance of  
41 a certificate of authority; providing that specified  
42 parties have standing to petition a circuit to enforce  
43 the section; authorizing a specified filing to rebut a  
44 presumption of control; authorizing rulemaking;  
45 amending s. 651.026, F.S.; revising requirements for  
46 annual reports filed with the office by providers and  
47 facilities; requiring a specified annual report by the  
48 office; amending s. 651.0261, F.S.; providing  
49 requirements for monthly and quarterly statements  
50 filed with the office by providers and facilities;

51 authorizing the office to require, under certain  
52 circumstances, providers or facilities to file monthly  
53 statements and certain other information; amending s.  
54 651.033, F.S.; revising requirements for and  
55 restrictions for withdrawals from escrow accounts;  
56 revising procedures for the office's review and  
57 approval of specified withdrawals; providing  
58 construction; authorizing the office to order transfer  
59 of escrowed funds under specified conditions; creating  
60 s. 651.034, F.S.; requiring the office to take  
61 specified actions if a regulatory action level event  
62 occurs; providing requirements and procedures for  
63 submission and approval of corrective actions plans;  
64 authorizing the office to retain consultants for  
65 specified purposes; requiring affected providers or  
66 parties directed by the office to bear fees, costs,  
67 and expenses for such consultants; authorizing the  
68 office to take certain actions if an impairment  
69 occurs; authorizing the office to exempt a provider  
70 from such actions for up to 5 years; authorizing the  
71 commission to adopt rules; amending s. 651.035, F.S.;  
72 revising provider minimum liquid reserve requirements  
73 under specified circumstances; providing construction  
74 related to specified debt service reserves; creating  
75 s. 651.043, F.S.; providing requirements for a

76 contract for management; providing procedures and  
77 requirements for providers filing notices of change in  
78 management with the office; authorizing the office to  
79 disapprove new management and order the provider to  
80 remove such management under specified conditions;  
81 providing requirements and procedures for the office's  
82 review of new management and issuance of required  
83 notices; providing timeframes for removal of  
84 disapproved management under specified conditions;  
85 authorizing the office to take administrative action  
86 based on specified violations; amending s. 651.051,  
87 F.S.; providing requirements for records storage;  
88 amending s. 651.071, F.S.; revising construction as to  
89 the priority of continuing care and continuing care  
90 at-home contracts in the event of receivership or  
91 liquidation proceedings against a provider; amending  
92 s. 651.105, F.S.; requiring a provider to furnish  
93 specified documents related to the provider's or  
94 facility's financial status and to other specified  
95 matters; providing that the office has standing in  
96 court to obtain such documents; amending s. 651.106,  
97 F.S.; authorizing the office to deny an application on  
98 certain grounds; revising and adding grounds for  
99 application denial or disciplinary action by the  
100 office; amending s. 651.114, F.S.; requiring a

101 provider to make a plan for obtaining compliance or  
102 solvency in delinquency proceedings to the office or  
103 the advisory council; providing a timeframe for the  
104 office or council upon receipt of such plan to take  
105 specified action; providing construction; authorizing  
106 the office to require the provider to prepare a  
107 corrective action plan under certain conditions, and  
108 to specify such a plan if the provider fails to timely  
109 submit such a plan; defining the term "impaired";  
110 requiring a provider to provide, within a specified  
111 timeframe, a certain notice to residents after the  
112 initiation of a delinquency proceeding; revising  
113 conditions under which the office's rights are  
114 subordinate to the rights of a trustee or lender  
115 pursuant to certain instruments; creating s. 651.1141,  
116 F.S.; authorizing the office to issue an immediate  
117 suspension order or cease and desist order under  
118 specified conditions; authorizing the office to  
119 enforce such orders in a specified circuit court;  
120 amending s. 651.121, F.S.; revising membership  
121 requirements for the Continuing Care Advisory Council;  
122 amending s. 651.125, F.S.; providing a criminal  
123 penalty for certain actions performed without a valid  
124 provisional certificate of authority; making a  
125 technical change; providing an effective date.

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

Section 1. Subsection (10) of section 451.1055, Florida Statutes, is amended to read:

415.1055 Notification to administrative entities.—

(10) When a report has been received and the department has reason to believe that a vulnerable adult resident of a facility licensed by the Agency for Health Care Administration or the Agency for Persons with Disabilities or a vulnerable adult resident of a provider licensed by the Office of Insurance Regulation under chapter 651 has been the victim of abuse, neglect, or exploitation, the department shall provide a copy of its investigation to the appropriate agency. If the investigation determines that a health professional licensed or certified under the Department of Health may have abused, neglected, or exploited a vulnerable adult, the department shall also provide a copy to the Department of Health.

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

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

(1) "Actuarial opinion" means an opinion issued by an actuary in accordance with Actuarial Standards of Practice No. 3 for Continuing Care Retirement Communities, Revised Edition, effective May 1, 2011.

151        (2) "Actuarial study" means an analysis prepared for an  
152 individual facility, or consolidated for multiple facilities,  
153 for either a certified provider as of a current valuation date  
154 or the most recent fiscal year, or for an applicant as of a  
155 projected future valuation date, which includes an actuary's  
156 opinion as to whether such provider or applicant is in  
157 satisfactory actuarial balance in accordance with Actuarial  
158 Standards of Practice No. 3 for Continuing Care Retirement  
159 Communities, Revised Edition, effective May 1, 2011.

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

164        (4)~~(1)~~ "Advertising" means the dissemination of written,  
165 visual, or electronic information by a provider, or any person  
166 affiliated with or controlled by a provider, to potential  
167 residents or their representatives for the purpose of inducing  
168 such persons to subscribe to or enter into a contract for  
169 continuing care or continuing care at-home.

170        (5)~~(2)~~ "Continuing care" or "care" means, pursuant to a  
171 contract, furnishing shelter and nursing care or personal  
172 services to a resident who resides in a facility, whether such  
173 nursing care or personal services are provided in the facility  
174 or in another setting designated in the contract for continuing  
175 care, by an individual not related by consanguinity or affinity

176 to the resident, upon payment of an entrance fee.

177 (6)~~(3)~~ "Continuing Care Advisory Council" or "advisory  
178 council" means the council established in s. 651.121.

179 (7)~~(4)~~ "Continuing care at-home" means, pursuant to a  
180 contract other than a contract described in subsection (2),  
181 furnishing to a resident who resides outside the facility the  
182 right to future access to shelter and nursing care or personal  
183 services, whether such services are provided in the facility or  
184 in another setting designated in the contract, by an individual  
185 not related by consanguinity or affinity to the resident, upon  
186 payment of an entrance fee.

187 (8) "Controlling company" means any corporation, trust, or  
188 association that directly or indirectly owns 25 percent or more  
189 of the voting securities of one or more facilities that are  
190 stock corporations, or 25 percent or more of the ownership  
191 interest of one or more facilities that are not stock  
192 corporations.

193 (9) "Corrective order" means an order issued by the office  
194 which specifies corrective actions the office has determined are  
195 required.

196 (10) "Days cash on hand" means the quotient obtained by  
197 dividing the value of paragraph (a) by the value of paragraph  
198 (b).

199 (a) The sum of unrestricted cash, unrestricted short-term  
200 and long-term investments, provider restricted funds, and the

201 liquid reserve as required under s. 651.035 as of the reporting  
202 period.

203 (b) Operating expenses less depreciation, amortization,  
204 and other noncash expenses and nonoperating losses, divided by  
205 365. Operating expenses, depreciation, amortization, and other  
206 noncash expenses and nonoperating losses are each the sum of  
207 their respective values over the 12-month period ending with the  
208 reporting date.

209  
210 With prior written approval of the office, a demand note or  
211 other parental guarantee may be considered a short-term or long-  
212 term investment for the purposes of paragraph (a). However, the  
213 total of all demand notes issued by the parent may not, at any  
214 time, be more than the sum of unrestricted cash and unrestricted  
215 short-term and long-term investments held by the parent.

216 (11) "Debt service coverage ratio" means the quotient  
217 obtained by dividing the value of paragraph (a) by the value of  
218 paragraph (b).

219 (a) The sum of total expenses less interest expense on the  
220 facility, depreciation, amortization, and other noncash expenses  
221 and nonoperating losses, subtracted from the sum of total  
222 revenues, excluding noncash revenues and nonoperating gains and  
223 gross entrance fees received less earned entrance fees and  
224 refunds paid. Expenses, interest expense on the facility,  
225 depreciation, amortization, other noncash expenses and

226 nonoperating losses, revenues, noncash revenues, nonoperating  
227 gains, gross entrance fees, earned entrance fees, and refunds  
228 are each the sum of their respective values over the 12-month  
229 period ending with the reporting date.

230 (b) Total annual principal and interest expense due on the  
231 facility over the 12-month period ending with the reporting  
232 date. For purposes of this paragraph, principal excludes any  
233 balloon principal payment amounts, and interest expense due is  
234 the sum of the interest over the 12-month period ending with the  
235 reporting date that is reflected in the provider's audit.

236 (12)-(5) "Entrance fee" means an initial or deferred  
237 payment of a sum of money or property made as full or partial  
238 payment for continuing care or continuing care at-home. An  
239 accommodation fee, admission fee, member fee, or other fee of  
240 similar form and application are considered to be an entrance  
241 fee.

242 (13)-(6) "Facility" means a place where continuing care is  
243 furnished and may include one or more physical plants on a  
244 primary or contiguous site or an immediately accessible site. As  
245 used in this subsection, the term "immediately accessible site"  
246 means a parcel of real property separated by a reasonable  
247 distance from the facility as measured along public  
248 thoroughfares, and the term "primary or contiguous site" means  
249 the real property contemplated in the feasibility study required  
250 by this chapter.

251 ~~(7) "Generally accepted accounting principles" means those~~  
252 ~~accounting principles and practices adopted by the Financial~~  
253 ~~Accounting Standards Board and the American Institute of~~  
254 ~~Certified Public Accountants, including Statement of Position~~  
255 ~~90-8 with respect to any full year to which the statement~~  
256 ~~applies.~~

257 (14) "Impaired" or "impairment" means that any of the  
258 following have occurred:

259 (a) A provider has failed to maintain the liquid reserve  
260 as required in s. 651.035, unless the provider has received  
261 prior written approval from the office for a withdrawal pursuant  
262 to s. 651.035(6) and is compliant with the approved payment  
263 schedule; or

264 (b) Beginning July 1, 2019:

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

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

272 ~~(15)-(8)~~ "Insolvency" means the condition in which the  
273 provider is unable to pay its obligations as they come due in  
274 the normal course of business.

275 ~~(16)-(9)~~ "Licensed" means that the provider has obtained a

276 certificate of authority from the office ~~department~~.

277 (17) "Manager" or "management" means a person who  
278 administers the day-to-day business operations of a facility for  
279 a provider, subject to the policies, directives, and oversight  
280 of the provider; a person who exercises or has the ability to  
281 exercise effective control of the provider; or a person who  
282 influences or has the ability to influence the transaction of  
283 the business of the provider.

284 (18)~~(10)~~ "Nursing care" means those services or acts  
285 rendered to a resident by an individual licensed or certified  
286 pursuant to chapter 464.

287 (19) "Obligated group" means a group of entities that have  
288 jointly agree to be bound by a financing structure containing  
289 security provisions and covenants applicable to the group, and  
290 debt issued under such a financing structure is a joint and  
291 several obligation of each member of the group.

292 (20) "Occupancy" means the total number of occupied  
293 independent living, assisted living, and skilled nursing units  
294 in a facility divided by the total number of units in that  
295 facility, excluding units that are unavailable to market or  
296 reserve, as of the most recent report filed with the office or  
297 the most recent examination by the office.

298 (21)~~(11)~~ "Personal services" has the same meaning as in s.  
299 429.02.

300 (22)~~(12)~~ "Provider" means the owner or operator, whether a

301 natural person, partnership or other unincorporated association,  
 302 however organized, trust, or corporation, of an institution,  
 303 building, residence, or other place, whether operated for profit  
 304 or not, which owner or operator provides continuing care or  
 305 continuing care at-home for a fixed or variable fee, or for any  
 306 other remuneration of any type, whether fixed or variable, for  
 307 the period of care, payable in a lump sum or lump sum and  
 308 monthly maintenance charges or in installments. The term does  
 309 not apply to an entity that has existed and continuously  
 310 operated a facility located on at least 63 acres in this state  
 311 providing residential lodging to members and their spouses for  
 312 at least 66 years on or before July 1, 1989, and has the  
 313 residential capacity of 500 persons, is directly or indirectly  
 314 owned or operated by a nationally recognized fraternal  
 315 organization, is not open to the public, and accepts only its  
 316 members and their spouses as residents.

317 (23)-(13) "Records" means all documents, correspondence,  
 318 and the permanent financial, directory, and personnel  
 319 information and data maintained by a provider pursuant to this  
 320 chapter, regardless of the physical form, characteristics, or  
 321 means of transmission.

322 (24) "Regulatory action level event" means that at least  
 323 two of the following have occurred:

324 (a) The provider's debt service coverage ratio is less  
 325 than the minimum ratio specified in the provider's bond

326 covenants or lending agreement for long-term financing, or, if  
327 the provider does not have a debt service coverage ratio  
328 required by its lending institution, the provider's debt service  
329 coverage ratio is less than 1.20:1 as of the most recent report  
330 filed with the office or the most recent examination by the  
331 office. For a provider that is a member of an obligated group  
332 having cross-collateralized debt and an investment grade credit  
333 rating from a nationally recognized credit rating agency, as  
334 applicable, from Moody's Investors Service, Standard & Poor's,  
335 or Fitch Ratings, the obligated group's debt service coverage  
336 ratio may be used as the provider's debt service coverage ratio  
337 if the provider furnishes documentation to the satisfaction of  
338 the office.

339 (b) The provider's days cash on hand is less than the  
340 minimum number of days cash on hand specified in the provider's  
341 bond covenants or lending agreement for long-term financing. If  
342 the provider does not have a days cash on hand required by its  
343 lending institution, the days cash on hand may not be less than  
344 100 as of the most recent report filed with the office or the  
345 most recent examination by the office. For a provider that is a  
346 member of an obligated group having cross-collateralized debt  
347 and an investment grade credit rating from a nationally  
348 recognized credit rating agency, as applicable, from Moody's  
349 Investors Service, Standard & Poor's, or Fitch Ratings, the days  
350 cash on hand of the obligated group may be used as the

351 provider's days cash on hand if the provider furnishes  
 352 documentation to the satisfaction of the office.

353 (c) The occupancy at the provider's facility is less than  
 354 80 percent, averaged over the 12-month period ending with the  
 355 reporting date.

356 (25)-(14) "Resident" means a purchaser of, a nominee of, or  
 357 a subscriber to a continuing care or continuing care at-home  
 358 contract. Such contract does not give the resident a part  
 359 ownership of the facility in which the resident is to reside,  
 360 unless expressly provided in the contract.

361 (26)-(15) "Shelter" means an independent living unit, room,  
 362 apartment, cottage, villa, personal care unit, nursing bed, or  
 363 other living area within a facility set aside for the exclusive  
 364 use of one or more identified residents.

365 Section 3. Section 651.012, Florida Statutes, is amended  
 366 to read:

367 651.012 Exempted facility; written disclosure of  
 368 exemption.—Any facility exempted under ss. 632.637(1)(e) and  
 369 651.011(22) ~~651.011(12)~~ must provide written disclosure of such  
 370 exemption to each person admitted to the facility ~~after October~~  
 371 ~~1, 1996~~. This disclosure must be written using language likely  
 372 to be understood by the person and must briefly explain the  
 373 exemption.

374 Section 4. Subsection (2) of section 651.013, Florida  
 375 Statutes, is amended to read:

376 651.013 Chapter exclusive; applicability of other laws.—

377 (2) In addition to other applicable provisions cited in  
 378 this chapter, the office has the authority granted under ss.  
 379 624.302 and 624.303, 624.307-624.312, 624.318 ~~624.308-624.312,~~  
 380 624.319(1)-(3), 624.320-624.321, 624.324, ~~and~~ 624.34, ~~and~~  
 381 624.422 of the Florida Insurance Code to regulate providers of  
 382 continuing care and continuing care at-home.

383 Section 5. Section 651.0215, Florida Statutes, is created  
 384 to read:

385 651.0215 Consolidated application for provisional  
 386 certificate of authority and certificate of authority; required  
 387 restrictions on use of entrance fees.—

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

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

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

399 (c) The resident contract must state that collection of  
 400 the balance of the entrance fee is to occur after the resident

401 is notified that his or her selected unit is available for  
402 occupancy and on or before the occupancy date.

403 (2) The consolidated application must be on a form  
404 prescribed by the commission and must contain all of the  
405 following information:

406 (a) All of the information required pursuant to s  
407 651.022(2).

408 (b) A feasibility study prepared by an independent  
409 consultant which contains all of the information required  
410 pursuant to s. 651.022(3) and financial forecasts or projections  
411 prepared in accordance with standards adopted by the American  
412 Institute of Certified Public Accountants or in accordance with  
413 standards for feasibility studies for continuing care retirement  
414 communities adopted by the Actuarial Standards Board.

415 1. The feasibility study must take into account project  
416 costs, actual marketing results to date and marketing  
417 projections, resident fees and charges, competition, resident  
418 contract provisions, and other factors that affect the  
419 feasibility of operating the facility.

420 2. If the feasibility study is prepared by an independent  
421 certified public accountant, it must contain an examination  
422 report, or a compilation report acceptable to the office,  
423 containing a financial forecast or projections for the first 5  
424 years of operations which take into account an actuary's  
425 mortality and morbidity assumptions as the study relates to

426 turnover, rates, fees, and charges. If the study is prepared by  
427 an independent consulting actuary, it must contain mortality and  
428 morbidity assumptions as it relates to turnover, rates, fees,  
429 and charges and an actuary's signed opinion that the project as  
430 proposed is feasible and that the study has been prepared in  
431 accordance with Actuarial Standards of Practice No. 3 for  
432 Continuing Care Retirement Communities, Revised Edition,  
433 effective May 1, 2011.

434 (c) Documents evidencing that commitments have been  
435 secured for construction financing and long-term financing or  
436 that a documented plan acceptable to the office has been adopted  
437 by the applicant for long-term financing.

438 (d) Documents evidencing that all conditions of the lender  
439 have been satisfied to activate the commitment to disburse  
440 funds, other than the obtaining of the certificate of authority,  
441 the completion of construction, or the closing of the purchase  
442 of realty or buildings for the facility.

443 (e) Documents evidencing that the aggregate amount of  
444 entrance fees received by or pledged to the applicant, plus  
445 anticipated proceeds from any long-term financing commitment and  
446 funds from all other sources in the actual possession of the  
447 applicant, equal at least 100 percent of the aggregate cost of  
448 constructing or purchasing, equipping, and furnishing the  
449 facility plus 100 percent of the anticipated startup losses of  
450 the facility.

451 (f) A complete audited financial report of the applicant,  
452 prepared by an independent certified public accountant in  
453 accordance with generally accepted accounting principles, as of  
454 the date the applicant commenced business operations or for the  
455 fiscal year that ended immediately preceding the date of  
456 application, whichever is later, and complete unaudited  
457 quarterly financial statements attested to by the applicant  
458 after the date of the last audit.

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

461 (h) Such other reasonable data, financial statements, and  
462 pertinent information as the commission or office may require  
463 with respect to the applicant or the facility to determine the  
464 financial status of the facility and the management capabilities  
465 of its managers and owners.

466  
467 If any material change occurs in the facts set forth in an  
468 application filed with the office pursuant to this subsection,  
469 an amendment setting forth such change must be filed with the  
470 office within 10 business days after the applicant becomes aware  
471 of such change, and a copy of the amendment must be sent by  
472 registered mail to the principal office of the facility and to  
473 the principal office of the controlling company.

474 (3) If an applicant has or proposes to have more than one  
475 facility offering continuing care or continuing care at-home, a

476 separate certificate of authority must be obtained for each  
477 facility.

478 (4) Within 45 days after receipt of the information  
479 required under subsection (2), the office must examine the  
480 information and notify the applicant in writing, specifically  
481 requesting any additional information that the office is  
482 authorized to require. An application is deemed complete when  
483 the office receives all requested information and the applicant  
484 corrects any error or omission of which the applicant was timely  
485 notified or when the time for such notification has expired.  
486 Within 15 days after receipt of all of the requested additional  
487 information, the office must notify the applicant in writing  
488 that all of the requested information has been received and that  
489 the application is deemed to be complete as of the date of the  
490 notice.

491 (5) Within 45 days after an application is deemed complete  
492 under subsection (4) and upon completion of the remaining  
493 requirements of this section, the office must complete its  
494 review and issue or deny a certificate of authority to the  
495 applicant. If a certificate of authority is denied, the office  
496 must notify the applicant in writing, citing the specific  
497 failures to satisfy this chapter, and the applicant is entitled  
498 to an administrative hearing pursuant to chapter 120.

499 (6) The office must issue a certificate of authority upon  
500 determining that the applicant meets all requirements of law and

501 has submitted all of the information required under this  
502 section, that all escrow requirements have been satisfied, and  
503 that the fees prescribed in s. 651.015(2) have been paid.

504 (7) The issuance of a certificate of authority entitles  
505 the applicant to begin construction and collect reservation  
506 deposits and entrance fees from prospective residents. The  
507 reservation contract must state the cancellation policy and the  
508 terms of the continuing care contract to be entered into. All or  
509 any part of an entrance fee or reservation deposit collected  
510 must be placed in an escrow account or on deposit with the  
511 department pursuant to s. 651.033.

512 (8) The provider is entitled to secure release of the  
513 moneys held in escrow within 7 days after the office receives an  
514 affidavit from the provider, along with appropriate  
515 documentation to verify, and notification is provided to the  
516 escrow agent by certified mail, that the following conditions  
517 have been satisfied:

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

519 (b) Payment in full has been received for at least 70  
520 percent of the total units of a phase or of the total of the  
521 combined phases constructed. If a provider offering continuing  
522 care at-home is applying for a release of escrowed entrance  
523 fees, the same minimum requirement must be met for the  
524 continuing care and continuing care at-home contracts  
525 independently of each other.

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

529        (d) Documents evidencing the intended application of the  
530 proceeds upon release and documents evidencing that the entrance  
531 fees, when released, will be applied as represented to the  
532 office.

533  
534 Notwithstanding chapter 120, a person, other than the provider,  
535 the escrow agent, and the office, may not have a substantial  
536 interest in any decision by the office regarding the release of  
537 escrow funds in any proceeding under chapter 120 or this  
538 chapter.

539        (9) The office may not approve any application that  
540 includes in the plan of financing any encumbrance of the  
541 operating reserves or renewal and replacement reserves required  
542 by this chapter.

543        (10) The office may not issue a certificate of authority  
544 to a facility that does not have a component that is to be  
545 licensed pursuant to part II of chapter 400 or part I of chapter  
546 429, or that does not offer personal services or nursing  
547 services through written contractual agreement. A written  
548 contractual agreement must be disclosed in the contract for  
549 continuing care or continuing care at-home and is subject to s.  
550 651.1151.

551 Section 6. Paragraphs (c) and (f) of subsection (2) and  
552 subsection (8) of section 651.022, Florida Statutes, are  
553 amended, and subsection (9) is added to that section, to read:

554 651.022 Provisional certificate of authority;  
555 application.—

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

559 (c)1. Evidence that the applicant is competent and  
560 trustworthy ~~reputable and of responsible~~ character. If the  
561 applicant is a firm, association, organization, partnership,  
562 business trust, corporation, or company, the form must ~~shall~~  
563 require evidence that the members or shareholders are competent  
564 and trustworthy ~~reputable and of responsible~~ character, and the  
565 person in charge of providing care under a certificate of  
566 authority must ~~shall~~ likewise be required to produce evidence of  
567 being competent and trustworthy ~~reputable and of responsible~~  
568 character.

569 2. Evidence satisfactory to the office of the ability of  
570 the applicant to comply with ~~the provisions of~~ this chapter and  
571 with rules adopted by the commission pursuant to this chapter.

572 3. A statement of whether a person identified in the  
573 application for a provisional certificate of authority or the  
574 administrator or manager of the facility, if such person has  
575 been designated, or any such person living in the same location:

576 a. Has been convicted of a felony or has pleaded nolo  
577 contendere to a felony charge, or has been held liable or has  
578 been enjoined in a civil action by final judgment, if the felony  
579 or civil action involved fraud, embezzlement, fraudulent  
580 conversion, or misappropriation of property.

581 b. Is subject to a currently effective injunctive or  
582 restrictive order or federal or state administrative order  
583 relating to business activity or health care as a result of an  
584 action brought by a public agency or department, including,  
585 without limitation, an action affecting a license under chapter  
586 400 or chapter 429.

587  
588 The statement must ~~shall~~ set forth the court or agency, the date  
589 of conviction or judgment, and the penalty imposed or damages  
590 assessed, or the date, nature, and issuer of the order. Before  
591 determining whether a provisional certificate of authority is to  
592 be issued, the office may make an inquiry to determine the  
593 accuracy of the information submitted pursuant to this paragraph  
594 ~~subparagraphs 1. and 2.~~

595 (f) Such other reasonable documents, data, records,  
596 financial statements, and pertinent information as the  
597 commission or office may reasonably require with respect to the  
598 provider or the facility, including the most recent audited  
599 financial statements of comparable facilities currently or  
600 previously owned, managed, or developed by the applicant or its

601 principal, to assist in determining the financial viability of  
602 the project and the management capabilities of its managers and  
603 owners.

604 (8) The office may ~~shall~~ not approve any application that  
605 ~~which~~ includes in the plan of financing any encumbrance of the  
606 operating reserves or renewal and replacement reserves required  
607 by this chapter.

608 (9) If any material change occurs in the facts set forth  
609 in an application filed with the office pursuant to this  
610 section, an amendment setting forth such change must be filed  
611 with the office within 10 business days after the applicant  
612 becomes aware of such change, and a copy of the amendment must  
613 be sent by registered mail to the principal office of the  
614 facility and to the principal office of the controlling company.

615 Section 7. Paragraph (i) of subsection (1) and subsection  
616 (9) of section 651.023, Florida Statutes, are amended, and  
617 subsection (10) is added to that section, to read:

618 651.023 Certificate of authority; application.-

619 (1) After issuance of a provisional certificate of  
620 authority, the office shall issue to the holder of such  
621 provisional certificate a certificate of authority if the holder  
622 of the provisional certificate provides the office with the  
623 following information:

624 (i) Such other reasonable documents, data, records,  
625 financial statements, and pertinent information as the

626 commission or office may require with respect to the applicant  
627 or the facility, to determine the financial status of the  
628 facility and the management capabilities of its managers and  
629 owners.

630 (9) The office may not approve an application that  
631 includes in the plan of financing any encumbrance of the  
632 operating reserves or renewal and replacement reserves required  
633 by this chapter.

634 (10) If any material change occurs in the facts set forth  
635 in an application filed with the office pursuant to this  
636 section, an amendment setting forth such change must be filed  
637 with the office within 10 business days after the applicant  
638 becomes aware of such change, and a copy of the amendment must  
639 be sent by registered mail to the principal office of the  
640 facility and to the principal office of the controlling company.

641 Section 8. Section 651.024, Florida Statutes, is amended  
642 to read:

643 651.024 Acquisition.—

644 (1) Except with the prior written approval of the office,  
645 a person may not, individually or in conjunction with an  
646 affiliated person of such person, directly or indirectly acquire  
647 a facility operating under a subsisting certificate of authority  
648 and engage in the business of providing continuing care.

649 (2) A person who seeks to assume the role of general  
650 partner of a provider or otherwise assume ownership or

651 possession of, or control over, 10 percent or more of a  
652 provider's assets, based on the balance sheet from the most  
653 recent audited financial statement filed with the office, or who  
654 seeks to acquire 10 percent or more of the ownership interest of  
655 a provider is subject to s. 628.4615.

656 (3) A person may rebut a presumption of control by filing  
657 a disclaimer of control with the office on a form prescribed by  
658 the commission. The disclaimer must fully disclose all material  
659 relationships and bases for affiliation between the person and  
660 the provider or facility, as well as the basis for disclaiming  
661 the affiliation. In lieu of such form, a person or acquiring  
662 party may file with the office a copy of a Schedule 13G filed  
663 with the Securities and Exchange Commission pursuant to Rule  
664 13d-1(b) or (c), 17 C.F.R. s. 240.13d-1, under the Securities  
665 Exchange Act of 1934, as amended. A person issued a certificate  
666 of authority to operate a continuing care facility or a  
667 provisional certificate of authority shall be subject to the  
668 provisions of s. 628.4615.

669 Section 9. Section 651.0245, Florida Statutes, is created  
670 to read:

671 651.0245 Application for the simultaneous acquisition of a  
672 facility and issuance of a certificate of authority.—

673 (1) An applicant seeking simultaneous acquisition of a  
674 facility and issuance of a certificate of authority must:

675 (a) Comply with the notice requirements of s.

676 628.4615(2)(a).

677 (b) File an application in the form prescribed by the  
678 commission.

679 (2) The commission must adopt by rule application  
680 requirements equivalent to those described in ss. 628.4615(4)  
681 and (5), 651.022(2), and 651.023(1)(b). The office must review  
682 the application and issue an approval or disapproval of the  
683 filing in accordance with ss. 628.4615(6)(a) and (c), (7)-(10),  
684 and (14); 651.022(9); and 651.023(1)(b).

685 (3) In addition to the facility or the controlling  
686 company, the office has standing to petition a circuit court as  
687 described in s. 628.4615(9).

688 (4) A person may rebut a presumption of control by filing  
689 a disclaimer of control with the office on a form prescribed by  
690 the commission. The disclaimer must fully disclose all material  
691 relationships and bases for affiliation between the person and  
692 the provider or facility, as well as the basis for disclaiming  
693 the affiliation. In lieu of such form, a person or acquiring  
694 party may file with the office a copy of a Schedule 13G filed  
695 with the Securities and Exchange Commission pursuant to Rule  
696 13d-1(b) or (c), 17 C.F.R. s. 240.13d-1, under the Securities  
697 Exchange Act of 1934, as amended. After a disclaimer has been  
698 filed, the provider or facility is relieved of any duty to  
699 register or report under this section which may arise out of the  
700 provider's or facility's relationship with the person, unless

701 the office disallows the disclaimer.

702 (5) The commission may adopt rules necessary to administer  
703 this section.

704 Section 10. Subsections (2) and (3) of section 651.026,  
705 Florida Statutes, are amended, and subsection (10) is added to  
706 that section, to read:

707 651.026 Annual reports.—

708 (2) The annual report must ~~shall~~ be in such form as the  
709 commission prescribes and must ~~shall~~ contain at least the  
710 following:

711 (a) Any change in status with respect to the information  
712 required to be filed under s. 651.022(2).

713 (b) Financial statements audited by an independent  
714 certified public accountant which must contain, for two or more  
715 periods if the facility has been in existence that long, all of  
716 the following:

717 1. An accountant's opinion and, in accordance with  
718 generally accepted accounting principles:

719 a. A balance sheet;

720 b. A statement of income and expenses;

721 c. A statement of equity or fund balances; and

722 d. A statement of changes in cash flows.

723 2. Notes to the financial statements considered customary  
724 or necessary for full disclosure or adequate understanding of  
725 the financial statements, financial condition, and operation.

726 (c) The following financial information:

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

730 2. A schedule giving additional information relating to  
731 property, plant, and equipment having an original cost of at  
732 least \$25,000, so as to show in reasonable detail with respect  
733 to each separate facility original costs, accumulated  
734 depreciation, net book value, appraised value or insurable value  
735 and date thereof, insurance coverage, encumbrances, and net  
736 equity of appraised or insured value over encumbrances. Any  
737 property not used in continuing care must be shown separately  
738 from property used in continuing care;

739 3. The level of participation in Medicare or Medicaid  
740 programs, or both;

741 4. A statement of all fees required of residents,  
742 including, but not limited to, a statement of the entrance fee  
743 charged, the monthly service charges, the proposed application  
744 of the proceeds of the entrance fee by the provider, and the  
745 plan by which the amount of the entrance fee is determined if  
746 the entrance fee is not the same in all cases; ~~and~~

747 5. Any change or increase in fees if the provider changes  
748 the scope of, or the rates for, care or services, regardless of  
749 whether the change involves the basic rate or only those  
750 services available at additional costs to the resident;:-

751           6. If the provider has more than one certificated  
752 facility, or has operations that are not licensed under this  
753 chapter, ~~it shall submit~~ a balance sheet, statement of income  
754 and expenses, statement of equity or fund balances, and  
755 statement of cash flows for each facility licensed under this  
756 chapter as supplemental information to the audited financial  
757 statements required under paragraph (b); and.

758           7. Calculation of the provider's debt service coverage  
759 ratio and days cash on hand for the current reporting period,  
760 and an opinion from an independent certified public accountant  
761 of such calculations.

762           (d) The provider's occupancy at each facility.

763           (e) ~~(d)~~ Such other reasonable documents, data, records,  
764 financial statements, and pertinent information as the  
765 commission or office may require with respect to the provider or  
766 the facility, or its directors, trustees, members, branches,  
767 subsidiaries, or affiliates, to determine the financial status  
768 of the facility and the management capabilities of its managers  
769 and owners.

770           (f) ~~(e)~~ For each facility, the provider must ~~shall~~ file  
771 with the office annually, together with the annual report  
772 required by this section, a computation of its minimum liquid  
773 reserve calculated in accordance with s. 651.035 on a form  
774 prescribed by the commission.

775           (g) ~~(f)~~ If, due to a change in generally accepted

776 accounting principles, the balance sheet, statement of income  
777 and expenses, statement of equity or fund balances, or statement  
778 of cash flows is known by any other name or title, the annual  
779 report must contain financial statements using the changed names  
780 or titles that most closely correspond to a balance sheet,  
781 statement of income and expenses, statement of equity or fund  
782 balances, and statement of changes in cash flows.

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

- 786 ~~(a) Debt service coverage ratios.~~  
787 ~~(b) Current ratios.~~  
788 ~~(c) Adjusted current ratios.~~  
789 ~~(d) Cash flows.~~  
790 ~~(e) Occupancy rates.~~  
791 ~~(f) Other measures, ratios, or trends.~~  
792 ~~(g) Other factors as may be appropriate.~~

793 (10) Within 90 days after the conclusion of each annual  
794 reporting period, the office must publish an industry  
795 benchmarking report that contains all of the following:

- 796 (a) The median days cash on hand for all providers.  
797 (b) The median debt service coverage ratio for all  
798 providers.  
799 (c) The median occupancy rate for all providers by  
800 setting, including independent living, assisted living, skilled

801 nursing, and the entire facility.

802 Section 11. Section 651.0261, Florida Statutes, is amended  
803 to read:

804 651.0261 Quarterly and monthly statements.—

805 (1) Within 45 days after the end of each fiscal quarter,  
806 each provider must file a quarterly unaudited financial  
807 statement in the form prescribed by rule of the commission and a  
808 detailed listing of the assets maintained in the liquid reserve  
809 as required pursuant to s. 651.035.

810 (2) If the office finds that such information is needed to  
811 properly monitor the financial condition of a provider or  
812 facility or is otherwise needed to protect the public interest,  
813 the office may require the provider to file:

814 (a) Within 25 days after the end of each month, a monthly  
815 unaudited financial statement of the provider or of the facility  
816 in the form prescribed by the commission by rule, a detailed  
817 listing of the assets maintained in the liquid reserve as  
818 required pursuant to s. 651.035, calculation of the provider's  
819 debt service coverage ratio and days cash on hand for the  
820 current reporting period, an opinion from an independent  
821 certified public accountant of such calculations, and the  
822 provider's occupancy at each facility.

823 (b) Such other reasonable documents, data, records,  
824 financial statements, and pertinent information as the  
825 commission or office may reasonably require with respect to the

826 provider or the facility, or its directors, trustees, members,  
827 branches, subsidiaries, or affiliates, to determine the  
828 financial status of the provider or of the facility and the  
829 management capabilities of its managers and owners.

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

832 (a) The facility has been operational for less than 2  
833 years;

834 (b) The provider is:

835 1. Subject to administrative supervision proceedings;

836 2. Subject to a corrective action plan resulting from a  
837 regulatory action level event and for up to 2 years after the  
838 factors that caused the regulatory action level event have been  
839 corrected; or

840 3. Subject to delinquency, receivership, or bankruptcy  
841 proceedings;

842 (c) The provider or facility displays an adverse material  
843 change in financial condition;

844 (d) A change of ownership subject to s. 651.024(2) has  
845 occurred within the previous 2 years; or

846 (e) The facility is found to be impaired.

847 ~~(4) If the office finds, pursuant to rules of the~~  
848 ~~commission, that such information is needed to properly monitor~~  
849 ~~the financial condition of a provider or facility or is~~  
850 ~~otherwise needed to protect the public interest, the office may~~

851 ~~require the provider to file, within 45 days after the end of~~  
852 ~~each fiscal quarter, a quarterly unaudited financial statement~~  
853 ~~of the provider or of the facility in the form prescribed by the~~  
854 ~~commission by rule.~~ The commission may by rule require all or  
855 part of the statements or filings required under this section to  
856 be submitted by electronic means in a computer-readable form  
857 compatible with the electronic data format specified by the  
858 commission.

859 Section 12. Paragraph (a) of subsection (1) and subsection  
860 (2) of section 651.033, Florida Statutes, are amended, and  
861 subsections (6) and (7) are added to that section, to read:

862 651.033 Escrow accounts.—

863 (1) When funds are required to be deposited in an escrow  
864 account pursuant to s. 651.022, s. 651.023, s. 651.035, or s.  
865 651.055:

866 (a) The escrow account must ~~shall~~ be established in a  
867 Florida bank, Florida savings and loan association, ~~or~~ Florida  
868 trust company, or a national bank that is chartered and  
869 supervised by the Office of the Comptroller of the Currency  
870 within the United States Department of the Treasury and that has  
871 a branch in this state which is acceptable to the office, or  
872 such funds must be deposited ~~on deposit~~ with the department; and  
873 the funds deposited therein must ~~shall~~ be kept and maintained in  
874 an account separate and apart from the provider's business  
875 accounts.

876           (2) (a) 1. A provider may withdraw funds held in escrow  
877 without the approval of the office if the amount held in escrow  
878 exceeds the requirements of this section and if the withdrawal  
879 will not affect compliance with s. 651.035.

880           2. For all other proposed withdrawals, in order to receive  
881 the consent of the office, the provider must file documentation  
882 showing why the withdrawal is necessary for the continued  
883 operation of the facility and file such additional information  
884 as the office reasonably requires. A filing is deemed complete  
885 upon the office's receipt of all requested information and the  
886 provider's correction of any error or omission for which the  
887 provider was timely notified. The office must notify the  
888 provider when the filing is deemed complete. Within 30 days  
889 after the filing is deemed complete, the office must provide the  
890 provider with written notice of its approval or disapproval of  
891 the request. The office may disapprove any request to withdraw  
892 such funds if it determines that the withdrawal is not in the  
893 best interest of the residents. In addition, the escrow  
894 agreement shall provide that the escrow agent or another person  
895 designated to act in the escrow agent's place and the provider,  
896 except as otherwise provided in s. 651.035, shall notify the  
897 office in writing at least 10 days before the withdrawal of any  
898 portion of any funds required to be escrowed under the  
899 provisions of s. 651.035. However,

900           (b) In the event of an emergency and upon petition by the

901 provider, the office may ~~waive the 10-day notification period~~  
902 ~~and~~ allow a withdrawal of up to 10 percent of the required  
903 minimum liquid reserve. The office shall have 3 working days to  
904 deny the petition for the emergency 10-percent withdrawal. If  
905 the office fails to deny the petition within 3 working days, the  
906 petition is ~~shall be~~ deemed to have been granted by the office.  
907 For purposes ~~the purpose~~ of this section, "working day" means  
908 each day that is not a Saturday, Sunday, or legal holiday as  
909 defined by Florida law. Also, for purposes ~~the purpose~~ of this  
910 section, the day the petition is received by the office is ~~shall~~  
911 not ~~be~~ counted as one of the 3 days.

912 (6) The escrow agent may not release or otherwise allow  
913 the transfer of funds without the written approval of the  
914 office, unless the withdrawal is made pursuant to paragraph  
915 (3)(a) or the withdrawal is from funds in excess of the amounts  
916 required by s. 651.022, s. 651.023, s. 651.035, or s. 651.055.

917 (7) If the office finds that the provider is impaired or  
918 insolvent, the office may order the immediate transfer to the  
919 custody of the department, pursuant to part III of chapter 625,  
920 of up to 100 percent of the funds required under s. 651.035 to  
921 be held in escrow for purposes of the minimum liquid reserve.  
922 The office may order such a transfer regardless of whether the  
923 office has suspended or revoked, or intends to suspend or  
924 revoke, the provisional certificate of authority or the  
925 certificate of authority of the provider.

926 Section 13. Section 651.034, Florida Statutes, is created  
927 to read:

928 651.034 Financial and operating requirements for  
929 providers.-

930 (1)(a) If a regulatory action level event occurs, the  
931 office must:

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

934 2. Perform an examination pursuant to s. 651.105 or an  
935 analysis of the assets, liabilities, and operations of the  
936 provider, including a review of the corrective action plan or  
937 the revised corrective action plan.

938 3. After the examination or analysis, issue a corrective  
939 order specifying any corrective actions that the office  
940 determines are required.

941 (b) In determining corrective actions, the office may  
942 consider any factor relevant to the provider based upon the  
943 office's examination or analysis of the assets, liabilities, and  
944 operations of the provider. The provider must submit the  
945 corrective action plan or the revised corrective action plan  
946 within 30 days after the occurrence of the regulatory action  
947 level event. The office must review and approve or disapprove  
948 the corrective action plan within 15 business days after receipt  
949 of the plan. If the office disapproves the corrective action  
950 plan, the office must notify the provider of the deficiencies

951 that led to the disapproval. The provider must, within 30 days  
952 after notification of the disapproval and deficiencies, correct  
953 the deficiencies and resubmit the corrective action plan.

954 (c) The office may consult members of the Continuing Care  
955 Advisory Council, individually or as a group, or may retain  
956 actuaries, investment experts, and other consultants to review a  
957 provider's corrective action plan or revised corrective action  
958 plan; examine or analyze the assets, liabilities, and operations  
959 of a provider; and formulate the corrective order with respect  
960 to the provider. The fees, costs, and expenses relating to  
961 consultants must be borne by the affected provider.

962 (2) If an impairment occurs, the office may take any  
963 action available to it, including any remedy available under  
964 chapter 631. An impairment is sufficient grounds for the  
965 department to be appointed as receiver as provided in chapter  
966 631. A provider that meets the definition of "impaired" as  
967 defined in s. 651.011 is deemed impaired for purposes of s.  
968 631.051. The office may forego taking action for up to 180 days  
969 after the impairment if the office finds there is a reasonable  
970 expectation that the impairment may be eliminated within the  
971 180-day period.

972 (3) The office may exempt a provider from subsection (1)  
973 or subsection (2) for up to 5 years from the date of issuance of  
974 the certificate of authority.

975 (4) The commission may adopt rules to administer this

976 section, including, but not limited to, rules regarding  
 977 corrective action plans, revised corrective action plans,  
 978 corrective orders, and procedures to be followed in the event of  
 979 a regulatory action level event or an impairment.

980 Section 14. Paragraphs (a) and (b) of subsection (1) of  
 981 section 651.035, Florida Statutes, are amended, to read:

982 651.035 Minimum liquid reserve requirements.—

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

985 (a) Each provider must ~~shall~~ maintain in escrow as a debt  
 986 service reserve the aggregate amount of all principal and  
 987 interest payments due during the fiscal year on any mortgage  
 988 loan or other long-term financing of the facility, including  
 989 property taxes as recorded in the audited financial statements  
 990 required under s. 651.026. The amount must include any leasehold  
 991 payments and all costs related to such payments. If principal  
 992 payments are not due during the fiscal year, the provider must  
 993 ~~shall~~ maintain in escrow as a minimum liquid reserve an amount  
 994 equal to interest payments due during the next 12 months on any  
 995 mortgage loan or other long-term financing of the facility,  
 996 including property taxes. If a provider does not have a mortgage  
 997 loan or other financing on the facility, the provider must  
 998 deposit monthly in escrow as a minimum liquid reserve an amount  
 999 equal to one-twelfth of the annual property tax liability as  
 1000 indicated in the most recent tax notice provided pursuant to s.

1001 197.322(3).

1002 (b) A provider that has outstanding indebtedness that  
 1003 requires a debt service reserve to be held in escrow pursuant to  
 1004 a trust indenture or mortgage lien on the facility and for which  
 1005 the debt service reserve may only be used to pay principal and  
 1006 interest payments on the debt that the debtor is obligated to  
 1007 pay, and which may include property taxes and insurance, may  
 1008 include such debt service reserve in computing the minimum  
 1009 liquid reserve needed to satisfy this subsection if the provider  
 1010 furnishes to the office a copy of the agreement under which such  
 1011 debt service is held, together with a statement of the amount  
 1012 being held in escrow for the debt service reserve, certified by  
 1013 the lender or trustee and the provider to be correct. The  
 1014 trustee must ~~shall~~ provide the office with any information  
 1015 concerning the debt service reserve account upon request of the  
 1016 provider or the office. Such separate debt service reserves, if  
 1017 any, are not subject to the transfer provisions set forth in s.  
 1018 651.033(7).

1019 Section 15. Section 651.043, Florida Statutes, is created  
 1020 to read:

1021 651.043 Approval of change in third-party management.—

1022 (1) A contract for third-party management entered into  
 1023 after January 1, 2019, must be in writing and include a  
 1024 provision that the contract will be canceled, without the  
 1025 application of any cancellation fee or penalty, upon issuance of

1026 an order by the office pursuant to this section.

1027 (2) A provider must notify the office, in writing or  
1028 electronically, of any change in third-party management within  
1029 10 business days after the earlier of the execution of a  
1030 management contract or the effective date of the change in  
1031 management. For each new third-party management appointment, the  
1032 provider must submit the information required by s. 651.022(2)  
1033 and a copy of the written management contract, if applicable.

1034 (3) For a provider that is found to be impaired or that is  
1035 under a regulatory action level event, the office may disapprove  
1036 the new management and order the provider to remove the new  
1037 management after reviewing the information required in  
1038 subsection (2).

1039 (4) For a provider other than that specified in subsection  
1040 (3), the office may disapprove the new management and order the  
1041 provider to remove the new management after receiving the  
1042 required information in subsection (2) if the office:

1043 (a) Finds that the new management is incompetent or  
1044 untrustworthy;

1045 (b) Finds that the new management is so lacking in  
1046 relevant managerial experience as to make the proposed operation  
1047 hazardous to the residents or potential residents;

1048 (c) Finds that the new management is so lacking in  
1049 relevant experience, ability, and standing as to jeopardize the  
1050 reasonable promise of successful operation; or

1051 (d) Has good reason to believe that the new management is  
1052 affiliated directly or indirectly through ownership, control, or  
1053 business relations with any person or persons whose business  
1054 operations are or have been marked, to the detriment of  
1055 residents, stockholders, investors, creditors, or the public, by  
1056 manipulation of assets or accounts or by bad faith.

1057 (5) The office must complete its review as required under  
1058 subsections (3) and (4) and issue any notice of disapproval of  
1059 the new management within 15 business days after the filing is  
1060 deemed complete. A filing is deemed complete upon the office's  
1061 receipt of all requested information and the provider's  
1062 correction of any error or omission of which the provider was  
1063 timely notified. If the office does not issue notice of  
1064 disapproval of the new management within 15 business days after  
1065 the filing is deemed complete, then the new management is deemed  
1066 approved. If any material change occurs in the facts set forth  
1067 in information filed with the office pursuant subsection (2), a  
1068 notice setting forth such change must be filed with the office  
1069 within 10 business days after the provider becomes aware of such  
1070 change. The office may disapprove the previously approved  
1071 management based upon the information contained in such notice  
1072 or upon its own discovery of a material change to the facts set  
1073 for in information filed pursuant to subsection (2).

1074 (6) Management disapproved by the office under this  
1075 section must be removed within 30 days after receipt by the

1076 provider of notice of such disapproval.

1077 (7) The provider must remove the management immediately  
1078 upon discovery of any of the following conditions, if the  
1079 conditions were not disclosed in the notice to the office  
1080 required in subsection (2):

1081 (a) That any manager or other person acting in such  
1082 capacity, has been found guilty of, or has pled guilty or no  
1083 contest to, regardless of adjudication, any felony or crime  
1084 punishable by imprisonment of 1 year or more under the laws of  
1085 the United States or any state thereof or under the laws of any  
1086 other country which involves moral turpitude.

1087 (b) That any person who exercises or has the ability to  
1088 exercise effective control of the organization, or acts in the  
1089 capacity of a manager, is now or was in the past affiliated,  
1090 directly or indirectly, through ownership interest of 10 percent  
1091 or more in, or control of, any business, corporation, or other  
1092 entity that has been found guilty of or has pled guilty or no  
1093 contest to, regardless of adjudication, any felony or crime  
1094 punishable by imprisonment for 1 year or more under the laws of  
1095 the United States, any state, or any other country.

1096 (8) The office may revoke, suspend, or take other  
1097 administrative action against the provisional certificate of  
1098 authority or the certificate of authority of the provider if the  
1099 provider violates this section or persists in appointing  
1100 disapproved managers.

1101 Section 16. Section 651.051, Florida Statutes, is amended  
1102 to read:

1103 651.051 Maintenance of assets and records in state.—All  
1104 records and assets of a provider must be maintained or readily  
1105 accessible in this state, or, if the provider's corporate office  
1106 is located in another state, records must be electronically  
1107 stored in a manner that will ensure that the records are readily  
1108 accessible by the office. No records or assets may be removed  
1109 from this state by a provider unless the office consents to such  
1110 removal in writing before such removal. Such consent must ~~shall~~  
1111 be based upon the provider's submitting satisfactory evidence  
1112 that the removal will facilitate and make more economical the  
1113 operations of the provider and will not diminish the service or  
1114 protection thereafter to be given the provider's residents in  
1115 this state. Before ~~Prior to~~ such removal, the provider must  
1116 ~~shall~~ give notice to the president or chair of the facility's  
1117 residents' council. If such removal is part of a cash management  
1118 system which has been approved by the office, disclosure of the  
1119 system must ~~shall~~ meet the notification requirements. The  
1120 electronic storage of records on a web-based, secured storage  
1121 platform by contract with a third party is acceptable if the  
1122 records are readily accessible by the office.

1123 Section 17. Subsection (1) of section 651.071, Florida  
1124 Statutes, is amended to read:

1125 651.071 Contracts as preferred claims on liquidation or

1126 receivership.-

1127 (1) In the event of receivership or liquidation  
1128 proceedings against a provider, all continuing care and  
1129 continuing care at-home contracts executed by a provider are  
1130 ~~shall be~~ deemed preferred claims against all assets owned by the  
1131 provider; however, such claims are subordinate to any secured  
1132 claim. For purposes of s. 631.271, all continuing care and  
1133 continuing care at-home contracts executed by a provider are  
1134 deemed Class 2 claims.

1135 Section 18. Subsections (1) and (5) of section 651.105,  
1136 Florida Statutes, are amended, to read:

1137 651.105 Examination and inspections.-

1138 (1) (a) The office may at any time, and must ~~shall~~ at least  
1139 once every 3 years, examine the business of any applicant for a  
1140 certificate of authority and any provider engaged in the  
1141 execution of care contracts or engaged in the performance of  
1142 obligations under such contracts, in the same manner as is  
1143 provided for the examination of insurance companies pursuant to  
1144 s. 624.316. For a provider as described ~~defined~~ in s. 651.028,  
1145 such examinations must ~~shall~~ take place at least once every 5  
1146 years. Such examinations must ~~shall~~ be made by a representative  
1147 or examiner designated by the office whose compensation will be  
1148 fixed by the office pursuant to s. 624.320. Routine examinations  
1149 may be made by having the necessary documents submitted to the  
1150 office; and, for this purpose, financial documents and records

1151 conforming to commonly accepted accounting principles and  
1152 practices, as required under s. 651.026, are deemed adequate.  
1153 The final written report of each examination must be filed with  
1154 the office and, when so filed, constitutes a public record.

1155 (b) Any provider being examined ~~must shall~~, upon request,  
1156 give reasonable and timely access to all of its records. In  
1157 addition, the provider must furnish, upon request, such other  
1158 reasonable documents, data, records, financial statements, and  
1159 pertinent information as the commission or office may reasonably  
1160 require with respect to a provider's or facility's directors,  
1161 trustees, members, branches, subsidiaries, or affiliates, to  
1162 determine the financial status of the provider or of the  
1163 facility and the management capabilities of its managers and  
1164 owners.

1165 (c) The representative or examiner designated by the  
1166 office may at any time examine the records and affairs and  
1167 inspect the physical property of any provider, whether in  
1168 connection with a formal examination or not.

1169 (5) A provider must respond to written correspondence from  
1170 the office and provide documents, data, records, financial  
1171 statements, and pertinent information as required by the  
1172 commission or office. The office has standing to petition a  
1173 circuit court for mandatory injunctive relief to compel access  
1174 to and require the provider to produce such documents, data,  
1175 records, financial statements, and other information. The office

1176 may petition the circuit court in the county in which the  
 1177 facility is situated or the Circuit Court of Leon County to  
 1178 enforce this section. ~~At the time of the routine examination,~~  
 1179 ~~the office shall determine if all disclosures required under~~  
 1180 ~~this chapter have been made to the president or chair of the~~  
 1181 ~~residents' council and the executive officer of the governing~~  
 1182 ~~body of the provider.~~

1183 Section 19. Section 651.106, Florida Statutes, is amended  
 1184 to read:

1185 651.106 Grounds for discretionary denial ~~refusal~~,  
 1186 suspension, or revocation of certificate of authority.— The  
 1187 office may deny an application or may deny, suspend, or revoke  
 1188 the provisional certificate of authority or the certificate of  
 1189 authority of any applicant or provider if it finds that any one  
 1190 or more of the following grounds applicable to the applicant or  
 1191 provider exist:

- 1192 (1) Failure by the provider to continue to meet the
- 1193 requirements for the authority originally granted.
- 1194 (2) Failure by the provider to meet one or more of the
- 1195 qualifications for the authority specified by this chapter.
- 1196 (3) Material misstatement, misrepresentation, or fraud in
- 1197 obtaining the authority, or in attempting to obtain the same.
- 1198 (4) Demonstrated lack of fitness or trustworthiness.
- 1199 (5) Fraudulent or dishonest practices of management in the
- 1200 conduct of business.

- 1201 (6) Misappropriation, conversion, or withholding of  
 1202 moneys.
- 1203 (7) Failure to comply with, or violation of, any proper  
 1204 order or rule of the office or commission or violation of any  
 1205 provision of this chapter.
- 1206 (8) The insolvent or impaired condition of the provider or  
 1207 the provider's being in such condition or using such methods and  
 1208 practices in the conduct of its business as to render its  
 1209 further transactions in this state hazardous or injurious to the  
 1210 public.
- 1211 (9) Refusal by the provider to be examined or to produce  
 1212 its accounts, records, and files for examination, or refusal by  
 1213 any of its officers to give information with respect to its  
 1214 affairs or to perform any other legal obligation under this  
 1215 chapter when required by the office.
- 1216 (10) Failure by the provider to comply with the  
 1217 requirements of s. 651.026 or s. 651.033.
- 1218 (11) Failure by the provider to maintain escrow accounts  
 1219 or funds as required by this chapter.
- 1220 (12) Failure by the provider to meet the requirements of  
 1221 this chapter for disclosure of information to residents  
 1222 concerning the facility, its ownership, its management, its  
 1223 development, or its financial condition or failure to honor its  
 1224 continuing care or continuing care at-home contracts.
- 1225 (13) Any cause for which issuance of the license could

1226 | have been refused had it then existed and been known to the  
 1227 | office.

1228 |       (14) Having been found guilty of, or having pleaded guilty  
 1229 | or nolo contendere to, a felony in this state or any other  
 1230 | state, without regard to whether a judgment or conviction has  
 1231 | been entered by the court having jurisdiction of such cases.

1232 |       (15) In the conduct of business under the license,  
 1233 | engaging in unfair methods of competition or in unfair or  
 1234 | deceptive acts or practices prohibited under part IX of chapter  
 1235 | 626.

1236 |       (16) A pattern of bankrupt enterprises.

1237 |       (17) The ownership, control, or third-party management of  
 1238 | the organization includes any person:

1239 |           (a) Who is incompetent or untrustworthy;

1240 |           (b) Who causes the operation of the provider to be  
 1241 | hazardous to potential and existing residents;

1242 |           (c) Who jeopardizes the reasonable promise of successful  
 1243 | operation of the provider or facility;

1244 |           (d) Who is affiliated, directly or indirectly, through  
 1245 | ownership or control, with any person whose business operations  
 1246 | are or have been marked by manipulation of assets or accounts or  
 1247 | by bad faith, to the detriment of the public, stockholders,  
 1248 | investors, or creditors; or

1249 |           (e) Whose business operations are or have been marked by  
 1250 | manipulation of assets or accounts or by bad faith, to the

1251 detriment of the public, stockholders, investors, or creditors.

1252 (18) The provider violated s. 651.043 or persists in  
 1253 appointing disapproved managers.

1254  
 1255 Revocation of a certificate of authority under this section does  
 1256 not relieve a provider from the provider's obligation to  
 1257 residents under the terms and conditions of any continuing care  
 1258 or continuing care at-home contract between the provider and  
 1259 residents or the provisions of this chapter. The provider must  
 1260 ~~shall~~ continue to file its annual statement and pay license fees  
 1261 to the office as required under this chapter as if the  
 1262 certificate of authority had continued in full force, but the  
 1263 provider may ~~shall~~ not issue any new contracts. The office may  
 1264 seek an action in the Circuit Court of Leon County to enforce  
 1265 the office's order and the provisions of this section.

1266 Section 20. Section 651.114, Florida Statutes, is amended  
 1267 to read:

1268 651.114 Delinquency proceedings; remedial rights.—

1269 (1) Upon determination by the office that a provider is  
 1270 not in compliance with this chapter, the office may notify the  
 1271 chair of the Continuing Care Advisory Council, who may assist  
 1272 the office in formulating a corrective action plan.

1273 (2) Within 30 days after a request by the advisory council  
 1274 or the office, a provider must ~~shall~~ make a plan for obtaining  
 1275 compliance or solvency available to the advisory council and the

1276 ~~office, within 30 days after being requested to do so by the~~  
1277 ~~council, a plan for obtaining compliance or solvency.~~

1278 (3) Within 30 days after receipt of a plan for obtaining  
1279 compliance or solvency, the office, or notification, the  
1280 advisory council, at the request of the office, must shall:

1281 (a) Consider and evaluate the plan submitted by the  
1282 provider.

1283 (b) Discuss the problem and solutions with the provider.

1284 (c) Conduct such other business as is necessary.

1285 (d) Report its findings and recommendations to the office,  
1286 which may require additional modification of the plan.

1287  
1288 This subsection may not be interpreted so as to delay or prevent  
1289 the office from taking any regulatory measures it deems  
1290 necessary regarding the provider that submitted the plan.

1291 (4) If the financial condition of a continuing care  
1292 facility or provider is impaired or is such that if not modified  
1293 or corrected, its continued operation would result in  
1294 insolvency, the office may direct the provider to formulate and  
1295 file with the office a corrective action plan. If the provider  
1296 fails to submit a plan within 30 days after the office's  
1297 directive, or submits a plan that is insufficient to correct the  
1298 condition, the office may specify a plan and direct the provider  
1299 to implement the plan. Before specifying a plan, the office may  
1300 seek a recommended plan from the advisory council.

1301            (5)~~(4)~~ After receiving approval of a plan by the office,  
 1302 the provider must ~~shall~~ submit a progress report monthly to the  
 1303 advisory council or the office, or both, in a manner prescribed  
 1304 by the office. After 3 months, or at any earlier time deemed  
 1305 necessary, the council must ~~shall~~ evaluate the progress by the  
 1306 provider and must ~~shall~~ advise the office of its findings.

1307            (6)~~(5)~~ If ~~Should~~ the office finds ~~find~~ that sufficient  
 1308 grounds exist for rehabilitation, liquidation, conservation,  
 1309 reorganization, seizure, or summary proceedings of an insurer as  
 1310 set forth in ss. 631.051, 631.061, and 631.071, the department  
 1311 ~~office~~ may petition for an appropriate court order or may pursue  
 1312 such other relief as is afforded in part I of chapter 631. A  
 1313 provider that meets the definition of "impaired" as defined in  
 1314 s. 651.011 is deemed impaired for purposes of s. 631.051. Before  
 1315 invoking its powers under part I of chapter 631, the department  
 1316 must ~~office shall~~ notify the chair of the advisory council.

1317            (7)~~(6)~~ In the event an order of rehabilitation,  
 1318 liquidation, conservation, reorganization, seizure, or summary  
 1319 proceeding has been entered against a provider, the department  
 1320 and office are vested with all of the powers and duties they  
 1321 have under ~~the provisions of~~ part I of chapter 631 in regard to  
 1322 delinquency proceedings of insurance companies. A provider must  
 1323 give written notice of the proceeding to its residents within 3  
 1324 business days after the initiation of a delinquency proceeding  
 1325 under chapter 631 and must include a notice of the delinquency

1326 proceeding in any written materials provided to prospective  
 1327 residents.

1328 ~~(7) If the financial condition of the continuing care~~  
 1329 ~~facility or provider is such that, if not modified or corrected,~~  
 1330 ~~its continued operation would result in insolvency, the office~~  
 1331 ~~may direct the provider to formulate and file with the office a~~  
 1332 ~~corrective action plan. If the provider fails to submit a plan~~  
 1333 ~~within 30 days after the office's directive or submits a plan~~  
 1334 ~~that is insufficient to correct the condition, the office may~~  
 1335 ~~specify a plan and direct the provider to implement the plan.~~

1336 (8) (a) If the petition for rehabilitation, liquidation,  
 1337 conservation, reorganization, seizure, or summary proceedings is  
 1338 based solely upon the default of the provider under the terms of  
 1339 a resolution, ordinance, loan agreement, indenture of trust,  
 1340 mortgage, lease, security agreement, or other instrument  
 1341 creating or securing bonds or notes issued to finance a  
 1342 facility, the rights of the office described in this section are  
 1343 subordinate to the rights of a trustee or lender pursuant to the  
 1344 terms of a resolution, ordinance, loan agreement, indenture of  
 1345 trust, mortgage, lease, security agreement, or other instrument  
 1346 creating or securing bonds or notes issued to finance a  
 1347 facility, and the office, subject to the provisions of paragraph  
 1348 (c), may ~~shall~~ not exercise its remedial rights provided under  
 1349 this section and ss. 651.018, 651.106, 651.108, and 651.116 with  
 1350 respect to a facility that is subject to a lien, mortgage,

1351 lease, or other encumbrance or trust indenture securing bonds or  
1352 notes issued in connection with the financing of the facility,  
1353 if the trustee or lender, by inclusion or by amendment to the  
1354 loan documents or by a separate contract with the office, agrees  
1355 that the rights of residents under a continuing care or  
1356 continuing care at-home contract will be honored and will not be  
1357 disturbed by a foreclosure or conveyance in lieu thereof as long  
1358 as the resident:

1359 1. Is current in the payment of all monetary obligations  
1360 required by the contract;

1361 2. Is in compliance and continues to comply with all  
1362 provisions of the contract; and

1363 3. Has asserted no claim inconsistent with the rights of  
1364 the trustee or lender.

1365 (b) This subsection does not require a trustee or lender  
1366 to:

1367 1. Continue to engage in the marketing or resale of new  
1368 continuing care or continuing care at-home contracts;

1369 2. Pay any rebate of entrance fees as may be required by a  
1370 resident's continuing care or continuing care at-home contract  
1371 as of the date of acquisition of the facility by the trustee or  
1372 lender and until expiration of the period described in paragraph  
1373 (d);

1374 3. Be responsible for any act or omission of any owner or  
1375 operator of the facility arising before the acquisition of the

1376 facility by the trustee or lender; or

1377 4. Provide services to the residents to the extent that  
 1378 the trustee or lender would be required to advance or expend  
 1379 funds that have not been designated or set aside for such  
 1380 purposes.

1381 (c) Should the office determine, at any time during the  
 1382 suspension of its remedial rights as provided in paragraph (a),  
 1383 that the trustee or lender is not in compliance with paragraph  
 1384 (a), or that a lender or trustee has assigned or has agreed to  
 1385 assign all or a portion of a delinquent or defaulted loan to a  
 1386 third party without the office's written consent, the office  
 1387 shall notify the trustee or lender in writing of its  
 1388 determination, setting forth the reasons giving rise to the  
 1389 determination and specifying those remedial rights afforded to  
 1390 the office which the office shall then reinstate.

1391 (d) Upon acquisition of a facility by a trustee or lender  
 1392 and evidence satisfactory to the office that the requirements of  
 1393 paragraph (a) have been met, the office shall issue a 90-day  
 1394 temporary certificate of authority granting the trustee or  
 1395 lender the authority to engage in the business of providing  
 1396 continuing care or continuing care at-home and to issue  
 1397 continuing care or continuing care at-home contracts subject to  
 1398 the office's right to immediately suspend or revoke the  
 1399 temporary certificate of authority if the office determines that  
 1400 any of the grounds described in s. 651.106 apply to the trustee

1401 or lender or that the terms of the contract used as the basis  
 1402 for the issuance of the temporary certificate of authority by  
 1403 the office have not been or are not being met by the trustee or  
 1404 lender since the date of acquisition.

1405 Section 21. Section 651.1141, Florida Statutes, is created  
 1406 to read:

1407 651.1141 Immediate suspension orders; cease and desist  
 1408 orders.-

1409 (1) The office may, pursuant to s. 120.60, in its  
 1410 discretion and without advance notice or hearing thereon,  
 1411 immediately suspend a provisional certificate of authority or  
 1412 certificate of authority granted under this chapter if it finds  
 1413 that one or more of the following circumstances exist:

1414 (a) The provider is insolvent or impaired under s.  
 1415 651.011(14)(b).

1416 (b) A person has acquired a facility operating under a  
 1417 subsisting certificate of authority and is engaging in the  
 1418 business of providing continuing care without prior written  
 1419 approval of the office, in violation of s. 651.024(1).

1420 (c) Without prior written approval of the office, a person  
 1421 has done any of the following in violation of s. 651.024(2):

1422 1. Assumed the role of general partner of a provider.

1423 2. Otherwise assumed ownership or possession of, or  
 1424 control over, 10 percent or more of a provider's assets.

1425 3. Acquired 10 percent or more of the ownership interest

1426 of a provider.

1427 (d) A person has removed or pledged 10 percent or more of  
1428 a provider's minimum liquid reserve required by s. 651.035.

1429 (e) In violation of s. 651.043, a provider has appointed  
1430 previously disapproved third-party managers, has failed to  
1431 remove a third-party manager disapproved by the office, or has  
1432 failed to remove a third-party manager upon discovery of the  
1433 conditions enumerated in s. 651.043(7).

1434 (f) In violation of s. 651.105, a provider has failed to  
1435 produce or give access to documents, data, records, financial  
1436 statements, and pertinent information requested by the office.

1437 (2) The office may issue a cease and desist order upon a  
1438 person that violates any provision of this chapter, rule adopted  
1439 by the commission, order of the office, or written agreement  
1440 entered into with the office.

1441 (3) The office may seek an action in the Circuit Court of  
1442 Leon County to enforce the office's order under the provisions  
1443 of this section.

1444 Section 22. Paragraphs (d) and (e) of subsection (1) of  
1445 section 651.121, Florida Statutes, are amended to read:

1446 651.121 Continuing Care Advisory Council.—

1447 (1) The Continuing Care Advisory Council to the office is  
1448 created consisting of 10 members ~~who are residents of this state~~  
1449 appointed by the Governor and geographically representative of  
1450 this state. Three members shall be representatives

1451 ~~administrators~~ of facilities that hold valid certificates of  
1452 authority under this chapter and shall have been actively  
1453 engaged in the offering of continuing care contracts in this  
1454 state for 5 years before appointment. The remaining members  
1455 include:

1456 ~~(d) An attorney.~~

1457 (d)(e) Four ~~Three~~ residents who hold continuing care or  
1458 continuing care at-home contracts with a facility certified in  
1459 this state.

1460 Section 23. Subsections (1) and (4) of section 651.125,  
1461 Florida Statutes, are amended to read:

1462 651.125 Criminal penalties; injunctive relief.—

1463 (1) Any person who maintains, enters into, or, as manager  
1464 or officer or in any other administrative capacity, assists in  
1465 entering into, maintaining, or performing any continuing care or  
1466 continuing care at-home contract subject to this chapter without  
1467 ~~doing so in pursuance of~~ a valid provisional certificate of  
1468 authority or certificate of authority ~~or renewal thereof~~, as  
1469 contemplated by or provided in this chapter, or who otherwise  
1470 violates any provision of this chapter or rule adopted in  
1471 pursuance of this chapter, commits a felony of the third degree,  
1472 punishable as provided in s. 775.082 or s. 775.083. Each  
1473 violation of this chapter constitutes a separate offense.

1474 (4) Any action brought by the office against a provider  
1475 shall not abate by reason of a sale or other transfer of

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1476 | ownership of the facility used to provide care, which provider  
1477 | is a party to the action, except with the express written  
1478 | consent of the ~~director of the~~ office.

1479 |       Section 24. This act shall take effect January 1, 2019.