

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Yarborough offered the following:

2  
3 **Amendment (with title amendment)**

4 Remove lines 1324-2159 and insert:

5 15-day period constitutes acknowledgment by the office that it  
6 has received all requested additional information, and the  
7 application is deemed complete for purposes of review on the  
8 date the applicant files all of the required additional  
9 information. If the application submitted is determined by the  
10 office to be substantially incomplete so as to require  
11 substantial additional information, including biographical  
12 information, the office may return the application to the  
13 applicant with a written notice stating that the application as

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14 received is substantially incomplete and, therefore, is  
15 unacceptable for filing without further action required by the  
16 office. Any filing fee received must be refunded to the  
17 applicant.

18 (b) An application is deemed complete upon the office  
19 receiving all requested information and the applicant correcting  
20 any error or omission of which the applicant was timely notified  
21 or when the time for such notification has expired. The office  
22 shall notify the applicant in writing of the date on which the  
23 application was deemed complete.

24 (6) Within 45 days after the date on which an application  
25 is deemed complete as provided in paragraph (5) (b), the office  
26 shall complete its review and, based upon its review, approve an  
27 expansion by the applicant and issue a determination that the  
28 application meets all requirements of law, that the feasibility  
29 study was based on sufficient data and reasonable assumptions,  
30 and that the applicant will be able to provide continuing care  
31 or continuing care at-home as proposed and meet all financial  
32 and contractual obligations related to its operations, including  
33 the financial requirements of this chapter. If the application  
34 is denied, the office must notify the applicant in writing,  
35 citing the specific failures to meet the requirements of this  
36 chapter. The denial entitles the applicant to a hearing pursuant  
37 to chapter 120.

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38 Section 12. Paragraphs (b) and (c) of subsection (2) and  
39 subsection (3) of section 651.026, Florida Statutes, are  
40 amended, subsection (10) is added to that section, and paragraph  
41 (a) of subsection (2) of that section is republished, to read:

42 651.026 Annual reports.—

43 (2) The annual report shall be in such form as the  
44 commission prescribes and shall contain at least the following:

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

47 (b) A financial report statements audited by an  
48 independent certified public accountant which must contain, for  
49 two or more periods if the facility has been in existence that  
50 long, all of the following:

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

- 53 a. A balance sheet;
- 54 b. A statement of income and expenses;
- 55 c. A statement of equity or fund balances; and
- 56 d. A statement of changes in cash flows.

57 2. Notes to the financial report statements considered  
58 customary or necessary for full disclosure or adequate  
59 understanding of the financial report statements, financial  
60 condition, and operation.

61 (c) The following financial information:

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

65 2. A schedule giving additional information relating to  
66 property, plant, and equipment having an original cost of at  
67 least \$25,000, so as to show in reasonable detail with respect  
68 to each separate facility original costs, accumulated  
69 depreciation, net book value, appraised value or insurable value  
70 and date thereof, insurance coverage, encumbrances, and net  
71 equity of appraised or insured value over encumbrances. Any  
72 property not used in continuing care must be shown separately  
73 from property used in continuing care;

74 3. The level of participation in Medicare or Medicaid  
75 programs, or both;

76 4. A statement of all fees required of residents,  
77 including, but not limited to, a statement of the entrance fee  
78 charged, the monthly service charges, the proposed application  
79 of the proceeds of the entrance fee by the provider, and the  
80 plan by which the amount of the entrance fee is determined if  
81 the entrance fee is not the same in all cases; ~~and~~

82 5. Any change or increase in fees if the provider changes  
83 the scope of, or the rates for, care or services, regardless of  
84 whether the change involves the basic rate or only those  
85 services available at additional costs to the resident; ~~and~~

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86           6. If the provider has more than one certificated  
87 facility, or has operations that are not licensed under this  
88 chapter, it shall submit a balance sheet, statement of income  
89 and expenses, statement of equity or fund balances, and  
90 statement of cash flows for each facility licensed under this  
91 chapter as supplemental information to the audited financial  
92 report statements required under paragraph (b); ~~and.~~

93           7. The management's calculation of the provider's debt  
94 service coverage ratio, occupancy, and days cash on hand for the  
95 current reporting period.

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

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

100           ~~(b) Current ratios.~~

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

102           ~~(d) Cash flows.~~

103           ~~(e) Occupancy rates.~~

104           ~~(f) Other measures, ratios, or trends.~~

105           ~~(g) Other factors as may be appropriate.~~

106           (10) By August 1 of each year, the office shall publish on  
107 its website an annual industry report for the preceding calendar  
108 year which contains all of the following:

109           (a) The median days cash on hand for all providers.

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110 (b) The median debt service coverage ratio for all  
111 providers.

112 (c) The median occupancy rate for all providers by  
113 setting, including independent living, assisted living, skilled  
114 nursing, and the entire facility.

115 (d) Documentation of the office's compliance with the  
116 requirements in s. 651.105(1) relating to examination  
117 timeframes. The documentation must include the number of  
118 examinations completed in the preceding calendar year, the  
119 number of such examinations for which the report has been  
120 issued, and the percentage of all examinations completed within  
121 the statutorily required timeframes.

122 (e) The number of annual reports submitted to the office  
123 pursuant to this section in the preceding calendar year and the  
124 percentage of such reports that the office has reviewed in order  
125 to determine whether a regulatory action level event has  
126 occurred.

127 Section 13. Section 651.0261, Florida Statutes, is amended  
128 to read:

129 651.0261 Quarterly and monthly statements.-

130 (1) Within 45 days after the end of each fiscal quarter,  
131 each provider shall file a quarterly unaudited financial  
132 statement of the provider or of the facility in the form  
133 prescribed by commission rule and days cash on hand, occupancy,  
134 debt service coverage ratio, and a detailed listing of the

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135 assets maintained in the liquid reserve as required under s.  
136 651.035. The last quarterly statement for a fiscal year is not  
137 required if a provider does not have pending a regulatory action  
138 level event, impairment, or a corrective action plan. If a  
139 provider falls below two or more of the thresholds set forth in  
140 s. 651.011(25) at the end of any fiscal quarter, the provider  
141 shall submit to the office, at the same time as the quarterly  
142 statement, an explanation of the circumstances and a description  
143 of the actions it will take to meet the requirements.

144 (2) If the office finds, ~~pursuant to rules of the~~  
145 ~~commission,~~ that such information is needed to properly monitor  
146 the financial condition of a provider or facility or is  
147 otherwise needed to protect the public interest, the office may  
148 require the provider to file:

149 (a) Within 25 days after the end of each month, a monthly  
150 unaudited financial statement of the provider or of the facility  
151 in the form prescribed by the commission by rule and a detailed  
152 listing of the assets maintained in the liquid reserve as  
153 required under s. 651.035, ~~within 45 days after the end of each~~  
154 ~~fiscal quarter, a quarterly unaudited financial statement of the~~  
155 ~~provider or of the facility in the form prescribed by the~~  
156 ~~commission by rule. The commission may by rule require all or~~  
157 ~~part of the statements or filings required under this section to~~  
158 ~~be submitted by electronic means in a computer-readable form~~

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159 ~~compatible with the electronic data format specified by the~~  
160 ~~commission.~~

161 (b) Such other data, financial statements, and pertinent  
162 information as the commission or office may reasonably require  
163 with respect to the provider or the facility, its directors, or  
164 its trustees; or with respect to any parent, subsidiary, or  
165 affiliate, if the provider or facility relies on a contractual  
166 or financial relationship with such parent, subsidiary, or  
167 affiliate in order to meet the financial requirements of this  
168 chapter, to determine the financial status of the provider or of  
169 the facility and the management capabilities of its managers and  
170 owners.

171 (3) A filing under subsection (2) may be required if any  
172 of the following applies:

173 (a) The provider is:

- 174 1. Subject to administrative supervision proceedings;  
175 2. Subject to a corrective action plan resulting from a  
176 regulatory action level event and for up to 2 years after the  
177 factors that caused the regulatory action level event have been  
178 corrected; or  
179 3. Subject to delinquency or receivership proceedings or  
180 has filed for bankruptcy.

181 (b) The provider or facility displays a declining  
182 financial position.

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183 (c) A change of ownership of the provider or facility has  
184 occurred within the previous 2 years.

185 (d) The provider is found to be impaired.

186 (4) The commission may by rule require all or part of the  
187 statements or filings required under this section to be  
188 submitted by electronic means in a computer-readable format  
189 compatible with an electronic data format specified by the  
190 commission.

191 Section 14. Section 651.028, Florida Statutes, is amended  
192 to read:

193 651.028 Accredited facilities.—~~If A provider or facility~~  
194 is deemed accredited for purposes of ss. 400.235(5)(b)1 and  
195 651.105(1) if it is accredited without stipulations or  
196 conditions by a process found by the commission office to be  
197 acceptable, and substantially equivalent to the provisions of  
198 this chapter, and consistent the office may, pursuant to rule of  
199 the commission, waive any requirements of this chapter with  
200 respect to the provider if the office finds that such waivers  
201 are not inconsistent with the security protections intended by  
202 this chapter.

203 Section 15. Subsections (1), (2), (3), and (5) of section  
204 651.033, Florida Statutes, are amended, and subsection (6) is  
205 added to that section, to read:

206 651.033 Escrow accounts.—

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207 (1) When funds are required to be deposited in an escrow  
208 account pursuant to s. 651.0215, s. 651.022, s. 651.023, s.  
209 651.0246, s. 651.035, or s. 651.055:

210 (a) The escrow account must ~~shall~~ be established in a  
211 Florida bank, Florida savings and loan association, ~~or~~ Florida  
212 trust company, or a national bank that is chartered and  
213 supervised by the Office of the Comptroller of the Currency  
214 within the United States Department of the Treasury and that has  
215 a branch in this state, which is acceptable to the office, or  
216 such funds must be deposited ~~on deposit~~ with the department, and  
217 ~~the funds deposited therein shall~~ be kept and maintained in an  
218 account separate and apart from the provider's business  
219 accounts.

220 (b) An escrow agreement shall be entered into between the  
221 bank, savings and loan association, or trust company and the  
222 provider of the facility; the agreement shall state that its  
223 purpose is to protect the resident or the prospective resident;  
224 and, upon presentation of evidence of compliance with applicable  
225 portions of this chapter, or upon order of a court of competent  
226 jurisdiction, the escrow agent shall release and pay over the  
227 funds, or portions thereof, together with any interest accrued  
228 thereon or earned from investment of the funds, to the provider  
229 or resident as directed.

230 (c) Any agreement establishing an escrow account required  
231 under ~~the provisions of this chapter~~ is ~~shall be~~ subject to

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232 approval by the office. The agreement must ~~shall~~ be in writing  
233 and ~~shall~~ contain, in addition to any other provisions required  
234 by law, a provision whereby the escrow agent agrees to abide by  
235 the duties imposed by paragraphs (b) and (e), (3) (a), (3) (b),  
236 and (5) (a) and subsection (6) under this section.

237 (d) All funds deposited in an escrow account, if invested,  
238 shall be invested as set forth in part II of chapter 625;  
239 however, such investment may not diminish the funds held in  
240 escrow below the amount required by this chapter. Funds  
241 deposited in an escrow account are not subject to charges by the  
242 escrow agent except escrow agent fees associated with  
243 administering the accounts, or subject to any liens, judgments,  
244 garnishments, creditor's claims, or other encumbrances against  
245 the provider or facility except as provided in s. 651.035(1).

246 (e) At the request of either the provider or the office,  
247 the escrow agent shall issue a statement indicating the status  
248 of the escrow account.

249 (2) Notwithstanding s. 651.035(7), ~~In addition, the escrow~~  
250 ~~agreement shall provide that the escrow agent or another person~~  
251 ~~designated to act in the escrow agent's place and the provider,~~  
252 ~~except as otherwise provided in s. 651.035, shall notify the~~  
253 ~~office in writing at least 10 days before the withdrawal of any~~  
254 ~~portion of any funds required to be escrowed under the~~  
255 ~~provisions of s. 651.035. However,~~ in the event of an emergency  
256 and upon petition by the provider, the office may ~~waive the 10-~~

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257 ~~day notification period~~ and allow a withdrawal of up to 10  
258 percent of the required minimum liquid reserve. The office shall  
259 have 3 working days to deny the petition for the emergency 10-  
260 percent withdrawal. If the office fails to deny the petition  
261 within 3 working days, the petition is ~~shall be~~ deemed to have  
262 been granted by the office. For purposes ~~the purpose~~ of this  
263 section, the term "working day" means each day that is not a  
264 Saturday, Sunday, or legal holiday as defined by Florida law.  
265 Also, for purposes ~~the purpose~~ of this section, the day the  
266 petition is received by the office is ~~shall not be~~ counted as  
267 one of the 3 days.

268 (3) ~~In addition,~~ When entrance fees are required to be  
269 deposited in an escrow account pursuant to s. 651.0215, s.  
270 651.022, s. 651.023, s. 651.0246, or s. 651.055:

271 (a) The provider shall deliver to the resident a written  
272 receipt. The receipt must show the payor's name and address, the  
273 date, the price of the care contract, and the amount of money  
274 paid. A copy of each receipt, together with the funds, must  
275 ~~shall~~ be deposited with the escrow agent or as provided in  
276 paragraph (c). The escrow agent must ~~shall~~ release such funds to  
277 the provider 7 days after the date of receipt of the funds by  
278 the escrow agent if the provider, operating under a certificate  
279 of authority issued by the office, has met the requirements of  
280 s. 651.0215(8), s. 651.023(6), or s. 651.0246. However, if the  
281 resident rescinds the contract within the 7-day period, the

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282 escrow agent must ~~shall~~ release the escrowed fees to the  
283 resident.

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

287 (c) At the request of an individual resident of a  
288 facility, the provider may hold the check for the 7-day period  
289 and may ~~shall~~ not deposit it during this time period. If the  
290 resident rescinds the contract within the 7-day period, the  
291 check must ~~shall~~ be immediately returned to the resident. Upon  
292 the expiration of the 7 days, the provider shall deposit the  
293 check.

294 (d) A provider may assess a nonrefundable fee, which is  
295 separate from the entrance fee, for processing a prospective  
296 resident's application for continuing care or continuing care  
297 at-home.

298 (5) When funds are required to be deposited in an escrow  
299 account pursuant to s. 651.0215, s. 651.022, s. 651.023, s.  
300 651.0246, or s. 651.035, the following ~~shall~~ apply:

301 (a) The escrow agreement must ~~shall~~ require that the  
302 escrow agent furnish the provider with a quarterly statement  
303 indicating the amount of any disbursements from or deposits to  
304 the escrow account and the condition of the account during the  
305 period covered by the statement. The agreement must ~~shall~~  
306 require that the statement be furnished to the provider by the

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307 escrow agent on or before the 10th day of the month following  
308 the end of the quarter for which the statement is due. If the  
309 escrow agent does not provide the quarterly statement to the  
310 provider on or before the 10th day of the month following the  
311 month for which the statement is due, the office may, in its  
312 discretion, levy against the escrow agent a fine not to exceed  
313 \$25 a day for each day of noncompliance with the provisions of  
314 this subsection.

315 (b) If the escrow agent does not provide the quarterly  
316 statement to the provider on or before the 10th day of the month  
317 following the quarter for which the statement is due, the  
318 provider shall, on or before the 15th day of the month following  
319 the quarter for which the statement is due, send a written  
320 request for the statement to the escrow agent by certified mail  
321 return receipt requested.

322 (c) On or before the 20th day of the month following the  
323 quarter for which the statement is due, the provider shall file  
324 with the office a copy of the escrow agent's statement or, if  
325 the provider has not received the escrow agent's statement, a  
326 copy of the written request to the escrow agent for the  
327 statement.

328 (d) The office may, in its discretion, in addition to any  
329 other penalty that may be provided for under this chapter, levy  
330 a fine against the provider not to exceed \$25 a day for each day

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331 the provider fails to comply with the provisions of this  
332 subsection.

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

335 (6) Except as described in paragraph (3)(a), the escrow  
336 agent may not release or otherwise allow the transfer of funds  
337 without the written approval of the office, unless the  
338 withdrawal is from funds in excess of the amounts required by  
339 ss. 651.0215, 651.022, 651.023, 651.0246, 651.035, and 651.055.

340 Section 16. Section 651.034, Florida Statutes, is created  
341 to read:

342 651.034 Financial and operating requirements for  
343 providers.-

344 (1)(a) If a regulatory action level event occurs, the  
345 office must:

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

348 2. Perform an examination pursuant to s. 651.105 or an  
349 analysis, as the office considers necessary, of the assets,  
350 liabilities, and operations of the provider, including a review  
351 of the corrective action plan or the revised corrective action  
352 plan; and

353 3. After the examination or analysis, issue a corrective  
354 order, if necessary, specifying any corrective actions that the  
355 office determines are required.

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356 (b) In determining corrective actions, the office shall  
357 consider any factor relevant to the provider based upon the  
358 office's examination or analysis of the assets, liabilities, and  
359 operations of the provider. The provider must submit the  
360 corrective action plan or the revised corrective action plan  
361 within 30 days after the occurrence of the regulatory action  
362 level event. The office shall review and approve or disapprove  
363 the corrective action plan within 45 business days.

364 (c) The office may use members of the Continuing Care  
365 Advisory Council, individually or as a group, or may retain  
366 actuaries, investment experts, and other consultants to review a  
367 provider's corrective action plan or revised corrective action  
368 plan, examine or analyze the assets, liabilities, and operations  
369 of a provider, and formulate the corrective order with respect  
370 to the provider. The costs and expenses relating to consultants  
371 must be borne by the affected provider.

372 (2) Except when the office's remedial rights are suspended  
373 pursuant to s. 651.114(11) (a), the office must take action  
374 necessary to place an impaired provider under regulatory  
375 control, including any remedy available under part I of chapter  
376 631. An impairment is sufficient grounds for the department to  
377 be appointed as receiver as provided in chapter 631, except when  
378 the office's remedial rights are suspended pursuant to s.  
379 651.114(11) (a). If the office's remedial rights are suspended  
380 pursuant to s. 651.114(11) (a), the impaired provider must make

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381 available to the office copies of any corrective action plan  
382 approved by the third-party lender or trustee to cure the  
383 impairment and any related required report. For purposes of s.  
384 631.051, impairment of a provider is defined according to the  
385 term "impaired" under s. 651.011. The office may forego taking  
386 action for up to 180 days after the impairment if the office  
387 finds there is a reasonable expectation that the impairment may  
388 be eliminated within the 180-day period.

389 (3) There is no liability on the part of, and a cause of  
390 action may not arise against, the commission, department, or  
391 office, or their employees or agents, for any action they take  
392 in the performance of their powers and duties under this  
393 section.

394 (4) The office shall transmit any notice that may result  
395 in regulatory action by registered mail, certified mail, or any  
396 other method of transmission which includes documentation of  
397 receipt by the provider. Notice is effective when the provider  
398 receives it.

399 (5) This section is supplemental to the other laws of this  
400 state and does not preclude or limit any power or duty of the  
401 department or office under those laws or under the rules adopted  
402 pursuant to those laws.

403 (6) The office may exempt a provider from subsection (1)  
404 or subsection (2) until stabilized occupancy is reached or until  
405 the time projected to achieve stabilized occupancy as reported

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406 in the last feasibility study required by the office as part of  
407 an application filing under s. 651.0215, s. 651.023, s. 651.024,  
408 or s. 651.0246 has elapsed, but for no longer than 5 years after  
409 the date of issuance of the certificate of occupancy.

410 (7) The commission may adopt rules to administer this  
411 section, including, but not limited to, rules regarding  
412 corrective action plans, revised corrective action plans,  
413 corrective orders, and procedures to be followed in the event of  
414 a regulatory action level event or an impairment.

415 Section 17. Paragraphs (a), (b), and (c) of subsection (1)  
416 of section 651.035, Florida Statutes, are amended, and  
417 subsections (7) through (11) are added to that section, to read:

418 651.035 Minimum liquid reserve requirements.—

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

421 (a) Each provider shall maintain in escrow as a debt  
422 service reserve the aggregate amount of all principal and  
423 interest payments due during the fiscal year on any mortgage  
424 loan or other long-term financing of the facility, including  
425 property taxes as recorded in the audited financial report  
426 ~~statements~~ required under s. 651.026. The amount must include  
427 any leasehold payments and all costs related to such payments.  
428 If principal payments are not due during the fiscal year, the  
429 provider must ~~shall~~ maintain in escrow as a minimum liquid  
430 reserve an amount equal to interest payments due during the next

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431 12 months on any mortgage loan or other long-term financing of  
432 the facility, including property taxes. If a provider does not  
433 have a mortgage loan or other financing on the facility, the  
434 provider must deposit monthly in escrow as a minimum liquid  
435 reserve an amount equal to one-twelfth of the annual property  
436 tax liability as indicated in the most recent tax notice  
437 provided pursuant to s. 197.322(3), and must annually pay  
438 property taxes out of such escrow.

439 (b) A provider that has outstanding indebtedness that  
440 requires a debt service reserve to be held in escrow pursuant to  
441 a trust indenture or mortgage lien on the facility and for which  
442 the debt service reserve may only be used to pay principal and  
443 interest payments on the debt that the debtor is obligated to  
444 pay, and which may include property taxes and insurance, may  
445 include such debt service reserve in computing the minimum  
446 liquid reserve needed to satisfy this subsection if the provider  
447 furnishes to the office a copy of the agreement under which such  
448 debt service is held, together with a statement of the amount  
449 being held in escrow for the debt service reserve, certified by  
450 the lender or trustee and the provider to be correct. The  
451 trustee shall provide the office with any information concerning  
452 the debt service reserve account upon request of the provider or  
453 the office. Any such separate debt service reserves are not  
454 subject to the transfer provisions set forth in subsection (8).

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455 (c) Each provider shall maintain in escrow an operating  
456 reserve equal to 30 percent of the total operating expenses  
457 projected in the feasibility study required by s. 651.023 for  
458 the first 12 months of operation. Thereafter, each provider  
459 shall maintain in escrow an operating reserve equal to 15  
460 percent of the total operating expenses in the annual report  
461 filed pursuant to s. 651.026. If a provider has been in  
462 operation for more than 12 months, the total annual operating  
463 expenses must ~~shall~~ be determined by averaging the total annual  
464 operating expenses reported to the office by the number of  
465 annual reports filed with the office within the preceding 3-year  
466 period subject to adjustment if there is a change in the number  
467 of facilities owned. For purposes of this subsection, total  
468 annual operating expenses include all expenses of the facility  
469 except+ depreciation and amortization; interest and property  
470 taxes included in paragraph (a); extraordinary expenses that are  
471 adequately explained and documented in accordance with generally  
472 accepted accounting principles; liability insurance premiums in  
473 excess of those paid in calendar year 1999; and changes in the  
474 obligation to provide future services to current residents. For  
475 providers initially licensed during or after calendar year 1999,  
476 liability insurance must ~~shall~~ be included in the total  
477 operating expenses in an amount not to exceed the premium paid  
478 during the first 12 months of facility operation. ~~Beginning~~  
479 ~~January 1, 1993,~~ The operating reserves required under this

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480 subsection must ~~shall~~ be in an unencumbered account held in  
481 escrow for the benefit of the residents. Such funds may not be  
482 encumbered or subject to any liens or charges by the escrow  
483 agent or judgments, garnishments, or creditors' claims against  
484 the provider or facility. However, if a facility had a lien,  
485 mortgage, trust indenture, or similar debt instrument in place  
486 before January 1, 1993, which encumbered all or any part of the  
487 reserves required by this subsection and such funds were used to  
488 meet the requirements of this subsection, then such arrangement  
489 may be continued, unless a refinancing or acquisition has  
490 occurred, and the provider is ~~shall be~~ in compliance with this  
491 subsection.

492 (7) (a) A provider may withdraw funds held in escrow  
493 without the approval of the office if the amount held in escrow  
494 exceeds the requirements of this section and if the withdrawal  
495 will not affect compliance with this section.

496 (b)1. For all other proposed withdrawals, in order to  
497 receive the consent of the office, the provider must file  
498 documentation showing why the withdrawal is necessary for the  
499 continued operation of the facility and such additional  
500 information as the office reasonably requires.

501 2. The office shall notify the provider when the filing is  
502 deemed complete. If the provider has complied with all prior  
503 requests for information, the filing is deemed complete after 30  
504 days without communication from the office.

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505 3. Within 30 days after the date a file is deemed  
506 complete, the office shall provide the provider with written  
507 notice of its approval or disapproval of the request. The office  
508 may disapprove any request to withdraw such funds if it  
509 determines that the withdrawal is not in the best interest of  
510 the residents.

511 (8) The office may order the immediate transfer of up to  
512 100 percent of the funds held in the minimum liquid reserve to  
513 the custody of the department pursuant to part III of chapter  
514 625 if the office finds that the provider is impaired or  
515 insolvent. The office may order such a transfer regardless of  
516 whether the office has suspended or revoked, or intends to  
517 suspend or revoke, the certificate of authority of the provider.

518 (9) Each facility shall file with the office annually,  
519 together with the annual report required by s. 651.026, a  
520 calculation of its minimum liquid reserve determined in  
521 accordance with this section on a form prescribed by the  
522 commission.

523 (10) Any increase in the minimum liquid reserve must be  
524 funded not later than 61 days after the minimum liquid reserve  
525 calculation is due to be filed as provided in s. 651.026.

526 (11) If the minimum liquid reserve is less than the  
527 required minimum amount at the end of any fiscal quarter due to  
528 a change in the market value of the invested funds, the provider  
529 must fund the shortfall within 10 business days.

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530 Section 18. Effective July 1, 2019, section 651.043,  
531 Florida Statutes, is created to read:

532 651.043 Approval of change in management.-

533 (1) A contract with a management company entered into  
534 after July 1, 2019, must be in writing and include a provision  
535 that the contract will be canceled upon issuance of an order by  
536 the office pursuant to this section and without the application  
537 of a cancellation fee or penalty. If a provider contracts with a  
538 management company, a separate written contract is not required  
539 for the individual manager employed by the management company or  
540 contractor hired by the management company to oversee a  
541 facility. If a management company executes a contract with an  
542 individual manager or contractor, the contract is not required  
543 to be submitted to the office unless requested by the office.

544 (2) A provider shall notify the office, in writing or  
545 electronically, of any change in management within 10 business  
546 days. For each new management company or manager not employed by  
547 a management company, the provider shall submit to the office  
548 the information required by s. 651.022(2) and a copy of the  
549 written management contract, if applicable.

550 (3) For a provider that is found to be impaired or that  
551 has a regulatory action level event pending, the office may  
552 disapprove new management and order the provider to remove the  
553 new management after reviewing the information required under  
554 subsection (2).

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555 (4) For a provider other than that specified in subsection  
556 (3), the office may disapprove new management and order the  
557 provider to remove the new management after receiving the  
558 required information under subsection (2), if the office:

559 (a) Finds that the new management is incompetent or  
560 untrustworthy;

561 (b) Finds that the new management is so lacking in  
562 managerial experience as to make the proposed operation  
563 hazardous to the residents or potential residents;

564 (c) Finds that the new management is so lacking in  
565 experience, ability, and standing as to jeopardize the  
566 reasonable promise of successful operation; or

567 (d) Has good reason to believe that the new management is  
568 affiliated directly or indirectly through ownership, control, or  
569 business relations with any person or persons whose business  
570 operations are or have been marked by manipulation of assets or  
571 accounts or by bad faith, to the detriment of residents,  
572 stockholders, investors, creditors, or the public.

573  
574 The office shall complete its review as required under  
575 subsections (3) and (4) and, if applicable, issue notice of  
576 disapproval of the new management within 30 business days after  
577 the filing is deemed complete. A filing is deemed complete upon  
578 the office's receipt of all requested information and the  
579 provider's correction of any error or omission for which the

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580 provider was timely notified. If the office does not issue  
581 notice of disapproval of the new management within 30 business  
582 days after the filing is deemed complete, the new management is  
583 deemed approved.

584 (5) Management disapproved by the office must be removed  
585 within 30 days after receipt by the provider of notice of such  
586 disapproval.

587 (6) The office may revoke, suspend, or take other  
588 administrative action against the certificate of authority of  
589 the provider if the provider:

590 (a) Fails to timely remove management disapproved by the  
591 office;

592 (b) Fails to timely notify the office of a change in  
593 management;

594 (c) Appoints new management without a written contract  
595 when a written contract is required under this section; or

596 (d) Repeatedly appoints management that was previously  
597 disapproved by the office or that is not approvable under  
598 subsection (4).

599 (7) The provider shall remove any management immediately  
600 upon discovery of either of the following conditions, if the  
601 conditions were not disclosed in the notice to the office  
602 required under subsection (2):

603 (a) That a manager has been found guilty of, or has pled  
604 guilty or no contest to, a felony charge, or has been held

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605 liable or has been enjoined in a civil action by final judgment,  
606 if the felony or civil action involved fraud, embezzlement,  
607 fraudulent conversion, or misappropriation of property.

608 (b) That a manager is now, or was in the past, affiliated,  
609 directly or indirectly, through ownership interest of 10 percent  
610 or more in, or control of, any business, corporation, or other  
611 entity that has been found guilty of or has pled guilty or no  
612 contest to a felony charge, or has been held liable or has been  
613 enjoined in a civil action by final judgment, if the felony or  
614 civil action involved fraud, embezzlement, fraudulent  
615 conversion, or misappropriation of property.

616  
617 The failure to remove such management is grounds for revocation  
618 or suspension of the provider's certificate of authority.

619 Section 19. Section 651.051, Florida Statutes, is amended  
620 to read:

621 651.051 Maintenance of assets and records in state.—All  
622 records and assets of a provider must be maintained or readily  
623 accessible in this state or, if the provider's corporate office  
624 is located in another state, such records must be electronically  
625 stored in a manner that will ensure that the records are readily  
626 accessible to the office. No records or assets may be removed  
627 from this state by a provider unless the office consents to such  
628 removal in writing before such removal. Such consent must ~~shall~~  
629 be based upon the provider's submitting satisfactory evidence

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630 that the removal will facilitate and make more economical the  
631 operations of the provider and will not diminish the service or  
632 protection thereafter to be given the provider's residents in  
633 this state. Before ~~Prior to~~ such removal, the provider shall  
634 give notice to the president or chair of the facility's  
635 residents' council. If such removal is part of a cash management  
636 system which has been approved by the office, disclosure of the  
637 system must ~~shall~~ meet the notification requirements. The  
638 electronic storage of records on a web-based, secured storage  
639 platform by contract with a third party is acceptable if the  
640 records are readily accessible to the office.

641 Section 20. Subsection (3) of section 651.055, Florida  
642 Statutes, is amended to read:

643 651.055 Continuing care contracts; right to rescind.-

644 (3) The contract must include or be accompanied by a  
645 statement, printed in boldfaced type, which reads: "This  
646 facility and all other continuing care facilities (also known as  
647 life plan communities) in the State of Florida are regulated by  
648 the Office of Insurance Regulation pursuant to chapter 651,  
649 Florida Statutes. A copy of the law is on file in this facility.  
650 The law gives you or your legal representative the right to  
651 inspect our most recent financial statement and inspection  
652 report before signing the contract. The financial structure of a  
653 continuing care provider can be complex, and the decision to  
654 enter into a contract for continuing care is a long-term

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655 commitment between a resident and the continuing care provider.  
656 You may wish to consult an attorney or a financial advisor  
657 before entering into such a contract."

658 Section 21. Subsection (2) of section 651.057, Florida  
659 Statutes, is amended to read:

660 651.057 Continuing care at-home contracts.—

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

663 (a) Submit a business plan to the office with the  
664 following information:

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

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

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

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

677 (b) Demonstrate to the office that the proposal to offer  
678 continuing care at-home contracts to individuals who do not

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679 immediately move into the facility will not place the provider  
680 in an unsound financial condition;

681 (c) Comply with the requirements of s. 651.0246(1) ~~s.~~  
682 ~~651.021(2)~~, except that an actuarial study may be substituted  
683 for the feasibility study; and

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

685 Section 22. Subsection (1) of section 651.071, Florida  
686 Statutes, is amended to read:

687 651.071 Contracts as preferred claims on liquidation or  
688 receivership.—

689 (1) In the event of receivership or liquidation  
690 proceedings against a provider, all continuing care and  
691 continuing care at-home contracts executed by a provider are  
692 ~~shall be~~ deemed preferred claims against all assets owned by the  
693 provider; however, such claims are subordinate to any secured  
694 claim. For purposes of s. 631.271, such contracts are deemed  
695 Class 2 claims.

696 Section 23. Subsections (2) and (3) of section 651.091,  
697 Florida Statutes, are amended, and subsection (4) of that  
698 section is republished, to read:

699 651.091 Availability, distribution, and posting of reports  
700 and records; requirement of full disclosure.—

701 (2) Every continuing care facility shall:

702 (a) Display the certificate of authority in a conspicuous  
703 place inside the facility.

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704 (b) Post in a prominent position in the facility which is  
705 accessible to all residents and the general public a concise  
706 summary of the last examination report issued by the office,  
707 with references to the page numbers of the full report noting  
708 any deficiencies found by the office, and the actions taken by  
709 the provider to rectify such deficiencies, indicating in such  
710 summary where the full report may be inspected in the facility.

711 (c) Post in a prominent position in the facility,  
712 accessible to all residents and the general public, a notice  
713 containing the contact information for the office and the  
714 Division of Consumer Services of the department and stating that  
715 the division or office may be contacted for the submission of  
716 inquiries and complaints with respect to potential violations of  
717 this chapter committed by a provider. Such contact information  
718 must include the division's website and the toll-free consumer  
719 helpline and the office's website and telephone number.

720 (d) Provide notice to the president or chair of the  
721 residents' council within 10 business days after issuance of a  
722 final examination report or the initiation of any legal or  
723 administrative proceeding by the office or the department and  
724 include a copy of such document.

725 (e)-(e) Post in a prominent position in the facility which  
726 is accessible to all residents and the general public a summary  
727 of the latest annual statement, indicating in the summary where  
728 the full annual statement may be inspected in the facility. A

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729 listing of any proposed changes in policies, programs, and  
730 services must also be posted.

731 ~~(f)-(d)~~ Distribute a copy of the full annual statement and  
732 a copy of the most recent third-party ~~third party~~ financial  
733 audit filed with the annual report to the president or chair of  
734 the residents' council within 30 days after filing the annual  
735 report with the office, and designate a staff person to provide  
736 explanation thereof.

737 ~~(g)-(e)~~ Deliver the information described in s. 651.085(4)  
738 in writing to the president or chair of the residents' council  
739 and make supporting documentation available upon request ~~Notify~~  
740 ~~the residents' council of any plans filed with the office to~~  
741 ~~obtain new financing, additional financing, or refinancing for~~  
742 ~~the facility and of any applications to the office for any~~  
743 ~~expansion of the facility.~~

744 ~~(h)-(f)~~ Deliver to the president or chair of the residents'  
745 council a summary of entrance fees collected and refunds made  
746 during the time period covered in the annual report and the  
747 refund balances due at the end of the report period.

748 ~~(i)-(g)~~ Deliver to the president or chair of the residents'  
749 council a copy of each quarterly statement within 30 days after  
750 the quarterly statement is filed with the office if the facility  
751 is required to file quarterly.

752 ~~(j)-(h)~~ Upon request, deliver to the president or chair of  
753 the residents' council a copy of any newly approved continuing

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754 care or continuing care at-home contract within 30 days after  
755 approval by the office.

756 (k) Provide to the president or chair of the residents'  
757 council a copy of any notice filed with the office relating to  
758 any change in ownership within 10 business days after such  
759 filing by the provider.

760 (l) Make the information available to prospective  
761 residents pursuant to paragraph (3) (d) available to current  
762 residents and provide notice of changes to that information to  
763 the president or chair of the residents' council within 3  
764 business days.

765 (3) Before entering into a contract to furnish continuing  
766 care or continuing care at-home, the provider undertaking to  
767 furnish the care, or the agent of the provider, shall make full  
768 disclosure, obtain written acknowledgment of receipt, and  
769 provide copies of the disclosure documents to the prospective  
770 resident or his or her legal representative, of the following  
771 information:

772 (a) The contract to furnish continuing care or continuing  
773 care at-home.

774 (b) The summary listed in paragraph (2) (b).

775 (c) All ownership interests and lease agreements,  
776 including information specified in s. 651.022(2) (b)8.

777 (d) In keeping with the intent of this subsection relating  
778 to disclosure, the provider shall make available for review

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779 master plans approved by the provider's governing board and any  
780 plans for expansion or phased development, to the extent that  
781 the availability of such plans does not put at risk real estate,  
782 financing, acquisition, negotiations, or other implementation of  
783 operational plans and thus jeopardize the success of  
784 negotiations, operations, and development.

785 (e) Copies of the rules and regulations of the facility  
786 and an explanation of the responsibilities of the resident.

787 (f) The policy of the facility with respect to admission  
788 to and discharge from the various levels of health care offered  
789 by the facility.

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

794 (g) ~~(h)~~ A copy of s. 651.071.

795 (h) ~~(i)~~ A copy of the resident's rights as described in s.  
796 651.083.

797 (i) Notice of the issuance of a final examination report  
798 or the initiation of any legal or administrative proceeding by  
799 the office or the department, including where the report or  
800 filing may be inspected in the facility, and that, upon request,  
801 an electronic copy or specific website address will be provided  
802 from which the document can be downloaded at no cost.

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803 (j) Notice that if the resident does not exercise the  
804 right to rescind a continuing care contract within 7 days after  
805 executing the contract, the resident's funds held in escrow  
806 pursuant to s. 651.055(2) will be released to the provider.

807 (k) A statement that distribution of the provider's assets  
808 or income may occur or a statement that such distributions will  
809 not occur.

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

812 (4) A true and complete copy of the full disclosure  
813 document to be used must be filed with the office before use. A  
814 resident or prospective resident or his or her legal  
815 representative may inspect the full reports referred to in  
816 paragraph (2)(b); the charter or other agreement or instrument  
817 required to be filed with the office pursuant to s. 651.022(2),  
818 together with all amendments thereto; and the bylaws of the  
819 corporation or association, if any. Upon request, copies of the  
820 reports and information shall be provided to the individual  
821 requesting them if the individual agrees to pay a reasonable  
822 charge to cover copying costs.

823 Section 24. Subsection (4) of section 651.095, Florida  
824 Statutes, is amended to read:

825 651.095 Advertisements; requirements; penalties.—

826 (4) It is unlawful for any person, other than a provider  
827 licensed pursuant to this chapter, to advertise or market to the

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828 general public any product similar to continuing care through  
829 the use of such terms as "life care," "life plan," "life plan  
830 at-home," "continuing care," or "guaranteed care for life," or  
831 similar terms, words, or phrases.

832 Section 25. Section 651.105, Florida Statutes, is amended  
833 to read:

834 651.105 Examination ~~and inspections.~~

835 (1) The office may at any time, and shall at least once  
836 every 3 years, examine the business of any applicant for a  
837 certificate of authority and any provider engaged in the  
838 execution of care contracts or engaged in the performance of  
839 obligations under such contracts, in the same manner as is  
840 provided for the examination of insurance companies pursuant to  
841 ss. 624.316 and 624.318 ~~s. 624.316~~. For a provider as deemed  
842 accredited under ~~defined~~ in s. 651.028, such examinations must  
843 ~~shall~~ take place

844  
845 -----

**T I T L E A M E N D M E N T**

847 Remove lines 56-132 and insert:  
848 industry report; amending s. 651.0261, F.S.; requiring  
849 providers to file quarterly unaudited financial  
850 statements; providing an exception for filing a  
851 certain quarterly statement; revising information that  
852 the office may require providers to file and the

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853 | circumstances under which such information must be  
854 | filed; revising the commission's rulemaking authority;  
855 | amending s. 651.028, F.S.; specifying applicability of  
856 | certain accreditations of providers or facilities;  
857 | deleting the authority of the office to waive  
858 | requirements for accredited facilities; providing that  
859 | the commission, rather than the office, must make  
860 | certain findings; amending s. 651.033, F.S.; revising  
861 | applicability of escrow requirements; revising  
862 | requirements for escrow accounts and agreements;  
863 | revising the office's authority to allow a withdrawal  
864 | of a specified percentage of the required minimum  
865 | liquid reserve; revising applicability of requirements  
866 | relating to the deposit of certain funds in escrow  
867 | accounts; prohibiting an escrow agent, except under  
868 | certain circumstances, from releasing or allowing the  
869 | transfer of funds; creating s. 651.034, F.S.;  
870 | specifying requirements for the office if a regulatory  
871 | action level event occurs; specifying requirements for  
872 | corrective action plans; authorizing the office to use  
873 | members of the Continuing Care Advisory Council and to  
874 | retain consultants for certain purposes; requiring  
875 | affected providers to bear costs and expenses relating  
876 | to such consultants; specifying requirements for, and  
877 | authorized actions of, the office and the Department

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878 of Financial Services if an impairment occurs;  
879 providing construction; authorizing the office to  
880 exempt a provider from certain requirements for a  
881 certain timeframe; authorizing the commission to adopt  
882 rules; amending s. 651.035, F.S.; revising minimum  
883 liquid reserve requirements for providers; specifying  
884 requirements, limitations, and procedures for a  
885 provider's withdrawal of funds held in escrow and the  
886 office's review of certain requests for withdrawal;  
887 authorizing the office to order certain transfers  
888 under certain circumstances; requiring facilities to  
889 annually file with the office a minimum liquid reserve  
890 calculation; requiring increases in the minimum liquid  
891 reserve to be funded within a certain timeframe;  
892 requiring providers to fund shortfalls in minimum  
893 liquid reserves under certain circumstances within a  
894 certain timeframe; creating s. 651.043, F.S.;  
895 specifying requirements for certain management company  
896 contracts; specifying requirements, procedures, and  
897 authorized actions relating to changes in provider  
898 management and to the office's review of such changes;  
899 requiring that disapproved management be removed  
900 within a certain timeframe; authorizing the office to  
901 take certain disciplinary actions under certain  
902 circumstances; requiring providers to immediately

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903 remove management under certain circumstances;  
904 amending s. 651.051, F.S.; revising requirements for  
905 the maintenance of provider records and assets;  
906 amending s. 651.055, F.S.; revising a required  
907 statement in continuing care contracts; amending s.  
908 651.057, F.S.; conforming provisions to changes made  
909 by the act; amending s. 651.071, F.S.; specifying the  
910 priority of continuing care contracts and continuing  
911 care at-home contracts in receivership or liquidation  
912 proceedings against a provider; amending s. 651.091,  
913 F.S.; revising requirements for continuing care  
914 facilities relating to posting or providing notices;  
915 amending s. 651.095, F.S.; adding terms to a list of  
916 prohibited terms in certain advertisements; amending  
917 s. 651.105, F.S.; adding a certain Florida Insurance  
918 Code provision to the office's authority to examine  
919 certain providers and applicants; authorizing the  
920 office to examine records for specified purposes;  
921 requiring providers to respond to the office's written  
922 correspondence and to provide certain information;  
923 providing standing to the office to petition certain  
924 circuit courts for certain relief; revising, and  
925 specifying limitations on, the office's examination

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