



131766

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/19/2019	.	
	.	
	.	
	.	

---

The Committee on Appropriations (Lee) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 216 - 2443

and insert:

(a) The voting securities of one or more providers that are stock corporations; or

(b) The ownership interest of one or more providers that are not stock corporations.

(9) "Corrective order" means an order issued by the office which specifies corrective actions that the office determines are required in accordance with this chapter or commission rule.



131766

12           (10) "Days cash on hand" means the quotient obtained by  
13 dividing the value of paragraph (a) by the value of paragraph  
14 (b).

15           (a) The sum of unrestricted cash, unrestricted short-term  
16 and long-term investments, provider restricted funds, and the  
17 minimum liquid reserve as of the reporting date.

18           (b) Operating expenses less depreciation, amortization, and  
19 other noncash expenses and nonoperating losses divided by 365.  
20 Operating expenses, depreciation, amortization, and other  
21 noncash expenses and nonoperating losses are each the sum of  
22 their respective values over the 12-month period ending on the  
23 reporting date.

24  
25 With prior written approval of the office, a demand note or  
26 other parental guarantee may be considered a short-term or long-  
27 term investment for the purposes of paragraph (a). However, the  
28 total of all demand notes issued by the parent may not, at any  
29 time, be more than the sum of unrestricted cash and unrestricted  
30 short-term and long-term investments held by the parent.

31           (11) "Debt service coverage ratio" means the quotient  
32 obtained by dividing the value of paragraph (a) by the value of  
33 paragraph (b).

34           (a) The sum of total expenses less interest expense on the  
35 debt facility, depreciation, amortization, and other noncash  
36 expense and nonoperating losses, subtracted from the sum of  
37 total revenues, excluding noncash revenues and nonoperating  
38 gains, and gross entrance fees received less earned entrance  
39 fees and refunds paid. Expenses, interest expense on the debt  
40 facility, depreciation, amortization, and other noncash expense



131766

41 and nonoperating losses, revenues, noncash revenues,  
42 nonoperating gains, gross entrance fees, earned entrance fees,  
43 and refunds are each the sum of their respective values over the  
44 12-month period ending on the reporting date.

45 (b) Total annual principal and interest expense due on the  
46 debt facility over the 12-month period ending on the reporting  
47 date. For the purposes of this paragraph, principal excludes any  
48 balloon principal payment amounts, and interest expense due is  
49 the sum of the interest over the 12-month period ending on the  
50 reporting date.

51 (12) "Department" means the Department of Financial  
52 Services.

53 (13)~~(5)~~ "Entrance fee" means an initial or deferred payment  
54 of a sum of money or property made as full or partial payment  
55 for continuing care or continuing care at-home. An accommodation  
56 fee, admission fee, member fee, or other fee of similar form and  
57 application are considered to be an entrance fee.

58 (14)~~(6)~~ "Facility" means a place where continuing care is  
59 furnished and may include one or more physical plants on a  
60 primary or contiguous site or an immediately accessible site. As  
61 used in this subsection, the term "immediately accessible site"  
62 means a parcel of real property separated by a reasonable  
63 distance from the facility as measured along public  
64 thoroughfares, and the term "primary or contiguous site" means  
65 the real property contemplated in the feasibility study required  
66 by this chapter.

67 ~~(7) "Generally accepted accounting principles" means those~~  
68 ~~accounting principles and practices adopted by the Financial~~  
69 ~~Accounting Standards Board and the American Institute of~~



131766

70 ~~Certified Public Accountants, including Statement of Position~~  
71 ~~90-8 with respect to any full year to which the statement~~  
72 ~~applies.~~

73 (15) "Impaired" or "impairment" means that either of the  
74 following has occurred:

75 (a) A provider has failed to maintain its minimum liquid  
76 reserve as required under s. 651.035, unless the provider has  
77 received prior written approval from the office for a withdrawal  
78 pursuant to s. 651.035(6) and is compliant with the approved  
79 payment schedule.

80 (b) Beginning January 1, 2021:

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

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

88  
89 If the provider is a member of an obligated group having cross-  
90 collateralized debt, the obligated group's debt service coverage  
91 ratio and days cash on hand must be used to determine if the  
92 provider is impaired.

93 (16)~~(8)~~ "Insolvency" means the condition in which a ~~the~~  
94 provider is unable to pay its obligations as they come due in  
95 the normal course of business.

96 (17)~~(9)~~ "Licensed" means that a ~~the~~ provider has obtained a  
97 certificate of authority from the office ~~department~~.

98 (18) "Manager," "management," or "management company" means



131766

99 a person who administers the day-to-day business operations of a  
100 facility for a provider, subject to the policies, directives,  
101 and oversight of the provider.

102 (19)-(10) "Nursing care" means those services or acts  
103 rendered to a resident by an individual licensed or certified  
104 pursuant to chapter 464.

105 (20) "Obligated group" means one or more entities that  
106 jointly agree to be bound by a financing structure containing  
107 security provisions and covenants applicable to the group. For  
108 the purposes of this subsection, debt issued under such a  
109 financing structure must be a joint and several obligation of  
110 each member of the group.

111 (21) "Occupancy" means the total number of occupied  
112 independent living units, assisted living units, and skilled  
113 nursing beds in a facility divided by the total number of units  
114 and beds in that facility, excluding units and beds that are  
115 unavailable to market or that are reserved by prospective  
116 residents.

117 (22)-(11) "Personal services" has the same meaning as in s.  
118 429.02.

119 (23)-(12) "Provider" means the owner or operator, whether a  
120 natural person, partnership or other unincorporated association,  
121 however organized, trust, or corporation, of an institution,  
122 building, residence, or other place, whether operated for profit  
123 or not, which owner or operator provides continuing care or  
124 continuing care at-home for a fixed or variable fee, or for any  
125 other remuneration of any type, whether fixed or variable, for  
126 the period of care, payable in a lump sum or lump sum and  
127 monthly maintenance charges or in installments. The term does



131766

128 not apply to an entity that has existed and continuously  
129 operated a facility located on at least 63 acres in this state  
130 providing residential lodging to members and their spouses for  
131 at least 66 years on or before July 1, 1989, and has the  
132 residential capacity of 500 persons, is directly or indirectly  
133 owned or operated by a nationally recognized fraternal  
134 organization, is not open to the public, and accepts only its  
135 members and their spouses as residents.

136 (24) ~~(13)~~ "Records" means all documents, correspondence, and  
137 the permanent financial, directory, and personnel information  
138 and data maintained by a provider pursuant to this chapter,  
139 regardless of the physical form, characteristics, or means of  
140 transmission.

141 (25) "Regulatory action level event" means that any two of  
142 the following have occurred:

143 (a) The provider's debt service coverage ratio is less than  
144 the greater of the minimum ratio specified in the provider's  
145 bond covenants or lending agreement for long-term financing or  
146 1.20:1 as of the most recent annual report filed with the office  
147 pursuant to s. 651.026, or, if the provider does not have a debt  
148 service coverage ratio required by its lending institution, the  
149 provider's debt service coverage ratio is less than 1.20:1 as of  
150 the most recent annual report filed with the office pursuant to  
151 s. 651.026. If the provider is a member of an obligated group  
152 having cross-collateralized debt, the obligated group's debt  
153 service coverage ratio must be used as the provider's debt  
154 service coverage ratio.

155 (b) The provider's days cash on hand is less than the  
156 greater of the minimum number of days cash on hand specified in



131766

157 the provider's bond covenants or lending agreement for long-term  
158 financing or 100 days. If the provider does not have a days cash  
159 on hand required by its lending institution, the days cash on  
160 hand may not be less than 100 as of the most recent annual  
161 report filed with the office pursuant to s. 651.026. If the  
162 provider is a member of an obligated group having cross-  
163 collateralized debt, the days cash on hand of the obligated  
164 group must be used as the provider's days cash on hand.

165 (c) The occupancy of the provider's facility is less than  
166 80 percent averaged over the 12-month period immediately  
167 preceding the annual report filed with the office pursuant to s.  
168 651.026.

169 (26)-(14) "Resident" means a purchaser of, a nominee of, or  
170 a subscriber to a continuing care or continuing care at-home  
171 contract. Such contract does not give the resident a part  
172 ownership of the facility in which the resident is to reside,  
173 unless expressly provided in the contract.

174 (27)-(15) "Shelter" means an independent living unit, room,  
175 apartment, cottage, villa, personal care unit, nursing bed, or  
176 other living area within a facility set aside for the exclusive  
177 use of one or more identified residents.

178 Section 2. Section 651.012, Florida Statutes, is amended to  
179 read:

180 651.012 Exempted facility; written disclosure of  
181 exemption.—Any facility exempted under ss. 632.637(1)(e) and  
182 651.011(23) ~~651.011(12)~~ must provide written disclosure of such  
183 exemption to each person admitted to the facility ~~after October~~  
184 ~~1, 1996~~. This disclosure must be written using language likely  
185 to be understood by the person and must briefly explain the



131766

186 exemption.

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

189 651.013 Chapter exclusive; applicability of other laws.—

190 (2) In addition to other applicable provisions cited in  
191 this chapter, the office has the authority granted under ss.  
192 624.302, ~~and 624.303, 624.307-624.312, 624.318 624.308-624.312,~~  
193 624.319(1)-(3), 624.320, 624.321 ~~624.320-624.321,~~ 624.324, ~~and~~  
194 624.34, and 624.422 of the Florida Insurance Code to regulate  
195 providers of continuing care and continuing care at-home.

196 Section 4. Section 651.019, Florida Statutes, is amended to  
197 read:

198 651.019 New financing, additional financing, or  
199 refinancing.—

200 (1) (a) A provider shall provide a written general outline  
201 of the amount and the anticipated terms of any new financing or  
202 refinancing, and the intended use of proceeds, to the residents'  
203 council at least 30 days before the closing date of the  
204 financing or refinancing transaction. If there is a material  
205 change in the noticed information, a provider shall provide an  
206 updated notice to the residents' council within 10 business days  
207 after the provider becomes aware of such change.

208 (b) If the facility does not have a residents' council, the  
209 facility must make available, in the same manner as other  
210 community notices, the information required under paragraph (a)  
211 ~~After issuance of a certificate of authority, the provider shall~~  
212 ~~submit to the office a general outline, including intended use~~  
213 ~~of proceeds, with respect to any new financing, additional~~  
214 ~~financing, or refinancing at least 30 days before the closing~~





131766

215 ~~date of such financing transaction.~~

216       (2) Within 30 days after the closing date of such financing  
217 or refinancing transaction, The provider shall furnish any  
218 information the office may reasonably request in connection with  
219 any new financing, additional financing, or refinancing,  
220 including, but not limited to, the financing agreements and any  
221 related documents, escrow or trust agreements, and statistical  
222 or financial data. the provider shall also submit to the office  
223 copies of executed financing documents, escrow or trust  
224 agreements prepared in support of such financing or refinancing  
225 transaction, and a copy of all documents required to be  
226 submitted to the residents' council under paragraph (1) (a)  
227 within 30 days after the closing date.

228       Section 5. Section 651.021, Florida Statutes, is amended to  
229 read:

230       651.021 Certificate of authority required.-

231       ~~(1)~~ A ~~Ne~~ person may not engage in the business of providing  
232 continuing care, issuing contracts for continuing care or  
233 continuing care at-home, or constructing a facility for the  
234 purpose of providing continuing care in this state without a  
235 certificate of authority obtained from the office as provided in  
236 this chapter. This section ~~subsection~~ does not prohibit the  
237 preparation of a construction site or construction of a model  
238 residence unit for marketing purposes, or both. The office may  
239 allow the purchase of an existing building for the purpose of  
240 providing continuing care if the office determines that the  
241 purchase is not being made to circumvent the prohibitions in  
242 this section.

243       ~~(2) Written approval must be obtained from the office~~



131766

244 ~~before commencing construction or marketing for an expansion of~~  
245 ~~a certificated facility equivalent to the addition of at least~~  
246 ~~20 percent of existing units or 20 percent or more in the number~~  
247 ~~of continuing care at-home contracts. This provision does not~~  
248 ~~apply to construction for which a certificate of need from the~~  
249 ~~Agency for Health Care Administration is required.~~

250 ~~(a) For providers that offer both continuing care and~~  
251 ~~continuing care at-home, the 20 percent is based on the total of~~  
252 ~~both existing units and existing contracts for continuing care~~  
253 ~~at-home. For purposes of this subsection, an expansion includes~~  
254 ~~increases in the number of constructed units or continuing care~~  
255 ~~at-home contracts or a combination of both.~~

256 ~~(b) The application for such approval shall be on forms~~  
257 ~~adopted by the commission and provided by the office. The~~  
258 ~~application must include the feasibility study required by s.~~  
259 ~~651.022(3) or s. 651.023(1)(b) and such other information as~~  
260 ~~required by s. 651.023. If the expansion is only for continuing~~  
261 ~~care at-home contracts, an actuarial study prepared by an~~  
262 ~~independent actuary in accordance with standards adopted by the~~  
263 ~~American Academy of Actuaries which presents the financial~~  
264 ~~impact of the expansion may be substituted for the feasibility~~  
265 ~~study.~~

266 ~~(c) In determining whether an expansion should be approved,~~  
267 ~~the office shall use the criteria provided in ss. 651.022(6) and~~  
268 ~~651.023(4).~~

269 Section 6. Section 651.0215, Florida Statutes, is created  
270 to read:

271 651.0215 Consolidated application for a provisional  
272 certificate of authority and a certificate of authority;



131766

273 required restrictions on use of entrance fees.-

274 (1) For an applicant to qualify for a certificate of  
275 authority without first obtaining a provisional certificate of  
276 authority, all of the following conditions must be met:

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

282 (b) The reservation deposit may not exceed the lesser of  
283 \$40,000 or 10 percent of the then-current fee for the unit  
284 selected by a resident and must be refundable at any time before  
285 the resident takes occupancy of the selected unit.

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

290 (2) The consolidated application must be on a form  
291 prescribed by the commission and must contain all of the  
292 following information:

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

294 (b) A feasibility study prepared by an independent  
295 consultant which contains all of the information required by s.  
296 651.022(3) and financial forecasts or projections prepared in  
297 accordance with standards adopted by the American Institute of  
298 Certified Public Accountants or in accordance with standards for  
299 feasibility studies for continuing care retirement communities  
300 adopted by the Actuarial Standards Board.

301 1. The feasibility study must take into account project



131766

302 costs, actual marketing results to date and marketing  
303 projections, resident fees and charges, competition, resident  
304 contract provisions, and other factors that affect the  
305 feasibility of operating the facility.

306 2. If the feasibility study is prepared by an independent  
307 certified public accountant, it must contain an examination  
308 report, or a compilation report acceptable to the office,  
309 containing a financial forecast or projections for the first 5  
310 years of operations which take into account an actuary's  
311 mortality and morbidity assumptions as the study relates to  
312 turnover, rates, fees, and charges. If the study is prepared by  
313 an independent consulting actuary, it must contain mortality and  
314 morbidity assumptions as it relates to turnover, rates, fees,  
315 and charges and an actuary's signed opinion that the project as  
316 proposed is feasible and that the study has been prepared in  
317 accordance with Actuarial Standards of Practice No. 3 for  
318 Continuing Care Retirement Communities, Revised Edition,  
319 effective May 1, 2011.

320 (c) Documents evidencing that commitments have been secured  
321 for construction financing and long-term financing or that a  
322 documented plan acceptable to the office has been adopted by the  
323 applicant for long-term financing.

324 (d) Documents evidencing that all conditions of the lender  
325 have been satisfied to activate the commitment to disburse  
326 funds, other than the obtaining of the certificate of authority,  
327 the completion of construction, or the closing of the purchase  
328 of realty or buildings for the facility.

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



131766

331 anticipated proceeds from any long-term financing commitment and  
332 funds from all other sources in the actual possession of the  
333 applicant, equal at least 100 percent of the aggregate cost of  
334 constructing or purchasing, equipping, and furnishing the  
335 facility plus 100 percent of the anticipated startup losses of  
336 the facility.

337 (f) A complete audited financial report of the applicant,  
338 prepared by an independent certified public accountant in  
339 accordance with generally accepted accounting principles, as of  
340 the date the applicant commenced business operations or for the  
341 fiscal year that ended immediately preceding the date of  
342 application, whichever is later; and complete unaudited  
343 quarterly financial statements attested to by the applicant  
344 after the date of the last audit.

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

347 (h) Such other reasonable data, financial statements, and  
348 pertinent information as the commission or office may require  
349 with respect to the applicant or the facility to determine the  
350 financial status of the facility and the management capabilities  
351 of its managers and owners.

352  
353 If any material change occurs in the facts set forth in an  
354 application filed with the office pursuant to this subsection,  
355 an amendment setting forth such change must be filed with the  
356 office within 10 business days after the applicant becomes aware  
357 of such change, and a copy of the amendment must be sent by  
358 registered mail to the principal office of the facility and to  
359 the principal office of the controlling company.



131766

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

364       (4) Within 45 days after receipt of the information  
365 required under subsection (2), the office shall examine the  
366 information and notify the applicant in writing, specifically  
367 requesting any additional information that the office is  
368 authorized to require. An application is deemed complete when  
369 the office receives all requested information and the applicant  
370 corrects any error or omission of which the applicant was timely  
371 notified or when the time for such notification has expired.  
372 Within 15 days after receipt of all of the requested additional  
373 information, the office shall notify the applicant in writing  
374 that all of the requested information has been received and that  
375 the application is deemed complete as of the date of the notice.  
376 Failure to notify the applicant in writing within the 15-day  
377 period constitutes acknowledgment by the office that it has  
378 received all requested additional information, and the  
379 application is deemed complete for purposes of review on the  
380 date the applicant files all of the required additional  
381 information.

382       (5) Within 45 days after an application is deemed complete  
383 as set forth in subsection (4) and upon completion of the  
384 remaining requirements of this section, the office shall  
385 complete its review and issue or deny a certificate of authority  
386 to the applicant. If a certificate of authority is denied, the  
387 office shall notify the applicant in writing, citing the  
388 specific failures to satisfy this chapter, and the applicant is



131766

389 entitled to an administrative hearing pursuant to chapter 120.

390 (6) The office shall issue a certificate of authority upon  
391 determining that the applicant meets all of the requirements of  
392 law and has submitted all of the information required under this  
393 section, that all escrow requirements have been satisfied, and  
394 that the fees prescribed in s. 651.015(2) have been paid.

395 (7) The issuance of a certificate of authority entitles the  
396 applicant to begin construction and collect reservation deposits  
397 and entrance fees from prospective residents. The reservation  
398 contract must state the cancellation policy and the terms of the  
399 continuing care contract. All or any part of an entrance fee or  
400 reservation deposit collected must be placed in an escrow  
401 account or on deposit with the department pursuant to s.  
402 651.033.

403 (8) The provider is entitled to secure release of the  
404 moneys held in escrow within 7 days after the office receives an  
405 affidavit from the provider, along with appropriate  
406 documentation to verify, and notification is provided to the  
407 escrow agent by certified mail, that all of the following  
408 conditions have been satisfied:

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

410 (b) Payment in full has been received for at least 70  
411 percent of the total units of a phase or of the total of the  
412 combined phases constructed. If a provider offering continuing  
413 care at-home is applying for a release of escrowed entrance  
414 fees, the same minimum requirement must be met for the  
415 continuing care contracts and for the continuing care at-home  
416 contracts independently of each other.

417 (c) The provider has evidence of sufficient funds to meet



131766

418 the requirements of s. 651.035, which may include funds  
419 deposited in the initial entrance fee account.

420 (d) Documents evidencing the intended application of the  
421 proceeds upon release and documents evidencing that the entrance  
422 fees, when released, will be applied as represented to the  
423 office.

424  
425 Notwithstanding chapter 120, only the provider, the escrow  
426 agent, and the office have a substantial interest in any office  
427 decision regarding release of escrow funds in any proceedings  
428 under chapter 120 or this chapter.

429 (9) The office may not approve any application that  
430 includes in the plan of financing any encumbrance of the  
431 operating reserves or renewal and replacement reserves required  
432 by this chapter.

433 (10) The office may not issue a certificate of authority  
434 for a facility that does not have a component that is to be  
435 licensed pursuant to part II of chapter 400 or part I of chapter  
436 429, or that does not offer personal services or nursing  
437 services through written contractual agreement. A written  
438 contractual agreement must be disclosed in the contract for  
439 continuing care or continuing care at-home and is subject to s.  
440 651.1151.

441 Section 7. Subsections (2), (3), (6), and (8) of section  
442 651.022, Florida Statutes, are amended, and subsection (5) of  
443 that section is republished, to read:

444 651.022 Provisional certificate of authority; application.—

445 (2) The application for a provisional certificate of  
446 authority must ~~shall~~ be on a form prescribed by the commission





131766

447 and must ~~shall~~ contain the following information:

448 (a) If the applicant or provider is a corporation, a copy  
449 of the articles of incorporation and bylaws; if the applicant or  
450 provider is a partnership or other unincorporated association, a  
451 copy of the partnership agreement, articles of association, or  
452 other membership agreement; and, if the applicant or provider is  
453 a trust, a copy of the trust agreement or instrument.

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

455 1. The proprietor, if the applicant or provider is an  
456 individual.

457 2. Every partner or member, if the applicant or provider is  
458 a partnership or other unincorporated association, however  
459 organized, having fewer than 50 partners or members, together  
460 with the business name and address of the partnership or other  
461 organization.

462 3. The principal partners or members, if the applicant or  
463 provider is a partnership or other unincorporated association,  
464 however organized, having 50 or more partners or members,  
465 together with the business name and business address of the  
466 partnership or other organization. If such unincorporated  
467 organization has officers and a board of directors, the full  
468 name and business address of each officer and director may be  
469 set forth in lieu of the full name and business address of its  
470 principal members.

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

473 5. Every trustee and officer, if the applicant or provider  
474 is a trust.

475 6. The manager, whether an individual, corporation,



131766

476 partnership, or association.

477 7. Any stockholder holding at least a 10 percent interest  
478 in the operations of the facility in which the care is to be  
479 offered.

480 8. Any person whose name is required to be provided in the  
481 application under this paragraph and who owns any interest in or  
482 receives any remuneration from, directly or indirectly, any  
483 professional service firm, association, trust, partnership, or  
484 corporation providing goods, leases, or services to the facility  
485 for which the application is made, with a real or anticipated  
486 value of \$10,000 or more, and the name and address of the  
487 professional service firm, association, trust, partnership, or  
488 corporation in which such interest is held. The applicant shall  
489 describe such goods, leases, or services and the probable cost  
490 to the facility or provider and shall describe why such goods,  
491 leases, or services should not be purchased from an independent  
492 entity.

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

496 10. Any affiliated parent or subsidiary corporation or  
497 partnership.

498 (c)1. Evidence that the applicant is reputable and of  
499 responsible character. If the applicant is a firm, association,  
500 organization, partnership, business trust, corporation, or  
501 company, the form must ~~shall~~ require evidence that the members  
502 or shareholders ~~are reputable and of responsible character,~~ and  
503 the person in charge of providing care under a certificate of  
504 authority are ~~shall likewise be required to produce evidence of~~



131766

505 ~~being~~ reputable and of responsible character.

506         2. Evidence satisfactory to the office of the ability of  
507 the applicant to comply with ~~the provisions of~~ this chapter and  
508 with rules adopted by the commission pursuant to this chapter.

509         3. A statement of whether a person identified in the  
510 application for a provisional certificate of authority or the  
511 administrator or manager of the facility, if such person has  
512 been designated, or any such person living in the same location:

513             a. Has been convicted of a felony or has pleaded nolo  
514 contendere to a felony charge, or has been held liable or has  
515 been enjoined in a civil action by final judgment, if the felony  
516 or civil action involved fraud, embezzlement, fraudulent  
517 conversion, or misappropriation of property.

518             b. Is subject to a currently effective injunctive or  
519 restrictive order or federal or state administrative order  
520 relating to business activity or health care as a result of an  
521 action brought by a public agency or department, including,  
522 without limitation, an action affecting a license under chapter  
523 400 or chapter 429.

524  
525 The statement must ~~shall~~ set forth the court or agency, the date  
526 of conviction or judgment, and the penalty imposed or damages  
527 assessed, or the date, nature, and issuer of the order. Before  
528 determining whether a provisional certificate of authority is to  
529 be issued, the office may make an inquiry to determine the  
530 accuracy of the information submitted pursuant to subparagraphs  
531 1., 2., and 3. ~~1. and 2.~~

532         (d) The contracts for continuing care and continuing care  
533 at-home to be entered into between the provider and residents



131766

534 which meet the minimum requirements of s. 651.055 or s. 651.057  
535 and which include a statement describing the procedures required  
536 by law relating to the release of escrowed entrance fees. Such  
537 statement may be furnished through an addendum.

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

540 (f) Such other reasonable data, financial statements, and  
541 pertinent information as the commission or office may reasonably  
542 require with respect to the provider or the facility, including  
543 the most recent audited financial report statements of  
544 comparable facilities currently or previously owned, managed, or  
545 developed by the applicant or its principal, to assist in  
546 determining the financial viability of the project and the  
547 management capabilities of its managers and owners.

548 (g) The forms of the residency contracts, reservation  
549 contracts, escrow agreements, and wait list contracts, if  
550 applicable, which are proposed to be used by the provider in the  
551 furnishing of care. The office shall approve contracts and  
552 escrow agreements that comply with ss. 651.023(1)(c), 651.033,  
553 651.055, and 651.057. Thereafter, no other form of contract or  
554 agreement may be used by the provider until it has been  
555 submitted to the office and approved.

556  
557 If any material change occurs in the facts set forth in an  
558 application filed with the office pursuant to this subsection,  
559 an amendment setting forth such change must be filed with the  
560 office within 10 business days after the applicant becomes aware  
561 of such change, and a copy of the amendment must be sent by  
562 registered mail to the principal office of the facility and to



131766

563 the principal office of the controlling company.

564 (3) In addition to the information required in subsection  
565 (2), an applicant for a provisional certificate of authority  
566 shall submit a ~~market~~ feasibility study with appropriate  
567 financial, marketing, and actuarial assumptions for the first 5  
568 years of operations. The ~~market~~ feasibility study must ~~shall~~  
569 include at least the following information:

570 (a) A description of the proposed facility, including the  
571 location, size, anticipated completion date, and the proposed  
572 construction program.

573 (b) An identification and evaluation of the primary and, if  
574 appropriate, the secondary market areas of the facility and the  
575 projected unit sales per month.

576 (c) Projected revenues, including anticipated entrance  
577 fees; monthly service fees; nursing care revenues ~~rates,~~ if  
578 applicable; and all other sources of revenue, ~~including the~~  
579 ~~total amount of debt financing required.~~

580 (d) Projected expenses, including staffing requirements and  
581 salaries; cost of property, plant, and equipment, including  
582 depreciation expense; interest expense; marketing expense; and  
583 other operating expenses.

584 (e) A projected balance sheet ~~Current assets and~~  
585 ~~liabilities of the applicant.~~

586 (f) Expectations of the financial condition of the project,  
587 including the projected cash flow, and a projected balance sheet  
588 ~~and~~ an estimate of the funds anticipated to be necessary to  
589 cover startup losses.

590 (g) The inflation factor, if any, assumed in the  
591 feasibility study for the proposed facility and how and where it



131766

592 is applied.

593       (h) Project costs and the total amount of debt financing  
594 required, marketing projections, resident fees and charges, the  
595 competition, resident contract provisions, and other factors  
596 that ~~which~~ affect the feasibility of the facility.

597       (i) Appropriate population projections, including morbidity  
598 and mortality assumptions.

599       (j) The name of the person who prepared the feasibility  
600 study and the experience of such person in preparing similar  
601 studies or otherwise consulting in the field of continuing care.  
602 The preparer of the feasibility study may be the provider or a  
603 contracted third party.

604       (k) Any other information that the applicant deems relevant  
605 and appropriate to enable the office to make a more informed  
606 determination.

607       (5) (a) Within 30 days after receipt of an application for a  
608 provisional certificate of authority, the office shall examine  
609 the application and shall notify the applicant in writing,  
610 specifically setting forth and specifically requesting any  
611 additional information the office is permitted by law to  
612 require. If the application submitted is determined by the  
613 office to be substantially incomplete so as to require  
614 substantial additional information, including biographical  
615 information, the office may return the application to the  
616 applicant with a written notice that the application as received  
617 is substantially incomplete and, therefore, unacceptable for  
618 filing without further action required by the office. Any filing  
619 fee received shall be refunded to the applicant.

620       (b) Within 15 days after receipt of all of the requested



131766

621 additional information, the office shall notify the applicant in  
622 writing that all of the requested information has been received  
623 and the application is deemed to be complete as of the date of  
624 the notice. Failure to so notify the applicant in writing within  
625 the 15-day period shall constitute acknowledgment by the office  
626 that it has received all requested additional information, and  
627 the application shall be deemed to be complete for purposes of  
628 review upon the date of the filing of all of the requested  
629 additional information.

630 (6) Within 45 days after the date an application is deemed  
631 complete as set forth in paragraph (5)(b), the office shall  
632 complete its review and issue a provisional certificate of  
633 authority to the applicant based upon its review and a  
634 determination that the application meets all requirements of  
635 law, that the feasibility study was based on sufficient data and  
636 reasonable assumptions, and that the applicant will be able to  
637 provide continuing care or continuing care at-home as proposed  
638 and meet all financial and contractual obligations related to  
639 its operations, including the financial requirements of this  
640 chapter. If the application is denied, the office shall notify  
641 the applicant in writing, citing the specific failures to meet  
642 the provisions of this chapter. Such denial entitles the  
643 applicant to a hearing pursuant to chapter 120.

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

648 Section 8. Subsection (1) and subsections (4) through (9)  
649 of section 651.023, Florida Statutes, are amended, and



131766

650 subsection (2) of that section is republished, to read:

651 651.023 Certificate of authority; application.—

652 (1) After issuance of a provisional certificate of  
653 authority, the office shall issue to the holder of such  
654 provisional certificate a certificate of authority if the holder  
655 of the provisional certificate provides the office with the  
656 following information:

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

660 (b) A feasibility study prepared by an independent  
661 consultant which contains all of the information required by s.  
662 651.022(3) and financial forecasts or projections prepared in  
663 accordance with standards adopted by the American Institute of  
664 Certified Public Accountants or in accordance with standards for  
665 feasibility studies or continuing care retirement communities  
666 adopted by the Actuarial Standards Board.

667 ~~1. The study must also contain an independent evaluation~~  
668 ~~and examination opinion, or a comparable opinion acceptable to~~  
669 ~~the office, by the consultant who prepared the study, of the~~  
670 ~~underlying assumptions used as a basis for the forecasts or~~  
671 ~~projections in the study and that the assumptions are reasonable~~  
672 ~~and proper and the project as proposed is feasible.~~

673 1.2. The study must take into account project costs, actual  
674 marketing results to date and marketing projections, resident  
675 fees and charges, competition, resident contract provisions, and  
676 any other factors which affect the feasibility of operating the  
677 facility.

678 ~~2.3.~~ If the study is prepared by an independent certified





131766

679 public accountant, it must contain an examination opinion or a  
680 compilation report acceptable to the office containing a  
681 financial forecast or projections for the first 5 ~~3~~ years of  
682 operations which take into account an actuary's mortality and  
683 morbidity assumptions as the study relates to turnover, rates,  
684 fees, and charges ~~and financial projections having a compilation~~  
685 ~~opinion for the next 3 years.~~ If the study is prepared by an  
686 independent consulting actuary, it must contain mortality and  
687 morbidity assumptions as the study relates to turnover, rates,  
688 fees, and charges ~~data~~ and an actuary's signed opinion that the  
689 project as proposed is feasible and that the study has been  
690 prepared in accordance with standards adopted by the American  
691 Academy of Actuaries.

692 (c) Subject to subsection (4), a provider may submit an  
693 application for a certificate of authority and any required  
694 exhibits upon submission of documents evidencing ~~proof~~ that the  
695 project has a minimum of 30 percent of the units reserved for  
696 which the provider is charging an entrance fee. ~~This does not~~  
697 ~~apply to an application for a certificate of authority for the~~  
698 ~~acquisition of a facility for which a certificate of authority~~  
699 ~~was issued before October 1, 1983, to a provider who~~  
700 ~~subsequently becomes a debtor in a case under the United States~~  
701 ~~Bankruptcy Code, 11 U.S.C. ss. 101 et seq., or to a provider for~~  
702 ~~which the department has been appointed receiver pursuant to~~  
703 ~~part II of chapter 631.~~

704 (d) Documents evidencing ~~Proof~~ that commitments have been  
705 secured for both construction financing and long-term financing  
706 or a documented plan acceptable to the office has been adopted  
707 by the applicant for long-term financing.



131766

708           (e) Documents evidencing ~~Proof~~ that all conditions of the  
709 lender have been satisfied to activate the commitment to  
710 disburse funds other than the obtaining of the certificate of  
711 authority, the completion of construction, or the closing of the  
712 purchase of realty or buildings for the facility.

713           (f) Documents evidencing ~~Proof~~ that the aggregate amount of  
714 entrance fees received by or pledged to the applicant, plus  
715 anticipated proceeds from any long-term financing commitment,  
716 plus funds from all other sources in the actual possession of  
717 the applicant, equal at least 100 percent of the aggregate cost  
718 of constructing or purchasing, equipping, and furnishing the  
719 facility plus 100 percent of the anticipated startup losses of  
720 the facility.

721           (g) A complete audited financial report ~~statements~~ of the  
722 applicant, prepared by an independent certified public  
723 accountant in accordance with generally accepted accounting  
724 principles, as of the date the applicant commenced business  
725 operations or for the fiscal year that ended immediately  
726 preceding the date of application, whichever is later, and  
727 complete unaudited quarterly financial statements attested to by  
728 the applicant after the date of the last audit.

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

732           (i) Such other reasonable data, financial statements, and  
733 pertinent information as the commission or office may require  
734 with respect to the applicant or the facility, to determine the  
735 financial status of the facility and the management capabilities  
736 of its managers and owners.



131766

737  
738 If any material change occurs in the facts set forth in an  
739 application filed with the office pursuant to this subsection,  
740 an amendment setting forth such change must be filed with the  
741 office within 10 business days after the applicant becomes aware  
742 of such change, and a copy of the amendment must be sent by  
743 registered mail to the principal office of the facility and to  
744 the principal office of the controlling company.

745       (2) Within 30 days after receipt of the information  
746 required under subsection (1), the office shall examine such  
747 information and notify the provider in writing, specifically  
748 requesting any additional information the office is permitted by  
749 law to require. Within 15 days after receipt of all of the  
750 requested additional information, the office shall notify the  
751 provider in writing that all of the requested information has  
752 been received and the application is deemed to be complete as of  
753 the date of the notice. Failure to notify the applicant in  
754 writing within the 15-day period constitutes acknowledgment by  
755 the office that it has received all requested additional  
756 information, and the application shall be deemed complete for  
757 purposes of review on the date of filing all of the required  
758 additional information.

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

764       (a) ~~A Notwithstanding satisfaction of the 30 percent~~  
765 ~~minimum reservation requirement of paragraph (1)(c), no~~



131766

766 certificate of authority may not ~~shall~~ be issued until  
767 documentation evidencing that the project has a minimum of 50  
768 percent of the units reserved for which the provider is charging  
769 an entrance fee, ~~and proof~~ is provided to the office. If a  
770 provider offering continuing care at-home is applying for a  
771 certificate of authority ~~or approval of an expansion pursuant to~~  
772 ~~s. 651.021(2)~~, the same minimum reservation requirements must be  
773 met for the continuing care and continuing care at-home  
774 contracts, independently of each other.

775 (b) In order for a unit to be considered reserved under  
776 this section, the provider must collect a minimum deposit of the  
777 lesser of \$40,000 or 10 percent of the then-current entrance fee  
778 for that unit, and may assess a forfeiture penalty of 2 percent  
779 of the entrance fee due to termination of the reservation  
780 contract after 30 days for any reason other than the death or  
781 serious illness of the resident, the failure of the provider to  
782 meet its obligations under the reservation contract, or other  
783 circumstances beyond the control of the resident that equitably  
784 entitle the resident to a refund of the resident's deposit. The  
785 reservation contract must state the cancellation policy and the  
786 terms of the continuing care or continuing care at-home contract  
787 to be entered into.

788 (5) Up to 25 percent of the moneys paid for all or any part  
789 of an initial entrance fee may be included or pledged for the  
790 construction or purchase of the facility or as security for  
791 long-term financing. As used in this section, the term "initial  
792 entrance fee" means the total entrance fee charged by the  
793 facility to the first occupant of a unit.

794 ~~(a)~~ A minimum of 75 percent of the moneys paid for all or



131766

795 any part of an initial entrance fee collected for continuing  
796 care or continuing care at-home must ~~shall~~ be placed in an  
797 escrow account or on deposit with the department as prescribed  
798 in s. 651.033.

799 ~~(b) For an expansion as provided in s. 651.021(2), a~~  
800 ~~minimum of 75 percent of the moneys paid for all or any part of~~  
801 ~~an initial entrance fee collected for continuing care and 50~~  
802 ~~percent of the moneys paid for all or any part of an initial fee~~  
803 ~~collected for continuing care at-home shall be placed in an~~  
804 ~~escrow account or on deposit with the department as prescribed~~  
805 ~~in s. 651.033.~~

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

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

812 (b) Payment in full has been received for at least 70  
813 percent of the total units of a phase or of the total of the  
814 combined phases constructed. If a provider offering continuing  
815 care at-home is applying for a release of escrowed entrance  
816 fees, the same minimum requirement must be met for the  
817 continuing care and continuing care at-home contracts,  
818 independently of each other.

819 ~~(c) The consultant who prepared the feasibility study~~  
820 ~~required by this section or a substitute approved by the office~~  
821 ~~certifies within 12 months before the date of filing for office~~  
822 ~~approval that there has been no material adverse change in~~  
823 ~~status with regard to the feasibility study. If a material~~



131766

824 ~~adverse change exists at the time of submission, sufficient~~  
825 ~~information acceptable to the office and the feasibility~~  
826 ~~consultant must be submitted which remedies the adverse~~  
827 ~~condition.~~

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

831 (d) ~~(e)~~ Documents evidencing Proof that the provider has  
832 sufficient funds to meet the requirements of s. 651.035, which  
833 may include funds deposited in the initial entrance fee account.

834 (e) ~~(f)~~ Documents evidencing Proof as to the intended  
835 application of the proceeds upon release and documentation proof  
836 that the entrance fees when released will be applied as  
837 represented to the office.

838 (f) If any material change occurred in the facts set forth  
839 in the application filed with the office pursuant to subsection  
840 (1), the applicant timely filed the amendment setting forth such  
841 change with the office and sent copies of the amendment to the  
842 principal office of the facility and to the principal office of  
843 the controlling company as required under that subsection.

844  
845 Notwithstanding chapter 120, no person, other than the provider,  
846 the escrow agent, and the office, may have a substantial  
847 interest in any office decision regarding release of escrow  
848 funds in any proceedings under chapter 120 or this chapter  
849 regarding release of escrow funds.

850 (7) In lieu of the provider fulfilling the requirements in  
851 subsection (5) and paragraphs (6)(b) and (c) ~~(d)~~, the office may  
852 authorize the release of escrowed funds to retire all



131766

853 outstanding debts on the facility and equipment upon application  
854 of the provider and upon the provider's showing that the  
855 provider will grant to the residents a first mortgage on the  
856 land, buildings, and equipment that constitute the facility, and  
857 that the provider has satisfied paragraphs (6) (a) ~~(c)~~ and (d)  
858 ~~(e)~~. Such mortgage shall secure the refund of the entrance fee  
859 in the amount required by this chapter. The granting of such  
860 mortgage is subject to the following:

861 (a) The first mortgage is granted to an independent trust  
862 that is beneficially held by the residents. The document  
863 creating the trust must include a provision that agrees to an  
864 annual audit and will furnish to the office all information the  
865 office may reasonably require. The mortgage may secure payment  
866 on bonds issued to the residents or trustee. Such bonds are  
867 redeemable after termination of the residency contract in the  
868 amount and manner required by this chapter for the refund of an  
869 entrance fee.

870 (b) Before granting a first mortgage to the residents, all  
871 construction must be substantially completed and substantially  
872 all equipment must be purchased. No part of the entrance fees  
873 may be pledged as security for a construction loan or otherwise  
874 used for construction expenses before the completion of  
875 construction.

876 (c) If the provider is leasing the land or buildings used  
877 by the facility, the leasehold interest must be for a term of at  
878 least 30 years.

879 ~~(8) The timeframes provided under s. 651.022(5) and (6)~~  
880 ~~apply to applications submitted under s. 651.021(2).~~ The office  
881 may not issue a certificate of authority to a facility that does



131766

882 not have a component that is to be licensed pursuant to part II  
883 of chapter 400 or to part I of chapter 429 or that does not  
884 offer personal services or nursing services through written  
885 contractual agreement. A written contractual agreement must be  
886 disclosed in the contract for continuing care or continuing care  
887 at-home and is subject to ~~the provisions of~~ s. 651.1151,  
888 relating to administrative, vendor, and management contracts.

889 (9) The office may not approve an application that includes  
890 in the plan of financing any encumbrance of the operating  
891 reserves or renewal and replacement reserves required by this  
892 chapter.

893 Section 9. Section 651.024, Florida Statutes, is amended to  
894 read:

895 651.024 Acquisition.—

896 (1) A person who seeks to assume the role of general  
897 partner of a provider or to otherwise assume ownership or  
898 possession of, or control over, 10 percent or more of a  
899 provider, a controlling company of the provider, or a provider's  
900 assets, based on the balance sheet from the most recent  
901 financial audit report filed with the office, is issued a  
902 certificate of authority to operate a continuing care facility  
903 or a provisional certificate of authority shall be subject to  
904 the provisions of s. 628.4615 and is not required to make  
905 filings pursuant to s. 651.022, s. 651.023, or s. 651.0245.

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

909 (3) In addition to the provider or the controlling company,  
910 the office has standing to petition a circuit court under s.





131766

911 628.4615(9).

912 Section 10. Section 651.0245, Florida Statutes, is created  
913 to read:

914 651.0245 Application for the simultaneous acquisition of a  
915 facility and issuance of a certificate of authority.-

916 (1) Except with the prior written approval of the office, a  
917 person may not, individually or in conjunction with any  
918 affiliated person of such person, directly or indirectly acquire  
919 a facility operating under a subsisting certificate of authority  
920 and engage in the business of providing continuing care.

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

923 (a) Comply with the notice requirements of s.  
924 628.4615(2) (a); and

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

927 (3) The commission shall adopt by rule application  
928 requirements equivalent to those described in ss. 628.4615(4)  
929 and (5), 651.022(2), and 651.023(1) (b). The office shall review  
930 the application and issue an approval or disapproval of the  
931 filing in accordance with ss. 628.4615(6) (a) and (c), (7)-(10),  
932 and (14); and 651.023(1) (b).

933 (4) In addition to the provider or the controlling company,  
934 the office has standing to petition a circuit court under s.  
935 628.4615(9).

936 (5) A person may rebut a presumption of control by filing a  
937 disclaimer of control with the office on a form prescribed by  
938 the commission. The disclaimer must fully disclose all material  
939 relationships and bases for affiliation between the person and



131766

940 the provider or facility, as well as the basis for disclaiming  
941 the affiliation. In lieu of such form, a person or acquiring  
942 party may file with the office a copy of a Schedule 13G filed  
943 with the Securities and Exchange Commission pursuant to Rule  
944 13d-1(b) or (c), 17 C.F.R. s. 240.13d-1, under the Securities  
945 Exchange Act of 1934, as amended. After a disclaimer has been  
946 filed, the provider or facility is relieved of any duty to  
947 register or report under this section which may arise out of the  
948 provider's or facility's relationship with the person, unless  
949 the office disallows the disclaimer.

950 (6) The commission may adopt rules as necessary to  
951 administer this section.

952 Section 11. Section 651.0246, Florida Statutes, is created  
953 to read:

954 651.0246 Expansions.—

955 (1) (a) A provider must obtain written approval from the  
956 office before commencing construction or marketing for an  
957 expansion of a certificated facility equivalent to the addition  
958 of at least 20 percent of existing units or 20 percent or more  
959 of the number of continuing care at-home contracts. If the  
960 provider has exceeded the current statewide median for days cash  
961 on hand, debt service coverage ratio, and total facility  
962 occupancy for the most recent two consecutive annual reporting  
963 periods, the provider is automatically granted approval to  
964 expand the total number of existing units by up to 35 percent  
965 upon submitting a letter to the office indicating the total  
966 number of planned units in the expansion, the proposed sources  
967 and uses of funds, and an attestation that the provider  
968 understands and pledges to comply with all minimum liquid



131766

969 reserve and escrow account requirements. As used in this  
970 section, the term "existing units" means the sum of the total  
971 number of independent living units and assisted living units  
972 identified in the most recent annual report filed with the  
973 office pursuant to s. 651.026. For purposes of this section, the  
974 statewide median for days cash on hand, debt service coverage  
975 ratio, and total facility occupancy is the median calculated in  
976 the most recent annual report submitted by the office to the  
977 Continuing Care Advisory Council pursuant to s. 651.121(8). This  
978 section does not apply to construction for which a certificate  
979 of need from the Agency for Health Care Administration is  
980 required.

981 (b) The application for the approval of an addition  
982 consisting of 20 percent or more of existing units or continuing  
983 care at-home contracts must be on forms adopted by the  
984 commission. The application must include the feasibility study  
985 required by this section and such other information as  
986 reasonably requested by the office. If the expansion is only for  
987 continuing care at-home contracts, an actuarial study prepared  
988 by an independent actuary in accordance with standards adopted  
989 by the American Academy of Actuaries which presents the  
990 financial impact of the expansion may be substituted for the  
991 feasibility study.

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

- 994 1. Whether the application meets all requirements of law;  
995 2. Whether the feasibility study was based on sufficient  
996 data and reasonable assumptions; and  
997 3. Whether the applicant will be able to provide continuing



131766

998 care or continuing care at-home as proposed and meet all  
999 financial obligations related to its operations, including the  
1000 financial requirements of this chapter.

1001  
1002 If the application is denied, the office must notify the  
1003 applicant in writing, citing the specific failures to meet the  
1004 provisions of this chapter. A denial entitles the applicant to a  
1005 hearing pursuant to chapter 120.

1006 (2) A provider applying for expansion of a certificated  
1007 facility must submit all of the following:

1008 (a) A feasibility study prepared by an independent  
1009 certified public accountant. The feasibility study must include  
1010 at least the following information:

1011 1. A description of the facility and proposed expansion,  
1012 including the location, the size, the anticipated completion  
1013 date, and the proposed construction program.

1014 2. An identification and evaluation of the primary and, if  
1015 applicable, secondary market areas of the facility and the  
1016 projected unit sales per month.

1017 3. Projected revenues, including anticipated entrance fees;  
1018 monthly service fees; nursing care revenues, if applicable; and  
1019 all other sources of revenue.

1020 4. Projected expenses, including for staffing requirements  
1021 and salaries; the cost of property, plant, and equipment,  
1022 including depreciation expense; interest expense; marketing  
1023 expense; and other operating expenses.

1024 5. A projected balance sheet of the applicant.

1025 6. The expectations for the financial condition of the  
1026 project, including the projected cash flow and an estimate of



131766

1027 the funds anticipated to be necessary to cover startup losses.

1028 7. The inflation factor, if any, assumed in the study for  
1029 the proposed expansion and how and where it is applied.

1030 8. Project costs; the total amount of debt financing  
1031 required; marketing projections; resident rates, fees, and  
1032 charges; the competition; resident contract provisions; and  
1033 other factors that affect the feasibility of the facility.

1034 9. Appropriate population projections, including morbidity  
1035 and mortality assumptions.

1036 10. The name of the person who prepared the feasibility  
1037 study and his or her experience in preparing similar studies or  
1038 otherwise consulting in the field of continuing care.

1039 11. Financial forecasts or projections prepared in  
1040 accordance with standards adopted by the American Institute of  
1041 Certified Public Accountants or in accordance with standards for  
1042 feasibility studies for continuing care retirement communities  
1043 adopted by the Actuarial Standards Board.

1044 12. An independent evaluation and examination opinion for  
1045 the first 5 years of operations, or a comparable opinion  
1046 acceptable to the office, by the consultant who prepared the  
1047 study, of the underlying assumptions used as a basis for the  
1048 forecasts or projections in the study and that the assumptions  
1049 are reasonable and proper and the project as proposed is  
1050 feasible.

1051 13. Any other information that the provider deems relevant  
1052 and appropriate to provide to enable the office to make a more  
1053 informed determination.

1054 (b) Such other reasonable data, financial statements, and  
1055 pertinent information as the commission or office may require



131766

1056 with respect to the applicant or the facility to determine the  
1057 financial status of the facility and the management capabilities  
1058 of its managers and owners.

1059  
1060 If any material change occurs in the facts set forth in an  
1061 application filed with the office pursuant to this section, an  
1062 amendment setting forth such change must be filed with the  
1063 office within 10 business days after the applicant becomes aware  
1064 of such change, and a copy of the amendment must be sent by  
1065 registered mail to the principal office of the facility and to  
1066 the principal office of the controlling company.

1067 (3) A minimum of 75 percent of the moneys paid for all or  
1068 any part of an initial entrance fee or reservation deposit  
1069 collected for units in the expansion and 50 percent of the  
1070 moneys paid for all or any part of an initial fee collected for  
1071 continuing care at-home contracts in the expansion must be  
1072 placed in an escrow account or on deposit with the department as  
1073 prescribed in s. 651.033. Up to 25 percent of the moneys paid  
1074 for all or any part of an initial entrance fee or reservation  
1075 deposit may be included or pledged for the construction or  
1076 purchase of the facility or as security for long-term financing.  
1077 As used in this section, the term "initial entrance fee" means  
1078 the total entrance fee charged by the facility to the first  
1079 occupant of a unit.

1080 (4) The provider is entitled to secure release of the  
1081 moneys held in escrow within 7 days after receipt by the office  
1082 of an affidavit from the provider, along with appropriate copies  
1083 to verify, and notification to the escrow agent by certified  
1084 mail that the following conditions have been satisfied:



131766

1085       (a) A certificate of occupancy has been issued.  
1086       (b) Payment in full has been received for at least 50  
1087 percent of the total units of a phase or of the total of the  
1088 combined phases constructed. If a provider offering continuing  
1089 care at-home is applying for a release of escrowed entrance  
1090 fees, the same minimum requirement must be met for the  
1091 continuing care and continuing care at-home contracts  
1092 independently of each other.  
1093       (c) Documents evidencing that commitments have been secured  
1094 or that a documented plan adopted by the applicant has been  
1095 approved by the office for long-term financing.  
1096       (d) Documents evidencing that the provider has sufficient  
1097 funds to meet the requirements of s. 651.035, which may include  
1098 funds deposited in the initial entrance fee account.  
1099       (e) Documents evidencing the intended application of the  
1100 proceeds upon release and documentation that the entrance fees,  
1101 when released, will be applied as represented to the office.  
1102  
1103 Notwithstanding chapter 120, only the provider, the escrow  
1104 agent, and the office have a substantial interest in any office  
1105 decision regarding release of escrow funds in any proceedings  
1106 under chapter 120 or this chapter.  
1107       (5) (a) Within 30 days after receipt of an application for  
1108 expansion, the office shall examine the application and shall  
1109 notify the applicant in writing, specifically requesting any  
1110 additional information that the office is authorized to require.  
1111 Within 15 days after the office receives all the requested  
1112 additional information, the office shall notify the applicant in  
1113 writing that the requested information has been received and



131766

1114 that the application is deemed complete as of the date of the  
1115 notice. Failure to notify the applicant in writing within the  
1116 15-day period constitutes acknowledgment by the office that it  
1117 has received all requested additional information, and the  
1118 application is deemed complete for purposes of review on the  
1119 date the applicant files all of the required additional  
1120 information. If the application submitted is determined by the  
1121 office to be substantially incomplete so as to require  
1122 substantial additional information, including biographical  
1123 information, the office may return the application to the  
1124 applicant with a written notice stating that the application as  
1125 received is substantially incomplete and, therefore, is  
1126 unacceptable for filing without further action required by the  
1127 office. Any filing fee received must be refunded to the  
1128 applicant.

1129 (b) An application is deemed complete upon the office  
1130 receiving all requested information and the applicant correcting  
1131 any error or omission of which the applicant was timely notified  
1132 or when the time for such notification has expired. The office  
1133 shall notify the applicant in writing of the date on which the  
1134 application was deemed complete.

1135 (6) Within 45 days after the date on which an application  
1136 is deemed complete as provided in paragraph (5) (b), the office  
1137 shall complete its review and, based upon its review, approve an  
1138 expansion by the applicant and issue a determination that the  
1139 application meets all requirements of law, that the feasibility  
1140 study was based on sufficient data and reasonable assumptions,  
1141 and that the applicant will be able to provide continuing care  
1142 or continuing care at-home as proposed and meet all financial





131766

1143 and contractual obligations related to its operations, including  
1144 the financial requirements of this chapter. If the application  
1145 is denied, the office must notify the applicant in writing,  
1146 citing the specific failures to meet the requirements of this  
1147 chapter. The denial entitles the applicant to a hearing pursuant  
1148 to chapter 120.

1149 Section 12. Paragraphs (b) and (c) of subsection (2) and  
1150 subsection (3) of section 651.026, Florida Statutes, are  
1151 amended, subsection (10) is added to that section, and paragraph  
1152 (a) of subsection (2) of that section is republished, to read:

1153 651.026 Annual reports.—

1154 (2) The annual report shall be in such form as the  
1155 commission prescribes and shall contain at least the following:

1156 (a) Any change in status with respect to the information  
1157 required to be filed under s. 651.022(2).

1158 (b) A financial report ~~statements~~ audited by an independent  
1159 certified public accountant which must contain, for two or more  
1160 periods if the facility has been in existence that long, all of  
1161 the following:

1162 1. An accountant's opinion and, in accordance with  
1163 generally accepted accounting principles:

- 1164 a. A balance sheet;
- 1165 b. A statement of income and expenses;
- 1166 c. A statement of equity or fund balances; and
- 1167 d. A statement of changes in cash flows.

1168 2. Notes to the financial report ~~statements~~ considered  
1169 customary or necessary for full disclosure or adequate  
1170 understanding of the financial report ~~statements~~, financial  
1171 condition, and operation.



131766

- 1172 (c) The following financial information:
- 1173 1. A detailed listing of the assets maintained in the
- 1174 liquid reserve as required under s. 651.035 and in accordance
- 1175 with part II of chapter 625;
- 1176 2. A schedule giving additional information relating to
- 1177 property, plant, and equipment having an original cost of at
- 1178 least \$25,000, so as to show in reasonable detail with respect
- 1179 to each separate facility original costs, accumulated
- 1180 depreciation, net book value, appraised value or insurable value
- 1181 and date thereof, insurance coverage, encumbrances, and net
- 1182 equity of appraised or insured value over encumbrances. Any
- 1183 property not used in continuing care must be shown separately
- 1184 from property used in continuing care;
- 1185 3. The level of participation in Medicare or Medicaid
- 1186 programs, or both;
- 1187 4. A statement of all fees required of residents,
- 1188 including, but not limited to, a statement of the entrance fee
- 1189 charged, the monthly service charges, the proposed application
- 1190 of the proceeds of the entrance fee by the provider, and the
- 1191 plan by which the amount of the entrance fee is determined if
- 1192 the entrance fee is not the same in all cases; ~~and~~
- 1193 5. Any change or increase in fees if the provider changes
- 1194 the scope of, or the rates for, care or services, regardless of
- 1195 whether the change involves the basic rate or only those
- 1196 services available at additional costs to the resident; ~~and~~
- 1197 6. If the provider has more than one certificated facility,
- 1198 or has operations that are not licensed under this chapter, it
- 1199 shall submit a balance sheet, statement of income and expenses,
- 1200 statement of equity or fund balances, and statement of cash



131766

1201 flows for each facility licensed under this chapter as  
1202 supplemental information to the audited financial report  
1203 ~~statements~~ required under paragraph (b); and-

1204 7. The management's calculation of the provider's debt  
1205 service coverage ratio, occupancy, and days cash on hand for the  
1206 current reporting period.

1207 (3) The commission shall adopt by rule additional  
1208 ~~meaningful~~ measures of assessing the financial viability of a  
1209 provider. ~~The rule may include the following factors:~~

- 1210 ~~(a) Debt service coverage ratios.~~
- 1211 ~~(b) Current ratios.~~
- 1212 ~~(c) Adjusted current ratios.~~
- 1213 ~~(d) Cash flows.~~
- 1214 ~~(e) Occupancy rates.~~
- 1215 ~~(f) Other measures, ratios, or trends.~~
- 1216 ~~(g) Other factors as may be appropriate.~~

1217 (10) By August 1 of each year, the office shall publish on  
1218 its website an annual industry report for the preceding calendar  
1219 year which contains all of the following:

- 1220 (a) The median days cash on hand for all providers.
- 1221 (b) The median debt service coverage ratio for all  
1222 providers.

1223 (c) The median occupancy rate for all providers by setting,  
1224 including independent living, assisted living, skilled nursing,  
1225 and the entire facility.

1226 (d) Documentation of the office's compliance with the  
1227 requirements in s. 651.105(1) relating to examination  
1228 timeframes. The documentation must include the number of  
1229 examinations completed in the preceding calendar year, the



131766

1230 number of such examinations for which the report has been  
1231 issued, and the percentage of all examinations completed within  
1232 the statutorily required timeframes.

1233 (e) The number of annual reports submitted to the office  
1234 pursuant to this section in the preceding calendar year and the  
1235 percentage of such reports that the office has reviewed in order  
1236 to determine whether a regulatory action level event has  
1237 occurred.

1238 Section 13. Section 651.0261, Florida Statutes, is amended  
1239 to read:

1240 651.0261 Quarterly and monthly statements.-

1241 (1) Within 45 days after the end of each fiscal quarter,  
1242 each provider shall file a quarterly unaudited financial  
1243 statement of the provider or of the facility in the form  
1244 prescribed by commission rule and days cash on hand, occupancy,  
1245 debt service coverage ratio, and a detailed listing of the  
1246 assets maintained in the liquid reserve as required under s.  
1247 651.035. The last quarterly statement for a fiscal year is not  
1248 required if a provider does not have pending a regulatory action  
1249 level event, impairment, or a corrective action plan. If a  
1250 provider falls below two or more of the thresholds set forth in  
1251 s. 651.011(25) at the end of any fiscal quarter, the provider  
1252 shall submit to the office, at the same time as the quarterly  
1253 statement, an explanation of the circumstances and a description  
1254 of the actions it will take to meet the requirements.

1255 (2) If the office finds, ~~pursuant to rules of the~~  
1256 ~~commission,~~ that such information is needed to properly monitor  
1257 the financial condition of a provider or facility or is  
1258 otherwise needed to protect the public interest, the office may



131766

1259 require the provider to file:

1260 (a) Within 25 days after the end of each month, a monthly  
1261 unaudited financial statement of the provider or of the facility  
1262 in the form prescribed by the commission by rule and a detailed  
1263 listing of the assets maintained in the liquid reserve as  
1264 required under s. 651.035, within 45 days after the end of each  
1265 fiscal quarter, a quarterly unaudited financial statement of the  
1266 provider or of the facility in the form prescribed by the  
1267 commission by rule. The commission may by rule require all or  
1268 part of the statements or filings required under this section to  
1269 be submitted by electronic means in a computer-readable form  
1270 compatible with the electronic data format specified by the  
1271 commission.

1272 (b) Such other data, financial statements, and pertinent  
1273 information as the commission or office may reasonably require  
1274 with respect to the provider or the facility, its directors, or  
1275 its trustees; or with respect to any parent, subsidiary, or  
1276 affiliate, if the provider or facility relies on a contractual  
1277 or financial relationship with such parent, subsidiary, or  
1278 affiliate in order to meet the financial requirements of this  
1279 chapter, to determine the financial status of the provider or of  
1280 the facility and the management capabilities of its managers and  
1281 owners.

1282 (3) A filing under subsection (2) may be required if any of  
1283 the following applies:

1284 (a) The provider is:

1285 1. Subject to administrative supervision proceedings;

1286 2. Subject to a corrective action plan resulting from a  
1287 regulatory action level event and for up to 2 years after the



131766

1288 factors that caused the regulatory action level event have been  
1289 corrected; or

1290 3. Subject to delinquency or receivership proceedings or  
1291 has filed for bankruptcy.

1292 (b) The provider or facility displays a declining financial  
1293 position.

1294 (c) A change of ownership of the provider or facility has  
1295 occurred within the previous 2 years.

1296 (d) The provider is found to be impaired.

1297 (4) The commission may by rule require all or part of the  
1298 statements or filings required under this section to be  
1299 submitted by electronic means in a computer-readable format  
1300 compatible with an electronic data format specified by the  
1301 commission.

1302 Section 14. Section 651.028, Florida Statutes, is amended  
1303 to read:

1304 651.028 Accredited facilities.—~~If~~ A provider or facility is  
1305 deemed accredited for purposes of ss. 400.235(5)(b)1. and  
1306 651.105(1) if it is accredited without stipulations or  
1307 conditions by a process found by the commission ~~office~~ to be  
1308 acceptable, ~~and~~ substantially equivalent to the provisions of  
1309 this chapter, and consistent ~~the office may, pursuant to rule of~~  
1310 the commission, waive any requirements of this chapter with  
1311 respect to the provider if the office finds that such waivers  
1312 are not inconsistent with the security protections intended by  
1313 this chapter.

1314 Section 15. Subsections (1), (2), (3), and (5) of section  
1315 651.033, Florida Statutes, are amended, and subsection (6) is  
1316 added to that section, to read:



131766

1317 651.033 Escrow accounts.—

1318 (1) When funds are required to be deposited in an escrow  
1319 account pursuant to s. 651.0215, s. 651.022, s. 651.023, s.  
1320 651.0246, s. 651.035, or s. 651.055:

1321 (a) The escrow account must ~~shall~~ be established in a  
1322 Florida bank, Florida savings and loan association, ~~or~~ Florida  
1323 trust company, or a national bank that is chartered and  
1324 supervised by the Office of the Comptroller of the Currency  
1325 within the United States Department of the Treasury and that has  
1326 a branch in this state, which is acceptable to the office, or  
1327 such funds must be deposited ~~on deposit~~ with the department; and  
1328 ~~the funds deposited therein shall~~ be kept and maintained in an  
1329 account separate and apart from the provider's business  
1330 accounts.

1331 (b) An escrow agreement shall be entered into between the  
1332 bank, savings and loan association, or trust company and the  
1333 provider of the facility; the agreement shall state that its  
1334 purpose is to protect the resident or the prospective resident;  
1335 and, upon presentation of evidence of compliance with applicable  
1336 portions of this chapter, or upon order of a court of competent  
1337 jurisdiction, the escrow agent shall release and pay over the  
1338 funds, or portions thereof, together with any interest accrued  
1339 thereon or earned from investment of the funds, to the provider  
1340 or resident as directed.

1341 (c) Any agreement establishing an escrow account required  
1342 under ~~the provisions of~~ this chapter is ~~shall~~ be subject to  
1343 approval by the office. The agreement must ~~shall~~ be in writing  
1344 and ~~shall~~ contain, in addition to any other provisions required  
1345 by law, a provision whereby the escrow agent agrees to abide by



131766

1346 the duties imposed by paragraphs (b) and (e), (3)(a), (3)(b),  
1347 and (5)(a) and subsection (6) under this section.

1348 (d) All funds deposited in an escrow account, if invested,  
1349 shall be invested as set forth in part II of chapter 625;  
1350 however, such investment may not diminish the funds held in  
1351 escrow below the amount required by this chapter. Funds  
1352 deposited in an escrow account are not subject to charges by the  
1353 escrow agent except escrow agent fees associated with  
1354 administering the accounts, or subject to any liens, judgments,  
1355 garnishments, creditor's claims, or other encumbrances against  
1356 the provider or facility except as provided in s. 651.035(1).

1357 (e) At the request of either the provider or the office,  
1358 the escrow agent shall issue a statement indicating the status  
1359 of the escrow account.

1360 (2) Notwithstanding s. 651.035(7), ~~In addition, the escrow~~  
1361 ~~agreement shall provide that the escrow agent or another person~~  
1362 ~~designated to act in the escrow agent's place and the provider,~~  
1363 ~~except as otherwise provided in s. 651.035, shall notify the~~  
1364 ~~office in writing at least 10 days before the withdrawal of any~~  
1365 ~~portion of any funds required to be escrowed under the~~  
1366 ~~provisions of s. 651.035. However,~~ in the event of an emergency  
1367 and upon petition by the provider, the office may ~~waive the 10-~~  
1368 ~~day notification period~~ and allow a withdrawal of up to 10  
1369 percent of the required minimum liquid reserve. The office shall  
1370 have 3 working days to deny the petition for the emergency 10-  
1371 percent withdrawal. If the office fails to deny the petition  
1372 within 3 working days, the petition is ~~shall be~~ deemed to have  
1373 been granted by the office. For purposes ~~the purpose~~ of this  
1374 section, the term "working day" means each day that is not a





131766

1375 Saturday, Sunday, or legal holiday as defined by Florida law.  
1376 Also, for purposes ~~the purpose~~ of this section, the day the  
1377 petition is received by the office is ~~shall~~ not ~~be~~ counted as  
1378 one of the 3 days.

1379 (3) ~~In addition,~~ When entrance fees are required to be  
1380 deposited in an escrow account pursuant to s. 651.0215, s.  
1381 651.022, s. 651.023, s. 651.0246, or s. 651.055:

1382 (a) The provider shall deliver to the resident a written  
1383 receipt. The receipt must show the payor's name and address, the  
1384 date, the price of the care contract, and the amount of money  
1385 paid. A copy of each receipt, together with the funds, must  
1386 ~~shall~~ be deposited with the escrow agent or as provided in  
1387 paragraph (c). The escrow agent must ~~shall~~ release such funds to  
1388 the provider 7 days after the date of receipt of the funds by  
1389 the escrow agent if the provider, operating under a certificate  
1390 of authority issued by the office, has met the requirements of  
1391 s. 651.0215(8), s. 651.023(6), or s. 651.0246. However, if the  
1392 resident rescinds the contract within the 7-day period, the  
1393 escrow agent must ~~shall~~ release the escrowed fees to the  
1394 resident.

1395 (b) At the request of an individual resident of a facility,  
1396 the escrow agent shall issue a statement indicating the status  
1397 of the resident's portion of the escrow account.

1398 (c) At the request of an individual resident of a facility,  
1399 the provider may hold the check for the 7-day period and may  
1400 ~~shall~~ not deposit it during this time period. If the resident  
1401 rescinds the contract within the 7-day period, the check must  
1402 ~~shall~~ be immediately returned to the resident. Upon the  
1403 expiration of the 7 days, the provider shall deposit the check.



131766

1404 (d) A provider may assess a nonrefundable fee, which is  
1405 separate from the entrance fee, for processing a prospective  
1406 resident's application for continuing care or continuing care  
1407 at-home.

1408 (5) When funds are required to be deposited in an escrow  
1409 account pursuant to s. 651.0215, s. 651.022, s. 651.023, s.  
1410 651.0246, or s. 651.035, the following ~~shall~~ apply:

1411 (a) The escrow agreement must ~~shall~~ require that the escrow  
1412 agent furnish the provider with a quarterly statement indicating  
1413 the amount of any disbursements from or deposits to the escrow  
1414 account and the condition of the account during the period  
1415 covered by the statement. The agreement must ~~shall~~ require that  
1416 the statement be furnished to the provider by the escrow agent  
1417 on or before the 10th day of the month following the end of the  
1418 quarter for which the statement is due. If the escrow agent does  
1419 not provide the quarterly statement to the provider on or before  
1420 the 10th day of the month following the month for which the  
1421 statement is due, the office may, in its discretion, levy  
1422 against the escrow agent a fine not to exceed \$25 a day for each  
1423 day of noncompliance with the provisions of this subsection.

1424 (b) If the escrow agent does not provide the quarterly  
1425 statement to the provider on or before the 10th day of the month  
1426 following the quarter for which the statement is due, the  
1427 provider shall, on or before the 15th day of the month following  
1428 the quarter for which the statement is due, send a written  
1429 request for the statement to the escrow agent by certified mail  
1430 return receipt requested.

1431 (c) On or before the 20th day of the month following the  
1432 quarter for which the statement is due, the provider shall file



131766

1433 with the office a copy of the escrow agent's statement or, if  
1434 the provider has not received the escrow agent's statement, a  
1435 copy of the written request to the escrow agent for the  
1436 statement.

1437 (d) The office may, in its discretion, in addition to any  
1438 other penalty that may be provided for under this chapter, levy  
1439 a fine against the provider not to exceed \$25 a day for each day  
1440 the provider fails to comply with the provisions of this  
1441 subsection.

1442 (e) Funds held on deposit with the department are exempt  
1443 from the reporting requirements of this subsection.

1444 (6) Except as described in paragraph (3) (a), the escrow  
1445 agent may not release or otherwise allow the transfer of funds  
1446 without the written approval of the office, unless the  
1447 withdrawal is from funds in excess of the amounts required by  
1448 ss. 651.0215, 651.022, 651.023, 651.0246, 651.035, and 651.055.

1449 Section 16. Section 651.034, Florida Statutes, is created  
1450 to read:

1451 651.034 Financial and operating requirements for  
1452 providers.—

1453 (1) (a) If a regulatory action level event occurs, the  
1454 office must:

1455 1. Require the provider to prepare and submit a corrective  
1456 action plan or, if applicable, a revised corrective action plan;

1457 2. Perform an examination pursuant to s. 651.105 or an  
1458 analysis, as the office considers necessary, of the assets,  
1459 liabilities, and operations of the provider, including a review  
1460 of the corrective action plan or the revised corrective action  
1461 plan; and



131766

1462           3. After the examination or analysis, issue a corrective  
1463 order, if necessary, specifying any corrective actions that the  
1464 office determines are required.

1465           (b) In determining corrective actions, the office shall  
1466 consider any factor relevant to the provider based upon the  
1467 office's examination or analysis of the assets, liabilities, and  
1468 operations of the provider. The provider must submit the  
1469 corrective action plan or the revised corrective action plan  
1470 within 30 days after the occurrence of the regulatory action  
1471 level event. The office shall review and approve or disapprove  
1472 the corrective action plan within 45 business days.

1473           (c) The office may use members of the Continuing Care  
1474 Advisory Council, individually or as a group, or may retain  
1475 actuaries, investment experts, and other consultants to review a  
1476 provider's corrective action plan or revised corrective action  
1477 plan, examine or analyze the assets, liabilities, and operations  
1478 of a provider, and formulate the corrective order with respect  
1479 to the provider. The costs and expenses relating to consultants  
1480 must be borne by the affected provider.

1481           (2) Except when the office's remedial rights are suspended  
1482 pursuant to s. 651.114(11) (a), the office must take action  
1483 necessary to place an impaired provider under regulatory  
1484 control, including any remedy available under part I of chapter  
1485 631. An impairment is sufficient grounds for the department to  
1486 be appointed as receiver as provided in chapter 631, except when  
1487 the office's remedial rights are suspended pursuant to s.  
1488 651.114(11) (a). If the office's remedial rights are suspended  
1489 pursuant to s. 651.114(11) (a), the impaired provider must make  
1490 available to the office copies of any corrective action plan



131766

1491 approved by the third-party lender or trustee to cure the  
1492 impairment and any related required report. For purposes of s.  
1493 631.051, impairment of a provider is defined according to the  
1494 term "impaired" under s. 651.011. The office may forego taking  
1495 action for up to 180 days after the impairment if the office  
1496 finds there is a reasonable expectation that the impairment may  
1497 be eliminated within the 180-day period.

1498 (3) There is no liability on the part of, and a cause of  
1499 action may not arise against, the commission, department, or  
1500 office, or their employees or agents, for any action they take  
1501 in the performance of their powers and duties under this  
1502 section.

1503 (4) The office shall transmit any notice that may result in  
1504 regulatory action by registered mail, certified mail, or any  
1505 other method of transmission which includes documentation of  
1506 receipt by the provider. Notice is effective when the provider  
1507 receives it.

1508 (5) This section is supplemental to the other laws of this  
1509 state and does not preclude or limit any power or duty of the  
1510 department or office under those laws or under the rules adopted  
1511 pursuant to those laws.

1512 (6) The office may exempt a provider from subsection (1) or  
1513 subsection (2) until stabilized occupancy is reached or until  
1514 the time projected to achieve stabilized occupancy as reported  
1515 in the last feasibility study required by the office as part of  
1516 an application filing under s. 651.0215, s. 651.023, s. 651.024,  
1517 or s. 651.0246 has elapsed, but for no longer than 5 years after  
1518 the date of issuance of the certificate of occupancy.

1519 (7) The commission may adopt rules to administer this



131766

1520 section, including, but not limited to, rules regarding  
1521 corrective action plans, revised corrective action plans,  
1522 corrective orders, and procedures to be followed in the event of  
1523 a regulatory action level event or an impairment.

1524 Section 17. Paragraphs (a), (b), and (c) of subsection (1)  
1525 of section 651.035, Florida Statutes, are amended, and  
1526 subsections (7) through (11) are added to that section, to read:

1527 651.035 Minimum liquid reserve requirements.—

1528 (1) A provider shall maintain in escrow a minimum liquid  
1529 reserve consisting of the following reserves, as applicable:

1530 (a) Each provider shall maintain in escrow as a debt  
1531 service reserve the aggregate amount of all principal and  
1532 interest payments due during the fiscal year on any mortgage  
1533 loan or other long-term financing of the facility, including  
1534 property taxes as recorded in the audited financial report  
1535 ~~statements~~ required under s. 651.026. The amount must include  
1536 any leasehold payments and all costs related to such payments.  
1537 If principal payments are not due during the fiscal year, the  
1538 provider must ~~shall~~ maintain in escrow as a minimum liquid  
1539 reserve an amount equal to interest payments due during the next  
1540 12 months on any mortgage loan or other long-term financing of  
1541 the facility, including property taxes. If a provider does not  
1542 have a mortgage loan or other financing on the facility, the  
1543 provider must deposit monthly in escrow as a minimum liquid  
1544 reserve an amount equal to one-twelfth of the annual property  
1545 tax liability as indicated in the most recent tax notice  
1546 provided pursuant to s. 197.322(3), and must annually pay  
1547 property taxes out of such escrow.

1548 (b) A provider that has outstanding indebtedness that



131766

1549 requires a debt service reserve to be held in escrow pursuant to  
1550 a trust indenture or mortgage lien on the facility and for which  
1551 the debt service reserve may only be used to pay principal and  
1552 interest payments on the debt that the debtor is obligated to  
1553 pay, and which may include property taxes and insurance, may  
1554 include such debt service reserve in computing the minimum  
1555 liquid reserve needed to satisfy this subsection if the provider  
1556 furnishes to the office a copy of the agreement under which such  
1557 debt service is held, together with a statement of the amount  
1558 being held in escrow for the debt service reserve, certified by  
1559 the lender or trustee and the provider to be correct. The  
1560 trustee shall provide the office with any information concerning  
1561 the debt service reserve account upon request of the provider or  
1562 the office. Any such separate debt service reserves are not  
1563 subject to the transfer provisions set forth in subsection (8).

1564 (c) Each provider shall maintain in escrow an operating  
1565 reserve equal to 30 percent of the total operating expenses  
1566 projected in the feasibility study required by s. 651.023 for  
1567 the first 12 months of operation. Thereafter, each provider  
1568 shall maintain in escrow an operating reserve equal to 15  
1569 percent of the total operating expenses in the annual report  
1570 filed pursuant to s. 651.026. If a provider has been in  
1571 operation for more than 12 months, the total annual operating  
1572 expenses must ~~shall~~ be determined by averaging the total annual  
1573 operating expenses reported to the office by the number of  
1574 annual reports filed with the office within the preceding 3-year  
1575 period subject to adjustment if there is a change in the number  
1576 of facilities owned. For purposes of this subsection, total  
1577 annual operating expenses include all expenses of the facility



131766

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

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

1605 (b)1. For all other proposed withdrawals, in order to  
1606 receive the consent of the office, the provider must file





131766

1607 documentation showing why the withdrawal is necessary for the  
1608 continued operation of the facility and such additional  
1609 information as the office reasonably requires.

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

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

1620 (8) The office may order the immediate transfer of up to  
1621 100 percent of the funds held in the minimum liquid reserve to  
1622 the custody of the department pursuant to part III of chapter  
1623 625 if the office finds that the provider is impaired or  
1624 insolvent. The office may order such a transfer regardless of  
1625 whether the office has suspended or revoked, or intends to  
1626 suspend or revoke, the certificate of authority of the provider.

1627 (9) Each facility shall file with the office annually,  
1628 together with the annual report required by s. 651.026, a  
1629 calculation of its minimum liquid reserve determined in  
1630 accordance with this section on a form prescribed by the  
1631 commission.

1632 (10) Any increase in the minimum liquid reserve must be  
1633 funded not later than 61 days after the minimum liquid reserve  
1634 calculation is due to be filed as provided in s. 651.026.

1635 (11) If the minimum liquid reserve is less than the



131766

1636 required minimum amount at the end of any fiscal quarter due to  
1637 a change in the market value of the invested funds, the provider  
1638 must fund the shortfall within 10 business days.

1639 Section 18. Effective July 1, 2019, section 651.043,  
1640 Florida Statutes, is created to read:

1641 651.043 Approval of change in management.-

1642 (1) A contract with a management company entered into after  
1643 July 1, 2019, must be in writing and include a provision that  
1644 the contract will be canceled upon issuance of an order by the  
1645 office pursuant to this section and without the application of a  
1646 cancellation fee or penalty. If a provider contracts with a  
1647 management company, a separate written contract is not required  
1648 for the individual manager employed by the management company or  
1649 contractor hired by the management company to oversee a  
1650 facility. If a management company executes a contract with an  
1651 individual manager or contractor, the contract is not required  
1652 to be submitted to the office unless requested by the office.

1653 (2) A provider shall notify the office, in writing or  
1654 electronically, of any change in management within 10 business  
1655 days. For each new management company or manager not employed by  
1656 a management company, the provider shall submit to the office  
1657 the information required by s. 651.022(2) and a copy of the  
1658 written management contract, if applicable.

1659 (3) For a provider that is found to be impaired or that has  
1660 a regulatory action level event pending, the office may  
1661 disapprove new management and order the provider to remove the  
1662 new management after reviewing the information required under  
1663 subsection (2).

1664 (4) For a provider other than that specified in subsection



131766

1665 (3), the office may disapprove new management and order the  
1666 provider to remove the new management after receiving the  
1667 required information under subsection (2), if the office:

1668 (a) Finds that the new management is incompetent or  
1669 untrustworthy;

1670 (b) Finds that the new management is so lacking in  
1671 managerial experience as to make the proposed operation  
1672 hazardous to the residents or potential residents;

1673 (c) Finds that the new management is so lacking in  
1674 experience, ability, and standing as to jeopardize the  
1675 reasonable promise of successful operation; or

1676 (d) Has good reason to believe that the new management is  
1677 affiliated directly or indirectly through ownership, control, or  
1678 business relations with any person or persons whose business  
1679 operations are or have been marked by manipulation of assets or  
1680 accounts or by bad faith, to the detriment of residents,  
1681 stockholders, investors, creditors, or the public.

1682  
1683 The office shall complete its review as required under  
1684 subsections (3) and (4) and, if applicable, issue notice of  
1685 disapproval of the new management within 30 business days after  
1686 the filing is deemed complete. A filing is deemed complete upon  
1687 the office's receipt of all requested information and the  
1688 provider's correction of any error or omission for which the  
1689 provider was timely notified. If the office does not issue  
1690 notice of disapproval of the new management within 30 business  
1691 days after the filing is deemed complete, the new management is  
1692 deemed approved.

1693 (5) Management disapproved by the office must be removed



131766

1694 within 30 days after receipt by the provider of notice of such  
1695 disapproval.

1696 (6) The office may revoke, suspend, or take other  
1697 administrative action against the certificate of authority of  
1698 the provider if the provider:

1699 (a) Fails to timely remove management disapproved by the  
1700 office;

1701 (b) Fails to timely notify the office of a change in  
1702 management;

1703 (c) Appoints new management without a written contract when  
1704 a written contract is required under this section; or

1705 (d) Repeatedly appoints management that was previously  
1706 disapproved by the office or that is not approvable under  
1707 subsection (4).

1708 (7) The provider shall remove any management immediately  
1709 upon discovery of either of the following conditions, if the  
1710 conditions were not disclosed in the notice to the office  
1711 required under subsection (2):

1712 (a) That a manager has been found guilty of, or has pled  
1713 guilty or no contest to, a felony charge, or has been held  
1714 liable or has been enjoined in a civil action by final judgment,  
1715 if the felony or civil action involved fraud, embezzlement,  
1716 fraudulent conversion, or misappropriation of property.

1717 (b) That a manager is now, or was in the past, affiliated,  
1718 directly or indirectly, through ownership interest of 10 percent  
1719 or more in, or control of, any business, corporation, or other  
1720 entity that has been found guilty of or has pled guilty or no  
1721 contest to a felony charge, or has been held liable or has been  
1722 enjoined in a civil action by final judgment, if the felony or



131766

1723 civil action involved fraud, embezzlement, fraudulent  
1724 conversion, or misappropriation of property.

1725  
1726 The failure to remove such management is grounds for revocation  
1727 or suspension of the provider's certificate of authority.

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

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

1750 Section 20. Subsection (3) of section 651.055, Florida  
1751 Statutes, is amended to read:



131766

1752 651.055 Continuing care contracts; right to rescind.-  
1753 (3) The contract must include or be accompanied by a  
1754 statement, printed in boldfaced type, which reads: "This  
1755 facility and all other continuing care facilities (also known as  
1756 life plan communities) in the State of Florida are regulated by  
1757 the Office of Insurance Regulation pursuant to chapter 651,  
1758 Florida Statutes. A copy of the law is on file in this facility.  
1759 The law gives you or your legal representative the right to  
1760 inspect our most recent financial statement and inspection  
1761 report before signing the contract. The financial structure of a  
1762 continuing care provider can be complex, and the decision to  
1763 enter into a contract for continuing care is a long-term  
1764 commitment between a resident and the continuing care provider.  
1765 You may wish to consult an attorney or a financial advisor  
1766 before entering into such a contract."

1767 Section 21. Subsection (2) of section 651.057, Florida  
1768 Statutes, is amended to read:

1769 651.057 Continuing care at-home contracts.-

1770 (2) A provider that holds a certificate of authority and  
1771 wishes to offer continuing care at-home must also:

1772 (a) Submit a business plan to the office with the following  
1773 information:

1774 1. A description of the continuing care at-home services  
1775 that will be provided, the market to be served, and the fees to  
1776 be charged;

1777 2. A copy of the proposed continuing care at-home contract;

1778 3. An actuarial study prepared by an independent actuary in  
1779 accordance with the standards adopted by the American Academy of  
1780 Actuaries which presents the impact of providing continuing care



131766

1781 at-home on the overall operation of the facility; and  
1782 4. A ~~market~~ feasibility study that meets the requirements  
1783 of s. 651.022(3) and documents that there is sufficient interest  
1784 in continuing care at-home contracts to support such a program;  
1785 (b) Demonstrate to the office that the proposal to offer  
1786 continuing care at-home contracts to individuals who do not  
1787 immediately move into the facility will not place the provider  
1788 in an unsound financial condition;  
1789 (c) Comply with the requirements of s. 651.0246(1) ~~or~~  
1790 ~~651.021(2)~~, except that an actuarial study may be substituted  
1791 for the feasibility study; and  
1792 (d) Comply with the requirements of this chapter.  
1793 Section 22. Subsection (1) of section 651.071, Florida  
1794 Statutes, is amended to read:  
1795 651.071 Contracts as preferred claims on liquidation or  
1796 receivership.—  
1797 (1) In the event of receivership or liquidation proceedings  
1798 against a provider, all continuing care and continuing care at-  
1799 home contracts executed by a provider are ~~shall be~~ deemed  
1800 preferred claims against all assets owned by the provider;  
1801 however, such claims are subordinate to any secured claim. For  
1802 purposes of s. 631.271, such contracts are deemed Class 2  
1803 claims.  
1804 Section 23. Subsections (2) and (3) of section 651.091,  
1805 Florida Statutes, are amended, and subsection (4) of that  
1806 section is republished, to read:  
1807 651.091 Availability, distribution, and posting of reports  
1808 and records; requirement of full disclosure.—  
1809 (2) Every continuing care facility shall:



131766

1810 (a) Display the certificate of authority in a conspicuous  
1811 place inside the facility.

1812 (b) Post in a prominent position in the facility which is  
1813 accessible to all residents and the general public a concise  
1814 summary of the last examination report issued by the office,  
1815 with references to the page numbers of the full report noting  
1816 any deficiencies found by the office, and the actions taken by  
1817 the provider to rectify such deficiencies, indicating in such  
1818 summary where the full report may be inspected in the facility.

1819 (c) Post in a prominent position in the facility,  
1820 accessible to all residents and the general public, a notice  
1821 containing the contact information for the office and the  
1822 Division of Consumer Services of the department and stating that  
1823 the division or office may be contacted for the submission of  
1824 inquiries and complaints with respect to potential violations of  
1825 this chapter committed by a provider. Such contact information  
1826 must include the division's website and the toll-free consumer  
1827 helpline and the office's website and telephone number.

1828 (d) Provide notice to the president or chair of the  
1829 residents' council within 10 business days after issuance of a  
1830 final examination report or the initiation of any legal or  
1831 administrative proceeding by the office or the department and  
1832 include a copy of such document.

1833 (e)-(e) Post in a prominent position in the facility which  
1834 is accessible to all residents and the general public a summary  
1835 of the latest annual statement, indicating in the summary where  
1836 the full annual statement may be inspected in the facility. A  
1837 listing of any proposed changes in policies, programs, and  
1838 services must also be posted.





131766

1839            (f)~~(d)~~ Distribute a copy of the full annual statement and a  
1840 copy of the most recent third-party ~~third-party~~ financial audit  
1841 filed with the annual report to the president or chair of the  
1842 residents' council within 30 days after filing the annual report  
1843 with the office, and designate a staff person to provide  
1844 explanation thereof.

1845            (g)~~(e)~~ Deliver the information described in s. 651.085(4)  
1846 in writing to the president or chair of the residents' council  
1847 and make supporting documentation available upon request ~~Notify~~  
1848 ~~the residents' council of any plans filed with the office to~~  
1849 ~~obtain new financing, additional financing, or refinancing for~~  
1850 ~~the facility and of any applications to the office for any~~  
1851 ~~expansion of the facility.~~

1852            (h)~~(f)~~ Deliver to the president or chair of the residents'  
1853 council a summary of entrance fees collected and refunds made  
1854 during the time period covered in the annual report and the  
1855 refund balances due at the end of the report period.

1856            (i)~~(g)~~ Deliver to the president or chair of the residents'  
1857 council a copy of each quarterly statement within 30 days after  
1858 the quarterly statement is filed with the office if the facility  
1859 is required to file quarterly.

1860            (j)~~(h)~~ Upon request, deliver to the president or chair of  
1861 the residents' council a copy of any newly approved continuing  
1862 care or continuing care at-home contract within 30 days after  
1863 approval by the office.

1864            (k) Provide to the president or chair of the residents'  
1865 council a copy of any notice filed with the office relating to  
1866 any change in ownership within 10 business days after such  
1867 filing by the provider.



131766

1868           (1) Make the information available to prospective residents  
1869 pursuant to paragraph (3) (d) available to current residents and  
1870 provide notice of changes to that information to the president  
1871 or chair of the residents' council within 3 business days.

1872           (3) Before entering into a contract to furnish continuing  
1873 care or continuing care at-home, the provider undertaking to  
1874 furnish the care, or the agent of the provider, shall make full  
1875 disclosure, obtain written acknowledgment of receipt, and  
1876 provide copies of the disclosure documents to the prospective  
1877 resident or his or her legal representative, of the following  
1878 information:

1879           (a) The contract to furnish continuing care or continuing  
1880 care at-home.

1881           (b) The summary listed in paragraph (2) (b).

1882           (c) All ownership interests and lease agreements, including  
1883 information specified in s. 651.022(2) (b)8.

1884           (d) In keeping with the intent of this subsection relating  
1885 to disclosure, the provider shall make available for review  
1886 master plans approved by the provider's governing board and any  
1887 plans for expansion or phased development, to the extent that  
1888 the availability of such plans does not put at risk real estate,  
1889 financing, acquisition, negotiations, or other implementation of  
1890 operational plans and thus jeopardize the success of  
1891 negotiations, operations, and development.

1892           (e) Copies of the rules and regulations of the facility and  
1893 an explanation of the responsibilities of the resident.

1894           (f) The policy of the facility with respect to admission to  
1895 and discharge from the various levels of health care offered by  
1896 the facility.



131766

1897 ~~(g) The amount and location of any reserve funds required~~  
1898 ~~by this chapter, and the name of the person or entity having a~~  
1899 ~~claim to such funds in the event of a bankruptcy, foreclosure,~~  
1900 ~~or rehabilitation proceeding.~~

1901 ~~(g)(h)~~ A copy of s. 651.071.

1902 ~~(h)(i)~~ A copy of the resident's rights as described in s.  
1903 651.083.

1904 (i) Notice of the issuance of a final examination report or  
1905 the initiation of any legal or administrative proceeding by the  
1906 office or the department, including where the report or filing  
1907 may be inspected in the facility, and that, upon request, an  
1908 electronic copy or specific website address will be provided  
1909 from which the document can be downloaded at no cost.

1910 (j) Notice that if the resident does not exercise the right  
1911 to rescind a continuing care contract within 7 days after  
1912 executing the contract, the resident's funds held in escrow  
1913 pursuant to s. 651.055(2) will be released to the provider.

1914 (k) A statement that distribution of the provider's assets  
1915 or income may occur or a statement that such distributions will  
1916 not occur.

1917 (l) Notice of any holding company system or obligated group  
1918 of which the provider is a member.

1919 (4) A true and complete copy of the full disclosure  
1920 document to be used must be filed with the office before use. A  
1921 resident or prospective resident or his or her legal  
1922 representative may inspect the full reports referred to in  
1923 paragraph (2)(b); the charter or other agreement or instrument  
1924 required to be filed with the office pursuant to s. 651.022(2),  
1925 together with all amendments thereto; and the bylaws of the



131766

1926 corporation or association, if any. Upon request, copies of the  
1927 reports and information shall be provided to the individual  
1928 requesting them if the individual agrees to pay a reasonable  
1929 charge to cover copying costs.

1930 Section 24. Subsection (4) of section 651.095, Florida  
1931 Statutes, is amended to read:

1932 651.095 Advertisements; requirements; penalties.-

1933 (4) It is unlawful for any person, other than a provider  
1934 licensed pursuant to this chapter, to advertise or market to the  
1935 general public any product similar to continuing care through  
1936 the use of such terms as "life care," "life plan," "life plan  
1937 at-home," "continuing care," or "guaranteed care for life," or  
1938 similar terms, words, or phrases.

1939 Section 25. Section 651.105, Florida Statutes, is amended  
1940 to read:

1941 651.105 Examination ~~and inspections~~.-

1942 (1) The office may at any time, and shall at least once  
1943 every 3 years, examine the business of any applicant for a  
1944 certificate of authority and any provider engaged in the  
1945 execution of care contracts or engaged in the performance of  
1946 obligations under such contracts, in the same manner as is  
1947 provided for the examination of insurance companies pursuant to  
1948 ss. 624.316 and 624.318 ~~s. 624.316~~. For a provider deemed  
1949 accredited under ~~as defined in~~ s. 651.028, such examinations  
1950 must ~~shall~~ take place at least once every 5 years. Such  
1951 examinations must ~~shall~~ be made by a representative or examiner  
1952 designated by the office whose compensation will be fixed by the  
1953 office pursuant to s. 624.320. Routine examinations may be made  
1954 by having the necessary documents submitted to the office; and,



131766

1955 for this purpose, financial documents and records conforming to  
1956 commonly accepted accounting principles and practices, as  
1957 required under s. 651.026, are deemed adequate. The final  
1958 written report of each examination must be filed with the office  
1959 and, when so filed, constitutes a public record. Any provider  
1960 being examined shall, upon request, give reasonable and timely  
1961 access to all of its records. The representative or examiner  
1962 designated by the office may at any time examine the records and  
1963 affairs and inspect the physical property of any provider,  
1964 whether in connection with a formal examination or not.

1965 (2) Any duly authorized officer, employee, or agent of the  
1966 office may, upon presentation of proper identification, have  
1967 access to, and examine ~~inspect~~, any records, with or without  
1968 advance notice, to secure compliance with, or to prevent a  
1969 violation of, any provision of this chapter.

1970 (3) Reports of the results of such financial examinations  
1971 must be kept on file by the office. Any investigatory records,  
1972 reports, or documents held by the office are confidential and  
1973 exempt from the provisions of s. 119.07(1), until the  
1974 investigation is completed or ceases to be active. For the  
1975 purpose of this section, an investigation is active while it is  
1976 being conducted by the office with a reasonable, good faith  
1977 belief that it could lead to the filing of administrative,  
1978 civil, or criminal proceedings. An investigation does not cease  
1979 to be active if the office is proceeding with reasonable  
1980 dispatch and has a good faith belief that action could be  
1981 initiated by the office or other administrative or law  
1982 enforcement agency.

1983 (4) The office shall notify the provider and the executive



131766

1984 officer of the governing body of the provider in writing of all  
1985 deficiencies in its compliance with the provisions of this  
1986 chapter and the rules adopted pursuant to this chapter and shall  
1987 set a reasonable length of time for compliance by the provider.  
1988 In addition, the office shall require corrective action or  
1989 request a corrective action plan from the provider which plan  
1990 demonstrates a good faith attempt to remedy the deficiencies by  
1991 a specified date. If the provider fails to comply within the  
1992 established length of time, the office may initiate action  
1993 against the provider in accordance with the provisions of this  
1994 chapter.

1995 (5) A provider shall respond to written correspondence from  
1996 the office and provide data, financial statements, and pertinent  
1997 information as requested by the office. The office has standing  
1998 to petition a circuit court for mandatory injunctive relief to  
1999 compel access to and require the provider to produce the  
2000 documents, data, records, and other information requested by the  
2001 office. The office may petition the circuit court in the county  
2002 in which the facility is situated or the Circuit Court of Leon  
2003 County to enforce this section ~~At the time of the routine~~  
2004 ~~examination, the office shall determine if all disclosures~~  
2005 ~~required under this chapter have been made to the president or~~  
2006 ~~chair of the residents' council and the executive officer of the~~  
2007 ~~governing body of the provider.~~

2008 (6) A representative of the provider must give a copy of  
2009 the final examination report and corrective action plan, if one  
2010 is required by the office, to the executive officer of the  
2011 governing body of the provider within 60 days after issuance of  
2012 the report.



131766

2013           (7) Unless a provider is impaired or subject to a  
2014 regulatory action level event, any parent, subsidiary, or  
2015 affiliate is not subject to examination by the office as part of  
2016 a routine examination. However, if a provider or facility relies  
2017 on a contractual or financial relationship with a parent, a  
2018 subsidiary, or an affiliate in order to meet the financial  
2019 requirements of this chapter, the office may examine any parent,  
2020 subsidiary, or affiliate that has a contractual or financial  
2021 relationship with the provider or facility to the extent  
2022 necessary to ascertain the financial condition of the provider.

2023           Section 26. Section 651.106, Florida Statutes, is amended  
2024 to read:

2025           651.106 Grounds for discretionary refusal, suspension, or  
2026 revocation of certificate of authority.—The office may deny an  
2027 application or ~~suspend~~ or revoke the provisional certificate  
2028 of authority or the certificate of authority of any applicant or  
2029 provider if it finds that any one or more of the following  
2030 grounds applicable to the applicant or provider exist:

2031           (1) Failure by the provider to continue to meet the  
2032 requirements for the authority originally granted.

2033           (2) Failure by the provider to meet one or more of the  
2034 qualifications for the authority specified by this chapter.

2035           (3) Material misstatement, misrepresentation, or fraud in  
2036 obtaining the authority, or in attempting to obtain the same.

2037           (4) Demonstrated lack of fitness or trustworthiness.

2038           (5) Fraudulent or dishonest practices of management in the  
2039 conduct of business.

2040           (6) Misappropriation, conversion, or withholding of moneys.

2041           (7) Failure to comply with, or violation of, any proper



131766

2042 order or rule of the office or commission or violation of any  
2043 provision of this chapter.

2044 (8) The insolvent or impaired condition of the provider or  
2045 the provider's being in such condition or using such methods and  
2046 practices in the conduct of its business as to render its  
2047 further transactions in this state hazardous or injurious to the  
2048 public.

2049 (9) Refusal by the provider to be examined or to produce  
2050 its accounts, records, and files for examination, or refusal by  
2051 any of its officers to give information with respect to its  
2052 affairs or to perform any other legal obligation under this  
2053 chapter when required by the office.

2054 (10) Failure by the provider to comply with the  
2055 requirements of s. 651.026 or s. 651.033.

2056 (11) Failure by the provider to maintain escrow accounts or  
2057 funds as required by this chapter.

2058 (12) Failure by the provider to meet the requirements of  
2059 this chapter for disclosure of information to residents  
2060 concerning the facility, its ownership, its management, its  
2061 development, or its financial condition or failure to honor its  
2062 continuing care or continuing care at-home contracts.

2063 (13) Any cause for which issuance of the license could have  
2064 been refused had it then existed and been known to the office.

2065 (14) Having been found guilty of, or having pleaded guilty  
2066 or nolo contendere to, a felony in this state or any other  
2067 state, without regard to whether a judgment or conviction has  
2068 been entered by the court having jurisdiction of such cases.

2069 (15) In the conduct of business under the license, engaging  
2070 in unfair methods of competition or in unfair or deceptive acts





131766

2071 or practices prohibited under part IX of chapter 626.  
2072       (16) A pattern of bankrupt enterprises.  
2073       (17) The ownership, control, or management of the  
2074 organization includes any person:  
2075       (a) Who is not reputable and of responsible character;  
2076       (b) Who is so lacking in management expertise as to make  
2077 the operation of the provider hazardous to potential and  
2078 existing residents;  
2079       (c) Who is so lacking in management experience, ability,  
2080 and standing as to jeopardize the reasonable promise of  
2081 successful operation;  
2082       (d) Who is affiliated, directly or indirectly, through  
2083 ownership or control, with any person or persons whose business  
2084 operations are or have been marked by business practices or  
2085 conduct that is detrimental to the public, contract holders,  
2086 investors, or creditors, or by manipulation of assets, finances,  
2087 or accounts or by bad faith; or  
2088       (e) Whose business operations are or have been marked by  
2089 business practices or conduct that is detrimental to the public,  
2090 contract holders, investors, or creditors, or by manipulation of  
2091 assets, finances, or accounts or by bad faith.  
2092       (18) The provider has not filed a notice of change in  
2093 management, fails to remove a disapproved manager, or persists  
2094 in appointing disapproved managers.  
2095  
2096 Revocation of a certificate of authority under this section does  
2097 not relieve a provider from the provider's obligation to  
2098 residents under the terms and conditions of any continuing care  
2099 or continuing care at-home contract between the provider and



131766

2100 residents or the provisions of this chapter. The provider shall  
2101 continue to file its annual statement and pay license fees to  
2102 the office as required under this chapter as if the certificate  
2103 of authority had continued in full force, but the provider shall  
2104 not issue any new contracts. The office may seek an action in  
2105 the Circuit Court of Leon County to enforce the office's order  
2106 and the provisions of this section.

2107 Section 27. Section 651.1065, Florida Statutes, is created  
2108 to read:

2109 651.1065 Soliciting or accepting new continuing care  
2110 contracts by impaired or insolvent facilities or providers.-

2111 (1) Regardless of whether delinquency proceedings as to a  
2112 continuing care facility have been or are to be initiated, a  
2113 proprietor, a general partner, a member, an officer, a director,  
2114 a trustee, or a manager of a continuing care facility may not  
2115 actively solicit, approve the solicitation or acceptance of, or  
2116 accept new continuing care contracts in this state after the  
2117 proprietor, general partner, member, officer, director, trustee,  
2118 or manager knew, or reasonably should have known, that the  
2119 continuing care facility was impaired or insolvent except with  
2120 the written permission of the office. If the facility has  
2121 declared bankruptcy, the bankruptcy court or trustee appointed  
2122 by the court has jurisdiction over such matters. The office must  
2123 approve or disapprove the continued marketing of new contracts  
2124 within 15 days after receiving a request from a provider.

2125 (2) A proprietor, a general partner, a member, an officer,  
2126 a director, a trustee, or a manager who violates this section  
2127 commits a felony of the third degree, punishable as provided in  
2128 s. 775.082, s. 775.083, or s. 775.084.



131766

2129           Section 28. Subsections (1) and (3) of section 651.111,  
2130 Florida Statutes, are amended to read:  
2131           651.111 Requests for inspections.—  
2132           (1) Any interested party may request an inspection of the  
2133 records and related financial affairs of a provider providing  
2134 care in accordance with ~~the provisions of~~ this chapter by  
2135 transmitting to the office notice of an alleged violation of  
2136 applicable requirements prescribed by statute or by rule,  
2137 specifying to a reasonable extent the details of the alleged  
2138 violation, which notice must ~~shall~~ be signed by the complainant.  
2139 As used in this section, the term "inspection" means an inquiry  
2140 into a provider's compliance with this chapter.  
2141           (3) Upon receipt of a complaint, the office shall make a  
2142 preliminary review to determine if the complaint alleges a  
2143 violation of this chapter; and, unless the office determines  
2144 that the complaint does not allege a violation of this chapter  
2145 or is without any reasonable basis, the office shall make an  
2146 inspection. The office shall provide the complainant with a  
2147 written acknowledgment of the complaint within 15 days after  
2148 receipt by the office. The complainant shall be advised, within  
2149 30 days after the receipt of the complaint by the office, of the  
2150 office's determination that the complaint does not allege a  
2151 violation of this chapter, that the complaint is without any  
2152 reasonable basis, or that the office will make an inspection.  
2153 The notice must include an estimated timeframe for completing  
2154 the inspection and a contact number. If the inspection is not  
2155 completed within the estimated timeframe, the office must  
2156 provide the complainant with a revised timeframe. Within 15 days  
2157 after completing an inspection, the office shall provide the



131766

2158 complainant and the provider a written statement specifying any  
2159 violations of this chapter and any actions taken or that no such  
2160 violation was found ~~proposed course of action of the office.~~

2161 Section 29. Section 651.114, Florida Statutes, is amended  
2162 to read:

2163 651.114 Delinquency proceedings; remedial rights.—

2164 (1) Upon determination by the office that a provider is not  
2165 in compliance with this chapter, the office may notify the chair  
2166 of the Continuing Care Advisory Council, who may assist the  
2167 office in formulating a corrective action plan.

2168 (2) Within 30 days after a request by either the advisory  
2169 council or the office, a provider shall make a plan for  
2170 obtaining compliance or solvency available to the advisory  
2171 council and the office, ~~within 30 days after being requested to~~  
2172 ~~do so by the council,~~ a plan for obtaining compliance or  
2173 solvency.

2174 (3) Within 30 days after receipt of a plan for obtaining  
2175 compliance or solvency, the office or, at the request of the  
2176 office, ~~notification,~~ the advisory council shall:

2177 (a) Consider and evaluate the plan submitted by the  
2178 provider.

2179 (b) Discuss the problem and solutions with the provider.

2180 (c) Conduct such other business as is necessary.

2181 (d) Report its findings and recommendations to the office,  
2182 which may require additional modification of the plan.

2183

2184 This subsection may not be construed to delay or prevent the  
2185 office from taking any regulatory measures it deems necessary  
2186 regarding the provider that submitted the plan.



131766

2187           (4) If the financial condition of a continuing care  
2188 provider is impaired or is such that if not modified or  
2189 corrected, its continued operation would result in insolvency,  
2190 the office may direct the provider to formulate and file with  
2191 the office a corrective action plan. If the provider fails to  
2192 submit a plan within 30 days after the office's directive or  
2193 submits a plan that is insufficient to correct the condition,  
2194 the office may specify a plan and direct the provider to  
2195 implement the plan. Before specifying a plan, the office may  
2196 seek a recommended plan from the advisory council.

2197           (5)~~(4)~~ After receiving approval of a plan by the office,  
2198 the provider shall submit a progress report monthly to the  
2199 advisory council or the office, or both, in a manner prescribed  
2200 by the office. After 3 months, or at any earlier time deemed  
2201 necessary, the council shall evaluate the progress by the  
2202 provider and shall advise the office of its findings.

2203           (6)~~(5)~~ ~~If should~~ the office finds ~~find~~ that sufficient  
2204 grounds exist for rehabilitation, liquidation, conservation,  
2205 reorganization, seizure, or summary proceedings of an insurer as  
2206 set forth in ss. 631.051, 631.061, and 631.071, the department  
2207 ~~office~~ may petition for an appropriate court order or may pursue  
2208 such other relief as is afforded in part I of chapter 631.  
2209 Before invoking its powers under part I of chapter 631, the  
2210 department ~~office~~ shall notify the chair of the advisory  
2211 council.

2212           (7) For purposes of s. 631.051, impairment of a provider  
2213 has the same meaning as the term "impaired" in s. 651.011.

2214           (8)~~(6)~~ In the event an order of conservation,  
2215 rehabilitation, liquidation, or ~~conservation, reorganization,~~



131766

2216 ~~seizure, or summary proceeding~~ has been entered against a  
2217 provider, the department and office are vested with all of the  
2218 powers and duties they have under ~~the provisions of part I of~~  
2219 chapter 631 in regard to delinquency proceedings of insurance  
2220 companies. A provider shall give written notice of the  
2221 proceeding to its residents within 3 business days after the  
2222 initiation of a delinquency proceeding under chapter 631 and  
2223 shall include a notice of the delinquency proceeding in any  
2224 written materials provided to prospective residents

2225 ~~(7) If the financial condition of the continuing care~~  
2226 ~~facility or provider is such that, if not modified or corrected,~~  
2227 ~~its continued operation would result in insolvency, the office~~  
2228 ~~may direct the provider to formulate and file with the office a~~  
2229 ~~corrective action plan. If the provider fails to submit a plan~~  
2230 ~~within 30 days after the office's directive or submits a plan~~  
2231 ~~that is insufficient to correct the condition, the office may~~  
2232 ~~specify a plan and direct the provider to implement the plan.~~

2233 (9) A provider subject to an order to show cause entered  
2234 pursuant to chapter 631 must file its written response to the  
2235 order, together with any defenses it may have to the  
2236 department's allegations, according to the time periods  
2237 specified in s. 631.031(3).

2238 (10) A hearing held pursuant to chapter 631 to determine  
2239 whether cause exists for the department to be appointed receiver  
2240 must be held in accordance with the time period specified in s.  
2241 631.031(4).

2242  
2243 ===== T I T L E A M E N D M E N T =====

2244 And the title is amended as follows:



2245 Delete lines 31 - 131  
2246 and insert:  
2247 persons relating to provider acquisitions; providing  
2248 standing to the office to petition a circuit court in  
2249 certain proceedings; creating s. 651.0245, F.S.;  
2250 specifying procedures, requirements, and a prohibition  
2251 relating to an application for the simultaneous  
2252 acquisition of a facility and issuance of a  
2253 certificate of authority and to the office's review of  
2254 such application; specifying rulemaking requirements  
2255 and authority of the Financial Services Commission;  
2256 providing standing to the office to petition a circuit  
2257 court in certain proceedings; specifying procedures  
2258 for rebutting a presumption of control; creating s.  
2259 651.0246, F.S.; specifying requirements, conditions,  
2260 procedures, and prohibitions relating to provider  
2261 applications to commence construction or marketing for  
2262 expansions of certificated facilities and to the  
2263 office's review of such applications; defining the  
2264 term "existing units"; specifying escrow requirements  
2265 for certain moneys; specifying conditions under which  
2266 providers are entitled to secure release of such  
2267 moneys; providing applicability and construction;  
2268 amending s. 651.026, F.S.; revising requirements for  
2269 annual reports filed by providers with the office;  
2270 revising the commission's rulemaking authority;  
2271 requiring the office to annually publish a specified  
2272 industry report; amending s. 651.0261, F.S.; requiring  
2273 providers to file quarterly unaudited financial



131766

2274 statements; providing an exception for filing a  
2275 certain quarterly statement; revising information that  
2276 the office may require providers to file and the  
2277 circumstances under which such information must be  
2278 filed; revising the commission's rulemaking authority;  
2279 amending s. 651.028, F.S.; specifying applicability of  
2280 certain accreditations of providers or facilities;  
2281 deleting the authority of the office to waive  
2282 requirements of ch. 651, F.S., for accredited  
2283 facilities; providing that the commission, rather than  
2284 the office, must make a certain finding; amending s.  
2285 651.033, F.S.; revising applicability of escrow  
2286 requirements; revising requirements for escrow  
2287 accounts and agreements; revising the office's  
2288 authority to allow a withdrawal of a specified  
2289 percentage of the required minimum liquid reserve;  
2290 revising applicability of requirements relating to the  
2291 deposit of certain funds in escrow accounts;  
2292 prohibiting an escrow agent, except under certain  
2293 circumstances, from releasing or allowing the transfer  
2294 of funds; creating s. 651.034, F.S.; specifying  
2295 requirements for the office if a regulatory action  
2296 level event occurs; specifying requirements for  
2297 corrective action plans; authorizing the office to use  
2298 members of the Continuing Care Advisory Council and to  
2299 retain consultants for certain purposes; requiring  
2300 affected providers to bear costs and expenses relating  
2301 to such consultants; specifying requirements for, and  
2302 authorized actions of, the office and the Department





2303 of Financial Services if an impairment occurs;  
2304 providing construction; authorizing the office to  
2305 exempt a provider from certain requirements for a  
2306 certain timeframe; authorizing the commission to adopt  
2307 rules; amending s. 651.035, F.S.; revising minimum  
2308 liquid reserve requirements for providers; specifying  
2309 requirements, limitations, and procedures for a  
2310 provider's withdrawal of funds held in escrow and the  
2311 office's review of certain requests for withdrawal;  
2312 authorizing the office to order certain transfers  
2313 under certain circumstances; requiring facilities to  
2314 annually file with the office a minimum liquid reserve  
2315 calculation; requiring increases in the minimum liquid  
2316 reserve to be funded within a certain timeframe;  
2317 requiring providers to fund shortfalls in minimum  
2318 liquid reserves under certain circumstances within a  
2319 certain timeframe; creating s. 651.043, F.S.;  
2320 specifying requirements for certain management company  
2321 contracts; specifying requirements, procedures, and  
2322 authorized actions relating to changes in provider  
2323 management and to the office's review of such changes;  
2324 requiring that disapproved management be removed  
2325 within a certain timeframe; authorizing the office to  
2326 take certain disciplinary actions under certain  
2327 circumstances; requiring providers to immediately  
2328 remove management under certain circumstances;  
2329 amending s. 651.051, F.S.; revising requirements for  
2330 the maintenance of provider records and assets;  
2331 amending s. 651.055, F.S.; revising a required



131766

2332 statement in continuing care contracts; amending s.  
2333 651.057, F.S.; conforming provisions to changes made  
2334 by the act; amending s. 651.071, F.S.; specifying the  
2335 priority of continuing care contracts and continuing  
2336 care at-home contracts in receivership or liquidation  
2337 proceedings against a provider; amending s. 651.091,  
2338 F.S.; revising requirements for continuing care  
2339 facilities relating to posting or providing notices;  
2340 amending s. 651.095, F.S.; adding terms to a list of  
2341 prohibited terms in certain advertisements; amending  
2342 s. 651.105, F.S.; adding a certain Florida Insurance  
2343 Code provision to the office's authority to examine  
2344 certain providers and applicants; authorizing the  
2345 office to examine records for specified purposes;  
2346 requiring providers