

By Senator Yarborough

4-00524A-23

2023622__

1 A bill to be entitled
2 An act relating to continuing care contracts; amending
3 s. 651.011, F.S.; defining the terms "designated
4 resident representative" and "residents' council";
5 amending s. 651.0246, F.S.; revising requirements for
6 feasibility studies submitted by providers applying
7 for expansions of certificated continuing care
8 facilities; revising a condition for the release of
9 certain escrowed funds to a provider; revising the
10 timeframe in which the Office of Insurance Regulation
11 must complete its review of an application for
12 expansion; amending s. 651.026, F.S.; revising
13 information required to be contained in certain
14 providers' financial reports in their annual reports;
15 amending s. 651.033, F.S.; revising a requirement for
16 national banks in which escrow accounts are
17 established; revising a condition under which a
18 provider may hold and not deposit a resident's check
19 for a specified period; amending s. 651.034, F.S.;
20 revising the timeframe during which the office may
21 exempt certain providers from certain regulatory
22 actions; authorizing the office, upon a provider's
23 written request, to temporarily suspend financial and
24 operating requirements under ch. 651, F.S., for
25 specified reasons; specifying conditions and
26 requirements for such temporary suspensions; amending
27 s. 651.035, F.S.; providing that certain documents
28 relating to a provider's debt service reserve must
29 require certain notice to the office before the

4-00524A-23

2023622__

30 withdrawal of debt service reserve funds; specifying
31 requirements for the notice and for certain plans to
32 replenish withdrawn funds; revising the calculation of
33 minimum liquid reserve requirements for certain
34 facilities; revising requirements for letters of
35 credit which satisfy minimum liquid reserve
36 requirements; revising circumstances under which a
37 provider may withdraw funds held in escrow without the
38 office's approval; making a technical change; amending
39 s. 651.055, F.S.; specifying that a forfeiture penalty
40 may be deducted from certain resident refunds except
41 under certain circumstances; conforming a provision to
42 changes made by the act; amending s. 651.081, F.S.;
43 specifying the authority of residents' councils and
44 the eligibility of persons to participate in
45 residents' council matters; deleting a requirement for
46 open meetings of residents' councils; amending s.
47 651.083, F.S.; specifying that a resident has the
48 right to access ombudsman staff; amending s. 651.085,
49 F.S.; requiring residents' councils to nominate and
50 elect a designated resident representative to
51 represent them on specified matters; providing
52 requirements for designated resident representatives;
53 revising meetings of the full governing body for which
54 the designated resident representative must be
55 notified; requiring each facility of certain providers
56 to have its own designated resident representative;
57 providing a requirement for certain designated
58 resident representatives; amending s. 651.091, F.S.;

4-00524A-23

2023622__

59 adding reporting and notice requirements for
60 continuing care facilities; adding a disclosure
61 requirement for providers to prospective residents or
62 their legal representatives; amending s. 651.105,
63 F.S.; specifying requirements for the office's
64 examination of providers and applicants for
65 certificates of authority; deleting a requirement for
66 a provider's representative to give examination
67 reports and corrective action plans to the governing
68 body's executive officer within a certain timeframe;
69 amending s. 651.118, F.S.; revising applicability of a
70 specified time limit on the use of sheltered nursing
71 home beds for certain persons; amending ss. 651.012
72 and 651.0261, F.S.; conforming cross-references;
73 providing an effective date.
74

75 Be It Enacted by the Legislature of the State of Florida:
76

77 Section 1. Present subsections (13) through (26) and (27)
78 of section 651.011, Florida Statutes, are redesignated as
79 subsections (14) through (27) and (29), respectively, and new
80 subsection (13) and subsection (28) are added to that section,
81 to read:

82 651.011 Definitions.—As used in this chapter, the term:
83 (13) "Designated resident representative" means a resident
84 elected by the residents' council to represent residents on
85 matters related to changes in fees or services as specified in
86 s. 651.085(2) and (3).

87 (28) "Residents' council" means an organized body

4-00524A-23

2023622__

88 representing the resident population of a certified facility. A
89 residents' council shall serve as a liaison between residents
90 and the appropriate representative of the provider.

91 Section 2. Paragraph (a) of subsection (2), paragraph (b)
92 of subsection (4), and subsection (6) of section 651.0246,
93 Florida Statutes, are amended to read:

94 651.0246 Expansions.—

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

97 (a) A feasibility study prepared by an independent
98 consultant which includes an independent evaluation and
99 examination opinion or compilation report for the first 5 years
100 of operations, or a comparable opinion acceptable to the office,
101 of the underlying assumptions used as a basis for the forecasts
102 or projections in the study prepared in accordance with
103 applicable professional standards adopted by the American
104 Institute of Certified Public Accountants or standards for
105 feasibility studies for continuing care retirement communities
106 adopted by the Actuarial Standards Board ~~certified public~~
107 accountant. The feasibility study must include at least the
108 following information:

109 1. A description of the facility and proposed expansion,
110 including the location, the size, the anticipated completion
111 date, and the proposed construction program.

112 2. An identification and evaluation of the primary and, if
113 applicable, secondary market areas of the facility and the
114 projected unit sales per month.

115 3. Projected revenues, including anticipated entrance fees;
116 monthly service fees; nursing care revenues, if applicable; and

4-00524A-23

2023622__

117 all other sources of revenue.

118 4. Projected expenses, including for staffing requirements
119 and salaries; the cost of property, plant, and equipment,
120 including depreciation expense; interest expense; marketing
121 expense; and other operating expenses.

122 5. A projected balance sheet of the applicant.

123 6. The expectations for the financial condition of the
124 project, including the projected cash flow and an estimate of
125 the funds anticipated to be necessary to cover startup losses.

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

128 8. Project costs; the total amount of debt financing
129 required; marketing projections; resident rates, fees, and
130 charges; the competition; resident contract provisions; and
131 other factors that affect the feasibility of the facility.

132 9. Appropriate population projections, including morbidity
133 and mortality assumptions.

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

137 11. Financial forecasts or projections ~~prepared in~~
138 ~~accordance with standards adopted by the American Institute of~~
139 ~~Certified Public Accountants or in accordance with standards for~~
140 ~~feasibility studies for continuing care retirement communities~~
141 ~~adopted by the Actuarial Standards Board.~~

142 12. ~~An independent evaluation and examination opinion for~~
143 ~~the first 5 years of operations, or a comparable opinion~~
144 ~~acceptable to the office, by the consultant who prepared the~~
145 ~~study, of the underlying assumptions used as a basis for the~~

4-00524A-23

2023622__

146 ~~forecasts or projections in the study and that the assumptions~~
147 ~~are reasonable and proper and the project as proposed is~~
148 ~~feasible.~~

149 ~~13.~~ Any other information that the provider deems relevant
150 and appropriate to provide to enable the office to make a more
151 informed determination.

152

153 If any material change occurs in the facts set forth in an
154 application filed with the office pursuant to this section, an
155 amendment setting forth such change must be filed with the
156 office within 10 business days after the applicant becomes aware
157 of such change, and a copy of the amendment must be sent by
158 registered mail to the principal office of the facility and to
159 the principal office of the controlling company.

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

165 (b) Payment in full has been received for at least 50
166 percent of the total units of a phase or of the total of the
167 combined phases constructed; or at least 75 percent of the
168 proposed units for which an entrance fee is charged for a phase
169 or a total of the combined phases are reserved and the provider
170 submits an attestation to the office to use the entrance fees
171 collected and held in escrow for the sole purpose of paying
172 secured indebtedness as specified in the feasibility study
173 submitted to the office pursuant to paragraph (2) (a). If the
174 expansion is to be completed in multiple phases, the 75 percent

4-00524A-23

2023622__

175 reservation requirement applies separately to each phase of the
176 expansion. If a provider offering continuing care at-home is
177 applying for a release of escrowed entrance fees, the same
178 minimum requirement must be met for the continuing care and
179 continuing care at-home contracts independently of each other.

180

181 Notwithstanding chapter 120, only the provider, the escrow
182 agent, and the office have a substantial interest in any office
183 decision regarding release of escrow funds in any proceedings
184 under chapter 120 or this chapter.

185 (6) Within 30 ~~45~~ days after the date on which an
186 application is deemed complete as provided in paragraph (5) (b),
187 the office shall complete its review and, based upon its review,
188 approve an expansion by the applicant and issue a determination
189 that the application meets all requirements of law, that the
190 feasibility study was based on sufficient data and reasonable
191 assumptions, and that the applicant will be able to provide
192 continuing care or continuing care at-home as proposed and meet
193 all financial and contractual obligations related to its
194 operations, including the financial requirements of this
195 chapter. If the application is denied, the office must notify
196 the applicant in writing, citing the specific failures to meet
197 the requirements of this chapter. The denial entitles the
198 applicant to a hearing pursuant to chapter 120.

199 Section 3. Paragraph (b) of subsection (2) of section
200 651.026, Florida Statutes, is amended to read:

201 651.026 Annual reports.—

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

4-00524A-23

2023622__

204 (b) A financial report audited by an independent certified
205 public accountant which must contain, for two or more periods if
206 the facility has been in existence that long, all of the
207 following:

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

- 210 a. A balance sheet;
211 b. A statement of income and expenses;
212 c. A statement of equity or fund balances; and
213 d. A statement of changes in cash flows.

214 2. Notes to the financial report considered customary or
215 necessary for full disclosure or adequate understanding of the
216 financial report, financial condition, and operation.

217 3. If the provider's financial statements are consolidated
218 or combined in accordance with generally accepted accounting
219 principles with the financial statements of additional entities
220 owned or controlled by the provider, the financial report must
221 provide as supplemental information the financial statements of
222 the provider with the items in subparagraph 1. for the
223 individual facility shown separately and its consolidated or
224 combined entities comprising the financial report.

225 4. If the facility is a member of an obligated group, the
226 facility may use the obligated group's audited financial
227 statements if they contain the items in subparagraph 1. for the
228 individual facility shown separately from other members of the
229 obligated group.

230 Section 4. Paragraph (a) of subsection (1) and paragraph
231 (c) of subsection (3) of section 651.033, Florida Statutes, are
232 amended, and paragraph (a) of subsection (3) of that section is

4-00524A-23

2023622__

233 republished, to read:

234 651.033 Escrow accounts.—

235 (1) When funds are required to be deposited in an escrow
236 account pursuant to s. 651.0215, s. 651.022, s. 651.023, s.
237 651.0246, s. 651.035, or s. 651.055:

238 (a) The escrow account must be established in a Florida
239 bank, Florida savings and loan association, Florida trust
240 company, or a national bank that is chartered and supervised by
241 the Office of the Comptroller of the Currency within the United
242 States Department of the Treasury ~~and that has a branch in this~~
243 ~~state~~, which is acceptable to the office, or such funds must be
244 deposited with the department and be kept and maintained in an
245 account separate and apart from the provider's business
246 accounts.

247 (3) When entrance fees are required to be deposited in an
248 escrow account pursuant to s. 651.0215, s. 651.022, s. 651.023,
249 s. 651.0246, or s. 651.055:

250 (a) The provider shall deliver to the resident a written
251 receipt. The receipt must show the payor's name and address, the
252 date, the price of the care contract, and the amount of money
253 paid. A copy of each receipt, together with the funds, must be
254 deposited with the escrow agent or as provided in paragraph (c).
255 The escrow agent must release such funds to the provider 7 days
256 after the date of receipt of the funds by the escrow agent if
257 the provider, operating under a certificate of authority issued
258 by the office, has met the requirements of s. 651.0215(8), s.
259 651.023(6), or s. 651.0246. However, if the resident rescinds
260 the contract within the 7-day period, the escrow agent must
261 release the escrowed fees to the resident.

4-00524A-23

2023622__

262 (c) As an alternative to paragraph (a) ~~At the request of an~~
263 ~~individual resident of a facility~~, the provider may hold the
264 check for the 7-day period and may not deposit it during this
265 time period. If the resident rescinds the contract within the 7-
266 day period, the check must be immediately returned to the
267 resident. Upon the expiration of the 7 days, the provider shall
268 deposit the check.

269 Section 5. Present subsection (7) of section 651.034,
270 Florida Statutes, is redesignated as subsection (8), a new
271 subsection (7) is added to that section, and subsection (6) of
272 that section is amended, to read:

273 651.034 Financial and operating requirements for
274 providers.—

275 (6) The office may exempt a provider from subsection (1) or
276 subsection (2) until stabilized occupancy is reached or until
277 the time projected to achieve stabilized occupancy as reported
278 in the last feasibility study required by the office as part of
279 an application filing under s. 651.0215, s. 651.023, s. 651.024,
280 or s. 651.0246 has elapsed, but for no longer than 5 years after
281 the end of the provider's fiscal year in which the certificate
282 of occupancy was issued ~~date of issuance of the certificate of~~
283 ~~occupancy~~.

284 (7) Upon written request of a provider, the office may
285 temporarily suspend all or a portion of financial and operating
286 requirements under this chapter due to an extraordinary event
287 rendering the provider incapable of continuing normal operations
288 such as, but not limited to, a pandemic, a fire, or a federal or
289 state executive order declaring a natural disaster which forces
290 the provider to evacuate, curtail operations, restrict

4-00524A-23

2023622__

291 admissions, or suspend marketing for lifesafety reasons or
292 repairs related to the event. Such temporary suspension may be
293 granted by the office if the provider maintains compliance with
294 ss. 651.026, 651.0261, and 651.035 and the provider is not
295 insolvent or impaired. The provider shall comply with required
296 reporting requested by the office, including the estimated time
297 for completing repairs or remediating problems related to
298 restrictions on admissions or marketing. When determining
299 whether to grant a suspension of specific regulatory
300 requirements, the office shall consider any formal action or
301 amendments approved by a lender or trustee to the provider's
302 lending agreements or bond covenants as a result of the event.

303 Section 6. Paragraph (b) of subsection (1), paragraph (a)
304 of subsection (2), subsection (5), and paragraph (a) of
305 subsection (7) of section 651.035, Florida Statutes, are amended
306 to read:

307 651.035 Minimum liquid reserve requirements.—

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

310 (b) A provider that has outstanding indebtedness that
311 requires a debt service reserve to be held in escrow pursuant to
312 a trust indenture or mortgage lien on the facility and for which
313 the debt service reserve may only be used to pay principal and
314 interest payments on the debt that the debtor is obligated to
315 pay, and which may include property taxes and insurance, may
316 include such debt service reserve in computing the minimum
317 liquid reserve needed to satisfy this subsection if the provider
318 furnishes to the office a copy of the agreement under which such
319 debt service reserve is held, together with a statement of the

4-00524A-23

2023622__

320 amount being held in escrow for the debt service reserve,
321 certified by the lender or trustee and the provider to be
322 correct. The trustee shall provide the office with any
323 information concerning the debt service reserve account upon
324 request of the provider or the office. In addition, the trust
325 indenture, loan agreement, or escrow agreement must provide that
326 the provider, trustee, lender, escrow agent, or another person
327 designated to act in their place shall notify the office in
328 writing at least 10 days before the withdrawal of any portion of
329 the debt service reserve funds required to be held in escrow as
330 described in this paragraph. The notice must include an
331 affidavit sworn to by the provider, the trustee, or a person
332 designated to act in their place which includes the amount of
333 the scheduled debt service payment, the payment due date, the
334 amount of the withdrawal, the accounts from which the withdrawal
335 will be made, and a plan with a schedule for replenishing the
336 withdrawn funds. If the plan is revised by a consultant that is
337 retained as prescribed in the provider's financing documents,
338 the revised plan must be submitted to the office within 10 days
339 after approval by the lender or trustee. Any such separate debt
340 service reserves are not subject to the transfer provisions set
341 forth in subsection (8).

342 (2) (a) In facilities where not all residents are under
343 continuing care or continuing care at-home contracts, the
344 reserve requirements of subsection (1) shall be computed only
345 with respect to the proportional share of operating expenses
346 that are applicable to residents. For purposes of this
347 calculation, the proportional share shall be based upon the
348 ratio of residents under continuing care or continuing care at-

4-00524A-23

2023622__

349 home contracts to the total of all residents, including those
350 residents who do not hold such contracts.

351 (5) A provider may satisfy the minimum liquid reserve
352 requirements of this section by acquiring from a financial
353 institution, as specified in paragraph (b), a clean,
354 unconditional irrevocable letter of credit equal to the
355 requirements of this section, less the amount of escrowed
356 operating cash required by paragraph (d).

357 (a) The letter of credit must be issued by a financial
358 institution participating in the State of Florida Treasury
359 Certificate of Deposit Program or a Florida bank, a Florida
360 savings and loan association, a Florida trust company, or a
361 national bank that is chartered and supervised by the Office of
362 the Comptroller of the Currency within the United States
363 Department of the Treasury, and must be approved by the office
364 before issuance and before any renewal or modification thereof.
365 At a minimum, the letter of credit must provide for:

366 1. Ninety days' prior written notice to both the provider
367 and the office of the financial institution's determination not
368 to renew or extend the term of the letter of credit.

369 2. Unless otherwise arranged by the provider to the
370 satisfaction of the office, deposit by the financial institution
371 of letter of credit funds in an account designated by the office
372 no later than 30 days before the expiration of the letter of
373 credit.

374 3. Deposit by the financial institution of letter of credit
375 funds in an account designated by the office within 4 business
376 days following written instructions from the office that, in the
377 sole judgment of the office, funding of the minimum liquid

4-00524A-23

2023622__

378 reserve is required.

379 (b) The terms of the letter of credit must be approved by
380 the office and the long-term debt of the financial institution
381 providing such letter of credit must be rated in one of their
382 top three long-term debt rating categories by either Moody's
383 Investors Service, Standard & Poor's Corporation, or a
384 recognized securities rating agency acceptable to the office.

385 (c) The letter of credit must name the office as
386 beneficiary.

387 (d) Notwithstanding any other provision of this section, a
388 provider using a letter of credit pursuant to this subsection
389 shall, at all times, have and maintain in escrow an operating
390 cash reserve equal to 2 months' operating expenses as determined
391 pursuant to s. 651.026.

392 (e) If the issuing financial institution no longer
393 participates in the State of Florida Treasury Certificate of
394 Deposit Program, such financial institution shall deposit as
395 collateral with the department eligible securities, as
396 prescribed by s. 625.52, having a market value equal to or
397 greater than 100 percent of the stated amount of the letter of
398 credit.

399 (7) (a) A provider may withdraw funds held in escrow without
400 the approval of the office if:

401 1. The amount held in escrow exceeds the requirements of
402 this section and if the withdrawal will not affect compliance
403 with this section; or

404 2. The withdrawal is from a debt service reserve required
405 to be held in escrow pursuant to a trust indenture or mortgage
406 lien on the facility as described in paragraph (1) (b) and will

4-00524A-23

2023622__

407 be used to pay delinquent principal and interest payments the
408 debtor is obligated to pay on the facility.

409 Section 7. Subsection (2) of section 651.055, Florida
410 Statutes, is amended to read:

411 651.055 Continuing care contracts; right to rescind.—

412 (2) A resident has the right to rescind a continuing care
413 contract and receive a full refund of any funds paid, without
414 penalty or forfeiture, within 7 days after executing the
415 contract. However, if an individual signs a reservation
416 agreement pursuant to s. 651.023(4) and fails to cancel such
417 agreement within 30 days after executing the agreement and
418 subsequently signs a contract and rescinds the contract within 7
419 days, the forfeiture penalty authorized under s. 651.023(4) (b)
420 may be deducted from the refund unless the individual can
421 demonstrate extenuating circumstances, such as, but not limited
422 to, the death or illness of a spouse or partner, a diagnosis of
423 a chronic or terminal illness of the individual, or a change in
424 financial or asset position which warrants cancellation of the
425 contract. A resident may not be required to move into the
426 facility designated in the contract before the expiration of the
427 7-day period. During the 7-day period, the resident's funds must
428 be held in an escrow account or the provider may hold the check
429 until the 7-day period expires ~~unless otherwise requested by the~~
430 ~~resident~~ pursuant to s. 651.033(3) (c).

431 Section 8. Paragraphs (a) and (d) of subsection (2) of
432 section 651.081, Florida Statutes, are amended to read:

433 651.081 Residents' council.—

434 (2) (a) Each facility shall establish a residents' council
435 created for the purpose of representing residents on matters set

4-00524A-23

2023622__

436 forth in s. 651.085. A residents' council has authority to
437 establish and maintain its own governance documents, such as
438 bylaws or operating agreements, policies, and operating
439 procedures, which may include establishment of committees. A
440 person is eligible to participate in residents' council matters,
441 including elections, if the person meets the definition of a
442 resident under s. 651.011. The residents' council shall be
443 established through an election in which the residents, as
444 defined in s. 651.011, vote by ballot, physically or by proxy.
445 If the election is to be held during a meeting, a notice of the
446 organizational meeting must be provided to all residents of the
447 community at least 10 business days before the meeting. Notice
448 may be given through internal mailboxes, communitywide
449 newsletters, bulletin boards, in-house television stations, and
450 other similar means of communication. An election creating a
451 residents' council is valid if at least 40 percent of the total
452 resident population participates in the election and a majority
453 of the participants vote affirmatively for the council. The
454 initial residents' council created under this section is valid
455 for at least 12 months. A residents' organization formalized by
456 bylaws and elected officials must be recognized as the
457 residents' council under this section and s. 651.085. Within 30
458 days after the election of a newly elected president or chair of
459 the residents' council, the provider shall give the president or
460 chair a copy of this chapter and rules adopted thereunder, or
461 direct him or her to the appropriate public website to obtain
462 this information. Only one residents' council may represent
463 residents before the governing body of the provider as described
464 in s. 651.085(2).

4-00524A-23

2023622__

465 ~~(d) A residents' council shall adopt its own bylaws and~~
466 ~~governance documents subject to the vote and approval of the~~
467 ~~residents. The residents' council shall provide for open~~
468 ~~meetings when appropriate.~~ The residents' council governing
469 documents shall define the manner in which residents may submit
470 an issue to the council and define a reasonable timeframe in
471 which the residents' council shall respond to a resident
472 submission or inquiry. A residents' council may include term
473 limits in its governing documents to ensure consistent
474 integration of new leaders. If a licensed facility files for
475 bankruptcy under chapter 11 of the United States Bankruptcy
476 Code, 11 U.S.C. chapter 11, the facility, in its required filing
477 of the 20 largest unsecured creditors with the United States
478 Trustee, shall include the name and contact information of a
479 designated resident selected by the residents' council, and a
480 statement explaining that the designated resident was chosen by
481 the residents' council to serve as a representative of the
482 residents' interest on the creditors' committee, if appropriate.

483 Section 9. Paragraph (f) of subsection (1) of section
484 651.083, Florida Statutes, is amended to read:

485 651.083 Residents' rights.—

486 (1) No resident of any facility shall be deprived of any
487 civil or legal rights, benefits, or privileges guaranteed by
488 law, by the State Constitution, or by the United States
489 Constitution solely by reason of status as a resident of a
490 facility. Each resident of a facility has the right to:

491 (f) Present grievances and recommend changes in policies,
492 procedures, and services to the staff of the facility, governing
493 officials, or any other person without restraint, interference,

4-00524A-23

2023622__

494 coercion, discrimination, or reprisal. This right includes
495 access to ombudsman volunteers or staff and advocates and the
496 right to be a member of, and active in, and to associate with,
497 advocacy or special interest groups or associations.

498 Section 10. Subsections (2), (3), and (5) of section
499 651.085, Florida Statutes, are amended to read:

500 651.085 Quarterly meetings between residents and the
501 governing body of the provider; resident representation before
502 the governing body of the provider.—

503 (2) A residents' council formed pursuant to s. 651.081,
504 members of which are elected by the residents, shall nominate
505 and elect ~~designate~~ a designated resident representative to
506 represent them on matters specified in subsection (3) before the
507 governing body of the provider. The initial designated resident
508 representative elected under this section shall be elected to
509 serve at least 12 months. The designated resident representative
510 need not be a current member of the residents' council; however,
511 such individual must meet the definition of a resident under s.
512 651.011.

513 (3) The designated resident representative shall be
514 notified by a representative of the provider at least 14 days in
515 advance of any meeting of the full governing body at which the
516 annual budget and proposed changes or increases in resident fees
517 or services are on the agenda or will be discussed. The
518 designated resident representative shall be invited to attend
519 and participate in that portion of the meeting designated for
520 the discussion of such changes. A designated resident
521 representative shall perform his or her duties in good faith.
522 For a provider that owns or operates more than one facility in

4-00524A-23

2023622__

523 this state, each facility must have its own designated resident
524 representative.

525 (5) The board of directors or governing board of a licensed
526 provider may at its sole discretion allow a resident of the
527 facility to be a voting member of the board or governing body of
528 the facility. The board of directors or governing board of a
529 licensed provider may establish specific criteria for the
530 nomination, selection, and term of a resident as a member of the
531 board or governing body. If the board or governing body of a
532 licensed provider operates more than one licensed facility,
533 regardless of whether the facility is in-state or out-of-state,
534 the board or governing body may select at its sole discretion
535 one resident from among its facilities to serve on the board of
536 directors or governing body on a rotating basis. A resident who
537 serves as a member of a board or governing body of the facility
538 shall perform his or her duties in a fiduciary manner, including
539 the duty of confidentiality, duty of care, duty of loyalty, and
540 duty of obedience, as required of any individual serving on the
541 board or governing body.

542 Section 11. Present paragraphs (e) through (k) and (l) of
543 subsection (2) of section 651.091, Florida Statutes, are
544 redesignated as paragraphs (f) through (l) and (n),
545 respectively, new paragraph (e) and paragraph (m) are added to
546 that subsection, and paragraph (m) is added to subsection (3) of
547 that section, to read:

548 651.091 Availability, distribution, and posting of reports
549 and records; requirement of full disclosure.—

550 (2) Every continuing care facility shall:

551 (e) Provide a copy of the final examination report and

4-00524A-23

2023622__

552 corrective action plan, if one is required by the office, to the
553 executive officer of the governing body of the provider and the
554 president or chair of the residents' council within 60 days
555 after issuance of the report.

556 (m) Notify the president or chair of the residents' council
557 in writing of a change in management within 10 business days
558 after the change.

559 (3) Before entering into a contract to furnish continuing
560 care or continuing care at-home, the provider undertaking to
561 furnish the care, or the agent of the provider, shall make full
562 disclosure, obtain written acknowledgment of receipt, and
563 provide copies of the disclosure documents to the prospective
564 resident or his or her legal representative, of the following
565 information:

566 (m) Disclosure of whether the provider has one or more
567 residents serving on its board or governing body and whether
568 that individual has a vote or is serving in a nonvoting, ex
569 officio capacity.

570 Section 12. Subsections (1) and (6) of section 651.105,
571 Florida Statutes, are amended to read:

572 651.105 Examination.—

573 (1)(a) The office may at any time, and shall at least once
574 every 3 years, examine the business of any applicant for a
575 certificate of authority and any provider engaged in the
576 execution of care contracts or engaged in the performance of
577 obligations under such contracts, in the same manner as is
578 provided for the examination of insurance companies pursuant to
579 ss. 624.316 and 624.318. For a provider as deemed accredited
580 under s. 651.028, such examinations must take place at least

4-00524A-23

2023622__

581 once every 5 years. The examination must cover the preceding 3
582 or 5 fiscal years of the provider, whichever is applicable, and
583 must be commenced within 12 months after the end of the most
584 recent fiscal year covered by the examination. The examination
585 may include events subsequent to the end of the most recent
586 fiscal year and the events of any prior period which affect the
587 present financial condition of the provider. As part of the
588 examination, the office shall conduct an interview in person,
589 telephonically, or through electronic communication with the
590 current president or chair of the residents' council, or another
591 designated officer of the council if the president or chair is
592 not available.

593 (b) Such examinations must be made by a representative or
594 examiner designated by the office whose compensation will be
595 fixed by the office pursuant to s. 624.320. Routine examinations
596 may be made by having the necessary documents submitted to the
597 office; and, for this purpose, financial documents and records
598 conforming to commonly accepted accounting principles and
599 practices, as required under s. 651.026, are deemed adequate.
600 The final written report of each examination must be filed with
601 the office and, when so filed, constitutes a public record. Any
602 provider being examined shall, upon request, give reasonable and
603 timely access to all of its records. The representative or
604 examiner designated by the office may at any time examine the
605 records and affairs and inspect the physical property of any
606 provider, whether in connection with a formal examination or
607 not.

608 ~~(6) A representative of the provider must give a copy of~~
609 ~~the final examination report and corrective action plan, if one~~

4-00524A-23

2023622__

610 ~~is required by the office, to the executive officer of the~~
611 ~~governing body of the provider within 60 days after issuance of~~
612 ~~the report.~~

613 Section 13. Subsection (7) of section 651.118, Florida
614 Statutes, is amended to read:

615 651.118 Agency for Health Care Administration; certificates
616 of need; sheltered beds; community beds.—

617 (7) Notwithstanding subsection (2), at the discretion of
618 the provider, sheltered nursing home beds may be used for
619 persons who are not residents of the continuing care facility
620 and who are not parties to a continuing care contract for up to
621 5 years after the date of issuance of the initial nursing home
622 license. A provider whose 5-year period has expired or is
623 expiring may request an extension from the Agency for Health
624 Care Administration, not to exceed 30 percent of the total
625 sheltered nursing home beds or 30 sheltered beds, whichever is
626 greater, if the utilization by residents of the nursing home
627 facility in the sheltered beds will not generate sufficient
628 income to cover nursing home facility expenses, as evidenced by
629 one of the following:

630 (a) The nursing home facility has a net loss for the most
631 recent fiscal year as determined under generally accepted
632 accounting principles, excluding the effects of extraordinary or
633 unusual items, as demonstrated in the most recently audited
634 financial statement.

635 (b) The nursing home facility would have had a pro forma
636 loss for the most recent fiscal year, excluding the effects of
637 extraordinary or unusual items, if revenues were reduced by the
638 amount of revenues from persons in sheltered beds who were not

4-00524A-23

2023622__

639 residents, as reported by a certified public accountant.
640
641 The Agency for Health Care Administration may grant an extension
642 to the provider based on the evidence required in this
643 subsection. The Agency for Health Care Administration may
644 request a continuing care facility to use up to 25 percent of
645 the patient days generated by new admissions of nonresidents
646 during the extension period to serve Medicaid recipients for
647 those beds authorized for extended use if there is a
648 demonstrated need in the respective service area and if funds
649 are available. A provider who obtains an extension is prohibited
650 from applying for additional sheltered beds under subsection
651 (2), unless additional residential units are built or the
652 provider can demonstrate need by continuing care facility
653 residents to the Agency for Health Care Administration. The 5-
654 year limit does not apply to sheltered beds designated for post-
655 acute care as part of a contractual agreement with a health care
656 delivery system with at least one facility licensed under
657 chapter 395 or up to five sheltered beds designated for
658 inpatient hospice care as part of a contractual arrangement with
659 a hospice licensed under part IV of chapter 400. A continuing
660 care facility that uses such beds after the 5-year period shall
661 report such use to the Agency for Health Care Administration.
662 For purposes of this subsection, "resident" means a person who,
663 upon admission to the continuing care facility, initially
664 resides in a part of the continuing care facility not licensed
665 under part II of chapter 400, or who contracts for continuing
666 care at-home.
667 Section 14. Section 651.012, Florida Statutes, is amended

4-00524A-23

2023622__

668 to read:

669 651.012 Exempted facility; written disclosure of
670 exemption.—Any facility exempted under ss. 632.637(1)(e) and
671 651.011(24) ~~ss. 632.637(1)(e) and 651.011(23)~~ must provide
672 written disclosure of such exemption to each person admitted to
673 the facility. This disclosure must be written using language
674 likely to be understood by the person and must briefly explain
675 the exemption.

676 Section 15. Subsection (1) of section 651.0261, Florida
677 Statutes, is amended to read:

678 651.0261 Quarterly and monthly statements.—

679 (1) Within 45 days after the end of each fiscal quarter,
680 each provider shall file a quarterly unaudited financial
681 statement of the provider or of the facility in the form
682 prescribed by commission rule and days cash on hand, occupancy,
683 debt service coverage ratio, and a detailed listing of the
684 assets maintained in the liquid reserve as required under s.
685 651.035. The last quarterly statement for a fiscal year is not
686 required if a provider does not have pending a regulatory action
687 level event, impairment, or a corrective action plan. If a
688 provider falls below two or more of the thresholds set forth in
689 s. 651.011(26) ~~s. 651.011(25)~~ at the end of any fiscal quarter,
690 the provider shall submit to the office, at the same time as the
691 quarterly statement, an explanation of the circumstances and a
692 description of the actions it will take to meet the
693 requirements.

694 Section 16. This act shall take effect July 1, 2023.