

By the Committee on Banking and Insurance; and Senator Lee

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1 A bill to be entitled
2 An act relating to continuing care contracts; amending
3 s. 651.011, F.S.; defining and redefining terms;
4 amending s. 651.012, F.S.; conforming a cross-
5 reference; deleting an obsolete date; amending s.
6 651.013, F.S.; revising applicability of specified
7 provisions of the Florida Insurance Code to the Office
8 of Insurance Regulation's authority to regulate
9 providers of continuing care and continuing care at-
10 home; amending s. 651.019, F.S.; revising notice and
11 filing requirements for providers and facilities with
12 respect to new and additional financing and
13 refinancing; amending s. 651.021, F.S.; conforming
14 provisions to changes made by the act; creating s.
15 651.0215, F.S.; specifying conditions that qualify an
16 applicant for a certificate of authority without first
17 obtaining a provisional certificate of authority;
18 specifying requirements for the consolidated
19 application; requiring an applicant to obtain separate
20 certificates of authority for multiple facilities;
21 specifying procedures and requirements for the
22 office's review of such applications and issuance or
23 denial of certificates of authority; providing
24 requirements for reservation contracts, entrance fees,
25 and reservation deposits; authorizing a provider to
26 secure release of moneys held in escrow under
27 specified circumstances; providing construction
28 relating to the release of escrow funds; amending s.
29 651.022, F.S.; revising the office's authority to make

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30 certain inquiries in the review of applications for
31 provisional certificates of authority; specifying
32 requirements for application amendments if material
33 changes occur; requiring applicants to submit a
34 specified feasibility study; revising procedures and
35 requirements for the office's review of such
36 applications; conforming a provision to changes made
37 by the act; making a technical change; conforming
38 cross-references; amending s. 651.023, F.S.; revising
39 requirements for an application for a certificate of
40 authority; specifying requirements for application
41 amendments if material changes occur; revising
42 procedures and requirements for the office's review of
43 such applications; revising minimum unit reservation
44 and minimum deposit requirements; revising conditions
45 under which a provider is entitled to secure release
46 of certain moneys held in escrow; conforming
47 provisions to changes made by the act; conforming
48 cross-references; amending s. 651.024, F.S.; providing
49 and revising applicability of certain provisions to a
50 person seeking to assume the role of general partner
51 of a provider or seeking specified ownership,
52 possession, or control of a provider's assets;
53 providing applicability of certain provisions to a
54 person seeking to acquire and become the provider for
55 a facility; providing procedures for filing a
56 disclaimer of control; defining terms; providing
57 standing to the office to petition a circuit court in
58 certain proceedings; creating s. 651.0245, F.S.;

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59 prohibiting a person, without the office's prior
60 written approval, from acquiring a facility operating
61 under a subsisting certificate of authority and
62 engaging in the business of providing continuing care;
63 providing requirements for an applicant seeking
64 simultaneous acquisition of a facility and issuance of
65 a certificate of authority; requiring the Financial
66 Services Commission to adopt by rule certain
67 application requirements; requiring the office to
68 review applications and issue approvals or
69 disapprovals of filings in accordance with specified
70 provisions; defining terms; providing standing to the
71 office to petition a specified circuit court under
72 certain circumstances; providing procedures for filing
73 a disclaimer of control; providing construction;
74 authorizing the commission to adopt, amend, and repeal
75 rules; creating s. 651.0246, F.S.; requiring a
76 provider to obtain written approval from the office
77 before commencing construction or marketing for
78 specified expansions of a certificated facility;
79 providing that a provider is automatically granted
80 approval for certain expansions under specified
81 circumstances; defining the term "existing units";
82 providing applicability; specifying requirements for
83 applying for such approval; requiring the office to
84 consider certain factors in reviewing such
85 applications; providing procedures and requirements
86 for the office's review of applications and approval
87 or denial of expansions; specifying requirements for

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88 escrowed moneys and for the release of the moneys;
89 defining the term "initial entrance fee"; providing
90 construction; amending s. 651.026, F.S.; revising
91 requirements for annual reports that providers file
92 with the office; revising guidelines for commission
93 rulemaking; requiring the office to publish, within
94 specified timeframes, a specified annual report;
95 amending s. 651.0261, F.S.; revising requirements for
96 quarterly statements filed by providers and facilities
97 with the office; authorizing the office to waive
98 certain filing requirements under certain
99 circumstances; authorizing the office to require,
100 under certain circumstances, providers or facilities
101 to file monthly unaudited financial statements and
102 certain other information; authorizing the commission
103 to adopt certain rules; amending s. 651.028, F.S.;
104 authorizing the office, under certain circumstances,
105 to waive any requirement of ch. 651, F.S., for
106 providers or obligated groups having certain
107 accreditations or credit ratings; amending s. 651.033,
108 F.S.; revising requirements for escrow accounts and
109 escrow agreements; revising requirements for, and
110 restrictions on, agents of escrow accounts; revising
111 permissible investments for funds in an escrow
112 account; revising requirements for the withdrawal of
113 escrowed funds under certain circumstances; creating
114 s. 651.034, F.S.; specifying requirements and
115 procedures for the office if a regulatory action level
116 event occurs; authorizing the office to use members of

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117 the Continuing Care Advisory Council or retain
118 consultants for specified purposes; requiring affected
119 providers to bear fees, costs, and expenses for such
120 consultants; requiring the office to take certain
121 actions if an impairment occurs; authorizing the
122 office to forego taking action for a certain timeframe
123 under certain circumstances; providing immunity from
124 liability to the commission, the Department of
125 Financial Services, the office, and their employees or
126 agents for certain actions; requiring the office to
127 transmit any notice that may result in regulatory
128 action by certain methods; authorizing the office to
129 exempt a provider from specified requirements under
130 certain circumstances and for a specified timeframe;
131 authorizing the commission to adopt rules; providing
132 construction; amending s. 651.035, F.S.; revising
133 provider minimum liquid reserve requirements under
134 specified circumstances; deleting an obsolete date;
135 authorizing providers, under certain circumstances, to
136 withdraw funds held in escrow without the office's
137 approval; providing procedures and requirements to
138 request approval for certain withdrawals; providing
139 procedures and requirements for the office's review of
140 such requests; authorizing the office, under certain
141 circumstances, to order the immediate transfer of
142 funds in the minimum liquid reserve to the custody of
143 the department; providing that certain debt service
144 reserves of a provider are not subject to such
145 transfer provision; requiring facilities to file

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146 annual calculations of their minimum liquid reserves
147 with the office and maintain such reserves beginning
148 at specified periods; requiring providers to fund
149 reserve shortfalls within a specified timeframe;
150 providing construction; creating s. 651.043, F.S.;
151 defining the term "management"; providing requirements
152 for a contract for management made after a certain
153 date; specifying procedures and requirements for
154 providers filing notices of change in management with
155 the office; specifying procedures, requirements, and
156 factors for the office's review of such changes and
157 approval or disapproval of the new management;
158 requiring management disapproved by the office to be
159 removed within a specified timeframe; authorizing the
160 office to take certain disciplinary actions under
161 certain circumstances; requiring providers to
162 immediately remove management under certain
163 circumstances; amending s. 651.051, F.S.; revising
164 requirements for the maintenance of a provider's
165 records and assets; amending s. 651.057, F.S.;
166 conforming cross-references; amending s. 651.071,
167 F.S.; revising construction as to the priority of
168 continuing care and continuing care at-home contracts
169 in the event of receivership or liquidation
170 proceedings against a provider; amending s. 651.091,
171 F.S.; revising requirements for continuing care
172 facilities and providers relating to the availability,
173 distribution, and posting of reports and records;
174 amending s. 651.105, F.S.; providing applicability of

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175 a provision of the Insurance Code relating to
176 examinations and investigations to the office's
177 authority in examining certain applicants and
178 providers; requiring providers to respond to written
179 correspondence from the office and provide certain
180 information; declaring that the office has standing to
181 petition a circuit court for certain injunctive
182 relief; specifying venue; deleting a requirement for
183 the office to determine if certain disclosures have
184 been made; providing that a provider's or facility's
185 parent, subsidiary, or affiliate is not subject to
186 routine examination by the office except under certain
187 circumstances; authorizing the office to examine
188 certain parents, subsidiaries, or affiliates to
189 ascertain the financial condition of a provider under
190 certain circumstances; prohibiting the office, when
191 conducting an examination or inspection, from using
192 certain actuary recommendations for a certain purpose
193 or requesting certain documents under certain
194 circumstances; amending s. 651.106, F.S.; authorizing
195 the office to deny an application for a provisional
196 certificate of authority or a certificate of authority
197 on certain grounds; revising and adding grounds for
198 application denial or disciplinary action by the
199 office; creating s. 651.1065, F.S.; prohibiting
200 certain persons of a continuing care retirement
201 community, except with the office's written
202 permission, from actively soliciting, approving the
203 solicitation or acceptance of, or accepting new

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204 continuing care contracts if they knew or should have
205 known that the retirement community was impaired or
206 insolvent; providing an exception; requiring the
207 office to approve or disapprove the continued
208 marketing of new contracts within a specified
209 timeframe; providing a criminal penalty; amending s.
210 651.111, F.S.; revising procedures and requirements
211 for the office's review of complaints requesting
212 inspections of records and related financial affairs
213 of a provider; amending s. 651.114, F.S.; providing
214 that certain duties relating to a certain compliance
215 or solvency plan must be performed by the office, or
216 the Continuing Care Advisory Council at the request of
217 the office, rather than solely by the council;
218 providing construction relating to the office's
219 authority to take certain measures; authorizing the
220 office to seek a recommended plan from the advisory
221 council; replacing the office with the department as
222 the entity taking certain actions under ch. 631, F.S.;
223 providing construction; revising circumstances under
224 which the department and office are vested with
225 certain powers and duties in regard to delinquency
226 proceedings; specifying requirements for providers to
227 notify residents and prospective residents of
228 delinquency proceedings; specifying procedures
229 relating to orders to show cause and hearings pursuant
230 to ch. 631, F.S.; revising facilities with respect to
231 which the office may not exercise certain remedial
232 rights; creating s. 651.1141, F.S.; authorizing the

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233 office to issue an immediate final order for a
234 provider to cease and desist from specified
235 violations; amending s. 651.121, F.S.; revising the
236 composition of the Continuing Care Advisory Council;
237 amending s. 651.125, F.S.; providing a criminal
238 penalty for certain actions performed without a valid
239 provisional certificate of authority; making a
240 technical change; providing an effective date.

241

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

243

244 Section 1. Section 651.011, Florida Statutes, is amended to
245 read:

246 651.011 Definitions.—As used in this chapter, the term:

247 (1) "Actuarial opinion" means an opinion issued by an
248 actuary in accordance with Actuarial Standards of Practice No. 3
249 for Continuing Care Retirement Communities, Revised Edition,
250 effective May 1, 2011, or any future amendments or replacements
251 to this standard which may be adopted by the Actuarial Standards
252 Board.

253 (2) "Actuarial study" means an analysis prepared for an
254 individual facility, or consolidated for multiple facilities,
255 for either a certified provider, as of a current valuation date
256 or the most recent fiscal year, or for an applicant, as of a
257 projected future valuation date, which includes an actuary's
258 opinion as to whether such provider or applicant is in
259 satisfactory actuarial balance in accordance with Actuarial
260 Standards of Practice No. 3 for Continuing Care Retirement
261 Communities, Revised Edition, effective May 1, 2011, or any

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262 future amendments or replacements to this standard which may be
263 adopted by the Actuarial Standards Board.

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

268 (4)~~(1)~~ "Advertising" means the dissemination of written,
269 visual, or electronic information by a provider, or any person
270 affiliated with or controlled by a provider, to potential
271 residents or their representatives for the purpose of inducing
272 such persons to subscribe to or enter into a contract for
273 continuing care or continuing care at-home.

274 (5)~~(2)~~ "Continuing care" or "care" means, pursuant to a
275 contract, furnishing shelter and nursing care or personal
276 services to a resident who resides in a facility, whether such
277 nursing care or personal services are provided in the facility
278 or in another setting designated in the contract for continuing
279 care, by an individual not related by consanguinity or affinity
280 to the resident, upon payment of an entrance fee. The terms may
281 also be referred to as a "life plan."

282 (6)~~(3)~~ "Continuing Care Advisory Council" or "advisory
283 council" means the council established in s. 651.121.

284 (7)~~(4)~~ "Continuing care at-home" means, pursuant to a
285 contract other than a contract described in subsection (5) ~~(2)~~,
286 furnishing to a resident who resides outside the facility the
287 right to future access to shelter and nursing care or personal
288 services, whether such services are provided in the facility or
289 in another setting designated in the contract, by an individual
290 not related by consanguinity or affinity to the resident, upon

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291 payment of an entrance fee. The term may also be referred to as
292 a "life plan at-home."

293 (8) "Corrective order" means an order issued by the office
294 which specifies corrective actions the office has determined are
295 required.

296 (9) "Days cash on hand" means, for a facility or obligated
297 group, the quotient obtained by dividing the value of paragraph
298 (a) by the value of paragraph (b).

299 (a) The sum of unrestricted cash, unrestricted short-term
300 and long-term investments, provider restricted funds, and the
301 minimum liquid reserve as of the reporting period.

302 (b) Operating expenses less depreciation, amortization, and
303 other noncash expenses and nonoperating losses, divided by 365.
304 Operating expenses, depreciation, amortization, and other
305 noncash expenses and nonoperating losses are each the sum of
306 their respective values over the 12-month period immediately
307 preceding the reporting date.

308
309 With prior written approval of the office, a demand note or
310 other parental guarantee may be considered a short-term or long-
311 term investment for the purposes of paragraph (a). However, the
312 total of all demand notes issued by the parent may not, at any
313 time, be more than the sum of unrestricted cash and unrestricted
314 short-term and long-term investments held by the parent.

315 (10) "Debt service coverage ratio" means, for a facility or
316 obligated group, the quotient obtained by dividing the value of
317 paragraph (a) by the value of paragraph (b).

318 (a) The sum of total expenses less interest expense on the
319 facility, depreciation, amortization, and other noncash expenses

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320 and nonoperating losses, subtracted from the sum of total
321 revenues and gross entrance fees received less earned entrance
322 fees and refunds paid. Expenses, interest expense on the
323 facility, depreciation, amortization, other noncash expenses and
324 nonoperating losses, revenues, noncash revenues, nonoperating
325 gains, gross entrance fees, earned entrance fees, and refunds
326 are each the sum of their respective values over the 12-month
327 period immediately preceding the reporting date.

328 (b) Total annual principal and interest expense due on the
329 facility or obligated group over the 12-month period immediately
330 preceding the reporting date. For purposes of this paragraph,
331 principal excludes any balloon principal payment amounts, and
332 interest expense due is the sum of the interest over the 12-
333 month period immediately preceding the reporting date which is
334 reflected in the provider's audit.

335 (11)-(5) "Entrance fee" means an initial or deferred payment
336 of a sum of money or property made as full or partial payment
337 for continuing care or continuing care at-home. An accommodation
338 fee, admission fee, member fee, or other fee of similar form and
339 application are considered to be an entrance fee.

340 (12)-(6) "Facility" means a place where continuing care is
341 furnished and may include one or more physical plants on a
342 primary or contiguous site or an immediately accessible site. As
343 used in this subsection, the term "immediately accessible site"
344 means a parcel of real property separated by a reasonable
345 distance from the facility as measured along public
346 thoroughfares, and the term "primary or contiguous site" means
347 the real property contemplated in the feasibility study required
348 by this chapter.

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349 ~~(7) "Generally accepted accounting principles" means those~~
350 ~~accounting principles and practices adopted by the Financial~~
351 ~~Accounting Standards Board and the American Institute of~~
352 ~~Certified Public Accountants, including Statement of Position~~
353 ~~90-8 with respect to any full year to which the statement~~
354 ~~applies.~~

355 (13) "Impaired" means that any of the following have
356 occurred:

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

362 (b) Beginning July 1, 2019:

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

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

370 (14)~~(8)~~ "Insolvency" means the condition in which a ~~the~~
371 provider is unable to pay its obligations as they come due in
372 the normal course of business.

373 (15)~~(9)~~ "Licensed" means that a ~~the~~ provider has obtained a
374 certificate of authority from the office ~~department~~.

375 (16) "Manager" or "management company" means a person who
376 administers the day-to-day business operations of a facility for
377 a provider, subject to the policies, directives, and oversight

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378 of the provider.

379 (17)~~(10)~~ "Nursing care" means those services or acts
380 rendered to a resident by an individual licensed or certified
381 pursuant to chapter 464.

382 (18) "Obligated group" means one or more entities that
383 jointly agree to be bound by a financing structure containing
384 security provisions and covenants applicable to the group. For
385 purposes of this subsection, debt issued under such a financing
386 structure must be a joint and several obligation of each member
387 of the group.

388 (19) "Occupancy" means the total number of occupied
389 independent living, assisted living, and skilled nursing units
390 in a facility divided by the total number of units in that
391 facility, excluding units that are unavailable to market or
392 reserve, as of the most recent annual report.

393 (20)~~(11)~~ "Personal services" has the same meaning as in s.
394 429.02.

395 (21)~~(12)~~ "Provider" means the owner or operator, whether a
396 natural person, partnership or other unincorporated association,
397 however organized, trust, or corporation, of an institution,
398 building, residence, or other place, whether operated for profit
399 or not, which owner or operator provides continuing care or
400 continuing care at-home for a fixed or variable fee, or for any
401 other remuneration of any type, whether fixed or variable, for
402 the period of care, payable in a lump sum or lump sum and
403 monthly maintenance charges or in installments. The term does
404 not apply to an entity that has existed and continuously
405 operated a facility located on at least 63 acres in this state
406 providing residential lodging to members and their spouses for

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407 at least 66 years on or before July 1, 1989, and has the
408 residential capacity of 500 persons, is directly or indirectly
409 owned or operated by a nationally recognized fraternal
410 organization, is not open to the public, and accepts only its
411 members and their spouses as residents.

412 (22)~~(13)~~ "Records" means all documents, correspondence, and
413 the permanent financial, directory, and personnel information
414 and data maintained by a provider pursuant to this chapter,
415 regardless of the physical form, characteristics, or means of
416 transmission.

417 (23) "Regulatory action level event" means that any two of
418 the following have occurred:

419 (a) The provider's debt service coverage ratio is less than
420 the minimum ratio specified in the provider's bond covenants or
421 lending agreement for long-term financing, or, if the provider
422 does not have a debt service coverage ratio required by its
423 lending institution, the provider's debt service coverage ratio
424 is less than 1.20:1 as of the most recent annual report filed
425 with the office. If the provider is a member of an obligated
426 group having cross-collateralized debt and the obligated group
427 has obtained an investment grade credit rating from a nationally
428 recognized credit rating agency, as applicable, from Moody's
429 Investors Service, Standard & Poor's, or Fitch Ratings, the
430 obligated group's debt service coverage ratio will be used as
431 the provider's debt service coverage ratio.

432 (b) The provider's days cash on hand is less than the
433 minimum number of days cash on hand specified in the provider's
434 bond covenants or lending agreement for long-term financing. If
435 the provider does not have a days cash on hand required by its

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436 lending institution, the days cash on hand may not be less than
437 100 as of the most recent annual report filed with the office.
438 If the provider is a member of an obligated group having cross-
439 collateralized debt and the obligated group has obtained an
440 investment grade credit rating from a nationally recognized
441 credit rating agency, as applicable, from Moody's Investors
442 Service, Standard & Poor's, or Fitch Ratings, the days cash on
443 hand of the obligated group will be used as the provider's days
444 cash on hand.

445 (c) The occupancy at the provider's facility is less than
446 80 percent, averaged over the 12-month period immediately
447 preceding the reporting date.

448 (24)~~(14)~~ "Resident" means a purchaser of, a nominee of, or
449 a subscriber to a continuing care or continuing care at-home
450 contract. Such contract does not give the resident a part
451 ownership of the facility in which the resident is to reside,
452 unless expressly provided in the contract.

453 (25)~~(15)~~ "Shelter" means an independent living unit, room,
454 apartment, cottage, villa, personal care unit, nursing bed, or
455 other living area within a facility set aside for the exclusive
456 use of one or more identified residents.

457 Section 2. Section 651.012, Florida Statutes, is amended to
458 read:

459 651.012 Exempted facility; written disclosure of
460 exemption.—Any facility exempted under ss. 632.637(1)(e) and
461 651.011(21) ~~651.011(12)~~ must provide written disclosure of such
462 exemption to each person admitted to the facility ~~after October~~
463 ~~1, 1996~~. This disclosure must be written using language likely
464 to be understood by the person and must briefly explain the

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465 exemption.

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

468 651.013 Chapter exclusive; applicability of other laws.—

469 (2) In addition to other applicable provisions cited in
470 this chapter, the office has the authority granted under ss.
471 624.302 and 624.303, 624.307-624.312, 624.318 ~~624.308-624.312,~~
472 ~~624.319(1)-(3), 624.320-624.321, 624.324, and 624.34,~~ and
473 624.422 of the Florida Insurance Code to regulate providers of
474 continuing care and continuing care at-home.

475 Section 4. Section 651.019, Florida Statutes, is amended to
476 read:

477 651.019 New financing, additional financing, or
478 refinancing.—

479 (1) (a) A provider shall provide notice to the residents'
480 council of any new financing or refinancing at least 30 days
481 before the closing date of the financing or refinancing
482 transaction. The notice must include a general outline of the
483 amount and terms of the financing or refinancing and the
484 intended use of proceeds.

485 (b) If the facility does not have a residents' council, the
486 facility must make available, in the same manner as other
487 community notices, the information required by paragraph (a)
488 ~~After issuance of a certificate of authority, the provider shall~~
489 ~~submit to the office a general outline, including intended use~~
490 ~~of proceeds, with respect to any new financing, additional~~
491 ~~financing, or refinancing at least 30 days before the closing~~
492 ~~date of such financing transaction.~~

493 (2) Within 30 days after the closing date of such financing

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494 ~~or refinancing transaction, The provider shall furnish any~~
495 ~~information the office may reasonably request in connection with~~
496 ~~any new financing, additional financing, or refinancing,~~
497 ~~including, but not limited to, the financing agreements and any~~
498 ~~related documents, escrow or trust agreements, and statistical~~
499 ~~or financial data. the provider shall also submit to the office~~
500 copies of executed financing documents and escrow or trust
501 agreements prepared in support of such financing or refinancing
502 transaction, and a copy of all documents required to be
503 submitted to the residents' council under paragraph (1) (a)
504 within 30 days after the closing date.

505 Section 5. Section 651.021, Florida Statutes, is amended to
506 read:

507 651.021 Certificate of authority required.-

508 ~~(1) A~~ A ~~Ne~~ person may not engage in the business of providing
509 continuing care, issuing contracts for continuing care or
510 continuing care at-home, or constructing a facility for the
511 purpose of providing continuing care in this state without a
512 certificate of authority obtained from the office as provided in
513 this chapter. This section ~~subsection~~ does not prohibit the
514 preparation of a construction site or construction of a model
515 residence unit for marketing purposes, or both. The office may
516 allow the purchase of an existing building for the purpose of
517 providing continuing care if the office determines that the
518 purchase is not being made to circumvent the prohibitions in
519 this section.

520 ~~(2) Written approval must be obtained from the office~~
521 ~~before commencing construction or marketing for an expansion of~~
522 ~~a certificated facility equivalent to the addition of at least~~

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523 ~~20 percent of existing units or 20 percent or more in the number~~
524 ~~of continuing care at-home contracts. This provision does not~~
525 ~~apply to construction for which a certificate of need from the~~
526 ~~Agency for Health Care Administration is required.~~

527 ~~(a) For providers that offer both continuing care and~~
528 ~~continuing care at-home, the 20 percent is based on the total of~~
529 ~~both existing units and existing contracts for continuing care~~
530 ~~at-home. For purposes of this subsection, an expansion includes~~
531 ~~increases in the number of constructed units or continuing care~~
532 ~~at-home contracts or a combination of both.~~

533 ~~(b) The application for such approval shall be on forms~~
534 ~~adopted by the commission and provided by the office. The~~
535 ~~application must include the feasibility study required by s.~~
536 ~~651.022(3) or s. 651.023(1)(b) and such other information as~~
537 ~~required by s. 651.023. If the expansion is only for continuing~~
538 ~~care at-home contracts, an actuarial study prepared by an~~
539 ~~independent actuary in accordance with standards adopted by the~~
540 ~~American Academy of Actuaries which presents the financial~~
541 ~~impact of the expansion may be substituted for the feasibility~~
542 ~~study.~~

543 ~~(c) In determining whether an expansion should be approved,~~
544 ~~the office shall use the criteria provided in ss. 651.022(6) and~~
545 ~~651.023(4).~~

546 Section 6. Section 651.0215, Florida Statutes, is created
547 to read:

548 651.0215 Consolidated application for provisional
549 certificate of authority and certificate of authority; required
550 restrictions on use of entrance fees.-

551 (1) For an applicant to qualify for a certificate of

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552 authority without first obtaining a provisional certificate of
553 authority, the following conditions must be met:

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

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

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

566 (2) The consolidated application must be on a form
567 prescribed by the commission and must contain all of the
568 following information:

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

570 (b) A feasibility study prepared by an independent
571 consultant which contains all of the information required by s.
572 651.022(3) and financial forecasts or projections prepared in
573 accordance with standards adopted by the American Institute of
574 Certified Public Accountants or in accordance with standards for
575 feasibility studies for continuing care retirement communities
576 adopted by the Actuarial Standards Board.

577 1. The feasibility study must take into account project
578 costs, actual marketing results to date and marketing
579 projections, resident fees and charges, competition, resident
580 contract provisions, and other factors that affect the

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581 feasibility of operating the facility.

582 2. If the feasibility study is prepared by an independent
583 certified public accountant, it must contain an examination
584 report, or a compilation report acceptable to the office,
585 containing a financial forecast or projections for the first 5
586 years of operations which take into account an actuary's
587 mortality and morbidity assumptions as the study relates to
588 turnover, rates, fees, and charges. If the study is prepared by
589 an independent consulting actuary, it must contain mortality and
590 morbidity assumptions as it relates to turnover, rates, fees,
591 and charges and an actuary's signed opinion that the project as
592 proposed is feasible and that the study has been prepared in
593 accordance with Actuarial Standards of Practice No. 3 for
594 Continuing Care Retirement Communities, Revised Edition,
595 effective May 1, 2011.

596 (c) Documents evidencing that commitments have been secured
597 for construction financing and long-term financing or that a
598 documented plan acceptable to the office has been adopted by the
599 applicant for long-term financing.

600 (d) Documents evidencing that all conditions of the lender
601 have been satisfied to activate the commitment to disburse
602 funds, other than the obtaining of the certificate of authority,
603 the completion of construction, or the closing of the purchase
604 of realty or buildings for the facility.

605 (e) Documents evidencing that the aggregate amount of
606 entrance fees received by or pledged to the applicant, plus
607 anticipated proceeds from any long-term financing commitment and
608 funds from all other sources in the actual possession of the
609 applicant, equal at least 100 percent of the aggregate cost of

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610 constructing or purchasing, equipping, and furnishing the
611 facility plus 100 percent of the anticipated startup losses of
612 the facility.

613 (f) A complete audited financial report of the applicant,
614 prepared by an independent certified public accountant in
615 accordance with generally accepted accounting principles, as of
616 the date the applicant commenced business operations or for the
617 fiscal year that ended immediately preceding the date of
618 application, whichever is later, and complete unaudited
619 quarterly financial statements attested to by the applicant
620 after the date of the last audit.

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

623 (h) Such other reasonable data, financial statements, and
624 pertinent information as the commission or office may require
625 with respect to the applicant or the facility to determine the
626 financial status of the facility and the management capabilities
627 of its managers and owners.

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

632 (4) Within 45 days after receipt of the information
633 required under subsection (2), the office shall examine the
634 information and notify the applicant in writing, specifically
635 requesting any additional information that the office is
636 authorized to require. An application is deemed complete when
637 the office receives all requested information and the applicant
638 corrects any error or omission of which the applicant was timely

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639 notified or when the time for such notification has expired.
640 Within 15 days after receipt of all of the requested additional
641 information, the office shall notify the applicant in writing
642 that all of the requested information has been received and that
643 the application is deemed to be complete as of the date of the
644 notice. Failure to notify the applicant in writing within the
645 15-day period constitutes acknowledgment by the office that it
646 has received all requested additional information, and the
647 application is deemed complete for purposes of review on the
648 date the applicant files all of the required additional
649 information.

650 (5) Within 45 days after an application is deemed complete
651 as set forth in subsection (4) and upon completion of the
652 remaining requirements of this section, the office shall
653 complete its review and issue or deny a certificate of authority
654 to the applicant. The period for review by the office may not be
655 tolled if the office requests additional information and the
656 applicant provides the requested information within 5 business
657 days. If a certificate of authority is denied, the office must
658 notify the applicant in writing, citing the specific failures to
659 satisfy this chapter, and the applicant is entitled to an
660 administrative hearing pursuant to chapter 120.

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

666 (7) The issuance of a certificate of authority entitles the
667 applicant to begin construction and collect reservation deposits

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668 and entrance fees from prospective residents. The reservation
669 contract must state the cancellation policy and the terms of the
670 continuing care contract to be entered into. All or any part of
671 an entrance fee or reservation deposit collected must be placed
672 in an escrow account or on deposit with the department pursuant
673 to s. 651.033.

674 (8) The provider is entitled to secure release of the
675 moneys held in escrow within 7 days after the office receives an
676 affidavit from the provider, along with appropriate
677 documentation to verify, and notification is provided to the
678 escrow agent by certified mail, that the following conditions
679 have been satisfied:

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

681 (b) Payment in full has been received for at least 70
682 percent of the total units of a phase or of the total of the
683 combined phases constructed. If a provider offering continuing
684 care at-home is applying for a release of escrowed entrance
685 fees, the same minimum requirement must be met for the
686 continuing care and continuing care at-home contracts
687 independently of each other.

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

691 (d) Documents evidencing the intended application of the
692 proceeds upon release and documents evidencing that the entrance
693 fees, when released, will be applied as represented to the
694 office.

695
696 Notwithstanding chapter 120, a person, other than the provider,

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697 the escrow agent, and the office, may not have a substantial
698 interest in any decision by the office regarding the release of
699 escrow funds in any proceeding under chapter 120 or this
700 chapter.

701 (9) The office may not approve any application that
702 includes in the plan of financing any encumbrance of the
703 operating reserves or renewal and replacement reserves required
704 by this chapter.

705 (10) The office may not issue a certificate of authority to
706 a facility that does not have a component that is to be licensed
707 pursuant to part II of chapter 400 or part I of chapter 429, or
708 that does not offer personal services or nursing services
709 through written contractual agreement. A written contractual
710 agreement must be disclosed in the contract for continuing care
711 or continuing care at-home and is subject to s. 651.1151.

712 Section 7. Subsection (2) and present subsections (6) and
713 (8) of section 651.022, Florida Statutes, are amended, present
714 subsections (3) through (8) of that section are redesignated as
715 subsections (4) through (9), respectively, and a new subsection
716 (3) is added to that section, to read:

717 651.022 Provisional certificate of authority; application.-

718 (2) The application for a provisional certificate of
719 authority must ~~shall~~ be on a form prescribed by the commission
720 and must ~~shall~~ contain the following information:

721 (a) If the applicant or provider is a corporation, a copy
722 of the articles of incorporation and bylaws; if the applicant or
723 provider is a partnership or other unincorporated association, a
724 copy of the partnership agreement, articles of association, or
725 other membership agreement; and, if the applicant or provider is

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726 a trust, a copy of the trust agreement or instrument.

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

728 1. The proprietor, if the applicant or provider is an
729 individual.

730 2. Every partner or member, if the applicant or provider is
731 a partnership or other unincorporated association, however
732 organized, having fewer than 50 partners or members, together
733 with the business name and address of the partnership or other
734 organization.

735 3. The principal partners or members, if the applicant or
736 provider is a partnership or other unincorporated association,
737 however organized, having 50 or more partners or members,
738 together with the business name and business address of the
739 partnership or other organization. If such unincorporated
740 organization has officers and a board of directors, the full
741 name and business address of each officer and director may be
742 set forth in lieu of the full name and business address of its
743 principal members.

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

746 5. Every trustee and officer, if the applicant or provider
747 is a trust.

748 6. The manager, whether an individual, corporation,
749 partnership, or association.

750 7. Any stockholder holding at least a 10 percent interest
751 in the operations of the facility in which the care is to be
752 offered.

753 8. Any person whose name is required to be provided in the
754 application under this paragraph and who owns any interest in or

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755 receives any remuneration from, directly or indirectly, any
756 professional service firm, association, trust, partnership, or
757 corporation providing goods, leases, or services to the facility
758 for which the application is made, with a real or anticipated
759 value of \$10,000 or more, and the name and address of the
760 professional service firm, association, trust, partnership, or
761 corporation in which such interest is held. The applicant shall
762 describe such goods, leases, or services and the probable cost
763 to the facility or provider and shall describe why such goods,
764 leases, or services should not be purchased from an independent
765 entity.

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

769 10. Any affiliated parent or subsidiary corporation or
770 partnership.

771 (c)1. Evidence that the applicant is reputable and of
772 responsible character. If the applicant is a firm, association,
773 organization, partnership, business trust, corporation, or
774 company, the form must ~~shall~~ require evidence that the members
775 or shareholders ~~are reputable and of responsible character,~~ and
776 the person in charge of providing care under a certificate of
777 authority are ~~shall likewise be required to produce evidence of~~
778 ~~being~~ reputable and of responsible character.

779 2. Evidence satisfactory to the office of the ability of
780 the applicant to comply with ~~the provisions of~~ this chapter and
781 with rules adopted by the commission pursuant to this chapter.

782 3. A statement of whether a person identified in the
783 application for a provisional certificate of authority or the

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784 administrator or manager of the facility, if such person has
785 been designated, or any such person living in the same location:

786 a. Has been convicted of a felony or has pleaded nolo
787 contendere to a felony charge, or has been held liable or has
788 been enjoined in a civil action by final judgment, if the felony
789 or civil action involved fraud, embezzlement, fraudulent
790 conversion, or misappropriation of property.

791 b. Is subject to a currently effective injunctive or
792 restrictive order or federal or state administrative order
793 relating to business activity or health care as a result of an
794 action brought by a public agency or department, including,
795 without limitation, an action affecting a license under chapter
796 400 or chapter 429.

797
798 The statement must ~~shall~~ set forth the court or agency, the date
799 of conviction or judgment, and the penalty imposed or damages
800 assessed, or the date, nature, and issuer of the order. Before
801 determining whether a provisional certificate of authority is to
802 be issued, the office may make an inquiry to determine the
803 accuracy of the information submitted pursuant to subparagraphs
804 1., 2., and 3. ~~1. and 2.~~

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

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

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813 (f) Such other reasonable data, financial statements, and
814 pertinent information as the commission or office may reasonably
815 require with respect to the provider or the facility, including
816 the most recent audited financial report ~~statements~~ of
817 comparable facilities currently or previously owned, managed, or
818 developed by the applicant or its principal, to assist in
819 determining the financial viability of the project and the
820 management capabilities of its managers and owners.

821 (g) The forms of the residency contracts, reservation
822 contracts, escrow agreements, and wait list contracts, if
823 applicable, which are proposed to be used by the provider in the
824 furnishing of care. The office shall approve contracts and
825 escrow agreements that comply with ss. 651.023(1)(c), 651.033,
826 651.055, and 651.057. Thereafter, no other form of contract or
827 agreement may be used by the provider until it has been
828 submitted to the office and approved.

829
830 If any material change occurs in the facts set forth in an
831 application filed with the office pursuant to this subsection,
832 an amendment setting forth such change must be filed with the
833 office within 10 business days after the applicant becomes aware
834 of such change, and a copy of the amendment must be sent by
835 registered mail to the principal office of the facility and to
836 the principal office of the controlling company.

837 (3) In addition to the information required in subsection
838 (2), an applicant for a provisional certificate of authority
839 must submit a feasibility study with appropriate financial,
840 marketing, and actuarial assumptions for the first 5 years of
841 operations. The feasibility study must include at least the

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842 following information:

843 (a) A description of the proposed facility, including the
844 location, size, anticipated completion date, and the proposed
845 construction program.

846 (b) Identification and an evaluation of the primary and, if
847 appropriate, the secondary market areas of the facility and the
848 projected unit sales per month.

849 (c) Projected revenues, including anticipated entrance
850 fees; monthly service fees; nursing care revenues, if
851 applicable; and all other sources of revenue.

852 (d) Projected expenses, including staffing requirements and
853 salaries; cost of property, plant, and equipment, including
854 depreciation expense; interest expense; marketing expense; and
855 other operating expenses.

856 (e) A projected balance sheet of the applicant.

857 (f) Expectations of the financial condition of the project,
858 including the projected cash flow, and an estimate of the funds
859 anticipated to be necessary to cover startup losses.

860 (g) The inflation factor, if any, assumed in the
861 feasibility study for the proposed facility and how and where it
862 is applied.

863 (h) Project costs and the total amount of debt financing
864 required, marketing projections, resident fees and charges, the
865 competition, resident contract provisions, and other factors
866 that affect the feasibility of the facility.

867 (i) Appropriate population projections, including morbidity
868 and mortality assumptions.

869 (j) The name of the person who prepared the feasibility
870 study and the experience of such person in preparing similar

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871 studies or otherwise consulting in the field of continuing care.
872 The preparer of the feasibility study may be the provider or a
873 contracted third party.

874 (k) Any other information that the applicant deems relevant
875 and appropriate to enable the office to make a more informed
876 determination.

877 (7)~~(6)~~ Within 45 days after the date an application is
878 deemed complete as set forth in paragraph (6) (b) ~~(5) (b)~~, the
879 office shall complete its review and issue a provisional
880 certificate of authority to the applicant based upon its review
881 and a determination that the application meets all requirements
882 of law, that the feasibility study was based on sufficient data
883 and reasonable assumptions, and that the applicant will be able
884 to provide continuing care or continuing care at-home as
885 proposed and meet all financial and contractual obligations
886 related to its operations, including the financial requirements
887 of this chapter. The period for review by the office may not be
888 tolled if the office requests additional information and the
889 applicant provides the requested information within 5 business
890 days. If the application is denied, the office shall notify the
891 applicant in writing, citing the specific failures to meet the
892 provisions of this chapter. Such denial entitles the applicant
893 to a hearing pursuant to chapter 120.

894 (9)~~(8)~~ The office may ~~shall~~ not approve any application
895 that ~~which~~ includes in the plan of financing any encumbrance of
896 the operating reserves or renewal and replacement reserves
897 required by this chapter.

898 Section 8. Subsections (1) through (4), paragraph (b) of
899 subsection (5), and subsections (6), (8), and (9) of section

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900 651.023, Florida Statutes, are amended to read:

901 651.023 Certificate of authority; application.—

902 (1) After issuance of a provisional certificate of
903 authority, the office shall issue to the holder of such
904 provisional certificate a certificate of authority if the holder
905 of the provisional certificate provides the office with the
906 following information:

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

910 (b) A feasibility study prepared by an independent
911 consultant which contains all of the information required by s.
912 651.022(4) ~~s. 651.022(3)~~ and financial forecasts or projections
913 prepared in accordance with standards adopted by the American
914 Institute of Certified Public Accountants or in accordance with
915 standards for feasibility studies or continuing care retirement
916 communities adopted by the Actuarial Standards Board.

917 ~~1. The study must also contain an independent evaluation~~
918 ~~and examination opinion, or a comparable opinion acceptable to~~
919 ~~the office, by the consultant who prepared the study, of the~~
920 ~~underlying assumptions used as a basis for the forecasts or~~
921 ~~projections in the study and that the assumptions are reasonable~~
922 ~~and proper and the project as proposed is feasible.~~

923 1.2. The study must take into account project costs, actual
924 marketing results to date and marketing projections, resident
925 fees and charges, competition, resident contract provisions, and
926 any other factors which affect the feasibility of operating the
927 facility.

928 ~~2.3.~~ If the study is prepared by an independent certified

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929 public accountant, it must contain an examination opinion, or a
930 compilation report acceptable to the office, containing a
931 financial forecast or projections for the first 5 ~~3~~ years of
932 operations which take into account an actuary's mortality and
933 morbidity assumptions as the study relates to turnover, rates,
934 fees, and charges ~~and financial projections having a compilation~~
935 ~~opinion for the next 3 years.~~ If the study is prepared by an
936 independent consulting actuary, it must contain mortality and
937 morbidity assumptions as the study relates to turnover, rates,
938 fees, and charges, ~~data~~ and an actuary's signed opinion that the
939 project as proposed is feasible and that the study has been
940 prepared in accordance with standards adopted by the American
941 Academy of Actuaries.

942 (c) Subject to subsection (4), a provider may submit an
943 application for a certificate of authority and any required
944 exhibits upon submission of documents evidencing ~~proof~~ that the
945 project has a minimum of 30 percent of the units reserved for
946 which the provider is charging an entrance fee. ~~This does not~~
947 ~~apply to an application for a certificate of authority for the~~
948 ~~acquisition of a facility for which a certificate of authority~~
949 ~~was issued before October 1, 1983, to a provider who~~
950 ~~subsequently becomes a debtor in a case under the United States~~
951 ~~Bankruptcy Code, 11 U.S.C. ss. 101 et seq., or to a provider for~~
952 ~~which the department has been appointed receiver pursuant to~~
953 ~~part II of chapter 631.~~

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

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958 (e) Documents evidencing ~~Proof~~ that all conditions of the
959 lender have been satisfied to activate the commitment to
960 disburse funds other than the obtaining of the certificate of
961 authority, the completion of construction, or the closing of the
962 purchase of realty or buildings for the facility.

963 (f) Documents evidencing ~~Proof~~ that the aggregate amount of
964 entrance fees received by or pledged to the applicant, plus
965 anticipated proceeds from any long-term financing commitment,
966 plus funds from all other sources in the actual possession of
967 the applicant, equal at least 100 percent of the aggregate cost
968 of constructing or purchasing, equipping, and furnishing the
969 facility plus 100 percent of the anticipated startup losses of
970 the facility.

971 (g) A complete audited financial report ~~statements~~ of the
972 applicant, prepared by an independent certified public
973 accountant in accordance with generally accepted accounting
974 principles, as of the date the applicant commenced business
975 operations or for the fiscal year that ended immediately
976 preceding the date of application, whichever is later, and
977 complete unaudited quarterly financial statements attested to by
978 the applicant after the date of the last audit.

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

982 (i) Such other reasonable data, financial statements, and
983 pertinent information as the commission or office may require
984 with respect to the applicant or the facility, to determine the
985 financial status of the facility and the management capabilities
986 of its managers and owners.

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987
988 If any material change occurs in the facts set forth in an
989 application filed with the office pursuant to this subsection,
990 an amendment setting forth such change must be filed with the
991 office within 10 business days, and a copy of the amendment must
992 be sent by registered mail to the principal office of the
993 facility and to the principal office of the controlling company.

994 (2) Within 30 days after receipt of the information
995 required under subsection (1), the office shall examine such
996 information and notify the provider in writing, specifically
997 requesting any additional information the office is permitted by
998 law to require. Within 15 days after receipt of all of the
999 requested additional information, the office shall notify the
1000 provider in writing that all of the requested information has
1001 been received, and the application is deemed to be complete as
1002 of the date of the notice. Failure to notify the provider in
1003 writing within the 15-day period constitutes acknowledgment by
1004 the office that it has received all requested additional
1005 information, and the application is deemed complete for purposes
1006 of review on the date of filing all of the required additional
1007 information ~~Within 15 days after receipt of all of the requested~~
1008 ~~additional information, the office shall notify the provider in~~
1009 ~~writing that all of the requested information has been received~~
1010 ~~and the application is deemed to be complete as of the date of~~
1011 ~~the notice. Failure to notify the applicant in writing within~~
1012 ~~the 15-day period constitutes acknowledgment by the office that~~
1013 ~~it has received all requested additional information, and the~~
1014 ~~application shall be deemed complete for purposes of review on~~
1015 ~~the date of filing all of the required additional information.~~

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1016 (3) Within 45 days after an application is deemed complete
1017 as set forth in subsection (2), and upon completion of the
1018 remaining requirements of this section, the office shall
1019 complete its review and issue or deny a certificate of authority
1020 to the holder of a provisional certificate of authority. If a
1021 certificate of authority is denied, the office must notify the
1022 holder of the provisional certificate in writing, citing the
1023 specific failures to satisfy the provisions of this chapter. The
1024 period for review by the office may not be tolled if the office
1025 requests additional information and the applicant provides the
1026 requested information within 5 business days. If denied, the
1027 holder of the provisional certificate is entitled to an
1028 administrative hearing pursuant to chapter 120.

1029 (4) The office shall issue a certificate of authority upon
1030 determining that the applicant meets all requirements of law and
1031 has submitted all of the information required by this section,
1032 that all escrow requirements have been satisfied, and that the
1033 fees prescribed in s. 651.015(2) have been paid.

1034 (a) ~~A Notwithstanding satisfaction of the 30-percent~~
1035 ~~minimum reservation requirement of paragraph (1)(c), no~~
1036 ~~certificate of authority may not shall~~ be issued until
1037 documentation evidencing that the project has a minimum of 50
1038 percent of the units reserved for which the provider is charging
1039 an entrance fee, ~~and proof~~ is provided to the office. If a
1040 provider offering continuing care at-home is applying for a
1041 certificate of authority ~~or approval of an expansion pursuant to~~
1042 ~~s. 651.021(2)~~, the same minimum reservation requirements must be
1043 met for the continuing care and continuing care at-home
1044 contracts, independently of each other.

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1045 (b) In order for a unit to be considered reserved under
1046 this section, the provider must collect a minimum deposit of the
1047 lesser of \$40,000 or 10 percent of the then-current entrance fee
1048 for that unit, and may assess a forfeiture penalty of 2 percent
1049 of the entrance fee due to termination of the reservation
1050 contract after 30 days for any reason other than the death or
1051 serious illness of the resident, the failure of the provider to
1052 meet its obligations under the reservation contract, or other
1053 circumstances beyond the control of the resident that equitably
1054 entitle the resident to a refund of the resident's deposit. The
1055 reservation contract must state the cancellation policy and the
1056 terms of the continuing care or continuing care at-home contract
1057 to be entered into.

1058 (5) Up to 25 percent of the moneys paid for all or any part
1059 of an initial entrance fee may be included or pledged for the
1060 construction or purchase of the facility or as security for
1061 long-term financing. The term "initial entrance fee" means the
1062 total entrance fee charged by the facility to the first occupant
1063 of a unit.

1064 (b) For an expansion as provided in s. 651.0246 ~~s.~~
1065 ~~651.021(2)~~, a minimum of 75 percent of the moneys paid for all
1066 or any part of an initial entrance fee collected for continuing
1067 care and 50 percent of the moneys paid for all or any part of an
1068 initial fee collected for continuing care at-home shall be
1069 placed in an escrow account or on deposit with the department as
1070 prescribed in s. 651.033.

1071 (6) The provider is entitled to secure release of the
1072 moneys held in escrow within 7 days after receipt by the office
1073 of an affidavit from the provider, along with appropriate copies

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1074 to verify, and notification to the escrow agent by certified
1075 mail, that the following conditions have been satisfied:

1076 (a) A certificate of occupancy has been issued.

1077 (b) Payment in full has been received for at least 70
1078 percent of the total units of a phase or of the total of the
1079 combined phases constructed. If a provider offering continuing
1080 care at-home is applying for a release of escrowed entrance
1081 fees, the same minimum requirement must be met for the
1082 continuing care and continuing care at-home contracts,
1083 independently of each other.

1084 ~~(c) The consultant who prepared the feasibility study~~
1085 ~~required by this section or a substitute approved by the office~~
1086 ~~certifies within 12 months before the date of filing for office~~
1087 ~~approval that there has been no material adverse change in~~
1088 ~~status with regard to the feasibility study. If a material~~
1089 ~~adverse change exists at the time of submission, sufficient~~
1090 ~~information acceptable to the office and the feasibility~~
1091 ~~consultant must be submitted which remedies the adverse~~
1092 ~~condition.~~

1093 (c)(d) Documents evidencing Proof that commitments have
1094 been secured or a documented plan adopted by the applicant has
1095 been approved by the office for long-term financing.

1096 (d)(e) Documents evidencing Proof that the provider has
1097 sufficient funds to meet the requirements of s. 651.035, which
1098 may include funds deposited in the initial entrance fee account.

1099 (e)(f) Documents evidencing Proof ~~as to~~ the intended
1100 application of the proceeds upon release and documentation proof
1101 that the entrance fees when released will be applied as
1102 represented to the office.

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1103 (f) If any material change occurred in the facts set forth
1104 in the application filed with the office pursuant to subsection
1105 (1), the applicant timely filed the amendment setting forth such
1106 change with the office and sent copies of the amendment to the
1107 principal office of the facility and to the principal office of
1108 the controlling company as required under that subsection.

1109

1110 Notwithstanding chapter 120, no person, other than the provider,
1111 the escrow agent, and the office, may have a substantial
1112 interest in any office decision regarding release of escrow
1113 funds in any proceedings under chapter 120 or this chapter
1114 regarding release of escrow funds.

1115 ~~(8) The timeframes provided under s. 651.022(5) and (6)~~
1116 ~~apply to applications submitted under s. 651.021(2).~~ The office
1117 may not issue a certificate of authority to a facility that does
1118 not have a component that is to be licensed pursuant to part II
1119 of chapter 400 or to part I of chapter 429 or that does not
1120 offer personal services or nursing services through written
1121 contractual agreement. A written contractual agreement must be
1122 disclosed in the contract for continuing care or continuing care
1123 at-home and is subject to ~~the provisions of~~ s. 651.1151,
1124 relating to administrative, vendor, and management contracts.

1125 (9) The office may not approve an application that includes
1126 in the plan of financing any encumbrance of the operating
1127 reserves or renewal and replacement reserves required by this
1128 chapter.

1129 Section 9. Section 651.024, Florida Statutes, is amended to
1130 read:

1131 651.024 Acquisition.—

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1132 (1) A person who seeks to assume the role of general
1133 partner of a provider or otherwise assume ownership or
1134 possession of, or control over, 10 percent or more of a
1135 provider's assets, based on the balance sheet from the most
1136 recent financial audit filed with the office, is ~~issued a~~
1137 ~~certificate of authority to operate a continuing care facility~~
1138 ~~or a provisional certificate of authority shall be subject to~~
1139 ~~the provisions of s. 628.4615 and is not required to make~~
1140 ~~filings pursuant to s. 651.022, s. 651.023, or s. 651.0245.~~

1141 (2) A person who seeks to acquire and become the provider
1142 for a facility is subject to s. 651.0245 and is not required to
1143 make filings pursuant to ss. 628.4615, 651.022, and 651.023.

1144 (3) A person may rebut a presumption of control by filing a
1145 disclaimer of control with the office on a form prescribed by
1146 the commission. The disclaimer must fully disclose all material
1147 relationships and bases for affiliation between the person and
1148 the provider or facility, as well as the basis for disclaiming
1149 the affiliation. In lieu of such form, a person or acquiring
1150 party may file with the office a copy of a Schedule 13G filed
1151 with the Securities and Exchange Commission pursuant to Rule
1152 13d-1(b) or (c), 17 C.F.R. s. 240.13d-1, under the Securities
1153 Exchange Act of 1934, as amended. After a disclaimer has been
1154 filed, the provider or facility is relieved of any duty to
1155 register or report under this section which may arise out of the
1156 provider's or facility's relationship with the person, unless
1157 the office disallows the disclaimer.

1158 (4) As used in this section, the term:

1159 (a) "Controlling company" means any corporation, trust, or
1160 association that directly or indirectly owns 25 percent or more

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1161 of the voting securities of one or more facilities that are
1162 stock corporations, or 25 percent or more of the ownership
1163 interest of one or more facilities that are not stock
1164 corporations.

1165 (b) "Natural person" means an individual.

1166 (c) "Person" includes a natural person, corporation,
1167 association, trust, general partnership, limited partnership,
1168 joint venture, firm, proprietorship, or any other entity that
1169 may hold a license or certificate as a facility.

1170 (5) In addition to the facility or the controlling company,
1171 the office has standing to petition a circuit court as described
1172 in s. 628.4615(9).

1173 Section 10. Section 651.0245, Florida Statutes, is created
1174 to read:

1175 651.0245 Application for the simultaneous acquisition of a
1176 facility and issuance of a certificate of authority.-

1177 (1) Except with the prior written approval of the office, a
1178 person may not, individually or in conjunction with any
1179 affiliated person of such person, directly or indirectly acquire
1180 a facility operating under a subsisting certificate of authority
1181 and engage in the business of providing continuing care.

1182 (2) An applicant seeking simultaneous acquisition of a
1183 facility and issuance of a certificate of authority must:

1184 (a) Comply with the notice requirements of s.
1185 628.4615(2) (a); and

1186 (b) File an application in the form required by the office
1187 and cooperate with the office's review of the application.

1188 (3) The commission shall adopt by rule application
1189 requirements equivalent to those described in ss. 628.4615(4)

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1190 and (5), 651.022(2)(a)-(g), and 651.023(1)(b). The office shall
1191 review the application and issue an approval or disapproval of
1192 the filing in accordance with ss. 628.4615(6)(a) and (c), (7)-
1193 (10), and (14); 651.022(9); and 651.023(1)(b).

1194 (4) As used in this section, the term:

1195 (a) "Controlling company" means any corporation, trust, or
1196 association that directly or indirectly owns 25 percent or more
1197 of the voting securities of one or more facilities that are
1198 stock corporations, or 25 percent or more of the ownership
1199 interest of one or more facilities that are not stock
1200 corporations.

1201 (b) "Natural person" means an individual.

1202 (c) "Person" includes a natural person, corporation,
1203 association, trust, general partnership, limited partnership,
1204 joint venture, firm, proprietorship, or any other entity that
1205 may hold a license or certificate as a facility.

1206 (5) In addition to the facility or the controlling company,
1207 the office has standing to petition a circuit court as described
1208 in s. 628.4615(9).

1209 (6) A person may rebut a presumption of control by filing a
1210 disclaimer of control with the office on a form prescribed by
1211 the commission. The disclaimer must fully disclose all material
1212 relationships and bases for affiliation between the person and
1213 the provider or facility, as well as the basis for disclaiming
1214 the affiliation. In lieu of such form, a person or acquiring
1215 party may file with the office a copy of a Schedule 13G filed
1216 with the Securities and Exchange Commission pursuant to Rule
1217 13d-1(b) or (c), 17 C.F.R. s. 240.13d-1, under the Securities
1218 Exchange Act of 1934, as amended. After a disclaimer has been

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1219 filed, the provider or facility is relieved of any duty to
1220 register or report under this section which may arise out of the
1221 provider's or facility's relationship with the person, unless
1222 the office disallows the disclaimer.

1223 (7) The commission may adopt, amend, or repeal rules as
1224 necessary to administer this section.

1225 Section 11. Section 651.0246, Florida Statutes, is created
1226 to read:

1227 651.0246 Expansions.—

1228 (1) (a) A provider must obtain written approval from the
1229 office before commencing construction or marketing for an
1230 expansion of a certificated facility equivalent to the addition
1231 of at least 20 percent of existing units or 20 percent or more
1232 in the number of continuing care at-home contracts. If the
1233 provider has exceeded the current statewide median for days cash
1234 on hand, debt service coverage ratio, and total campus occupancy
1235 for two consecutive annual reporting periods, the provider is
1236 automatically granted approval to expand the total number of
1237 existing units by up to 35 percent upon submitting a letter to
1238 the office indicating the total number of planned units in the
1239 expansion, the proposed sources and uses of funds, and an
1240 attestation that the provider understands and pledges to comply
1241 with all minimum liquid reserve and escrow account requirements.
1242 As used in this section, the term "existing units" means the sum
1243 of the total number of independent living units and assisted
1244 living units identified in the most recent annual report filed
1245 with the office pursuant to s. 651.026. For purposes of this
1246 section, the statewide median for days cash on hand, debt
1247 service coverage ratio, and total campus occupancy is the median

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1248 calculated in the most recent annual report submitted by the
1249 office to the Continuing Care Advisory Council pursuant to s.
1250 651.121(8). This section does not apply to construction for
1251 which a certificate of need from the Agency for Health Care
1252 Administration is required.

1253 (b) The application for such approval must be on forms
1254 adopted by the commission and provided by the office. The
1255 application must include the feasibility study required by this
1256 section and such other information as reasonably requested by
1257 the office. If the expansion is only for continuing care at-home
1258 contracts, an actuarial study prepared by an independent actuary
1259 in accordance with standards adopted by the American Academy of
1260 Actuaries which presents the financial impact of the expansion
1261 may be substituted for the feasibility study.

1262 (c) In determining whether an expansion should be approved,
1263 the office shall consider:

- 1264 1. Whether the application meets all requirements of law;
- 1265 2. Whether the feasibility study was based on sufficient
1266 data and reasonable assumptions; and
- 1267 3. Whether the applicant will be able to provide continuing
1268 care or continuing care at-home as proposed and meet all
1269 financial obligations related to its operations, including the
1270 financial requirements of this chapter.

1271
1272 If the application is denied, the office must notify the
1273 applicant in writing, citing the specific failures to meet the
1274 provisions of this chapter. A denial entitles the applicant to a
1275 hearing pursuant to chapter 120.

1276 (2) A provider applying for expansion of a certificated

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1277 facility must submit all of the following:

1278 (a) A feasibility study prepared by an independent
1279 certified public accountant. The feasibility study must include
1280 at least the following information:

1281 1. A description of the facility and proposed expansion,
1282 including the location, size, anticipated completion date, and
1283 the proposed construction program.

1284 2. An identification and evaluation of the primary and, if
1285 applicable, secondary market areas of the facility and the
1286 projected unit sales per month.

1287 3. Projected revenues, including anticipated entrance fees;
1288 monthly service fees; nursing care rates, if applicable; and all
1289 other sources of revenue.

1290 4. Projected expenses, including for staffing requirements
1291 and salaries; the cost of property, plant, and equipment,
1292 including depreciation expense; interest expense; marketing
1293 expense; and other operating expenses.

1294 5. A projected balance sheet of the applicant.

1295 6. Expectations of the financial condition of the project,
1296 including the projected cash flow and an estimate of the funds
1297 anticipated to be necessary to cover startup losses.

1298 7. The inflation factor, if any, assumed in the study for
1299 the proposed expansion and how and where it is applied.

1300 8. Project costs, the total amount of debt financing
1301 required, marketing projections, resident fees and charges, the
1302 competition, resident contract provisions, and other factors
1303 that affect the feasibility of the facility.

1304 9. Appropriate population projections, including morbidity
1305 and mortality assumptions.

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1306 10. The name of the person who prepared the feasibility
1307 study and his or her experience in preparing similar studies or
1308 otherwise consulting in the field of continuing care.

1309 11. Financial forecasts or projections prepared in
1310 accordance with standards adopted by the American Institute of
1311 Certified Public Accountants or in accordance with standards for
1312 feasibility studies for continuing care retirement communities
1313 adopted by the Actuarial Standards Board.

1314 12. An independent evaluation and examination opinion for
1315 the first 5 years of operations, or a comparable opinion
1316 acceptable to the office, by the consultant who prepared the
1317 study, of the underlying assumptions used as a basis for the
1318 forecasts or projections in the study and that the assumptions
1319 are reasonable and proper and the project as proposed is
1320 feasible.

1321 13. Any other information that the provider deems relevant
1322 and appropriate to provide to enable the office to make a more
1323 informed determination.

1324 (b) Such other reasonable data, financial statements, and
1325 pertinent information as the commission or office may require
1326 with respect to the applicant or the facility to determine the
1327 financial status of the facility and the management capabilities
1328 of its managers and owners.

1329 (3) A minimum of 75 percent of the moneys paid for all or
1330 any part of an initial entrance fee or reservation deposit
1331 collected for continuing care and 50 percent of the moneys paid
1332 for all or any part of an initial fee collected for continuing
1333 care at-home must be placed in an escrow account or on deposit
1334 with the department as prescribed in s. 651.033. Up to 25

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1335 percent of the moneys paid for all or any part of an initial
1336 entrance fee or reservation deposit may be included or pledged
1337 for the construction or purchase of the facility or as security
1338 for long-term financing. As used in this section, the term
1339 "initial entrance fee" means the total entrance fee charged by
1340 the facility to the first occupant of a unit.

1341
1342 Entrance fees and reservation deposits collected for expansions
1343 must be held pursuant to the escrow requirements of s.
1344 651.023(5) and (6).

1345 (4) The provider is entitled to secure release of the
1346 moneys held in escrow within 7 days after receipt by the office
1347 of an affidavit from the provider, along with appropriate copies
1348 to verify, and notification to the escrow agent by certified
1349 mail that the following conditions have been satisfied:

1350 (a) A certificate of occupancy has been issued.

1351 (b) Payment in full has been received for at least 50
1352 percent of the total units of a phase or of the total of the
1353 combined phases constructed. If a provider offering continuing
1354 care at-home is applying for a release of escrowed entrance
1355 fees, the same minimum requirement must be met for the
1356 continuing care and continuing care at-home contracts
1357 independently of each other.

1358 (c) Documents evidencing that commitments have been secured
1359 or that a documented plan adopted by the applicant has been
1360 approved by the office for long-term financing.

1361 (d) Documents evidencing that the provider has sufficient
1362 funds to meet the requirements of s. 651.035, which may include
1363 funds deposited in the initial entrance fee account.

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1364 (e) Documents evidencing the intended application of the
1365 proceeds upon release and documentation that the entrance fees,
1366 when released, will be applied as represented to the office.

1367
1368 Notwithstanding chapter 120, only the provider, the escrow
1369 agent, and the office have a substantial interest in any office
1370 decision regarding release of escrow funds in any proceedings
1371 under chapter 120 or this chapter.

1372 (5) (a) Within 30 days after receipt of an application for
1373 expansion, the office shall examine the application and shall
1374 notify the applicant in writing, specifically setting forth and
1375 specifically requesting any additional information that the
1376 office is authorized to require. Within 15 days after the office
1377 receives all the requested additional information, the office
1378 shall notify the applicant in writing that the requested
1379 information has been received and that the application is deemed
1380 to be complete as of the date of the notice. If the office
1381 chooses not to notify the applicant within the 15-day period,
1382 then the application is deemed complete for purposes of review
1383 on the date the applicant files the additional requested
1384 information. If the application submitted is determined by the
1385 office to be substantially incomplete so as to require
1386 substantial additional information, including biographical
1387 information, the office may return the application to the
1388 applicant with a written notice that the application as received
1389 is substantially incomplete and therefore unacceptable for
1390 filing without further action required by the office. Any filing
1391 fee received must be refunded to the applicant.

1392 (b) An application is deemed complete upon the office

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1393 receiving all requested information and the applicant correcting
1394 any error or omission of which the applicant was timely notified
1395 or when the time for such notification has expired. The office
1396 shall notify the applicant in writing of the date on which the
1397 application was deemed complete.

1398 (6) Within 45 days after the date on which an application
1399 is deemed complete as set forth in paragraph (5) (b), the office
1400 shall complete its review and, based upon its review, approve an
1401 expansion by the applicant and issue a determination that the
1402 application meets all requirements of law, that the feasibility
1403 study was based on sufficient data and reasonable assumptions,
1404 and that the applicant will be able to provide continuing care
1405 or continuing care at-home as proposed and meet all financial
1406 and contractual obligations related to its operations, including
1407 the financial requirements of this chapter. The period for
1408 review by the office may not be tolled if the office requests
1409 additional information and the applicant provides information
1410 acceptable to the office within 5 business days. If the
1411 application is denied, the office must notify the applicant in
1412 writing, citing the specific failures to meet the provisions of
1413 this chapter. The denial entitles the applicant to a hearing
1414 pursuant to chapter 120.

1415 Section 12. Paragraph (c) of subsection (2) and subsection
1416 (3) of section 651.026, Florida Statutes, are amended,
1417 subsection (10) is added to that section, and paragraph (a) of
1418 subsection (2) of that section is republished, to read:

1419 651.026 Annual reports.—

1420 (2) The annual report shall be in such form as the
1421 commission prescribes and shall contain at least the following:

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1422 (a) Any change in status with respect to the information
1423 required to be filed under s. 651.022(2).

1424 (c) The following financial information:

1425 1. A detailed listing of the assets maintained in the
1426 liquid reserve as required under s. 651.035 and in accordance
1427 with part II of chapter 625;

1428 2. A schedule giving additional information relating to
1429 property, plant, and equipment having an original cost of at
1430 least \$25,000, so as to show in reasonable detail with respect
1431 to each separate facility original costs, accumulated
1432 depreciation, net book value, appraised value or insurable value
1433 and date thereof, insurance coverage, encumbrances, and net
1434 equity of appraised or insured value over encumbrances. Any
1435 property not used in continuing care must be shown separately
1436 from property used in continuing care;

1437 3. The level of participation in Medicare or Medicaid
1438 programs, or both;

1439 4. A statement of all fees required of residents,
1440 including, but not limited to, a statement of the entrance fee
1441 charged, the monthly service charges, the proposed application
1442 of the proceeds of the entrance fee by the provider, and the
1443 plan by which the amount of the entrance fee is determined if
1444 the entrance fee is not the same in all cases; and

1445 5. Any change or increase in fees if the provider changes
1446 the scope of, or the rates for, care or services, regardless of
1447 whether the change involves the basic rate or only those
1448 services available at additional costs to the resident.

1449 6. If the provider has more than one certificated facility,
1450 or has operations that are not licensed under this chapter, it

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1451 shall submit a balance sheet, statement of income and expenses,
1452 statement of equity or fund balances, and statement of cash
1453 flows for each facility licensed under this chapter as
1454 supplemental information to the audited financial report
1455 ~~statements~~ required under paragraph (b).

1456 7. The management's calculation of the provider's debt
1457 service coverage ratio and days cash on hand for the current
1458 reporting period, and an opinion from an independent certified
1459 public accountant of the management's calculations.

1460 (3) The commission shall adopt by rule additional
1461 ~~meaningful~~ measures of assessing the financial viability of a
1462 provider. ~~The rule may include the following factors:~~

- 1463 ~~(a) Debt service coverage ratios.~~
- 1464 ~~(b) Current ratios.~~
- 1465 ~~(c) Adjusted current ratios.~~
- 1466 ~~(d) Cash flows.~~
- 1467 ~~(e) Occupancy rates.~~
- 1468 ~~(f) Other measures, ratios, or trends.~~
- 1469 ~~(g) Other factors as may be appropriate.~~

1470 (10) Within 90 days after the conclusion of each annual
1471 reporting period, the office shall publish an industry
1472 benchmarking report that contains all of the following:

1473 (a) The median days cash on hand for all providers.

1474 (b) The median debt service coverage ratio for all
1475 providers.

1476 (c) The median occupancy rate for all providers by setting,
1477 including independent living, assisted living, skilled nursing,
1478 and the entire campus.

1479 Section 13. Section 651.0261, Florida Statutes, is amended

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1480 to read:

1481 651.0261 Quarterly and monthly statements.-

1482 (1) Within 45 days after the end of each fiscal quarter,
1483 each provider shall file a quarterly unaudited financial
1484 statement of the provider or of the facility in the form
1485 prescribed by rule of the commission and a detailed listing of
1486 the assets maintained in the liquid reserve as required under s.
1487 651.035. This requirement may be waived by the office upon
1488 written request from a provider that is accredited or that has
1489 obtained an investment grade credit rating from a United States
1490 credit rating agency as authorized under s. 651.028. The last
1491 quarterly statement for a fiscal year is not required if a
1492 provider does not have pending a regulatory action level event
1493 or corrective action plan.

1494 (2) If the office finds, ~~pursuant to rules of the~~
1495 ~~commission,~~ that such information is needed to properly monitor
1496 the financial condition of a provider or facility or is
1497 otherwise needed to protect the public interest, the office may
1498 require the provider to file:

1499 (a) Within 25 days after the end of each month, a monthly
1500 unaudited financial statement of the provider or of the facility
1501 in the form prescribed by the commission by rule and a detailed
1502 listing of the assets maintained in the liquid reserve as
1503 required under s. 651.035, ~~within 45 days after the end of each~~
1504 ~~fiscal quarter, a quarterly unaudited financial statement of the~~
1505 ~~provider or of the facility in the form prescribed by the~~
1506 ~~commission by rule. The commission may by rule require all or~~
1507 ~~part of the statements or filings required under this section to~~
1508 ~~be submitted by electronic means in a computer-readable form~~

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1509 ~~compatible with the electronic data format specified by the~~
1510 ~~commission.~~

1511 (b) Such other data, financial statements, and pertinent
1512 information as the commission or office may reasonably require
1513 with respect to the provider or the facility, or its directors,
1514 trustees, members, branches, subsidiaries, or affiliates, to
1515 determine the financial status of the provider or of the
1516 facility and the management capabilities of its managers and
1517 owners.

1518 (3) A filing under subsection (2) may be required if any of
1519 the following apply:

1520 (a) The facility has been operational for less than 2
1521 years.

1522 (b) The provider is:

1523 1. Subject to administrative supervision proceedings;

1524 2. Subject to a corrective action plan resulting from a
1525 regulatory action level event for up to 2 years after the
1526 factors that caused the regulatory action level event have been
1527 corrected; or

1528 3. Subject to delinquency or receivership proceedings.

1529 (c) The provider or facility displays a declining financial
1530 position.

1531 (d) A change of ownership of the provider or facility has
1532 occurred within the previous 2 years.

1533 (e) The facility is deemed to be impaired.

1534 (4) The commission may by rule require all or part of the
1535 statements or filings required under this section to be
1536 submitted by electronic means in a computer-readable form
1537 compatible with an electronic data format specified by the

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1538 commission.

1539 Section 14. Section 651.028, Florida Statutes, is amended
 1540 to read:

1541 651.028 Accredited or certain credit-rated facilities.—If a
 1542 provider or obligated group is accredited without stipulations
 1543 or conditions by a process found by the office to be acceptable
 1544 and substantially equivalent to the provisions of this chapter
 1545 or has obtained an investment grade credit rating from a
 1546 nationally recognized credit rating agency, as applicable, from
 1547 Moody’s Investors Service, Standard & Poor’s, or Fitch Ratings,
 1548 the office may, pursuant to rule of the commission, waive any
 1549 requirements of this chapter with respect to the provider if the
 1550 office finds that such waivers are not inconsistent with the
 1551 security protections intended by this chapter.

1552 Section 15. Paragraphs (a), (c), and (d) of subsection (1)
 1553 and subsections (2) and (3) of section 651.033, Florida
 1554 Statutes, are amended, and subsection (6) is added to that
 1555 section, to read:

1556 651.033 Escrow accounts.—

1557 (1) When funds are required to be deposited in an escrow
 1558 account pursuant to s. 651.022, s. 651.023, s. 651.035, or s.
 1559 651.055:

1560 (a) The escrow account must ~~shall~~ be established in a
 1561 Florida bank, Florida savings and loan association, ~~or~~ Florida
 1562 trust company, or a national bank that is chartered and
 1563 supervised by the Office of the Comptroller of the Currency
 1564 within the United States Department of the Treasury and that has
 1565 either a branch or a license to operate in this state which is
 1566 acceptable to the office, or such funds must be deposited ~~or~~

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1567 ~~deposit~~ with the department, ~~and the funds deposited therein~~
1568 ~~shall~~ be kept and maintained in an account separate and apart
1569 from the provider's business accounts.

1570 (c) Any agreement establishing an escrow account required
1571 ~~under the provisions of this chapter~~ is ~~shall~~ be subject to
1572 approval by the office. The agreement must ~~shall~~ be in writing
1573 and ~~shall~~ contain, in addition to any other provisions required
1574 by law, a provision whereby the escrow agent agrees to abide by
1575 the duties imposed by paragraphs (b) and (e), (3)(a), (3)(b),
1576 and (5)(a) and subsection (6) under this section.

1577 (d) All funds deposited in an escrow account, if invested,
1578 must ~~shall~~ be invested in cash, cash equivalents, mutual funds,
1579 equities, or investment grade bonds ~~as set forth in part II of~~
1580 ~~chapter 625;~~ however, such investment may not diminish the funds
1581 held in escrow below the amount required by this chapter. Funds
1582 deposited in an escrow account are not subject to charges by the
1583 escrow agent except escrow agent fees associated with
1584 administering the accounts, or subject to any liens, judgments,
1585 garnishments, creditor's claims, or other encumbrances against
1586 the provider or facility except as provided in s. 651.035(1).

1587 (2) Notwithstanding s. 651.035(7), ~~In addition, the escrow~~
1588 ~~agreement shall provide that the escrow agent or another person~~
1589 ~~designated to act in the escrow agent's place and the provider,~~
1590 ~~except as otherwise provided in s. 651.035, shall notify the~~
1591 ~~office in writing at least 10 days before the withdrawal of any~~
1592 ~~portion of any funds required to be escrowed under the~~
1593 ~~provisions of s. 651.035. However,~~ in the event of an emergency
1594 and upon petition by the provider, the office may ~~waive the 10-~~
1595 ~~day notification period~~ and allow a withdrawal of up to 10

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1596 percent of the required minimum liquid reserve. The office shall
1597 have 3 working days to deny the petition for the emergency 10-
1598 percent withdrawal. If the office fails to deny the petition
1599 within 3 working days, the petition is ~~shall be~~ deemed to have
1600 been granted by the office. For purposes ~~the purpose~~ of this
1601 section, "working day" means each day that is not a Saturday,
1602 Sunday, or legal holiday as defined by Florida law. Also, for
1603 purposes ~~the purpose~~ of this section, the day the petition is
1604 received by the office is ~~shall not be~~ counted as one of the 3
1605 days.

1606 (3) ~~In addition,~~ When entrance fees are required to be
1607 deposited in an escrow account pursuant to s. 651.022, s.
1608 651.023, or s. 651.055:

1609 (a) The provider shall deliver to the resident a written
1610 receipt. The receipt must show the payor's name and address, the
1611 date, the price of the care contract, and the amount of money
1612 paid. A copy of each receipt, together with the funds, must
1613 ~~shall~~ be deposited with the escrow agent or as provided in
1614 paragraph (c). The escrow agent must ~~shall~~ release such funds to
1615 the provider 7 days after the date of receipt of the funds by
1616 the escrow agent if the provider, operating under a certificate
1617 of authority issued by the office, has met the requirements of
1618 s. 651.023(6). However, if the resident rescinds the contract
1619 within the 7-day period, the escrow agent must ~~shall~~ release the
1620 escrowed fees to the resident.

1621 (b) At the request of an individual resident of a facility,
1622 the escrow agent shall issue a statement indicating the status
1623 of the resident's portion of the escrow account.

1624 (c) At the request of an individual resident of a facility,

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1625 the provider may hold the check for the 7-day period and may
1626 ~~shall~~ not deposit it during this time period. If the resident
1627 rescinds the contract within the 7-day period, the check must
1628 ~~shall~~ be immediately returned to the resident. Upon the
1629 expiration of the 7 days, the provider shall deposit the check.

1630 (d) A provider may assess a nonrefundable fee, which is
1631 separate from the entrance fee, for processing a prospective
1632 resident's application for continuing care or continuing care
1633 at-home.

1634 (6) Except as described in paragraph (3) (a), the escrow
1635 agent may not release or otherwise allow the transfer of funds
1636 without the written approval of the office, unless the
1637 withdrawal is from funds in excess of the amounts required by
1638 ss. 651.022, 651.023, 651.035, and 651.055.

1639 Section 16. Section 651.034, Florida Statutes, is created
1640 to read:

1641 651.034 Financial and operating requirements for
1642 providers.-

1643 (1) (a) If a regulatory action level event occurs, the
1644 office must:

1645 1. Require the provider to prepare and submit a corrective
1646 action plan or, if applicable, a revised corrective action plan;

1647 2. Perform an examination pursuant to s. 651.105 or an
1648 analysis, as the office considers necessary, of the assets,
1649 liabilities, and operations of the provider, including a review
1650 of the corrective action plan or the revised corrective action
1651 plan; and

1652 3. After the examination or analysis, issue a corrective
1653 order specifying any corrective actions that the office

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1654 determines are required.

1655 (b) In determining corrective actions, the office shall
1656 consider any factor relevant to the provider based upon the
1657 office's examination or analysis of the assets, liabilities, and
1658 operations of the provider. The provider must submit the
1659 corrective action plan or the revised corrective action plan
1660 within 30 days after the occurrence of the regulatory action
1661 level event. The office shall review and approve or disapprove
1662 the corrective action plan within 15 business days.

1663 (c) The office may use members of the Continuing Care
1664 Advisory Council, individually or as a group, or may retain
1665 actuaries, investment experts, and other consultants to review a
1666 provider's corrective action plan or revised corrective action
1667 plan, examine or analyze the assets, liabilities, and operations
1668 of a provider, and formulate the corrective order with respect
1669 to the provider. The fees, costs, and expenses relating to
1670 consultants must be borne by the affected provider.

1671 (2) If an impairment occurs, the office must take any
1672 action necessary to place the provider under regulatory control,
1673 including any remedy available under chapter 631. An impairment
1674 is sufficient grounds for the department to be appointed as
1675 receiver as provided in chapter 631. Notwithstanding s. 631.011,
1676 impairment of a provider, for purposes of s. 631.051, is defined
1677 according to the term "impaired" under s. 651.011. The office
1678 may forego taking action for up to 180 days after the impairment
1679 if the office finds there is a reasonable expectation that the
1680 impairment may be eliminated within the 180-day period.

1681 (3) There is no liability on the part of, and a cause of
1682 action may not arise against, the commission, department, or

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1683 office, or their employees or agents, for any action they take
1684 in the performance of their powers and duties under this
1685 section.

1686 (4) The office shall transmit any notice that may result in
1687 regulatory action by registered mail, certified mail, or any
1688 other method of transmission which includes documentation of
1689 receipt by the provider. Notice is effective when the provider
1690 receives it.

1691 (5) This section is supplemental to the other laws of this
1692 state and does not preclude or limit any power or duty of the
1693 department or office under those laws or under the rules adopted
1694 pursuant to those laws.

1695 (6) The office may exempt a provider from subsection (1) or
1696 subsection (2) until stabilized occupancy is reached or until
1697 the time projected to achieve stabilized occupancy as reported
1698 in the last feasibility study required by the office as part of
1699 an application filing under s. 651.023, s. 651.024, s. 651.0245,
1700 or s. 651.0246 has elapsed, but for no longer than 5 years from
1701 the date of issuance of the certificate of occupancy.

1702 (7) The commission may adopt rules to administer this
1703 section, including, but not limited to, rules regarding
1704 corrective action plans, revised corrective action plans,
1705 corrective orders, and procedures to be followed in the event of
1706 a regulatory action level event or an impairment.

1707 Section 17. Paragraphs (a), (b), and (c) of subsection (1)
1708 of section 651.035, Florida Statutes, are amended, and
1709 subsections (7) through (10) are added to that section, to read:

1710 651.035 Minimum liquid reserve requirements.—

1711 (1) A provider shall maintain in escrow a minimum liquid

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1712 reserve consisting of the following reserves, as applicable:

1713 (a) Each provider shall maintain in escrow as a debt
1714 service reserve the aggregate amount of all principal and
1715 interest payments due during the fiscal year on any mortgage
1716 loan or other long-term financing of the facility, including
1717 property taxes as recorded in the audited financial report
1718 ~~statements~~ required under s. 651.026. The amount must include
1719 any leasehold payments and all costs related to such payments.
1720 If principal payments are not due during the fiscal year, the
1721 provider must ~~shall~~ maintain in escrow as a minimum liquid
1722 reserve an amount equal to interest payments due during the next
1723 12 months on any mortgage loan or other long-term financing of
1724 the facility, including property taxes. If a provider does not
1725 have a mortgage loan or other financing on the facility, the
1726 provider must deposit monthly in escrow as a minimum liquid
1727 reserve an amount equal to one-twelfth of the annual property
1728 tax liability as indicated in the most recent tax notice
1729 provided pursuant to s. 197.322(3).

1730 (b) A provider that has outstanding indebtedness that
1731 requires a debt service reserve to be held in escrow pursuant to
1732 a trust indenture or mortgage lien on the facility and for which
1733 the debt service reserve may only be used to pay principal and
1734 interest payments on the debt that the debtor is obligated to
1735 pay, and which may include property taxes and insurance, may
1736 include such debt service reserve in computing the minimum
1737 liquid reserve needed to satisfy this subsection if the provider
1738 furnishes to the office a copy of the agreement under which such
1739 debt service is held, together with a statement of the amount
1740 being held in escrow for the debt service reserve, certified by

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1741 the lender or trustee and the provider to be correct. The
1742 trustee shall provide the office with any information concerning
1743 the debt service reserve account upon request of the provider or
1744 the office. Such separate debt service reserves, if any, are not
1745 subject to the transfer provisions set forth in subsection (8).

1746 (c) Each provider shall maintain in escrow an operating
1747 reserve equal to 30 percent of the total operating expenses
1748 projected in the feasibility study required by s. 651.023 for
1749 the first 12 months of operation. Thereafter, each provider
1750 shall maintain in escrow an operating reserve equal to 15
1751 percent of the total operating expenses in the annual report
1752 filed pursuant to s. 651.026. If a provider has been in
1753 operation for more than 12 months, the total annual operating
1754 expenses must ~~shall~~ be determined by averaging the total annual
1755 operating expenses reported to the office by the number of
1756 annual reports filed with the office within the preceding 3-year
1757 period subject to adjustment if there is a change in the number
1758 of facilities owned. For purposes of this subsection, total
1759 annual operating expenses include all expenses of the facility
1760 except+ depreciation and amortization; interest and property
1761 taxes included in paragraph (a); extraordinary expenses that are
1762 adequately explained and documented in accordance with generally
1763 accepted accounting principles; liability insurance premiums in
1764 excess of those paid in calendar year 1999; and changes in the
1765 obligation to provide future services to current residents. For
1766 providers initially licensed during or after calendar year 1999,
1767 liability insurance must ~~shall~~ be included in the total
1768 operating expenses in an amount not to exceed the premium paid
1769 during the first 12 months of facility operation. ~~Beginning~~

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1770 ~~January 1, 1993,~~ The operating reserves required under this
1771 subsection must ~~shall~~ be in an unencumbered account held in
1772 escrow for the benefit of the residents. Such funds may not be
1773 encumbered or subject to any liens or charges by the escrow
1774 agent or judgments, garnishments, or creditors' claims against
1775 the provider or facility. However, if a facility had a lien,
1776 mortgage, trust indenture, or similar debt instrument in place
1777 before January 1, 1993, which encumbered all or any part of the
1778 reserves required by this subsection and such funds were used to
1779 meet the requirements of this subsection, then such arrangement
1780 may be continued, unless a refinancing or acquisition has
1781 occurred, and the provider is ~~shall be~~ in compliance with this
1782 subsection.

1783 (7) (a) A provider may withdraw funds held in escrow without
1784 the approval of the office if the amount held in escrow exceeds
1785 the requirements of this section and if the withdrawal will not
1786 affect compliance with this section.

1787 (b)1. For all other proposed withdrawals, in order to
1788 receive the consent of the office, the provider must file
1789 documentation showing why the withdrawal is necessary for the
1790 continued operation of the facility and such additional
1791 information as the office reasonably requires.

1792 2. The office shall notify the provider when the filing is
1793 deemed complete. If the provider has complied with all prior
1794 requests for information, the filing is deemed complete after 30
1795 days without communication from the office.

1796 3. Within 30 days after the date a file is deemed complete,
1797 the office shall provide the provider with written notice of its
1798 approval or disapproval of the request. The office may

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1799 disapprove any request to withdraw such funds if it determines
1800 that the withdrawal is not in the best interest of the
1801 residents.

1802 (8) The office may order the immediate transfer of up to
1803 100 percent of the funds held in the minimum liquid reserve to
1804 the custody of the department pursuant to part III of chapter
1805 625 if the office finds that the provider is impaired or
1806 insolvent. The office may order such a transfer regardless of
1807 whether the office has suspended or revoked, or intends to
1808 suspend or revoke, the certificate of authority of the provider.

1809 (9) Each facility shall file with the office annually,
1810 together with the annual report required by s. 651.026, a
1811 calculation of its minimum liquid reserve, determined in
1812 accordance with this section, on a form prescribed by the
1813 commission. The minimum liquid reserve must be maintained at the
1814 calculated level within 60 days after filing the annual report.

1815 (10) If the balance of the minimum liquid reserve is below
1816 the required amount at the end of any month, the provider must
1817 fund the shortfall in the reserve within 10 business days after
1818 the beginning of the following month. If the balance of the
1819 minimum liquid reserve is not restored to the required amount
1820 within such time, the provider will be deemed out of compliance
1821 with this section.

1822 Section 18. Section 651.043, Florida Statutes, is created
1823 to read:

1824 651.043 Approval of change in management.-

1825 (1) As used in this section, the term "management" means:

1826 (a) A manager or management company; or

1827 (b) A person who exercises or who has the ability to

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1828 exercise effective control of the provider or organization, or
1829 who influences or has the ability to influence the transaction
1830 of the business of the provider.

1831 (2) A contract for management entered into after July 1,
1832 2018, must be in writing and include a provision that the
1833 contract will be canceled upon issuance of an order by the
1834 office pursuant to this section without the application of any
1835 cancellation fee or penalty. If a provider contracts with a
1836 management company, a separate written contract is not required
1837 for the individual manager employed by the management company to
1838 oversee a facility.

1839 (3) A provider must notify the office, in writing or
1840 electronically, of any change in management within 10 business
1841 days. For each new management appointment, the provider must
1842 submit the information required by s. 651.022(2) and a copy of
1843 the written management contract, if applicable.

1844 (4) For a provider that is deemed to be impaired or that
1845 has a regulatory action level event pending, the office may
1846 disapprove new management and order the provider to remove the
1847 new management after reviewing the information required in
1848 subsection (3).

1849 (5) For a provider other than that specified in subsection
1850 (4), the office may disapprove new management and order the
1851 provider to remove the new management after receiving the
1852 required information in subsection (3) if the office:

1853 (a) Finds that the new management is incompetent or
1854 untrustworthy;

1855 (b) Finds that the new management is so lacking in relevant
1856 managerial experience as to make the proposed operation

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1857 hazardous to the residents or potential residents;

1858 (c) Finds that the new management is so lacking in relevant
1859 experience, ability, and standing as to jeopardize the
1860 reasonable promise of successful operation; or

1861 (d) Has good reason to believe that the new management is
1862 affiliated directly or indirectly through ownership, control, or
1863 business relations with any person or persons whose business
1864 operations are or have been marked by manipulation of assets or
1865 accounts or by bad faith, to the detriment of residents,
1866 stockholders, investors, creditors, or the public.

1867
1868 The office shall complete its review as required under
1869 subsections (4) and (5) and, if applicable, issue notice of
1870 disapproval of the new management within 15 business days after
1871 the filing is deemed complete. A filing is deemed complete upon
1872 the office's receipt of all requested information and the
1873 provider's correction of any error or omission for which the
1874 provider was timely notified. If the office does not issue
1875 notice of disapproval of the new management within 15 business
1876 days after the filing is deemed complete, then the new
1877 management is deemed approved.

1878 (6) Management disapproved by the office must be removed
1879 within 30 days after receipt by the provider of notice of such
1880 disapproval.

1881 (7) The office may revoke, suspend, or take other
1882 administrative action against the certificate of authority of
1883 the provider if the provider:

1884 (a) Fails to timely remove management disapproved by the
1885 office;

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1886 (b) Fails to timely notify the office of a change in
1887 management;

1888 (c) Appoints new management without a written contract; or

1889 (d) Repeatedly appoints management that was previously
1890 disapproved by the office or that is not approvable pursuant to
1891 subsection (5).

1892 (8) The provider shall remove any management immediately
1893 upon discovery of any of the following conditions, if the
1894 conditions were not disclosed in the notice to the office
1895 required in subsection (3):

1896 (a) That any person who exercises or has the ability to
1897 exercise effective control of the provider, or who influences or
1898 has the ability to influence the transaction of the business of
1899 the provider, has been found guilty of, or has pled guilty or no
1900 contest to, any felony or crime punishable by imprisonment of 1
1901 year or more under the laws of the United States or any state
1902 thereof or under the laws of any other country which involves
1903 moral turpitude, without regard to whether a judgment or
1904 conviction has been entered by the court having jurisdiction in
1905 such case.

1906 (b) That any person who exercises or has the ability to
1907 exercise effective control of the organization, or who
1908 influences or has the ability to influence the transaction of
1909 the business of the provider, is now or was in the past
1910 affiliated, directly or indirectly, through ownership interest
1911 of 10 percent or more in, or control of, any business,
1912 corporation, or other entity that has been found guilty of or
1913 has pled guilty or no contest to any felony or crime punishable
1914 by imprisonment for 1 year or more under the laws of the United

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1915 States, any state, or any other country, regardless of
1916 adjudication.

1917
1918 The failure to remove such management is grounds for revocation
1919 or suspension of the provider's certificate of authority.

1920 Section 19. Section 651.051, Florida Statutes, is amended
1921 to read:

1922 651.051 Maintenance of assets and records in state.—All
1923 records and assets of a provider must be maintained in this
1924 state, or, if the provider's corporate office is located in
1925 another state, must be electronically stored in a manner that
1926 will ensure that the records are readily accessible to the
1927 office. No records or assets may be removed from this state by a
1928 provider unless the office consents to such removal in writing
1929 before such removal. Such consent must ~~shall~~ be based upon the
1930 provider's submitting satisfactory evidence that the removal
1931 will facilitate and make more economical the operations of the
1932 provider and will not diminish the service or protection
1933 thereafter to be given the provider's residents in this state.
1934 Before ~~Prior to~~ such removal, the provider shall give notice to
1935 the president or chair of the facility's residents' council. If
1936 such removal is part of a cash management system which has been
1937 approved by the office, disclosure of the system must ~~shall~~ meet
1938 the notification requirements. The electronic storage of records
1939 on a web-based, secured storage platform by contract with a
1940 third party is acceptable if the records are readily accessible
1941 to the office.

1942 Section 20. Subsection (2) of section 651.057, Florida
1943 Statutes, is amended to read:

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1944 651.057 Continuing care at-home contracts.—

1945 (2) A provider that holds a certificate of authority and

1946 wishes to offer continuing care at-home must also:

1947 (a) Submit a business plan to the office with the following

1948 information:

1949 1. A description of the continuing care at-home services

1950 that will be provided, the market to be served, and the fees to

1951 be charged;

1952 2. A copy of the proposed continuing care at-home contract;

1953 3. An actuarial study prepared by an independent actuary in

1954 accordance with the standards adopted by the American Academy of

1955 Actuaries which presents the impact of providing continuing care

1956 at-home on the overall operation of the facility; and

1957 4. A market feasibility study that meets the requirements

1958 of s. 651.022(4) ~~s. 651.022(3)~~ and documents that there is

1959 sufficient interest in continuing care at-home contracts to

1960 support such a program;

1961 (b) Demonstrate to the office that the proposal to offer

1962 continuing care at-home contracts to individuals who do not

1963 immediately move into the facility will not place the provider

1964 in an unsound financial condition;

1965 (c) Comply with the requirements of s. 651.0246(1) ~~s.~~

1966 ~~651.021(2)~~, except that an actuarial study may be substituted

1967 for the feasibility study; and

1968 (d) Comply with the requirements of this chapter.

1969 Section 21. Subsection (1) of section 651.071, Florida

1970 Statutes, is amended to read:

1971 651.071 Contracts as preferred claims on liquidation or

1972 receivership.—

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1973 (1) In the event of receivership or liquidation proceedings
 1974 against a provider, all continuing care and continuing care at-
 1975 home contracts executed by a provider are ~~shall be~~ deemed
 1976 preferred claims or policyholder loss preferred claims pursuant
 1977 to s. 631.271(1)(b) against all assets owned by the provider;
 1978 however, such claims are subordinate to any secured claim.

1979 Section 22. Subsection (2) and present paragraph (g) of
 1980 subsection (3) of section 651.091, Florida Statutes, are
 1981 amended, present paragraphs (h) and (i) of subsection (3) of
 1982 that section are redesignated as paragraphs (g) and (h),
 1983 respectively, a new paragraph (i) and paragraphs (j), (k), and
 1984 (l) are added to that subsection, and paragraph (d) of
 1985 subsection (3) and subsection (4) of that section are
 1986 republished, to read:

1987 651.091 Availability, distribution, and posting of reports
 1988 and records; requirement of full disclosure.—

1989 (2) Every continuing care facility shall:

1990 (a) Display the certificate of authority in a conspicuous
 1991 place inside the facility.

1992 (b) Post in a prominent position in the facility which is
 1993 accessible to all residents and the general public a concise
 1994 summary of the last examination report issued by the office,
 1995 with references to the page numbers of the full report noting
 1996 any deficiencies found by the office, and the actions taken by
 1997 the provider to rectify such deficiencies, indicating in such
 1998 summary where the full report may be inspected in the facility.

1999 (c) Provide notice to the president or chair of the
 2000 residents' council within 10 business days after issuance of a
 2001 final examination report or the initiation of any legal or

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2002 administrative proceeding by the office or the department and
2003 include a copy of such document.

2004 (d)~~(e)~~ Post in a prominent position in the facility which
2005 is accessible to all residents and the general public a summary
2006 of the latest annual statement, indicating in the summary where
2007 the full annual statement may be inspected in the facility. A
2008 listing of any proposed changes in policies, programs, and
2009 services must also be posted.

2010 (e)~~(d)~~ Distribute a copy of the full annual statement and a
2011 copy of the most recent third-party ~~third-party~~ financial audit
2012 filed with the annual report to the president or chair of the
2013 residents' council within 30 days after filing the annual report
2014 with the office, and designate a staff person to provide
2015 explanation thereof.

2016 (f)~~(e)~~ Deliver the information described in s. 651.085(4)
2017 in writing to the president or chair of the residents' council
2018 and make supporting documentation available upon request ~~Notify~~
2019 ~~the residents' council of any plans filed with the office to~~
2020 ~~obtain new financing, additional financing, or refinancing for~~
2021 ~~the facility and of any applications to the office for any~~
2022 ~~expansion of the facility.~~

2023 (g)~~(f)~~ Deliver to the president or chair of the residents'
2024 council a summary of entrance fees collected and refunds made
2025 during the time period covered in the annual report and the
2026 refund balances due at the end of the report period.

2027 (h)~~(g)~~ Deliver to the president or chair of the residents'
2028 council a copy of each quarterly statement within 30 days after
2029 the quarterly statement is filed with the office if the facility
2030 is required to file quarterly.

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2031 ~~(i)-(h)~~ Upon request, deliver to the president or chair of
2032 the residents' council a copy of any newly approved continuing
2033 care or continuing care at-home contract within 30 days after
2034 approval by the office.

2035 (j) Provide to the president or chair of the residents'
2036 council a copy of any notice filed with the office relating to
2037 any change in ownership within 10 business days after such
2038 filing by the provider.

2039 (k) Make the information available to prospective residents
2040 pursuant to paragraph (3) (d) available to current residents and
2041 provide notice of changes to that information to the president
2042 or chair of the residents' council within 3 business days.

2043 (3) Before entering into a contract to furnish continuing
2044 care or continuing care at-home, the provider undertaking to
2045 furnish the care, or the agent of the provider, shall make full
2046 disclosure, and provide copies of the disclosure documents to
2047 the prospective resident or his or her legal representative, of
2048 the following information:

2049 (d) In keeping with the intent of this subsection relating
2050 to disclosure, the provider shall make available for review
2051 master plans approved by the provider's governing board and any
2052 plans for expansion or phased development, to the extent that
2053 the availability of such plans does not put at risk real estate,
2054 financing, acquisition, negotiations, or other implementation of
2055 operational plans and thus jeopardize the success of
2056 negotiations, operations, and development.

2057 ~~(g) The amount and location of any reserve funds required~~
2058 ~~by this chapter, and the name of the person or entity having a~~
2059 ~~claim to such funds in the event of a bankruptcy, foreclosure,~~

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2060 ~~or rehabilitation proceeding.~~

2061 (i) Notice of the issuance of a final examination report or
2062 the initiation of any legal or administrative proceeding by the
2063 office or the department, including where the report or filing
2064 may be inspected in the facility, and that upon request, an
2065 electronic copy or specific website address will be provided
2066 where the document can be downloaded at no cost.

2067 (j) Notice that the entrance fee is the property of the
2068 provider after the expiration of the 7-day escrow requirement
2069 under s. 651.055(2).

2070 (k) If the provider operates multiple facilities, a
2071 disclosure of any distribution of assets or income between
2072 facilities that may occur and the manner in which such
2073 distributions would be made, or a statement that such
2074 distributions will not occur.

2075 (l) Notice of any holding company system or obligated group
2076 of which the provider is a member.

2077 (4) A true and complete copy of the full disclosure
2078 document to be used must be filed with the office before use. A
2079 resident or prospective resident or his or her legal
2080 representative may inspect the full reports referred to in
2081 paragraph (2) (b); the charter or other agreement or instrument
2082 required to be filed with the office pursuant to s. 651.022(2),
2083 together with all amendments thereto; and the bylaws of the
2084 corporation or association, if any. Upon request, copies of the
2085 reports and information shall be provided to the individual
2086 requesting them if the individual agrees to pay a reasonable
2087 charge to cover copying costs.

2088 Section 23. Subsections (1) and (5) of section 651.105,

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2089 Florida Statutes, are amended, and subsections (7) and (8) are
2090 added to that section, to read:

2091 651.105 Examination and inspections.—

2092 (1) The office may at any time, and shall at least once
2093 every 3 years, examine the business of any applicant for a
2094 certificate of authority and any provider engaged in the
2095 execution of care contracts or engaged in the performance of
2096 obligations under such contracts, in the same manner as is
2097 provided for the examination of insurance companies pursuant to
2098 ss. 624.316 and 624.318 ~~s. 624.316~~. For a provider as described
2099 ~~defined~~ in s. 651.028, such examinations must ~~shall~~ take place
2100 at least once every 5 years. Such examinations must ~~shall~~ be
2101 made by a representative or examiner designated by the office
2102 whose compensation will be fixed by the office pursuant to s.
2103 624.320. Routine examinations may be made by having the
2104 necessary documents submitted to the office; and, for this
2105 purpose, financial documents and records conforming to commonly
2106 accepted accounting principles and practices, as required under
2107 s. 651.026, are deemed adequate. The final written report of
2108 each examination must be filed with the office and, when so
2109 filed, constitutes a public record. Any provider being examined
2110 shall, upon request, give reasonable and timely access to all of
2111 its records. The representative or examiner designated by the
2112 office may at any time examine the records and affairs and
2113 inspect the physical property of any provider, whether in
2114 connection with a formal examination or not.

2115 (5) A provider must respond to written correspondence from
2116 the office and provide data, financial statements, and pertinent
2117 information as requested by the office or by the office's

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2118 investigators, examiners, or inspectors. The office has standing
2119 to petition a circuit court for mandatory injunctive relief to
2120 compel access to and require the provider to produce the
2121 documents, data, records, and other information requested by the
2122 office or its investigators, examiners, or inspectors. The
2123 office may petition the circuit court in the county in which the
2124 facility is situated or the Circuit Court of Leon County to
2125 enforce this section ~~At the time of the routine examination, the~~
2126 ~~office shall determine if all disclosures required under this~~
2127 ~~chapter have been made to the president or chair of the~~
2128 ~~residents' council and the executive officer of the governing~~
2129 ~~body of the provider.~~

2130 (7) Unless a provider or facility is impaired or subject to
2131 a regulatory action level event, any parent, subsidiary, or
2132 affiliate is not subject to examination by the office as part of
2133 a routine examination. However, if a provider or facility relies
2134 on a contractual or financial relationship with a parent,
2135 subsidiary, or affiliate in order to demonstrate the provider or
2136 facility's financial condition is in compliance with this
2137 chapter, the office may examine any parent, subsidiary, or
2138 affiliate that has a contractual or financial relationship with
2139 the provider or facility to the extent necessary to ascertain
2140 the financial condition of the provider.

2141 (8) If a provider voluntarily contracts with an actuary for
2142 an actuarial study or review at regular intervals, the office
2143 may not use any recommendations made by the actuary as a measure
2144 of performance when conducting an examination or inspection. The
2145 office may not request, as part of the examination or
2146 inspection, documents associated with an actuarial study or

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2147 review marked "restricted distribution" if the study or review
2148 is not required by this chapter.

2149 Section 24. Section 651.106, Florida Statutes, is amended
2150 to read:

2151 651.106 Grounds for discretionary refusal, suspension, or
2152 revocation of certificate of authority.—The office may deny an
2153 application or ~~suspend~~ or revoke the provisional certificate
2154 of authority or the certificate of authority of any applicant or
2155 provider if it finds that any one or more of the following
2156 grounds applicable to the applicant or provider exist:

2157 (1) Failure by the provider to continue to meet the
2158 requirements for the authority originally granted.

2159 (2) Failure by the provider to meet one or more of the
2160 qualifications for the authority specified by this chapter.

2161 (3) Material misstatement, misrepresentation, or fraud in
2162 obtaining the authority, or in attempting to obtain the same.

2163 (4) Demonstrated lack of fitness or trustworthiness.

2164 (5) Fraudulent or dishonest practices of management in the
2165 conduct of business.

2166 (6) Misappropriation, conversion, or withholding of moneys.

2167 (7) Failure to comply with, or violation of, any proper
2168 order or rule of the office or commission or violation of any
2169 provision of this chapter.

2170 (8) The insolvent or impaired condition of the provider or
2171 the provider's being in such condition or using such methods and
2172 practices in the conduct of its business as to render its
2173 further transactions in this state hazardous or injurious to the
2174 public.

2175 (9) Refusal by the provider to be examined or to produce

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2176 its accounts, records, and files for examination, or refusal by
2177 any of its officers to give information with respect to its
2178 affairs or to perform any other legal obligation under this
2179 chapter when required by the office.

2180 (10) Failure by the provider to comply with the
2181 requirements of s. 651.026 or s. 651.033.

2182 (11) Failure by the provider to maintain escrow accounts or
2183 funds as required by this chapter.

2184 (12) Failure by the provider to meet the requirements of
2185 this chapter for disclosure of information to residents
2186 concerning the facility, its ownership, its management, its
2187 development, or its financial condition or failure to honor its
2188 continuing care or continuing care at-home contracts.

2189 (13) Any cause for which issuance of the license could have
2190 been refused had it then existed and been known to the office.

2191 (14) Having been found guilty of, or having pleaded guilty
2192 or nolo contendere to, a felony in this state or any other
2193 state, without regard to whether a judgment or conviction has
2194 been entered by the court having jurisdiction of such cases.

2195 (15) In the conduct of business under the license, engaging
2196 in unfair methods of competition or in unfair or deceptive acts
2197 or practices prohibited under part IX of chapter 626.

2198 (16) A pattern of bankrupt enterprises.

2199 (17) The ownership, control, or management of the
2200 organization includes any person:

2201 (a) Who is not reputable and of responsible character;

2202 (b) Who is so lacking in management expertise as to make
2203 the operation of the provider hazardous to potential and
2204 existing residents;

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2205 (c) Who is so lacking in management experience, ability,
2206 and standing as to jeopardize the reasonable promise of
2207 successful operation;

2208 (d) Who is affiliated, directly or indirectly, through
2209 ownership or control, with any person whose business operations
2210 are or have been marked by business practices or conduct that is
2211 detrimental to the public, stockholders, investors, or
2212 creditors; or

2213 (e) Whose business operations are or have been marked by
2214 business practices or conduct that is detrimental to the public,
2215 stockholders, investors, or creditors.

2216 (18) The provider has not filed a notice of change in
2217 management, fails to remove a disapproved manager, or persists
2218 in appointing disapproved managers.

2219

2220 Revocation of a certificate of authority under this section does
2221 not relieve a provider from the provider's obligation to
2222 residents under the terms and conditions of any continuing care
2223 or continuing care at-home contract between the provider and
2224 residents or the provisions of this chapter. The provider shall
2225 continue to file its annual statement and pay license fees to
2226 the office as required under this chapter as if the certificate
2227 of authority had continued in full force, but the provider shall
2228 not issue any new contracts. The office may seek an action in
2229 the Circuit Court of Leon County to enforce the office's order
2230 and the provisions of this section.

2231 Section 25. Section 651.1065, Florida Statutes, is created
2232 to read:

2233 651.1065 Soliciting or accepting new continuing care

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2234 contracts by impaired or insolvent facilities or providers.-

2235 (1) Regardless of whether delinquency proceedings as to a
2236 continuing care retirement community have been or are to be
2237 initiated, a proprietor, general partner, member, officer,
2238 director, trustee, or manager of a continuing care retirement
2239 community may not actively solicit, approve the solicitation or
2240 acceptance of, or accept new continuing care contracts in this
2241 state after the proprietor, general partner, member, officer,
2242 director, trustee, or manager knew, or reasonably should have
2243 known, that the continuing care retirement community was
2244 impaired or insolvent, except with the written permission of the
2245 office, unless the facility has declared bankruptcy, in which
2246 case the bankruptcy court or trustee appointed by the court has
2247 jurisdiction over such matters. The office must approve or
2248 disapprove the continued marketing of new contracts within 15
2249 days after receiving a request from a provider.

2250 (2) A proprietor, general partner, member, officer,
2251 director, trustee, or manager who violates this section commits
2252 a felony of the third degree, punishable as provided in s.
2253 775.082, s. 775.083, or s. 775.084.

2254 Section 26. Section 651.111, Florida Statutes, is amended
2255 to read:

2256 651.111 Requests for inspections.-

2257 (1) Any interested party may request an inspection of the
2258 records and related financial affairs of a provider providing
2259 care in accordance with ~~the provisions of~~ this chapter by
2260 transmitting to the office notice of an alleged violation of
2261 applicable requirements prescribed by statute or by rule,
2262 specifying to a reasonable extent the details of the alleged

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2263 violation, which notice must ~~shall~~ be signed by the complainant.

2264 (2) The substance of the complaint must ~~shall~~ be given to
2265 the provider no earlier than the time of the inspection. Unless
2266 the complainant specifically requests otherwise, neither the
2267 substance of the complaint which is provided to the provider nor
2268 any copy of the complaint, closure statement, or any record
2269 which is published, released, or otherwise made available to the
2270 provider may ~~shall~~ disclose the name of any person mentioned in
2271 the complaint except the name of any duly authorized officer,
2272 employee, or agent of the office conducting the investigation or
2273 inspection pursuant to this chapter.

2274 (3) Upon receipt of a complaint, the office shall make a
2275 preliminary review; and, unless the office determines that the
2276 complaint is without any reasonable basis or the complaint does
2277 not request an inspection, the office shall make an inspection.
2278 The office shall provide the complainant with a written
2279 acknowledgment of the complaint within 15 days after receipt by
2280 the office. Such acknowledgment must include the case number
2281 assigned by the office to the complaint and the name and contact
2282 information of any duly authorized officer, employee, or agent
2283 of the office conducting the investigation or inspection
2284 pursuant to this chapter. The complainant must ~~shall~~ be advised,
2285 within 30 days after the receipt of the complaint by the office,
2286 of the proposed course of action of the office, including an
2287 estimated timeframe for the handling of the complaint. If the
2288 office does not conclude its inspection or investigation within
2289 the office's estimated timeframe, the office must advise the
2290 complainant in writing within 15 days after any revised course
2291 of action, including a revised estimated timeframe for the

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2292 handling of the complaint. Within 15 days after the office
2293 completes its inspection or concludes its investigation, the
2294 office shall provide the complainant and the provider a written
2295 closure statement specifying the office's findings and the
2296 results of any inspection or investigation.

2297 (4) A ~~No~~ provider operating under a certificate of
2298 authority under this chapter may not discriminate or retaliate
2299 in any manner against a resident or an employee of a facility
2300 providing care because such resident or employee or any other
2301 person has initiated a complaint pursuant to this section.

2302 Section 27. Section 651.114, Florida Statutes, is amended
2303 to read:

2304 651.114 Delinquency proceedings; remedial rights.—

2305 (1) Upon determination by the office that a provider is not
2306 in compliance with this chapter, the office may notify the chair
2307 of the Continuing Care Advisory Council, who may assist the
2308 office in formulating a corrective action plan.

2309 (2) Within 30 days after a request by either the advisory
2310 council or the office, a provider shall make a plan for
2311 obtaining compliance or solvency available to the advisory
2312 council and the office, ~~within 30 days after being requested to~~
2313 ~~do so by the council, a plan for obtaining compliance or~~
2314 ~~solvency.~~

2315 (3) Within 30 days after receipt of a plan for obtaining
2316 compliance or solvency, the office, or notification, the
2317 advisory council at the request of the office, shall:

2318 (a) Consider and evaluate the plan submitted by the
2319 provider.

2320 (b) Discuss the problem and solutions with the provider.

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2321 (c) Conduct such other business as is necessary.

2322 (d) Report its findings and recommendations to the office,
2323 which may require additional modification of the plan.

2324

2325 This subsection may not be interpreted so as to delay or prevent
2326 the office from taking any regulatory measures it deems
2327 necessary regarding the provider that submitted the plan.

2328 (4) If the financial condition of a continuing care
2329 facility or provider is impaired or is such that if not modified
2330 or corrected, its continued operation would result in
2331 insolvency, the office may direct the provider to formulate and
2332 file with the office a corrective action plan. If the provider
2333 fails to submit a plan within 30 days after the office's
2334 directive, or submits a plan that is insufficient to correct the
2335 condition, the office may specify a plan and direct the provider
2336 to implement the plan. Before specifying a plan, the office may
2337 seek a recommended plan from the advisory council.

2338 (5)~~(4)~~ After receiving approval of a plan by the office,
2339 the provider shall submit a progress report monthly to the
2340 advisory council or the office, or both, in a manner prescribed
2341 by the office. After 3 months, or at any earlier time deemed
2342 necessary, the council shall evaluate the progress by the
2343 provider and shall advise the office of its findings.

2344 (6)~~(5)~~ ~~If Should~~ the office finds find that sufficient
2345 grounds exist for rehabilitation, liquidation, conservation,
2346 reorganization, seizure, or summary proceedings of an insurer as
2347 set forth in ss. 631.051, 631.061, and 631.071, the department
2348 ~~office~~ may petition for an appropriate court order or may pursue
2349 such other relief as is afforded in part I of chapter 631.

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2350 Before invoking its powers under part I of chapter 631, the
2351 department office shall notify the chair of the advisory
2352 council.

2353 (7) Notwithstanding s. 631.011, impairment of a provider,
2354 for purposes of s. 631.051, is defined according to the term
2355 "impaired" in s. 651.011.

2356 (8)~~(6)~~ In the event an order of conservation,
2357 rehabilitation, liquidation, or ~~conservation, reorganization,~~
2358 seizure, ~~or summary proceeding~~ has been entered against a
2359 provider, the department and office are vested with all of the
2360 powers and duties they have under ~~the provisions of~~ part I of
2361 chapter 631 in regard to delinquency proceedings of insurance
2362 companies. A provider shall give written notice of the
2363 proceeding to its residents within 3 business days after the
2364 initiation of a delinquency proceeding under chapter 631 and
2365 shall include a notice of the delinquency proceeding in any
2366 written materials provided to prospective residents.

2367 ~~(7) If the financial condition of the continuing care~~
2368 ~~facility or provider is such that, if not modified or corrected,~~
2369 ~~its continued operation would result in insolvency, the office~~
2370 ~~may direct the provider to formulate and file with the office a~~
2371 ~~corrective action plan. If the provider fails to submit a plan~~
2372 ~~within 30 days after the office's directive or submits a plan~~
2373 ~~that is insufficient to correct the condition, the office may~~
2374 ~~specify a plan and direct the provider to implement the plan.~~

2375 (9) A provider subject to an order to show cause entered
2376 pursuant to chapter 631 must file its written response to the
2377 order, together with any defenses it may have to the
2378 department's allegations, no later than 20 days after service of

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2379 the order to show cause, but no less than 15 days before the
2380 date of the hearing set by the order to show cause.

2381 (10) A hearing held pursuant to chapter 631 to determine
2382 whether cause exists for the department to be appointed receiver
2383 must be commenced within 60 days after an order directing a
2384 provider to show cause.

2385 (11) (a) ~~(8) (a)~~ The rights of the office described in this
2386 section are subordinate to the rights of a trustee or lender
2387 pursuant to the terms of a resolution, ordinance, loan
2388 agreement, indenture of trust, mortgage, lease, security
2389 agreement, or other instrument creating or securing bonds or
2390 notes issued to finance a facility, and the office, subject to
2391 the provisions of paragraph (c), may ~~shall~~ not exercise its
2392 remedial rights provided under this section and ss. 651.018,
2393 651.106, 651.108, and 651.116 with respect to a facility that is
2394 not in default of any financial or contractual obligation other
2395 than ~~subject to~~ a lien, mortgage, lease, or other encumbrance or
2396 trust indenture securing bonds or notes issued in connection
2397 with the financing of the facility, if the trustee or lender, by
2398 inclusion or by amendment to the loan documents or by a separate
2399 contract with the office, agrees that the rights of residents
2400 under a continuing care or continuing care at-home contract will
2401 be honored and will not be disturbed by a foreclosure or
2402 conveyance in lieu thereof as long as the resident:

2403 1. Is current in the payment of all monetary obligations
2404 required by the contract;

2405 2. Is in compliance and continues to comply with all
2406 provisions of the contract; and

2407 3. Has asserted no claim inconsistent with the rights of

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2408 the trustee or lender.

2409 (b) This subsection does not require a trustee or lender
2410 to:

2411 1. Continue to engage in the marketing or resale of new
2412 continuing care or continuing care at-home contracts;

2413 2. Pay any rebate of entrance fees as may be required by a
2414 resident's continuing care or continuing care at-home contract
2415 as of the date of acquisition of the facility by the trustee or
2416 lender and until expiration of the period described in paragraph
2417 (d);

2418 3. Be responsible for any act or omission of any owner or
2419 operator of the facility arising before the acquisition of the
2420 facility by the trustee or lender; or

2421 4. Provide services to the residents to the extent that the
2422 trustee or lender would be required to advance or expend funds
2423 that have not been designated or set aside for such purposes.

2424 (c) Should the office determine, at any time during the
2425 suspension of its remedial rights as provided in paragraph (a),
2426 that the trustee or lender is not in compliance with paragraph
2427 (a), or that a lender or trustee has assigned or has agreed to
2428 assign all or a portion of a delinquent or defaulted loan to a
2429 third party without the office's written consent, the office
2430 shall notify the trustee or lender in writing of its
2431 determination, setting forth the reasons giving rise to the
2432 determination and specifying those remedial rights afforded to
2433 the office which the office shall then reinstate.

2434 (d) Upon acquisition of a facility by a trustee or lender
2435 and evidence satisfactory to the office that the requirements of
2436 paragraph (a) have been met, the office shall issue a 90-day

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2437 temporary certificate of authority granting the trustee or
2438 lender the authority to engage in the business of providing
2439 continuing care or continuing care at-home and to issue
2440 continuing care or continuing care at-home contracts subject to
2441 the office's right to immediately suspend or revoke the
2442 temporary certificate of authority if the office determines that
2443 any of the grounds described in s. 651.106 apply to the trustee
2444 or lender or that the terms of the contract used as the basis
2445 for the issuance of the temporary certificate of authority by
2446 the office have not been or are not being met by the trustee or
2447 lender since the date of acquisition.

2448 Section 28. Section 651.1141, Florida Statutes, is created
2449 to read:

2450 651.1141 Immediate final orders.—The office may issue an
2451 immediate final order to cease and desist if the office finds
2452 that installation of a general partner of a provider or
2453 assumption of ownership or possession or control of 10 percent
2454 or more of a provider's assets in violation of s. 651.024 or s.
2455 651.0245, the removal or commitment of 10 percent or more of the
2456 required minimum liquid reserve funds in violation of s.
2457 651.035, or the assumption of control over a facility's
2458 operations in violation of s. 651.043 has occurred.

2459 Section 29. Paragraphs (d) and (e) of subsection (1) of
2460 section 651.121, Florida Statutes, are amended to read:

2461 651.121 Continuing Care Advisory Council.—

2462 (1) The Continuing Care Advisory Council to the office is
2463 created consisting of 10 members who are residents of this state
2464 appointed by the Governor and geographically representative of
2465 this state. Three members shall be administrators of facilities

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2466 that hold valid certificates of authority under this chapter and
2467 shall have been actively engaged in the offering of continuing
2468 care contracts in this state for 5 years before appointment. The
2469 remaining members include:

2470 ~~(d) An attorney.~~

2471 (d) ~~(e)~~ Four ~~Three~~ residents who hold continuing care or
2472 continuing care at-home contracts with a facility certified in
2473 this state.

2474 Section 30. Subsections (1) and (4) of section 651.125,
2475 Florida Statutes, are amended to read:

2476 651.125 Criminal penalties; injunctive relief.—

2477 (1) Any person who maintains, enters into, or, as manager
2478 or officer or in any other administrative capacity, assists in
2479 entering into, maintaining, or performing any continuing care or
2480 continuing care at-home contract subject to this chapter without
2481 ~~doing so in pursuance of~~ a valid provisional certificate of
2482 authority or certificate of authority or renewal thereof, as
2483 contemplated by or provided in this chapter, or who otherwise
2484 violates any provision of this chapter or rule adopted in
2485 pursuance of this chapter, commits a felony of the third degree,
2486 punishable as provided in s. 775.082 or s. 775.083. Each
2487 violation of this chapter constitutes a separate offense.

2488 (4) Any action brought by the office against a provider
2489 shall not abate by reason of a sale or other transfer of
2490 ownership of the facility used to provide care, which provider
2491 is a party to the action, except with the express written
2492 consent of the ~~director of the office~~.

2493 Section 31. This act shall take effect July 1, 2018.