

1 A bill to be entitled

2 An act relating to continuing care contracts; amending  
3 s. 651.011, F.S.; adding and revising definitions;  
4 amending s. 651.012, F.S.; conforming a cross-  
5 reference; deleting an obsolete date; amending s.  
6 651.013, F.S.; adding certain Florida Insurance Code  
7 provisions to the Office of Insurance Regulation's  
8 authority to regulate providers of continuing care and  
9 continuing care at-home; amending s. 651.019, F.S.;  
10 revising requirements for providers and facilities  
11 relating to financing and refinancing transactions;  
12 amending s. 651.021, F.S.; conforming provisions to  
13 changes made by the act; creating s. 651.0215, F.S.;  
14 specifying conditions, requirements, procedures, and  
15 prohibitions relating to consolidated applications for  
16 provisional certificates of authority and for  
17 certificates of authority and to the office's review  
18 of such applications; specifying conditions under  
19 which a provider is entitled to secure the release of  
20 certain escrowed funds; providing construction;  
21 amending s. 651.022, F.S.; revising and specifying  
22 requirements, procedures, and prohibitions relating to  
23 applications for provisional certificates of authority  
24 and to the office's review of such applications;  
25 amending s. 651.023, F.S.; revising and specifying

26 requirements, procedures, and prohibitions relating to  
27 applications for certificates of authority and to the  
28 office's review of such applications; conforming  
29 provisions to changes made by the act; amending s.  
30 651.024, F.S.; revising requirements for certain  
31 persons relating to provider acquisitions; specifying  
32 procedures for rebutting a presumption of control;  
33 providing standing to the office to petition a circuit  
34 court in certain proceedings; creating s. 651.0245,  
35 F.S.; specifying procedures, requirements, and a  
36 prohibition relating to an application for the  
37 simultaneous acquisition of a facility and issuance of  
38 a certificate of authority and to the office's review  
39 of such application; specifying rulemaking  
40 requirements and authority of the Financial Services  
41 Commission; providing standing to the office to  
42 petition a circuit court in certain proceedings;  
43 specifying procedures for rebutting a presumption of  
44 control; creating s. 651.0246, F.S.; specifying  
45 requirements, conditions, procedures, and prohibitions  
46 relating to provider applications to commence  
47 construction or marketing for expansions of  
48 certificated facilities and to the office's review of  
49 such applications; defining the term "existing units";  
50 specifying escrow requirements for certain moneys;

51 specifying conditions under which providers are  
52 entitled to secure release of such moneys; providing  
53 applicability and construction; amending s. 651.026,  
54 F.S.; revising requirements for annual reports filed  
55 by providers with the office; revising the  
56 commission's rulemaking authority; requiring the  
57 office to annually publish a specified industry  
58 benchmarking report; amending s. 651.0261, F.S.;  
59 requiring providers to file quarterly unaudited  
60 financial statements; authorizing the office to waive  
61 such requirement under certain circumstances;  
62 providing an exception for filing a certain quarterly  
63 statement; revising information that the office may  
64 require providers to file and the circumstances under  
65 which such information must be filed; revising the  
66 commission's rulemaking authority; amending s.  
67 651.028, F.S.; revising requirements that the office  
68 may waive under certain circumstances; revising the  
69 entities that may qualify for such waiver; requiring  
70 such entities to provide certain information to the  
71 office under certain circumstances; amending s.  
72 651.033, F.S.; revising applicability of escrow  
73 requirements; revising requirements for escrow  
74 accounts and agreements; revising the office's  
75 authority to allow a withdrawal of a specified

76 percentage of the required minimum liquid reserve;  
77 revising applicability of requirements relating to the  
78 deposit of certain funds in escrow accounts;  
79 prohibiting an escrow agent, except under certain  
80 circumstances, from releasing or allowing the transfer  
81 of funds; creating s. 651.034, F.S.; specifying  
82 requirements for the office if a regulatory action  
83 level event occurs; specifying requirements for  
84 corrective action plans; authorizing the office to use  
85 members of the Continuing Care Advisory Council and to  
86 retain consultants for certain purposes; requiring  
87 affected providers to bear the fees, costs, and  
88 expenses of such consultants; specifying requirements  
89 for, and authorized actions of, the office and the  
90 Department of Financial Services if an impairment  
91 occurs; providing construction; authorizing the office  
92 to exempt a provider from certain requirements for a  
93 certain timeframe; authorizing the commission to adopt  
94 rules; amending s. 651.035, F.S.; revising minimum  
95 liquid reserve requirements for providers; specifying  
96 requirements, limitations, and procedures for a  
97 provider's withdrawal of funds held in escrow and the  
98 office's review of certain requests for withdrawal;  
99 authorizing the office to order certain transfers  
100 under certain circumstances; requiring facilities to

101 annually file with the office a minimum liquid reserve  
102 calculation; providing construction; creating s.  
103 651.043, F.S.; specifying requirements for certain  
104 management company contracts; specifying requirements,  
105 procedures, and authorized actions relating to changes  
106 in provider management and to the office's review of  
107 such changes; requiring that disapproved management be  
108 removed within a certain timeframe; authorizing the  
109 office to take certain disciplinary actions under  
110 certain circumstances; requiring providers to  
111 immediately remove management under certain  
112 circumstances; amending s. 651.051, F.S.; revising  
113 requirements for the maintenance of provider records  
114 and assets; amending s. 651.055, F.S.; revising a  
115 required statement in continuing care contracts;  
116 amending s. 651.057, F.S.; conforming provisions to  
117 changes made by the act; amending s. 651.071, F.S.;  
118 specifying the priority of continuing care contracts  
119 and continuing care at-home contracts in receivership  
120 or liquidation proceedings against a provider;  
121 amending s. 651.091, F.S.; revising requirements for  
122 continuing care facilities relating to posting or  
123 providing notices; amending s. 651.095, F.S.; adding  
124 terms to a list of prohibited terms in certain  
125 advertisements; amending s. 651.105, F.S.; adding a

126 certain Florida Insurance Code provision to the  
127 office's authority to examine certain providers and  
128 applicants; requiring providers to respond to the  
129 office's written correspondence and to provide certain  
130 information; providing standing to the office to  
131 petition certain circuit courts for certain relief;  
132 revising, and specifying limitations on, the office's  
133 examination authority; amending s. 651.106, F.S.;  
134 authorizing the office to deny applications on  
135 specified grounds; adding and revising grounds for  
136 suspension or revocation of provisional certificates  
137 of authority and certificates of authority; creating  
138 s. 651.1065, F.S.; prohibiting certain actions by  
139 certain persons of an impaired or insolvent continuing  
140 care facility; providing that bankruptcy courts or  
141 trustees have jurisdiction over certain matters;  
142 requiring the office to approve or disapprove the  
143 continued marketing of new contracts within a certain  
144 timeframe; providing a criminal penalty; amending s.  
145 651.111, F.S.; defining the term "inspection";  
146 revising procedures and requirements relating to  
147 requests for inspections to the office; amending s.  
148 651.114, F.S.; revising and specifying requirements,  
149 procedures, and authorized actions relating to  
150 providers' corrective action plans; providing

151 construction; revising and specifying requirements and  
 152 procedures relating to delinquency proceedings against  
 153 a provider; revising circumstances under which the  
 154 office must provide a certain notice to trustees or  
 155 lenders; creating s. 651.1141, F.S.; authorizing the  
 156 office to issue certain immediate final orders under  
 157 certain circumstances; amending s. 651.121, F.S.;  
 158 revising the composition of the Continuing Care  
 159 Advisory Council; amending s. 651.125, F.S.; revising  
 160 a prohibition to include certain actions performed  
 161 without a valid provisional certificate of authority;  
 162 providing effective dates.

163

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

165

166 Section 1. Section 651.011, Florida Statutes, is amended  
 167 to read:

168 651.011 Definitions.—As used in this chapter, the term:

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

173 (2) "Actuarial study" means an analysis prepared for an  
 174 individual facility, or consolidated for multiple facilities,  
 175 for either a certified provider, as of a current valuation date

176 | or the most recent fiscal year, or for an applicant, as of a  
177 | projected future valuation date, which includes an actuary's  
178 | opinion as to whether such provider or applicant is in  
179 | satisfactory actuarial balance in accordance with Actuarial  
180 | Standards of Practice No. 3 for Continuing Care Retirement  
181 | Communities, Revised Edition, effective May 1, 2011.

182 | (3) "Actuary" means an individual who is qualified to sign  
183 | an actuarial opinion in accordance with the American Academy of  
184 | Actuaries' qualification standards and who is a member in good  
185 | standing of the American Academy of Actuaries.

186 | (4)~~(1)~~ "Advertising" means the dissemination of written,  
187 | visual, or electronic information by a provider, or any person  
188 | affiliated with or controlled by a provider, to potential  
189 | residents or their representatives for the purpose of inducing  
190 | such persons to subscribe to or enter into a contract for  
191 | continuing care or continuing care at-home.

192 | (5)~~(2)~~ "Continuing care" or "care" means, pursuant to a  
193 | contract, furnishing shelter and nursing care or personal  
194 | services to a resident who resides in a facility, whether such  
195 | nursing care or personal services are provided in the facility  
196 | or in another setting designated in the contract for continuing  
197 | care, by an individual not related by consanguinity or affinity  
198 | to the resident, upon payment of an entrance fee.

199 | (6)~~(3)~~ "Continuing Care Advisory Council" or "advisory  
200 | council" means the council established in s. 651.121.

201        (7)~~(4)~~ "Continuing care at-home" means, pursuant to a  
202 contract other than a contract described in subsection (5) ~~(2)~~,  
203 furnishing to a resident who resides outside the facility the  
204 right to future access to shelter and nursing care or personal  
205 services, whether such services are provided in the facility or  
206 in another setting designated in the contract, by an individual  
207 not related by consanguinity or affinity to the resident, upon  
208 payment of an entrance fee.

209        (8) "Controlling company" means any corporation, trust, or  
210 association that directly or indirectly owns 25 percent or more  
211 of:

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

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

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

219        (10) "Days cash on hand" means the quotient obtained by  
220 dividing the value of paragraph (a) by the value of paragraph  
221 (b).

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

225        (b) Operating expenses less depreciation, amortization,

226 and other noncash expenses and nonoperating losses for the 12  
227 month period included in an annual report filed pursuant to s.  
228 651.026, divided by 365.

229  
230 With prior written approval of the office, a demand note or  
231 other parental guarantee may be considered a short-term or long-  
232 term investment for the purposes of paragraph (a). However, the  
233 total of all demand notes issued by the parent may not, at any  
234 time, be more than the sum of unrestricted cash and unrestricted  
235 short-term and long-term investments held by the parent.

236 (11) "Debt service coverage ratio" means the quotient  
237 obtained by dividing the value of paragraph (a) by the value of  
238 paragraph (b).

239 (a) The sum of total expenses less interest expense on the  
240 debt facility, depreciation, amortization, and other noncash  
241 expense and nonoperating losses, subtracted from the sum of  
242 total revenues, excluding noncash revenues and nonoperating  
243 gains, and gross entrance fees received less earned entrance  
244 fees and refunds paid for the 12-month period included in an  
245 annual report filed pursuant to s. 651.026.

246 (b) Total annual principal and interest expense due on the  
247 debt facility for the 12-month period included in an annual  
248 report filed pursuant to s. 651.026. For the purposes of this  
249 paragraph, principal excludes any balloon principal payment  
250 amounts, and interest expense due is the sum of the interest

251 over such 12-month period.

252 (12) "Department" means the Department of Financial  
 253 Services.

254 (13)~~(5)~~ "Entrance fee" means an initial or deferred  
 255 payment of a sum of money or property made as full or partial  
 256 payment for continuing care or continuing care at-home. An  
 257 accommodation fee, admission fee, member fee, or other fee of  
 258 similar form and application are considered to be an entrance  
 259 fee.

260 (14)~~(6)~~ "Facility" means a place where continuing care is  
 261 furnished and may include one or more physical plants on a  
 262 primary or contiguous site or an immediately accessible site. As  
 263 used in this subsection, the term "immediately accessible site"  
 264 means a parcel of real property separated by a reasonable  
 265 distance from the facility as measured along public  
 266 thoroughfares, and the term "primary or contiguous site" means  
 267 the real property contemplated in the feasibility study required  
 268 by this chapter.

269 ~~(7) "Generally accepted accounting principles" means those~~  
 270 ~~accounting principles and practices adopted by the Financial~~  
 271 ~~Accounting Standards Board and the American Institute of~~  
 272 ~~Certified Public Accountants, including Statement of Position~~  
 273 ~~90-8 with respect to any full year to which the statement~~  
 274 ~~applies.~~

275 (15) "Impaired" or "impairment" means that either of the

276 following has occurred:

277 (a) A provider has failed to maintain its minimum liquid  
278 reserve as required under s. 651.035, unless the provider has  
279 received prior written approval from the office for a withdrawal  
280 pursuant to s. 651.035(6) and is compliant with the approved  
281 payment schedule.

282 (b) Beginning January 1, 2021:

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

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

290

291 If the provider is a member of an obligated group having cross-  
292 collateralized debt, the obligated group's debt service coverage  
293 ratio and days cash on hand must be used to determine if the  
294 provider is impaired.

295 (16)-(8) "Insolvency" means the condition in which a ~~the~~  
296 provider is unable to pay its obligations as they come due in  
297 the normal course of business.

298 (17)-(9) "Licensed" means that a ~~the~~ provider has obtained  
299 a certificate of authority from the office ~~department~~.

300 (18) "Manager", "management," or "management company"

301 means a person who administers the day-to-day business  
 302 operations of a facility for a provider, subject to the  
 303 policies, directives, and oversight of the provider.

304 (19)~~(10)~~ "Nursing care" means those services or acts  
 305 rendered to a resident by an individual licensed or certified  
 306 pursuant to chapter 464.

307 (20) "Obligated group" means one or more entities that  
 308 jointly agree to be bound by a financing structure containing  
 309 security provisions and covenants applicable to the group. For  
 310 the purposes of this subsection, debt issued under such a  
 311 financing structure must be a joint and several obligation of  
 312 each member of the group.

313 (21) "Occupancy" means the total number of occupied  
 314 independent living units, assisted living units, and skilled  
 315 nursing beds in a facility divided by the total number of units  
 316 and beds in that facility, excluding units and beds that are  
 317 unavailable to market or that are reserved by prospective  
 318 residents.

319 (22)~~(11)~~ "Personal services" has the same meaning as in s.  
 320 429.02.

321 (23)~~(12)~~ "Provider" means the owner or operator, whether a  
 322 natural person, partnership or other unincorporated association,  
 323 however organized, trust, or corporation, of an institution,  
 324 building, residence, or other place, whether operated for profit  
 325 or not, which owner or operator provides continuing care or

326 continuing care at-home for a fixed or variable fee, or for any  
327 other remuneration of any type, whether fixed or variable, for  
328 the period of care, payable in a lump sum or lump sum and  
329 monthly maintenance charges or in installments. The term does  
330 not apply to an entity that has existed and continuously  
331 operated a facility located on at least 63 acres in this state  
332 providing residential lodging to members and their spouses for  
333 at least 66 years on or before July 1, 1989, and has the  
334 residential capacity of 500 persons, is directly or indirectly  
335 owned or operated by a nationally recognized fraternal  
336 organization, is not open to the public, and accepts only its  
337 members and their spouses as residents.

338 ~~(24)-(13)~~ "Records" means all documents, correspondence,  
339 and the permanent financial, directory, and personnel  
340 information and data maintained by a provider pursuant to this  
341 chapter, regardless of the physical form, characteristics, or  
342 means of transmission.

343 (25) "Regulatory action level event" means that any of the  
344 following has occurred:

345 (a) The provider's debt service coverage ratio is less  
346 than the minimum ratio specified in the provider's bond  
347 covenants or lending agreement for long-term financing, or, if  
348 the provider does not have a debt service coverage ratio  
349 required by its lending institution, the provider's debt service  
350 coverage ratio is less than 1.20:1 as of the most recent annual

351 report filed with the office. If the provider is a member of an  
352 obligated group having cross-collateralized debt, the obligated  
353 group's debt service coverage ratio must be used as the  
354 provider's debt service coverage ratio.

355 (b) The provider's days cash on hand is less than the  
356 minimum number of days cash on hand specified in the provider's  
357 bond covenants or lending agreement for long-term financing. If  
358 the provider does not have a days cash on hand required by its  
359 lending institution, the days cash on hand may not be less than  
360 100 as of the most recent annual report filed with the office.  
361 If the provider is a member of an obligated group having cross-  
362 collateralized debt, the days cash on hand of the obligated  
363 group must be used as the provider's days cash on hand.

364 (c) The average occupancy of the provider's facility is  
365 less than 80 percent for the 12-month period included in an  
366 annual report filed pursuant to s. 651.026.

367 (26)-(14) "Resident" means a purchaser of, a nominee of, or  
368 a subscriber to a continuing care or continuing care at-home  
369 contract. Such contract does not give the resident a part  
370 ownership of the facility in which the resident is to reside,  
371 unless expressly provided in the contract.

372 (27)-(15) "Shelter" means an independent living unit, room,  
373 apartment, cottage, villa, personal care unit, nursing bed, or  
374 other living area within a facility set aside for the exclusive  
375 use of one or more identified residents.

376 Section 2. Section 651.012, Florida Statutes, is amended  
 377 to read:

378 651.012 Exempted facility; written disclosure of  
 379 exemption.—Any facility exempted under ss. 632.637(1)(e) and  
 380 651.011(23) ~~651.011(12)~~ must provide written disclosure of such  
 381 exemption to each person admitted to the facility ~~after October~~  
 382 ~~1, 1996~~. This disclosure must be written using language likely  
 383 to be understood by the person and must briefly explain the  
 384 exemption.

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

387 651.013 Chapter exclusive; applicability of other laws.—

388 (2) In addition to other applicable provisions cited in  
 389 this chapter, the office has the authority granted under ss.  
 390 624.302 and 624.303, 624.307-624.312, 624.318 ~~624.308-624.312,~~  
 391 624.319(1)-(3), 624.320-624.321, 624.324, ~~and~~ 624.34, and  
 392 624.422 of the Florida Insurance Code to regulate providers of  
 393 continuing care and continuing care at-home.

394 Section 4. Section 651.019, Florida Statutes, is amended  
 395 to read:

396 651.019 New financing, additional financing, or  
 397 refinancing.—

398 (1) (a) A provider shall provide a written general outline  
 399 of the amount and the anticipated terms of any new financing or  
 400 refinancing, and the intended use of proceeds, to the residents'

401 council at least 30 days before the closing date of the  
402 financing or refinancing transaction. If there is a material  
403 change in the noticed information, a provider shall provide an  
404 updated notice to the residents' council within 10 business days  
405 after the provider becomes aware of such change.

406 (b) If the facility does not have a residents' council,  
407 the facility must make available, in the same manner as other  
408 community notices, the information required under paragraph (a)  
409 ~~After issuance of a certificate of authority, the provider shall~~  
410 ~~submit to the office a general outline, including intended use~~  
411 ~~of proceeds, with respect to any new financing, additional~~  
412 ~~financing, or refinancing at least 30 days before the closing~~  
413 ~~date of such financing transaction.~~

414 (2) Within 30 days after the closing date of such  
415 financing or refinancing transaction, The provider shall furnish  
416 ~~any information the office may reasonably request in connection~~  
417 ~~with any new financing, additional financing, or refinancing,~~  
418 ~~including, but not limited to, the financing agreements and any~~  
419 ~~related documents, escrow or trust agreements, and statistical~~  
420 ~~or financial data. the provider shall also submit to the office~~  
421 copies of executed financing documents, escrow or trust  
422 agreements prepared in support of such financing or refinancing  
423 transaction, and a copy of all documents required to be  
424 submitted to the residents' council under paragraph (1) (a)  
425 ~~within 30 days after the closing date.~~

426 Section 5. Section 651.021, Florida Statutes, is amended  
427 to read:

428 651.021 Certificate of authority required.—

429 ~~(1)~~ A ~~No~~ person may not engage in the business of  
430 providing continuing care, issuing contracts for continuing care  
431 or continuing care at-home, or constructing a facility for the  
432 purpose of providing continuing care in this state without a  
433 certificate of authority obtained from the office as provided in  
434 this chapter. This section ~~subsection~~ does not prohibit the  
435 preparation of a construction site or construction of a model  
436 residence unit for marketing purposes, or both. The office may  
437 allow the purchase of an existing building for the purpose of  
438 providing continuing care if the office determines that the  
439 purchase is not being made to circumvent the prohibitions in  
440 this section.

441 ~~(2) Written approval must be obtained from the office~~  
442 ~~before commencing construction or marketing for an expansion of~~  
443 ~~a certificated facility equivalent to the addition of at least~~  
444 ~~20 percent of existing units or 20 percent or more in the number~~  
445 ~~of continuing care at-home contracts. This provision does not~~  
446 ~~apply to construction for which a certificate of need from the~~  
447 ~~Agency for Health Care Administration is required.~~

448 ~~(a) For providers that offer both continuing care and~~  
449 ~~continuing care at-home, the 20 percent is based on the total of~~  
450 ~~both existing units and existing contracts for continuing care~~

451 ~~at-home. For purposes of this subsection, an expansion includes~~  
452 ~~increases in the number of constructed units or continuing care~~  
453 ~~at-home contracts or a combination of both.~~

454 ~~(b) The application for such approval shall be on forms~~  
455 ~~adopted by the commission and provided by the office. The~~  
456 ~~application must include the feasibility study required by s.~~  
457 ~~651.022(3) or s. 651.023(1)(b) and such other information as~~  
458 ~~required by s. 651.023. If the expansion is only for continuing~~  
459 ~~care at-home contracts, an actuarial study prepared by an~~  
460 ~~independent actuary in accordance with standards adopted by the~~  
461 ~~American Academy of Actuaries which presents the financial~~  
462 ~~impact of the expansion may be substituted for the feasibility~~  
463 ~~study.~~

464 ~~(c) In determining whether an expansion should be~~  
465 ~~approved, the office shall use the criteria provided in ss.~~  
466 ~~651.022(6) and 651.023(4).~~

467 Section 6. Section 651.0215, Florida Statutes, is created  
468 to read:

469 651.0215 Consolidated application for a provisional  
470 certificate of authority and a certificate of authority;  
471 required restrictions on use of entrance fees.-

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

475 (a) All reservation deposits and entrance fees must be

476 placed in escrow in accordance with s. 651.033. The applicant  
477 may not use or pledge any part of an initial entrance fee for  
478 the construction or purchase of the facility or as security for  
479 long-term financing.

480 (b) The reservation deposit may not exceed the lesser of  
481 \$40,000 or 10 percent of the then-current fee for the unit  
482 selected by a resident and must be refundable at any time before  
483 the resident takes occupancy of the selected unit.

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

488 (2) The consolidated application must be on a form  
489 prescribed by the commission and must contain all of the  
490 following information:

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

492 (b) A feasibility study prepared by an independent  
493 consultant which contains all of the information required by s.  
494 651.022(3) and financial forecasts or projections prepared in  
495 accordance with standards adopted by the American Institute of  
496 Certified Public Accountants or in accordance with standards for  
497 feasibility studies for continuing care retirement communities  
498 adopted by the Actuarial Standards Board.

499 1. The feasibility study must take into account project  
500 costs, actual marketing results to date and marketing

501 projections, resident fees and charges, competition, resident  
502 contract provisions, and other factors that affect the  
503 feasibility of operating the facility.

504 2. If the feasibility study is prepared by an independent  
505 certified public accountant, it must contain an examination  
506 report, or a compilation report acceptable to the office,  
507 containing a financial forecast or projections for the first 5  
508 years of operations which take into account an actuary's  
509 mortality and morbidity assumptions as the study relates to  
510 turnover, rates, fees, and charges. If the study is prepared by  
511 an independent consulting actuary, it must contain mortality and  
512 morbidity assumptions as it relates to turnover, rates, fees,  
513 and charges and an actuary's signed opinion that the project as  
514 proposed is feasible and that the study has been prepared in  
515 accordance with Actuarial Standards of Practice No. 3 for  
516 Continuing Care Retirement Communities, Revised Edition,  
517 effective May 1, 2011.

518 (c) Documents evidencing that commitments have been  
519 secured for construction financing and long-term financing or  
520 that a documented plan acceptable to the office has been adopted  
521 by the applicant for long-term financing.

522 (d) Documents evidencing that all conditions of the lender  
523 have been satisfied to activate the commitment to disburse  
524 funds, other than the obtaining of the certificate of authority,  
525 the completion of construction, or the closing of the purchase

526 of realty or buildings for the facility.

527 (e) Documents evidencing that the aggregate amount of  
528 entrance fees received by or pledged to the applicant, plus  
529 anticipated proceeds from any long-term financing commitment and  
530 funds from all other sources in the actual possession of the  
531 applicant, equal at least 100 percent of the aggregate cost of  
532 constructing or purchasing, equipping, and furnishing the  
533 facility plus 100 percent of the anticipated startup losses of  
534 the facility.

535 (f) A complete audited financial report of the applicant,  
536 prepared by an independent certified public accountant in  
537 accordance with generally accepted accounting principles, as of  
538 the date the applicant commenced business operations or for the  
539 fiscal year that ended immediately preceding the date of  
540 application, whichever is later; and complete unaudited  
541 quarterly financial statements attested to by the applicant  
542 after the date of the last audit.

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

545 (h) Such other reasonable data, financial statements, and  
546 pertinent information as the commission or office may require  
547 with respect to the applicant or the facility to determine the  
548 financial status of the facility and the management capabilities  
549 of its managers and owners.

550

551 If any material change occurs in the facts set forth in an  
552 application filed with the office pursuant to this subsection,  
553 an amendment setting forth such change must be filed with the  
554 office within 10 business days after the applicant becomes aware  
555 of such change, and a copy of the amendment must be sent by  
556 registered mail to the principal office of the facility and to  
557 the principal office of the controlling company.

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

562 (4) Within 45 days after receipt of the information  
563 required under subsection (2), the office shall examine the  
564 information and notify the applicant in writing, specifically  
565 requesting any additional information that the office is  
566 authorized to require. An application is deemed complete when  
567 the office receives all requested information and the applicant  
568 corrects any error or omission of which the applicant was timely  
569 notified or when the time for such notification has expired.  
570 Within 15 days after receipt of all of the requested additional  
571 information, the office shall notify the applicant in writing  
572 that all of the requested information has been received and that  
573 the application is deemed complete as of the date of the notice.  
574 Failure to notify the applicant in writing within the 15-day  
575 period constitutes acknowledgment by the office that it has

576 received all requested additional information, and the  
577 application is deemed complete for purposes of review on the  
578 date the applicant files all of the required additional  
579 information.

580 (5) Within 45 days after an application is deemed complete  
581 as set forth in subsection (4) and upon completion of the  
582 remaining requirements of this section, the office shall  
583 complete its review and issue or deny a certificate of authority  
584 to the applicant. If the office requests additional information  
585 and the applicant provides it within 5 business days after  
586 notification, the period for reviewing or approving an  
587 application may not be extended beyond the period specified in  
588 subsection (4). If a certificate of authority is denied, the  
589 office shall notify the applicant in writing, citing the  
590 specific failures to satisfy this chapter, and the applicant is  
591 entitled to an administrative hearing pursuant to chapter 120.

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

597 (7) The issuance of a certificate of authority entitles  
598 the applicant to begin construction and collect reservation  
599 deposits and entrance fees from prospective residents. The  
600 reservation contract must state the cancellation policy and the

601 terms of the continuing care contract. All or any part of an  
602 entrance fee or reservation deposit collected must be placed in  
603 an escrow account or on deposit with the department pursuant to  
604 s. 651.033.

605 (8) The provider is entitled to secure release of the  
606 moneys held in escrow within 7 days after the office receives an  
607 affidavit from the provider, along with appropriate  
608 documentation to verify, and notification is provided to the  
609 escrow agent by certified mail, that all of the following  
610 conditions have been satisfied:

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

612 (b) Payment in full has been received for at least 70  
613 percent of the total units of a phase or of the total of the  
614 combined phases constructed. If a provider offering continuing  
615 care at-home is applying for a release of escrowed entrance  
616 fees, the same minimum requirement must be met for the  
617 continuing care contracts and for the continuing care at-home  
618 contracts independently of each other.

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

622 (d) Documents evidencing the intended application of the  
623 proceeds upon release and documents evidencing that the entrance  
624 fees, when released, will be applied as represented to the  
625 office.

626  
627 Notwithstanding chapter 120, a person, other than the provider,  
628 the escrow agent, and the office, may not have a substantial  
629 interest in any decision by the office regarding the release of  
630 escrow funds in any proceeding under chapter 120 or this  
631 chapter.

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

636 (10) The office may not issue a certificate of authority  
637 to a facility that does not have a component that is to be  
638 licensed pursuant to part II of chapter 400 or part I of chapter  
639 429, or that does not offer personal services or nursing  
640 services through written contractual agreement. A written  
641 contractual agreement must be disclosed in the contract for  
642 continuing care or continuing care at-home and is subject to s.  
643 651.1151.

644 Section 7. Subsections (2), (3), (6), and (8) of section  
645 651.022, Florida Statutes, are amended, and subsection (5) of  
646 that section is republished, to read:

647 651.022 Provisional certificate of authority;  
648 application.—

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

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

652 (a) If the applicant or provider is a corporation, a copy  
653 of the articles of incorporation and bylaws; if the applicant or  
654 provider is a partnership or other unincorporated association, a  
655 copy of the partnership agreement, articles of association, or  
656 other membership agreement; and, if the applicant or provider is  
657 a trust, a copy of the trust agreement or instrument.

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

659 1. The proprietor, if the applicant or provider is an  
660 individual.

661 2. Every partner or member, if the applicant or provider  
662 is a partnership or other unincorporated association, however  
663 organized, having fewer than 50 partners or members, together  
664 with the business name and address of the partnership or other  
665 organization.

666 3. The principal partners or members, if the applicant or  
667 provider is a partnership or other unincorporated association,  
668 however organized, having 50 or more partners or members,  
669 together with the business name and business address of the  
670 partnership or other organization. If such unincorporated  
671 organization has officers and a board of directors, the full  
672 name and business address of each officer and director may be  
673 set forth in lieu of the full name and business address of its  
674 principal members.

675 4. The corporation and each officer and director thereof,

676 if the applicant or provider is a corporation.

677 5. Every trustee and officer, if the applicant or provider  
678 is a trust.

679 6. The manager, whether an individual, corporation,  
680 partnership, or association.

681 7. Any stockholder holding at least a 10 percent interest  
682 in the operations of the facility in which the care is to be  
683 offered.

684 8. Any person whose name is required to be provided in the  
685 application under this paragraph and who owns any interest in or  
686 receives any remuneration from, directly or indirectly, any  
687 professional service firm, association, trust, partnership, or  
688 corporation providing goods, leases, or services to the facility  
689 for which the application is made, with a real or anticipated  
690 value of \$10,000 or more, and the name and address of the  
691 professional service firm, association, trust, partnership, or  
692 corporation in which such interest is held. The applicant shall  
693 describe such goods, leases, or services and the probable cost  
694 to the facility or provider and shall describe why such goods,  
695 leases, or services should not be purchased from an independent  
696 entity.

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

700 10. Any affiliated parent or subsidiary corporation or

701 partnership.

702 (c)1. Evidence that the applicant is reputable and of  
703 responsible character. If the applicant is a firm, association,  
704 organization, partnership, business trust, corporation, or  
705 company, the form must ~~shall~~ require evidence that the members  
706 or shareholders ~~are reputable and of responsible character,~~ and  
707 the person in charge of providing care under a certificate of  
708 authority are ~~shall likewise be required to produce evidence of~~  
709 ~~being~~ reputable and of responsible character.

710 2. Evidence satisfactory to the office of the ability of  
711 the applicant to comply with ~~the provisions of~~ this chapter and  
712 with rules adopted by the commission pursuant to this chapter.

713 3. A statement of whether a person identified in the  
714 application for a provisional certificate of authority or the  
715 administrator or manager of the facility, if such person has  
716 been designated, or any such person living in the same location:

717 a. Has been convicted of a felony or has pleaded nolo  
718 contendere to a felony charge, or has been held liable or has  
719 been enjoined in a civil action by final judgment, if the felony  
720 or civil action involved fraud, embezzlement, fraudulent  
721 conversion, or misappropriation of property.

722 b. Is subject to a currently effective injunctive or  
723 restrictive order or federal or state administrative order  
724 relating to business activity or health care as a result of an  
725 action brought by a public agency or department, including,

726 without limitation, an action affecting a license under chapter  
727 400 or chapter 429.

728

729 The statement must ~~shall~~ set forth the court or agency, the date  
730 of conviction or judgment, and the penalty imposed or damages  
731 assessed, or the date, nature, and issuer of the order. Before  
732 determining whether a provisional certificate of authority is to  
733 be issued, the office may make an inquiry to determine the  
734 accuracy of the information submitted pursuant to subparagraphs  
735 1., 2., and 3. ~~1. and 2.~~

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

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

744 (f) Such other reasonable data, financial statements, and  
745 pertinent information as the commission or office may reasonably  
746 require with respect to the provider or the facility, including  
747 the most recent audited financial report ~~statements~~ of  
748 comparable facilities currently or previously owned, managed, or  
749 developed by the applicant or its principal, to assist in  
750 determining the financial viability of the project and the

751 management capabilities of its managers and owners.

752 (g) The forms of the residency contracts, reservation  
 753 contracts, escrow agreements, and wait list contracts, if  
 754 applicable, which are proposed to be used by the provider in the  
 755 furnishing of care. The office shall approve contracts and  
 756 escrow agreements that comply with ss. 651.023(1)(c), 651.033,  
 757 651.055, and 651.057. Thereafter, no other form of contract or  
 758 agreement may be used by the provider until it has been  
 759 submitted to the office and approved.

760  
 761 If any material change occurs in the facts set forth in an  
 762 application filed with the office pursuant to this subsection,  
 763 an amendment setting forth such change must be filed with the  
 764 office within 10 business days after the applicant becomes aware  
 765 of such change, and a copy of the amendment must be sent by  
 766 registered mail to the principal office of the facility and to  
 767 the principal office of the controlling company.

768 (3) In addition to the information required in subsection  
 769 (2), an applicant for a provisional certificate of authority  
 770 shall submit a ~~market~~ feasibility study with appropriate  
 771 financial, marketing, and actuarial assumptions for the first 5  
 772 years of operations. The ~~market~~ feasibility study must ~~shall~~  
 773 include at least the following information:

774 (a) A description of the proposed facility, including the  
 775 location, size, anticipated completion date, and the proposed

776 construction program.

777 (b) An identification and evaluation of the primary and,  
778 if appropriate, the secondary market areas of the facility and  
779 the projected unit sales per month.

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

784 (d) Projected expenses, including staffing requirements  
785 and salaries; cost of property, plant, and equipment, including  
786 depreciation expense; interest expense; marketing expense; and  
787 other operating expenses.

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

790 (f) Expectations of the financial condition of the  
791 project, including the projected cash flow, and a projected  
792 ~~balance sheet~~ and an estimate of the funds anticipated to be  
793 necessary to cover startup losses.

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

797 (h) Project costs and the total amount of debt financing  
798 required, marketing projections, resident fees and charges, the  
799 competition, resident contract provisions, and other factors  
800 that ~~which~~ affect the feasibility of the facility.

801           (i) Appropriate population projections, including  
802 morbidity and mortality assumptions.

803           (j) The name of the person who prepared the feasibility  
804 study and the experience of such person in preparing similar  
805 studies or otherwise consulting in the field of continuing care.  
806 The preparer of the feasibility study may be the provider or a  
807 contracted third party.

808           (k) Any other information that the applicant deems  
809 relevant and appropriate to enable the office to make a more  
810 informed determination.

811           (5) (a) Within 30 days after receipt of an application for  
812 a provisional certificate of authority, the office shall examine  
813 the application and shall notify the applicant in writing,  
814 specifically setting forth and specifically requesting any  
815 additional information the office is permitted by law to  
816 require. If the application submitted is determined by the  
817 office to be substantially incomplete so as to require  
818 substantial additional information, including biographical  
819 information, the office may return the application to the  
820 applicant with a written notice that the application as received  
821 is substantially incomplete and, therefore, unacceptable for  
822 filing without further action required by the office. Any filing  
823 fee received shall be refunded to the applicant.

824           (b) Within 15 days after receipt of all of the requested  
825 additional information, the office shall notify the applicant in

826 writing that all of the requested information has been received  
827 and the application is deemed to be complete as of the date of  
828 the notice. Failure to so notify the applicant in writing within  
829 the 15-day period shall constitute acknowledgment by the office  
830 that it has received all requested additional information, and  
831 the application shall be deemed to be complete for purposes of  
832 review upon the date of the filing of all of the requested  
833 additional information.

834 (6) Within 45 days after the date an application is deemed  
835 complete as set forth in paragraph (5)(b), the office shall  
836 complete its review and issue a provisional certificate of  
837 authority to the applicant based upon its review and a  
838 determination that the application meets all requirements of  
839 law, that the feasibility study was based on sufficient data and  
840 reasonable assumptions, and that the applicant will be able to  
841 provide continuing care or continuing care at-home as proposed  
842 and meet all financial and contractual obligations related to  
843 its operations, including the financial requirements of this  
844 chapter. If the office requests additional information and the  
845 applicant provides it within 5 business days after notification,  
846 the period for reviewing or approving the application may not be  
847 extended beyond the period specified in subsection (5). If the  
848 application is denied, the office shall notify the applicant in  
849 writing, citing the specific failures to meet the provisions of  
850 this chapter. Such denial entitles the applicant to a hearing

851 pursuant to chapter 120.

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

856 Section 8. Subsections (1), (3), and (4), paragraph (b) of  
857 subsection (5), and subsections (6) through (9) of section  
858 651.023, Florida Statutes, are amended, and subsection (2) of  
859 that section is republished, to read:

860 651.023 Certificate of authority; application.—

861 (1) After issuance of a provisional certificate of  
862 authority, the office shall issue to the holder of such  
863 provisional certificate a certificate of authority if the holder  
864 of the provisional certificate provides the office with the  
865 following information:

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

869 (b) A feasibility study prepared by an independent  
870 consultant which contains all of the information required by s.  
871 651.022(3) and financial forecasts or projections prepared in  
872 accordance with standards adopted by the American Institute of  
873 Certified Public Accountants or in accordance with standards for  
874 feasibility studies or continuing care retirement communities  
875 adopted by the Actuarial Standards Board.

876 | ~~1. The study must also contain an independent evaluation~~  
877 | ~~and examination opinion, or a comparable opinion acceptable to~~  
878 | ~~the office, by the consultant who prepared the study, of the~~  
879 | ~~underlying assumptions used as a basis for the forecasts or~~  
880 | ~~projections in the study and that the assumptions are reasonable~~  
881 | ~~and proper and the project as proposed is feasible.~~

882 | 1.2. The study must take into account project costs,  
883 | actual marketing results to date and marketing projections,  
884 | resident fees and charges, competition, resident contract  
885 | provisions, and any other factors which affect the feasibility  
886 | of operating the facility.

887 | 2.3. If the study is prepared by an independent certified  
888 | public accountant, it must contain an examination opinion or a  
889 | compilation report acceptable to the office containing a  
890 | financial forecast or projections for the first 5 ~~3~~ years of  
891 | operations which take into account an actuary's mortality and  
892 | morbidity assumptions as the study relates to turnover, rates,  
893 | fees, and charges ~~and financial projections having a compilation~~  
894 | ~~opinion for the next 3 years.~~ If the study is prepared by an  
895 | independent consulting actuary, it must contain mortality and  
896 | morbidity assumptions as the study relates to turnover, rates,  
897 | fees, and charges ~~data~~ and an actuary's signed opinion that the  
898 | project as proposed is feasible and that the study has been  
899 | prepared in accordance with standards adopted by the American  
900 | Academy of Actuaries.

901           (c) Subject to subsection (4), a provider may submit an  
902 application for a certificate of authority and any required  
903 exhibits upon submission of documents evidencing ~~proof~~ that the  
904 project has a minimum of 30 percent of the units reserved for  
905 which the provider is charging an entrance fee. ~~This does not~~  
906 ~~apply to an application for a certificate of authority for the~~  
907 ~~acquisition of a facility for which a certificate of authority~~  
908 ~~was issued before October 1, 1983, to a provider who~~  
909 ~~subsequently becomes a debtor in a case under the United States~~  
910 ~~Bankruptcy Code, 11 U.S.C. ss. 101 et seq., or to a provider for~~  
911 ~~which the department has been appointed receiver pursuant to~~  
912 ~~part II of chapter 631.~~

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

917           (e) Documents evidencing ~~Proof~~ that all conditions of the  
918 lender have been satisfied to activate the commitment to  
919 disburse funds other than the obtaining of the certificate of  
920 authority, the completion of construction, or the closing of the  
921 purchase of realty or buildings for the facility.

922           (f) Documents evidencing ~~Proof~~ that the aggregate amount  
923 of entrance fees received by or pledged to the applicant, plus  
924 anticipated proceeds from any long-term financing commitment,  
925 plus funds from all other sources in the actual possession of

926 the applicant, equal at least 100 percent of the aggregate cost  
927 of constructing or purchasing, equipping, and furnishing the  
928 facility plus 100 percent of the anticipated startup losses of  
929 the facility.

930 (g) A complete audited financial report ~~statements~~ of the  
931 applicant, prepared by an independent certified public  
932 accountant in accordance with generally accepted accounting  
933 principles, as of the date the applicant commenced business  
934 operations or for the fiscal year that ended immediately  
935 preceding the date of application, whichever is later, and  
936 complete unaudited quarterly financial statements attested to by  
937 the applicant after the date of the last audit.

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

941 (i) Such other reasonable data, financial statements, and  
942 pertinent information as the commission or office may require  
943 with respect to the applicant or the facility, to determine the  
944 financial status of the facility and the management capabilities  
945 of its managers and owners.

946  
947 If any material change occurs in the facts set forth in an  
948 application filed with the office pursuant to this subsection,  
949 an amendment setting forth such change must be filed with the  
950 office within 10 business days after the applicant becomes aware

951 of such change, and a copy of the amendment must be sent by  
952 registered mail to the principal office of the facility and to  
953 the principal office of the controlling company.

954 (2) Within 30 days after receipt of the information  
955 required under subsection (1), the office shall examine such  
956 information and notify the provider in writing, specifically  
957 requesting any additional information the office is permitted by  
958 law to require. Within 15 days after receipt of all of the  
959 requested additional information, the office shall notify the  
960 provider in writing that all of the requested information has  
961 been received and the application is deemed to be complete as of  
962 the date of the notice. Failure to notify the applicant in  
963 writing within the 15-day period constitutes acknowledgment by  
964 the office that it has received all requested additional  
965 information, and the application shall be deemed complete for  
966 purposes of review on the date of filing all of the required  
967 additional information.

968 (3) Within 45 days after an application is deemed complete  
969 as set forth in subsection (2), and upon completion of the  
970 remaining requirements of this section, the office shall  
971 complete its review and issue or deny a certificate of authority  
972 to the holder of a provisional certificate of authority. If a  
973 certificate of authority is denied, the office must notify the  
974 holder of the provisional certificate in writing, citing the  
975 specific failures to satisfy the provisions of this chapter. If

976 the office requests additional information and the applicant  
977 provides it within 5 business days after notification, the  
978 period for reviewing or approving an application may not be  
979 extended beyond the period specified in subsection (2). If  
980 denied, the holder of the provisional certificate is entitled to  
981 an administrative hearing pursuant to chapter 120.

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

987 (a) A ~~Notwithstanding satisfaction of the 30-percent~~  
988 ~~minimum reservation requirement of paragraph (1)(c), no~~  
989 ~~certificate of authority may not shall~~ be issued until  
990 documentation evidencing that the project has a minimum of 50  
991 percent of the units reserved for which the provider is charging  
992 an entrance fee, ~~and proof~~ is provided to the office. If a  
993 provider offering continuing care at-home is applying for a  
994 certificate of authority ~~or approval of an expansion pursuant to~~  
995 ~~s. 651.021(2)~~, the same minimum reservation requirements must be  
996 met for the continuing care and continuing care at-home  
997 contracts, independently of each other.

998 (b) In order for a unit to be considered reserved under  
999 this section, the provider must collect a minimum deposit of the  
1000 lesser of \$40,000 or 10 percent of the then-current entrance fee

1001 for that unit, and may assess a forfeiture penalty of 2 percent  
 1002 of the entrance fee due to termination of the reservation  
 1003 contract after 30 days for any reason other than the death or  
 1004 serious illness of the resident, the failure of the provider to  
 1005 meet its obligations under the reservation contract, or other  
 1006 circumstances beyond the control of the resident that equitably  
 1007 entitle the resident to a refund of the resident's deposit. The  
 1008 reservation contract must state the cancellation policy and the  
 1009 terms of the continuing care or continuing care at-home contract  
 1010 to be entered into.

1011 (5) Up to 25 percent of the moneys paid for all or any  
 1012 part of an initial entrance fee may be included or pledged for  
 1013 the construction or purchase of the facility or as security for  
 1014 long-term financing. The term "initial entrance fee" means the  
 1015 total entrance fee charged by the facility to the first occupant  
 1016 of a unit.

1017 (b) For an expansion as provided in s. 651.0246 ~~s.~~  
 1018 ~~651.021(2)~~, a minimum of 75 percent of the moneys paid for all  
 1019 or any part of an initial entrance fee collected for continuing  
 1020 care and 50 percent of the moneys paid for all or any part of an  
 1021 initial fee collected for continuing care at-home shall be  
 1022 placed in an escrow account or on deposit with the department as  
 1023 prescribed in s. 651.033.

1024 (6) The provider is entitled to secure release of the  
 1025 moneys held in escrow within 7 days after receipt by the office

1026 of an affidavit from the provider, along with appropriate copies  
1027 to verify, and notification to the escrow agent by certified  
1028 mail, that the following conditions have been satisfied:

1029 (a) A certificate of occupancy has been issued.

1030 (b) Payment in full has been received for at least 70  
1031 percent of the total units of a phase or of the total of the  
1032 combined phases constructed. If a provider offering continuing  
1033 care at-home is applying for a release of escrowed entrance  
1034 fees, the same minimum requirement must be met for the  
1035 continuing care and continuing care at-home contracts,  
1036 independently of each other.

1037 ~~(c) The consultant who prepared the feasibility study~~  
1038 ~~required by this section or a substitute approved by the office~~  
1039 ~~certifies within 12 months before the date of filing for office~~  
1040 ~~approval that there has been no material adverse change in~~  
1041 ~~status with regard to the feasibility study. If a material~~  
1042 ~~adverse change exists at the time of submission, sufficient~~  
1043 ~~information acceptable to the office and the feasibility~~  
1044 ~~consultant must be submitted which remedies the adverse~~  
1045 ~~condition.~~

1046 (c)-(d) Documents evidencing Proof that commitments have  
1047 been secured or a documented plan adopted by the applicant has  
1048 been approved by the office for long-term financing.

1049 (d)-(e) Documents evidencing Proof that the provider has  
1050 sufficient funds to meet the requirements of s. 651.035, which

HB 1033

2019

1051 may include funds deposited in the initial entrance fee account.

1052 (e) ~~(f)~~ Documents evidencing Proof as to the intended  
1053 application of the proceeds upon release and documentation ~~proof~~  
1054 that the entrance fees when released will be applied as  
1055 represented to the office.

1056 (f) If any material change occurred in the facts set forth  
1057 in the application filed with the office pursuant to subsection  
1058 (1), the applicant timely filed the amendment setting forth such  
1059 change with the office and sent copies of the amendment to the  
1060 principal office of the facility and to the principal office of  
1061 the controlling company as required under that subsection.

1062  
1063 Notwithstanding chapter 120, no person, other than the provider,  
1064 the escrow agent, and the office, may have a substantial  
1065 interest in any office decision regarding release of escrow  
1066 funds in any proceedings under chapter 120 or this chapter  
1067 regarding release of escrow funds.

1068 (7) In lieu of the provider fulfilling the requirements in  
1069 subsection (5) and paragraphs (6) (b) and (c) ~~(d)~~, the office may  
1070 authorize the release of escrowed funds to retire all  
1071 outstanding debts on the facility and equipment upon application  
1072 of the provider and upon the provider's showing that the  
1073 provider will grant to the residents a first mortgage on the  
1074 land, buildings, and equipment that constitute the facility, and  
1075 that the provider has satisfied paragraphs (6) (a), ~~(e)~~, and (d)

1076 ~~(e)~~. Such mortgage shall secure the refund of the entrance fee  
 1077 in the amount required by this chapter. The granting of such  
 1078 mortgage is subject to the following:

1079 (a) The first mortgage is granted to an independent trust  
 1080 that is beneficially held by the residents. The document  
 1081 creating the trust must include a provision that agrees to an  
 1082 annual audit and will furnish to the office all information the  
 1083 office may reasonably require. The mortgage may secure payment  
 1084 on bonds issued to the residents or trustee. Such bonds are  
 1085 redeemable after termination of the residency contract in the  
 1086 amount and manner required by this chapter for the refund of an  
 1087 entrance fee.

1088 (b) Before granting a first mortgage to the residents, all  
 1089 construction must be substantially completed and substantially  
 1090 all equipment must be purchased. No part of the entrance fees  
 1091 may be pledged as security for a construction loan or otherwise  
 1092 used for construction expenses before the completion of  
 1093 construction.

1094 (c) If the provider is leasing the land or buildings used  
 1095 by the facility, the leasehold interest must be for a term of at  
 1096 least 30 years.

1097 (8) ~~The timeframes provided under s. 651.022(5) and (6)~~  
 1098 ~~apply to applications submitted under s. 651.021(2).~~ The office  
 1099 may not issue a certificate of authority to a facility that does  
 1100 not have a component that is to be licensed pursuant to part II

1101 of chapter 400 or to part I of chapter 429 or that does not  
1102 offer personal services or nursing services through written  
1103 contractual agreement. A written contractual agreement must be  
1104 disclosed in the contract for continuing care or continuing care  
1105 at-home and is subject to ~~the provisions of~~ s. 651.1151,  
1106 relating to administrative, vendor, and management contracts.

1107 (9) The office may not approve an application that  
1108 includes in the plan of financing any encumbrance of the  
1109 operating reserves or renewal and replacement reserves required  
1110 by this chapter.

1111 Section 9. Section 651.024, Florida Statutes, is amended  
1112 to read:

1113 651.024 Acquisition.—

1114 (1) A person who seeks to assume the role of general  
1115 partner of a provider or to otherwise assume ownership or  
1116 possession of, or control over, 10 percent or more of a  
1117 provider's assets, based on the balance sheet from the most  
1118 recent financial audit report filed with the office, is issued a  
1119 ~~certificate of authority to operate a continuing care facility~~  
1120 ~~or a provisional certificate of authority shall be subject to~~  
1121 ~~the provisions of~~ s. 628.4615 and is not required to make  
1122 filings pursuant to s. 651.022, s. 651.023, or s. 651.0245.

1123 (2) A person who seeks to acquire and become the provider  
1124 for a facility is subject to s. 651.0245 and is not required to  
1125 make filings pursuant to ss. 628.4615, 651.022, and 651.023.

1126       (3) A person may rebut a presumption of control by filing  
1127 a disclaimer of control with the office on a form prescribed by  
1128 the commission. The disclaimer must fully disclose all material  
1129 relationships and bases for affiliation between the person and  
1130 the provider or facility, as well as the basis for disclaiming  
1131 the affiliation. In lieu of such form, a person or acquiring  
1132 party may file with the office a copy of a Schedule 13G filed  
1133 with the Securities and Exchange Commission pursuant to Rule  
1134 13d-1(b) or (c), 17 C.F.R. s. 240.13d-1, under the Securities  
1135 Exchange Act of 1934, as amended. After a disclaimer has been  
1136 filed, the provider or facility is relieved of any duty to  
1137 register or report under this section which may arise out of the  
1138 provider's or facility's relationship with the person, unless  
1139 the office disallows the disclaimer.

1140       (4) In addition to the provider, the facility, or the  
1141 controlling company, the office has standing to petition a  
1142 circuit court as described in s. 628.4615(9).

1143       Section 10. Section 651.0245, Florida Statutes, is created  
1144 to read:

1145       651.0245 Application for the simultaneous acquisition of a  
1146 facility and issuance of a certificate of authority.-

1147       (1) Except with the prior written approval of the office,  
1148 a person may not, individually or in conjunction with any  
1149 affiliated person of such person, directly or indirectly acquire  
1150 a facility operating under a subsisting certificate of authority

1151 and engage in the business of providing continuing care.

1152 (2) An applicant seeking simultaneous acquisition of a

1153 facility and issuance of a certificate of authority must:

1154 (a) Comply with the notice requirements of s.

1155 628.4615(2) (a); and

1156 (b) File an application in the form required by the office

1157 and cooperate with the office's review of the application.

1158 (3) The commission shall adopt by rule application

1159 requirements equivalent to those described in ss. 628.4615(4)

1160 and (5), 651.022(2), and 651.023(1) (b). The office shall review

1161 the application and issue an approval or disapproval of the

1162 filing in accordance with ss. 628.4615(6) (a) and (c), (7)-(10),

1163 and (14); and 651.023(1) (b).

1164 (4) In addition to the facility, the provider, or the

1165 controlling company, the office has standing to petition a

1166 circuit court as described in s. 628.4615(9).

1167 (5) A person may rebut a presumption of control by filing

1168 a disclaimer of control with the office on a form prescribed by

1169 the commission. The disclaimer must fully disclose all material

1170 relationships and bases for affiliation between the person and

1171 the provider or facility, as well as the basis for disclaiming

1172 the affiliation. In lieu of such form, a person or acquiring

1173 party may file with the office a copy of a Schedule 13G filed

1174 with the Securities and Exchange Commission pursuant to Rule

1175 13d-1(b) or (c), 17 C.F.R. s. 240.13d-1, under the Securities

1176 Exchange Act of 1934, as amended. After a disclaimer has been  
1177 filed, the provider or facility is relieved of any duty to  
1178 register or report under this section which may arise out of the  
1179 provider's or facility's relationship with the person, unless  
1180 the office disallows the disclaimer.

1181 (6) The commission may adopt rules as necessary to  
1182 administer this section.

1183 Section 11. Section 651.0246, Florida Statutes, is created  
1184 to read:

1185 651.0246 Expansions.-

1186 (1) (a) A provider must obtain written approval from the  
1187 office before commencing construction or marketing for an  
1188 expansion of a certificated facility equivalent to the addition  
1189 of at least 20 percent of existing units or 20 percent or more  
1190 of the number of continuing care at-home contracts. If the  
1191 provider has exceeded the current statewide median for days cash  
1192 on hand, debt service coverage ratio, and total campus occupancy  
1193 for two consecutive annual reporting periods, the provider is  
1194 automatically granted approval to expand the total number of  
1195 existing units by up to 35 percent upon submitting a letter to  
1196 the office indicating the total number of planned units in the  
1197 expansion, the proposed sources and uses of funds, and an  
1198 attestation that the provider understands and pledges to comply  
1199 with all minimum liquid reserve and escrow account requirements.  
1200 As used in this section, the term "existing units" means the sum

1201 of the total number of independent living units and assisted  
1202 living units identified in the most recent annual report filed  
1203 with the office pursuant to s. 651.026. For purposes of this  
1204 section, the statewide median for days cash on hand, debt  
1205 service coverage ratio, and total campus occupancy is the median  
1206 calculated in the most recent annual report submitted by the  
1207 office to the Continuing Care Advisory Council pursuant to s.  
1208 651.121(8). This section does not apply to construction for  
1209 which a certificate of need from the Agency for Health Care  
1210 Administration is required.

1211 (b) The application for the approval of an addition  
1212 consisting of 20 percent or more of existing units or continuing  
1213 care at-home contracts must be on forms adopted by the  
1214 commission and provided by the office. The application must  
1215 include the feasibility study required by this section and such  
1216 other information as reasonably requested by the office. If the  
1217 expansion is only for continuing care at-home contracts, an  
1218 actuarial study prepared by an independent actuary in accordance  
1219 with standards adopted by the American Academy of Actuaries  
1220 which presents the financial impact of the expansion may be  
1221 substituted for the feasibility study.

1222 (c) In determining whether an expansion should be  
1223 approved, the office shall consider:

- 1224 1. Whether the application meets all requirements of law;  
1225 2. Whether the feasibility study was based on sufficient

1226 data and reasonable assumptions; and

1227 3. Whether the applicant will be able to provide  
1228 continuing care or continuing care at-home as proposed and meet  
1229 all financial obligations related to its operations, including  
1230 the financial requirements of this chapter.

1231  
1232 If the application is denied, the office must notify the  
1233 applicant in writing, citing the specific failures to meet the  
1234 provisions of this chapter. A denial entitles the applicant to a  
1235 hearing pursuant to chapter 120.

1236 (2) A provider applying for expansion of a certificated  
1237 facility must submit all of the following:

1238 (a) A feasibility study prepared by an independent  
1239 certified public accountant. The feasibility study must include  
1240 at least the following information:

1241 1. A description of the facility and proposed expansion,  
1242 including the location, the size, the anticipated completion  
1243 date, and the proposed construction program.

1244 2. An identification and evaluation of the primary and, if  
1245 applicable, secondary market areas of the facility and the  
1246 projected unit sales per month.

1247 3. Projected revenues, including anticipated entrance  
1248 fees; monthly service fees; nursing care revenues, if  
1249 applicable; and all other sources of revenue.

1250 4. Projected expenses, including for staffing requirements

1251 and salaries; the cost of property, plant, and equipment,  
1252 including depreciation expense; interest expense; marketing  
1253 expense; and other operating expenses.

1254 5. A projected balance sheet of the applicant.

1255 6. The expectations for the financial condition of the  
1256 project, including the projected cash flow and an estimate of  
1257 the funds anticipated to be necessary to cover startup losses.

1258 7. The inflation factor, if any, assumed in the study for  
1259 the proposed expansion and how and where it is applied.

1260 8. Project costs; the total amount of debt financing  
1261 required; marketing projections; resident rates, fees, and  
1262 charges; the competition; resident contract provisions; and  
1263 other factors that affect the feasibility of the facility.

1264 9. Appropriate population projections, including morbidity  
1265 and mortality assumptions.

1266 10. The name of the person who prepared the feasibility  
1267 study and his or her experience in preparing similar studies or  
1268 otherwise consulting in the field of continuing care.

1269 11. Financial forecasts or projections prepared in  
1270 accordance with standards adopted by the American Institute of  
1271 Certified Public Accountants or in accordance with standards for  
1272 feasibility studies for continuing care retirement communities  
1273 adopted by the Actuarial Standards Board.

1274 12. An independent evaluation and examination opinion for  
1275 the first 5 years of operations, or a comparable opinion

1276 acceptable to the office, by the consultant who prepared the  
1277 study, of the underlying assumptions used as a basis for the  
1278 forecasts or projections in the study and that the assumptions  
1279 are reasonable and proper and the project as proposed is  
1280 feasible.

1281 13. Any other information that the provider deems relevant  
1282 and appropriate to provide to enable the office to make a more  
1283 informed determination.

1284 (b) Such other reasonable data, financial statements, and  
1285 pertinent information as the commission or office may require  
1286 with respect to the applicant or the facility to determine the  
1287 financial status of the facility and the management capabilities  
1288 of its managers and owners.

1289 (3) A minimum of 75 percent of the moneys paid for all or  
1290 any part of an initial entrance fee or reservation deposit  
1291 collected for units in the expansion and 50 percent of the  
1292 moneys paid for all or any part of an initial fee collected for  
1293 continuing care at-home contracts in the expansion must be  
1294 placed in an escrow account or on deposit with the department as  
1295 prescribed in s. 651.033. Up to 25 percent of the moneys paid  
1296 for all or any part of an initial entrance fee or reservation  
1297 deposit may be included or pledged for the construction or  
1298 purchase of the facility or as security for long-term financing.  
1299 As used in this section, the term "initial entrance fee" means  
1300 the total entrance fee charged by the facility to the first

1301 occupant of a unit.

1302 (4) The provider is entitled to secure release of the  
1303 moneys held in escrow within 7 days after receipt by the office  
1304 of an affidavit from the provider, along with appropriate copies  
1305 to verify, and notification to the escrow agent by certified  
1306 mail that the following conditions have been satisfied:

1307 (a) A certificate of occupancy has been issued.

1308 (b) Payment in full has been received for at least 50  
1309 percent of the total units of a phase or of the total of the  
1310 combined phases constructed. If a provider offering continuing  
1311 care at-home is applying for a release of escrowed entrance  
1312 fees, the same minimum requirement must be met for the  
1313 continuing care and continuing care at-home contracts  
1314 independently of each other.

1315 (c) Documents evidencing that commitments have been  
1316 secured or that a documented plan adopted by the applicant has  
1317 been approved by the office for long-term financing.

1318 (d) Documents evidencing that the provider has sufficient  
1319 funds to meet the requirements of s. 651.035, which may include  
1320 funds deposited in the initial entrance fee account.

1321 (e) Documents evidencing the intended application of the  
1322 proceeds upon release and documentation that the entrance fees,  
1323 when released, will be applied as represented to the office.

1324

1325 Notwithstanding chapter 120, only the provider, the escrow

1326 agent, and the office have a substantial interest in any office  
1327 decision regarding release of escrow funds in any proceedings  
1328 under chapter 120 or this chapter.

1329 (5) (a) Within 30 days after receipt of an application for  
1330 expansion, the office shall examine the application and shall  
1331 notify the applicant in writing, specifically requesting any  
1332 additional information that the office is authorized to require.  
1333 Within 15 days after the office receives all the requested  
1334 additional information, the office shall notify the applicant in  
1335 writing that the requested information has been received and  
1336 that the application is deemed complete as of the date of the  
1337 notice. If the office chooses not to notify the applicant within  
1338 the 15-day period, the application is deemed complete for  
1339 purposes of review on the date the applicant files the  
1340 additional requested information. If the application submitted  
1341 is determined by the office to be substantially incomplete so as  
1342 to require substantial additional information, including  
1343 biographical information, the office may return the application  
1344 to the applicant with a written notice stating that the  
1345 application as received is substantially incomplete and,  
1346 therefore, is unacceptable for filing without further action  
1347 required by the office. Any filing fee received must be refunded  
1348 to the applicant.

1349 (b) An application is deemed complete upon the office  
1350 receiving all requested information and the applicant correcting

1351 any error or omission of which the applicant was timely notified  
1352 or when the time for such notification has expired. The office  
1353 shall notify the applicant in writing of the date on which the  
1354 application was deemed complete.

1355 (6) Within 45 days after the date on which an application  
1356 is deemed complete as provided in paragraph (5) (b), the office  
1357 shall complete its review and, based upon its review, approve an  
1358 expansion by the applicant and issue a determination that the  
1359 application meets all requirements of law, that the feasibility  
1360 study was based on sufficient data and reasonable assumptions,  
1361 and that the applicant will be able to provide continuing care  
1362 or continuing care at-home as proposed and meet all financial  
1363 and contractual obligations related to its operations, including  
1364 the financial requirements of this chapter. If the office  
1365 requests additional information and the applicant provides it  
1366 within 5 business days after notification, the period for  
1367 reviewing or approving an application may not be extended beyond  
1368 the period specified in paragraph (5) (a). If the application is  
1369 denied, the office must notify the applicant in writing, citing  
1370 the specific failures to meet the requirements of this chapter.  
1371 The denial entitles the applicant to a hearing pursuant to  
1372 chapter 120.

1373 Section 12. Paragraphs (b) and (c) of subsection (2) and  
1374 subsection (3) of section 651.026, Florida Statutes, are  
1375 amended, subsection (10) is added to that section, and paragraph

1376 (a) of subsection (2) of that section is republished, to read:  
 1377 651.026 Annual reports.—

1378 (2) The annual report shall be in such form as the  
 1379 commission prescribes and shall contain at least the following:

1380 (a) Any change in status with respect to the information  
 1381 required to be filed under s. 651.022(2).

1382 (b) A financial report ~~statements~~ audited by an  
 1383 independent certified public accountant which must contain, for  
 1384 two or more periods if the facility has been in existence that  
 1385 long, all of the following:

1386 1. An accountant's opinion and, in accordance with  
 1387 generally accepted accounting principles:

- 1388 a. A balance sheet;
- 1389 b. A statement of income and expenses;
- 1390 c. A statement of equity or fund balances; and
- 1391 d. A statement of changes in cash flows.

1392 2. Notes to the financial report ~~statements~~ considered  
 1393 customary or necessary for full disclosure or adequate  
 1394 understanding of the financial report ~~statements~~, financial  
 1395 condition, and operation.

1396 (c) The following financial information:

1397 1. A detailed listing of the assets maintained in the  
 1398 liquid reserve as required under s. 651.035 and in accordance  
 1399 with part II of chapter 625;

1400 2. A schedule giving additional information relating to

1401 property, plant, and equipment having an original cost of at  
 1402 least \$25,000, so as to show in reasonable detail with respect  
 1403 to each separate facility original costs, accumulated  
 1404 depreciation, net book value, appraised value or insurable value  
 1405 and date thereof, insurance coverage, encumbrances, and net  
 1406 equity of appraised or insured value over encumbrances. Any  
 1407 property not used in continuing care must be shown separately  
 1408 from property used in continuing care;

1409 3. The level of participation in Medicare or Medicaid  
 1410 programs, or both;

1411 4. A statement of all fees required of residents,  
 1412 including, but not limited to, a statement of the entrance fee  
 1413 charged, the monthly service charges, the proposed application  
 1414 of the proceeds of the entrance fee by the provider, and the  
 1415 plan by which the amount of the entrance fee is determined if  
 1416 the entrance fee is not the same in all cases; ~~and~~

1417 5. Any change or increase in fees if the provider changes  
 1418 the scope of, or the rates for, care or services, regardless of  
 1419 whether the change involves the basic rate or only those  
 1420 services available at additional costs to the resident;:-

1421 6. If the provider has more than one certificated  
 1422 facility, or has operations that are not licensed under this  
 1423 chapter, it shall submit a balance sheet, statement of income  
 1424 and expenses, statement of equity or fund balances, and  
 1425 statement of cash flows for each facility licensed under this

1426 chapter as supplemental information to the audited financial  
 1427 report statements required under paragraph (b); and-

1428 7. The management's calculation of the provider's debt  
 1429 service coverage ratio, occupancy, and days cash on hand for the  
 1430 current reporting period.

1431 (3) The commission shall adopt by rule additional  
 1432 ~~meaningful~~ measures of assessing the financial viability of a  
 1433 provider. ~~The rule may include the following factors:~~

- 1434 ~~(a) Debt service coverage ratios.~~
- 1435 ~~(b) Current ratios.~~
- 1436 ~~(c) Adjusted current ratios.~~
- 1437 ~~(d) Cash flows.~~
- 1438 ~~(e) Occupancy rates.~~
- 1439 ~~(f) Other measures, ratios, or trends.~~
- 1440 ~~(g) Other factors as may be appropriate.~~

1441 (10) Within 90 days after the conclusion of each annual  
 1442 reporting period, the office shall publish an industry  
 1443 benchmarking report that contains all of the following:

- 1444 (a) The median days cash on hand for all providers.
- 1445 (b) The median debt service coverage ratio for all  
 1446 providers.
- 1447 (c) The median occupancy rate for all providers by  
 1448 setting, including independent living, assisted living, skilled  
 1449 nursing, and the entire campus.

1450 Section 13. Section 651.0261, Florida Statutes, is amended

1451 to read:

1452 651.0261 Quarterly and monthly statements.—

1453 (1) Within 45 days after the end of each fiscal quarter,  
1454 each provider shall file a quarterly unaudited financial  
1455 statement of the provider or of the facility in the form  
1456 prescribed by commission rule and days cash on hand, occupancy,  
1457 debt service coverage ratio, and a detailed listing of the  
1458 assets maintained in the liquid reserve as required under s.  
1459 651.035. This requirement may be waived by the office upon  
1460 written request from a provider that is accredited without  
1461 conditions or stipulations or that has obtained an investment  
1462 grade credit rating from a United States credit rating agency as  
1463 authorized under s. 651.028. The last quarterly statement for a  
1464 fiscal year is not required if a provider does not have pending  
1465 a regulatory action level event or a corrective action plan.

1466 (2) If the office finds, ~~pursuant to rules of the~~  
1467 ~~commission,~~ that such information is needed to properly monitor  
1468 the financial condition of a provider or facility or is  
1469 otherwise needed to protect the public interest, the office may  
1470 require the provider to file:

1471 (a) Within 25 days after the end of each month, a monthly  
1472 unaudited financial statement of the provider or of the facility  
1473 in the form prescribed by the commission by rule and a detailed  
1474 listing of the assets maintained in the liquid reserve as  
1475 required under s. 651.035, ~~within 45 days after the end of each~~

1476 ~~fiscal quarter, a quarterly unaudited financial statement of the~~  
1477 ~~provider or of the facility in the form prescribed by the~~  
1478 ~~commission by rule. The commission may by rule require all or~~  
1479 ~~part of the statements or filings required under this section to~~  
1480 ~~be submitted by electronic means in a computer readable form~~  
1481 ~~compatible with the electronic data format specified by the~~  
1482 ~~commission.~~

1483 (b) Such other data, financial statements, and pertinent  
1484 information as the commission or office may reasonably require  
1485 with respect to the provider or the facility, its directors or  
1486 trustees, or, with respect to any parent, subsidiary, or  
1487 affiliate, if the provider or facility relies on a contractual  
1488 or financial relationship with such parent, subsidiary, or  
1489 affiliate in order to meet the financial requirements of this  
1490 chapter, to determine the financial status of the provider or of  
1491 the facility and the management capabilities of its managers and  
1492 owners.

1493 (3) A filing under subsection (2) may be required if any  
1494 of the following applies:

1495 (a) The provider is:

- 1496 1. Subject to administrative supervision proceedings;
- 1497 2. Subject to a corrective action plan resulting from a  
1498 regulatory action level event for up to 2 years after the  
1499 factors that caused the regulatory action level event have been  
1500 corrected; or

1501           3. Subject to delinquency or receivership proceedings or  
 1502 has filed for bankruptcy.

1503           (b) The provider or facility displays a declining  
 1504 financial position.

1505           (c) A change of ownership of the provider or facility has  
 1506 occurred within the previous 2 years.

1507           (d) The facility is found to be impaired.

1508           (4) The commission may by rule require all or part of the  
 1509 statements or filings required under this section to be  
 1510 submitted by electronic means in a computer-readable format  
 1511 compatible with an electronic data format specified by the  
 1512 commission.

1513           Section 14. Section 651.028, Florida Statutes, is amended  
 1514 to read:

1515           651.028 Accredited or certain credit-rated facilities.—If  
 1516 a provider or obligated group is accredited without stipulations  
 1517 or conditions by a process found by the office to be acceptable  
 1518 and substantially equivalent to the provisions of this chapter  
 1519 or has obtained an investment grade credit rating from a  
 1520 nationally recognized credit rating agency, as applicable, from  
 1521 Moody's Investors Service, Standard & Poor's, or Fitch Ratings,  
 1522 the office may, pursuant to rule of the commission, waive the  
 1523 quarterly filing ~~any~~ requirements under s. 651.0261 ~~of this~~  
 1524 ~~chapter~~ with respect to the provider if the office finds that  
 1525 such waivers are not inconsistent with the security protections

1526 | intended by this chapter. A provider or obligated group that is  
 1527 | accredited without stipulations or conditions or that has  
 1528 | obtained such an investment grade credit rating shall provide  
 1529 | documentation substantiating such accreditation or investment  
 1530 | grade rating in its request for the waiver. If the office grants  
 1531 | a waiver to the provider or obligated group, the provider or  
 1532 | obligated group must notify the office of any changes in the  
 1533 | accreditation or investment grade rating.

1534 | Section 15. Subsections (1), (2), (3), and (5) of section  
 1535 | 651.033, Florida Statutes, are amended, and subsection (6) is  
 1536 | added to that section, to read:

1537 | 651.033 Escrow accounts.—

1538 | (1) When funds are required to be deposited in an escrow  
 1539 | account pursuant to s. 651.0215, s. 651.022, s. 651.023, s.  
 1540 | 651.0246, s. 651.035, or s. 651.055:

1541 | (a) The escrow account must ~~shall~~ be established in a  
 1542 | Florida bank, Florida savings and loan association, ~~or~~ Florida  
 1543 | trust company, or a national bank that is chartered and  
 1544 | supervised by the Office of the Comptroller of the Currency  
 1545 | within the United States Department of the Treasury and that has  
 1546 | either a branch or a license to operate in this state, which is  
 1547 | acceptable to the office, or such funds must be deposited ~~on~~  
 1548 | ~~deposit~~ with the department, ~~and the funds deposited therein~~  
 1549 | ~~shall~~ be kept and maintained in an account separate and apart  
 1550 | from the provider's business accounts.

1551 (b) An escrow agreement shall be entered into between the  
1552 bank, savings and loan association, or trust company and the  
1553 provider of the facility; the agreement shall state that its  
1554 purpose is to protect the resident or the prospective resident;  
1555 and, upon presentation of evidence of compliance with applicable  
1556 portions of this chapter, or upon order of a court of competent  
1557 jurisdiction, the escrow agent shall release and pay over the  
1558 funds, or portions thereof, together with any interest accrued  
1559 thereon or earned from investment of the funds, to the provider  
1560 or resident as directed.

1561 (c) Any agreement establishing an escrow account required  
1562 under ~~the provisions of~~ this chapter is ~~shall be~~ subject to  
1563 approval by the office. The agreement must ~~shall~~ be in writing  
1564 and ~~shall~~ contain, in addition to any other provisions required  
1565 by law, a provision whereby the escrow agent agrees to abide by  
1566 the duties imposed by paragraphs (b) and (e), (3)(a), (3)(b),  
1567 and (5)(a) and subsection (6) under this section.

1568 (d) All funds deposited in an escrow account, if invested,  
1569 shall be invested as set forth in part II of chapter 625;  
1570 however, such investment may not diminish the funds held in  
1571 escrow below the amount required by this chapter. Funds  
1572 deposited in an escrow account are not subject to charges by the  
1573 escrow agent except escrow agent fees associated with  
1574 administering the accounts, or subject to any liens, judgments,  
1575 garnishments, creditor's claims, or other encumbrances against

1576 the provider or facility except as provided in s. 651.035(1).

1577 (e) At the request of either the provider or the office,  
1578 the escrow agent shall issue a statement indicating the status  
1579 of the escrow account.

1580 (2) Notwithstanding s. 651.035(7), ~~In addition, the escrow~~  
1581 ~~agreement shall provide that the escrow agent or another person~~  
1582 ~~designated to act in the escrow agent's place and the provider,~~  
1583 ~~except as otherwise provided in s. 651.035, shall notify the~~  
1584 ~~office in writing at least 10 days before the withdrawal of any~~  
1585 ~~portion of any funds required to be escrowed under the~~  
1586 ~~provisions of s. 651.035. However,~~ in the event of an emergency  
1587 and upon petition by the provider, the office may ~~waive the 10-~~  
1588 ~~day notification period and~~ allow a withdrawal of up to 10  
1589 percent of the required minimum liquid reserve. The office shall  
1590 have 3 working days to deny the petition for the emergency 10-  
1591 percent withdrawal. If the office fails to deny the petition  
1592 within 3 working days, the petition is ~~shall be~~ deemed to have  
1593 been granted by the office. For purposes ~~the purpose~~ of this  
1594 section, the term "working day" means each day that is not a  
1595 Saturday, Sunday, or legal holiday as defined by Florida law.  
1596 Also, for purposes ~~the purpose~~ of this section, the day the  
1597 petition is received by the office is ~~shall~~ not be counted as  
1598 one of the 3 days.

1599 (3) ~~In addition,~~ When entrance fees are required to be  
1600 deposited in an escrow account pursuant to s. 651.0215, s.

1601 651.022, s. 651.023, s. 651.0246, or s. 651.055:

1602 (a) The provider shall deliver to the resident a written  
1603 receipt. The receipt must show the payor's name and address, the  
1604 date, the price of the care contract, and the amount of money  
1605 paid. A copy of each receipt, together with the funds, must  
1606 ~~shall~~ be deposited with the escrow agent or as provided in  
1607 paragraph (c). The escrow agent must ~~shall~~ release such funds to  
1608 the provider 7 days after the date of receipt of the funds by  
1609 the escrow agent if the provider, operating under a certificate  
1610 of authority issued by the office, has met the requirements of  
1611 s. 651.0215(8), s. 651.023(6), or s. 651.0246. However, if the  
1612 resident rescinds the contract within the 7-day period, the  
1613 escrow agent must ~~shall~~ release the escrowed fees to the  
1614 resident.

1615 (b) At the request of an individual resident of a  
1616 facility, the escrow agent shall issue a statement indicating  
1617 the status of the resident's portion of the escrow account.

1618 (c) At the request of an individual resident of a  
1619 facility, the provider may hold the check for the 7-day period  
1620 and may ~~shall~~ not deposit it during this time period. If the  
1621 resident rescinds the contract within the 7-day period, the  
1622 check must ~~shall~~ be immediately returned to the resident. Upon  
1623 the expiration of the 7 days, the provider shall deposit the  
1624 check.

1625 (d) A provider may assess a nonrefundable fee, which is

1626 separate from the entrance fee, for processing a prospective  
1627 resident's application for continuing care or continuing care  
1628 at-home.

1629 (5) When funds are required to be deposited in an escrow  
1630 account pursuant to s. 651.0215, s. 651.022, s. 651.023, s.  
1631 651.0246, or s. 651.035, the following ~~shall~~ apply:

1632 (a) The escrow agreement must ~~shall~~ require that the  
1633 escrow agent furnish the provider with a quarterly statement  
1634 indicating the amount of any disbursements from or deposits to  
1635 the escrow account and the condition of the account during the  
1636 period covered by the statement. The agreement must ~~shall~~  
1637 require that the statement be furnished to the provider by the  
1638 escrow agent on or before the 10th day of the month following  
1639 the end of the quarter for which the statement is due. If the  
1640 escrow agent does not provide the quarterly statement to the  
1641 provider on or before the 10th day of the month following the  
1642 month for which the statement is due, the office may, in its  
1643 discretion, levy against the escrow agent a fine not to exceed  
1644 \$25 a day for each day of noncompliance with the provisions of  
1645 this subsection.

1646 (b) If the escrow agent does not provide the quarterly  
1647 statement to the provider on or before the 10th day of the month  
1648 following the quarter for which the statement is due, the  
1649 provider shall, on or before the 15th day of the month following  
1650 the quarter for which the statement is due, send a written

1651 request for the statement to the escrow agent by certified mail  
1652 return receipt requested.

1653 (c) On or before the 20th day of the month following the  
1654 quarter for which the statement is due, the provider shall file  
1655 with the office a copy of the escrow agent's statement or, if  
1656 the provider has not received the escrow agent's statement, a  
1657 copy of the written request to the escrow agent for the  
1658 statement.

1659 (d) The office may, in its discretion, in addition to any  
1660 other penalty that may be provided for under this chapter, levy  
1661 a fine against the provider not to exceed \$25 a day for each day  
1662 the provider fails to comply with the provisions of this  
1663 subsection.

1664 (e) Funds held on deposit with the department are exempt  
1665 from the reporting requirements of this subsection.

1666 (6) Except as described in paragraph (3)(a), the escrow  
1667 agent may not release or otherwise allow the transfer of funds  
1668 without the written approval of the office, unless the  
1669 withdrawal is from funds in excess of the amounts required by  
1670 ss. 651.0215, 651.022, 651.023, 651.0246, 651.035, and 651.055.

1671 Section 16. Section 651.034, Florida Statutes, is created  
1672 to read:

1673 651.034 Financial and operating requirements for  
1674 providers.-

1675 (1) (a) If a regulatory action level event occurs, the

1676 office must:

1677 1. Require the provider to prepare and submit a corrective  
1678 action plan or, if applicable, a revised corrective action plan;

1679 2. Perform an examination pursuant to s. 651.105 or an  
1680 analysis, as the office considers necessary, of the assets,  
1681 liabilities, and operations of the provider, including a review  
1682 of the corrective action plan or the revised corrective action  
1683 plan; and

1684 3. After the examination or analysis, issue a corrective  
1685 order, if necessary, specifying any corrective actions that the  
1686 office determines are required.

1687 (b) In determining corrective actions, the office shall  
1688 consider any factor relevant to the provider based upon the  
1689 office's examination or analysis of the assets, liabilities, and  
1690 operations of the provider. The provider must submit the  
1691 corrective action plan or the revised corrective action plan  
1692 within 30 days after the occurrence of the regulatory action  
1693 level event. The office shall review and approve or disapprove  
1694 the corrective action plan within 15 business days.

1695 (c) The office may use members of the Continuing Care  
1696 Advisory Council, individually or as a group, or may retain  
1697 actuaries, investment experts, and other consultants to review a  
1698 provider's corrective action plan or revised corrective action  
1699 plan, examine or analyze the assets, liabilities, and operations  
1700 of a provider, and formulate the corrective order with respect

1701 to the provider. The fees, costs, and expenses relating to  
1702 consultants must be borne by the affected provider.

1703 (2) If an impairment occurs and except when s.  
1704 651.114(11)(a) applies, the office must take action necessary to  
1705 place the provider under regulatory control, including any  
1706 remedy available under part I of chapter 631. An impairment is  
1707 sufficient grounds for the department to be appointed as  
1708 receiver as provided in chapter 631. Except when s.  
1709 651.114(11)(a) is applicable, the department may appoint a  
1710 receiver. If s. 651.114(11)(a) applies, the provider must make  
1711 available to the office copies of any corrective action plan  
1712 approved by the third-party lender or trustee to cure the  
1713 impairment and any related required report. Notwithstanding s.  
1714 631.011, impairment of a provider, for purposes of s. 631.051,  
1715 is defined according to the term "impaired" under s. 651.011.  
1716 The office may forego taking action for up to 180 days after the  
1717 impairment if the office finds there is a reasonable expectation  
1718 that the impairment may be eliminated within the 180-day period.

1719 (3) There is no liability on the part of, and a cause of  
1720 action may not arise against, the commission, department, or  
1721 office, or their employees or agents, for any action they take  
1722 in the performance of their powers and duties under this  
1723 section.

1724 (4) The office shall transmit any notice that may result  
1725 in regulatory action by registered mail, certified mail, or any

1726 other method of transmission which includes documentation of  
1727 receipt by the provider. Notice is effective when the provider  
1728 receives it.

1729 (5) This section is supplemental to the other laws of this  
1730 state and does not preclude or limit any power or duty of the  
1731 department or office under those laws or under the rules adopted  
1732 pursuant to those laws.

1733 (6) The office may exempt a provider from subsection (1)  
1734 or subsection (2) until stabilized occupancy is reached or until  
1735 the time projected to achieve stabilized occupancy as reported  
1736 in the last feasibility study required by the office as part of  
1737 an application filing under s. 651.0215, s. 651.023, s. 651.024,  
1738 or s. 651.0246 has elapsed, but for no longer than 5 years after  
1739 the date of issuance of the certificate of occupancy.

1740 (7) The commission may adopt rules to administer this  
1741 section, including, but not limited to, rules regarding  
1742 corrective action plans, revised corrective action plans,  
1743 corrective orders, and procedures to be followed in the event of  
1744 a regulatory action level event or an impairment.

1745 Section 17. Paragraphs (a), (b), and (c) of subsection (1)  
1746 of section 651.035, Florida Statutes, are amended, and  
1747 subsections (7) through (10) are added to that section, to read:

1748 651.035 Minimum liquid reserve requirements.—

1749 (1) A provider shall maintain in escrow a minimum liquid  
1750 reserve consisting of the following reserves, as applicable:

1751 (a) Each provider shall maintain in escrow as a debt  
1752 service reserve the aggregate amount of all principal and  
1753 interest payments due during the fiscal year on any mortgage  
1754 loan or other long-term financing of the facility, including  
1755 property taxes as recorded in the audited financial report  
1756 ~~statements~~ required under s. 651.026. The amount must include  
1757 any leasehold payments and all costs related to such payments.  
1758 If principal payments are not due during the fiscal year, the  
1759 provider must ~~shall~~ maintain in escrow as a minimum liquid  
1760 reserve an amount equal to interest payments due during the next  
1761 12 months on any mortgage loan or other long-term financing of  
1762 the facility, including property taxes. If a provider does not  
1763 have a mortgage loan or other financing on the facility, the  
1764 provider must deposit monthly in escrow as a minimum liquid  
1765 reserve an amount equal to one-twelfth of the annual property  
1766 tax liability as indicated in the most recent tax notice  
1767 provided pursuant to s. 197.322(3), and must annually pay  
1768 property taxes out of such escrow.

1769 (b) A provider that has outstanding indebtedness that  
1770 requires a debt service reserve to be held in escrow pursuant to  
1771 a trust indenture or mortgage lien on the facility and for which  
1772 the debt service reserve may only be used to pay principal and  
1773 interest payments on the debt that the debtor is obligated to  
1774 pay, and which may include property taxes and insurance, may  
1775 include such debt service reserve in computing the minimum

1776 liquid reserve needed to satisfy this subsection if the provider  
1777 furnishes to the office a copy of the agreement under which such  
1778 debt service is held, together with a statement of the amount  
1779 being held in escrow for the debt service reserve, certified by  
1780 the lender or trustee and the provider to be correct. The  
1781 trustee shall provide the office with any information concerning  
1782 the debt service reserve account upon request of the provider or  
1783 the office. Any such separate debt service reserves are not  
1784 subject to the transfer provisions set forth in subsection (8).

1785 (c) Each provider shall maintain in escrow an operating  
1786 reserve equal to 30 percent of the total operating expenses  
1787 projected in the feasibility study required by s. 651.023 for  
1788 the first 12 months of operation. Thereafter, each provider  
1789 shall maintain in escrow an operating reserve equal to 15  
1790 percent of the total operating expenses in the annual report  
1791 filed pursuant to s. 651.026. If a provider has been in  
1792 operation for more than 12 months, the total annual operating  
1793 expenses must ~~shall~~ be determined by averaging the total annual  
1794 operating expenses reported to the office by the number of  
1795 annual reports filed with the office within the preceding 3-year  
1796 period subject to adjustment if there is a change in the number  
1797 of facilities owned. For purposes of this subsection, total  
1798 annual operating expenses include all expenses of the facility  
1799 except: depreciation and amortization; interest and property  
1800 taxes included in paragraph (a); extraordinary expenses that are

1801 adequately explained and documented in accordance with generally  
 1802 accepted accounting principles; liability insurance premiums in  
 1803 excess of those paid in calendar year 1999; and changes in the  
 1804 obligation to provide future services to current residents. For  
 1805 providers initially licensed during or after calendar year 1999,  
 1806 liability insurance must ~~shall~~ be included in the total  
 1807 operating expenses in an amount not to exceed the premium paid  
 1808 during the first 12 months of facility operation. ~~Beginning~~  
 1809 ~~January 1, 1993,~~ The operating reserves required under this  
 1810 subsection must ~~shall~~ be in an unencumbered account held in  
 1811 escrow for the benefit of the residents. Such funds may not be  
 1812 encumbered or subject to any liens or charges by the escrow  
 1813 agent or judgments, garnishments, or creditors' claims against  
 1814 the provider or facility. However, if a facility had a lien,  
 1815 mortgage, trust indenture, or similar debt instrument in place  
 1816 before January 1, 1993, which encumbered all or any part of the  
 1817 reserves required by this subsection and such funds were used to  
 1818 meet the requirements of this subsection, then such arrangement  
 1819 may be continued, unless a refinancing or acquisition has  
 1820 occurred, and the provider is ~~shall be~~ in compliance with this  
 1821 subsection.

1822 (7) (a) A provider may withdraw funds held in escrow  
 1823 without the approval of the office if the amount held in escrow  
 1824 exceeds the requirements of this section and if the withdrawal  
 1825 will not affect compliance with this section.

1826        (b)1. For all other proposed withdrawals, in order to  
1827 receive the consent of the office, the provider must file  
1828 documentation showing why the withdrawal is necessary for the  
1829 continued operation of the facility and such additional  
1830 information as the office reasonably requires.

1831        2. The office shall notify the provider when the filing is  
1832 deemed complete. If the provider has complied with all prior  
1833 requests for information, the filing is deemed complete after 30  
1834 days without communication from the office.

1835        3. Within 30 days after the date a file is deemed  
1836 complete, the office shall provide the provider with written  
1837 notice of its approval or disapproval of the request. The office  
1838 may disapprove any request to withdraw such funds if it  
1839 determines that the withdrawal is not in the best interest of  
1840 the residents.

1841        (8) The office may order the immediate transfer of up to  
1842 100 percent of the funds held in the minimum liquid reserve to  
1843 the custody of the department pursuant to part III of chapter  
1844 625 if the office finds that the provider is impaired or  
1845 insolvent. The office may order such a transfer regardless of  
1846 whether the office has suspended or revoked, or intends to  
1847 suspend or revoke, the certificate of authority of the provider.

1848        (9) Each facility shall file with the office annually,  
1849 together with the annual report required by s. 651.026, a  
1850 calculation of its minimum liquid reserve determined in

1851 accordance with this section on a form prescribed by the  
1852 commission.

1853 (10) Notwithstanding subsection (6), if the market value  
1854 of the minimum liquid reserve is less than the required minimum  
1855 amount at the end of any fiscal quarter, the provider must fund  
1856 the shortfall within 10 business days.

1857 Section 18. Effective July 1, 2019, section 651.043,  
1858 Florida Statutes, is created to read:

1859 651.043 Approval of change in management.-

1860 (1) A contract with a management company entered into  
1861 after July 1, 2019, must be in writing and include a provision  
1862 that the contract will be canceled upon issuance of an order by  
1863 the office pursuant to this section and without the application  
1864 of a cancellation fee or penalty. If a provider contracts with a  
1865 management company, a separate written contract is not required  
1866 for the individual manager employed by the management company to  
1867 oversee a facility. If a management company voluntarily executes  
1868 a contract with a manager or contractor, the contract is not  
1869 required to be submitted to the office unless requested by the  
1870 office.

1871 (2) A provider shall notify the office, in writing or  
1872 electronically, of any change in management within 10 business  
1873 days. For each new management company or manager not employed by  
1874 a management company, the provider shall submit to the office  
1875 the information required by s. 651.022(2) and a copy of the

1876 written management contract, if applicable.

1877 (3) For a provider that is found to be impaired or that  
1878 has a regulatory action level event pending, the office may  
1879 disapprove new management and order the provider to remove the  
1880 new management after reviewing the information required under  
1881 subsection (2).

1882 (4) For a provider other than that specified in subsection  
1883 (3), the office may disapprove new management and order the  
1884 provider to remove the new management after receiving the  
1885 required information under subsection (2), if the office:

1886 (a) Finds that the new management is incompetent or  
1887 untrustworthy;

1888 (b) Finds that the new management is so lacking in  
1889 managerial experience as to make the proposed operation  
1890 hazardous to the residents or potential residents;

1891 (c) Finds that the new management is so lacking in  
1892 experience, ability, and standing as to jeopardize the  
1893 reasonable promise of successful operation; or

1894 (d) Has good reason to believe that the new management is  
1895 affiliated directly or indirectly through ownership, control, or  
1896 business relations with any person or persons whose business  
1897 operations are or have been marked by manipulation of assets or  
1898 accounts or by bad faith, to the detriment of residents,  
1899 stockholders, investors, creditors, or the public.

1900

1901 The office shall complete its review as required under  
1902 subsections (3) and (4) and, if applicable, issue notice of  
1903 disapproval of the new management within 15 business days after  
1904 the filing is deemed complete. A filing is deemed complete upon  
1905 the office's receipt of all requested information and the  
1906 provider's correction of any error or omission for which the  
1907 provider was timely notified. If the office does not issue  
1908 notice of disapproval of the new management within 15 business  
1909 days after the filing is deemed complete, the new management is  
1910 deemed approved.

1911 (5) Management disapproved by the office must be removed  
1912 within 30 days after receipt by the provider of notice of such  
1913 disapproval.

1914 (6) The office may revoke, suspend, or take other  
1915 administrative action against the certificate of authority of  
1916 the provider if the provider:

1917 (a) Fails to timely remove management disapproved by the  
1918 office;

1919 (b) Fails to timely notify the office of a change in  
1920 management;

1921 (c) Appoints new management without a written contract  
1922 when a written contract is required under this section; or

1923 (d) Repeatedly appoints management that was previously  
1924 disapproved by the office or that is not approvable under  
1925 subsection (4).

1926           (7) The provider shall remove any management immediately  
 1927 upon discovery of either of the following conditions, if the  
 1928 conditions were not disclosed in the notice to the office  
 1929 required under subsection (2):

1930           (a) That a manager has been found guilty of, or has pled  
 1931 guilty or no contest to, a felony charge, or has been held  
 1932 liable or has been enjoined in a civil action by final judgment,  
 1933 if the felony or civil action involved fraud, embezzlement,  
 1934 fraudulent conversion, or misappropriation of property.

1935           (b) That a manager is now, or was in the past, affiliated,  
 1936 directly or indirectly, through ownership interest of 10 percent  
 1937 or more in, or control of, any business, corporation, or other  
 1938 entity that has been found guilty of or has pled guilty or no  
 1939 contest to a felony charge, or has been held liable or has been  
 1940 enjoined in a civil action by final judgment, if the felony or  
 1941 civil action involved fraud, embezzlement, fraudulent  
 1942 conversion, or misappropriation of property.

1943  
 1944 The failure to remove such management is grounds for revocation  
 1945 or suspension of the provider's certificate of authority.

1946           Section 19. Section 651.051, Florida Statutes, is amended  
 1947 to read:

1948           651.051 Maintenance of assets and records in state.—All  
 1949 records and assets of a provider must be maintained or readily  
 1950 accessible in this state or, if the provider's corporate office

1951 is located in another state, such records must be electronically  
1952 stored in a manner that will ensure that the records are readily  
1953 accessible to the office. No records or assets may be removed  
1954 from this state by a provider unless the office consents to such  
1955 removal in writing before such removal. Such consent must ~~shall~~  
1956 be based upon the provider's submitting satisfactory evidence  
1957 that the removal will facilitate and make more economical the  
1958 operations of the provider and will not diminish the service or  
1959 protection thereafter to be given the provider's residents in  
1960 this state. Before ~~Prior to~~ such removal, the provider shall  
1961 give notice to the president or chair of the facility's  
1962 residents' council. If such removal is part of a cash management  
1963 system which has been approved by the office, disclosure of the  
1964 system must ~~shall~~ meet the notification requirements. The  
1965 electronic storage of records on a web-based, secured storage  
1966 platform by contract with a third party is acceptable if the  
1967 records are readily accessible to the office.

1968 Section 20. Subsection (3) of section 651.055, Florida  
1969 Statutes, is amended to read:

1970 651.055 Continuing care contracts; right to rescind.—

1971 (3) The contract must include or be accompanied by a  
1972 statement, printed in boldfaced type, which reads: "This  
1973 facility and all other continuing care facilities (also known as  
1974 life plan communities) in the State of Florida are regulated by  
1975 chapter 651, Florida Statutes. A copy of the law is on file in

1976 | this facility. The law gives you or your legal representative  
 1977 | the right to inspect our most recent financial statement and  
 1978 | inspection report before signing the contract."

1979 |       Section 21. Subsection (2) of section 651.057, Florida  
 1980 | Statutes, is amended to read:

1981 |       651.057 Continuing care at-home contracts.—

1982 |       (2) A provider that holds a certificate of authority and  
 1983 | wishes to offer continuing care at-home must also:

1984 |       (a) Submit a business plan to the office with the  
 1985 | following information:

1986 |       1. A description of the continuing care at-home services  
 1987 | that will be provided, the market to be served, and the fees to  
 1988 | be charged;

1989 |       2. A copy of the proposed continuing care at-home  
 1990 | contract;

1991 |       3. An actuarial study prepared by an independent actuary  
 1992 | in accordance with the standards adopted by the American Academy  
 1993 | of Actuaries which presents the impact of providing continuing  
 1994 | care at-home on the overall operation of the facility; and

1995 |       4. A ~~market~~ feasibility study that meets the requirements  
 1996 | of s. 651.022(3) and documents that there is sufficient interest  
 1997 | in continuing care at-home contracts to support such a program;

1998 |       (b) Demonstrate to the office that the proposal to offer  
 1999 | continuing care at-home contracts to individuals who do not  
 2000 | immediately move into the facility will not place the provider

2001 in an unsound financial condition;

2002 (c) Comply with the requirements of s. 651.0246(1) ~~s.~~

2003 ~~651.021(2)~~, except that an actuarial study may be substituted

2004 for the feasibility study; and

2005 (d) Comply with the requirements of this chapter.

2006 Section 22. Subsection (1) of section 651.071, Florida

2007 Statutes, is amended to read:

2008 651.071 Contracts as preferred claims on liquidation or

2009 receivership.—

2010 (1) In the event of receivership or liquidation

2011 proceedings against a provider, all continuing care and

2012 continuing care at-home contracts executed by a provider are

2013 ~~shall be~~ deemed preferred claims or policyholder loss ~~preferred~~

2014 claims pursuant to s. 631.271(1)(b) against all assets owned by

2015 the provider; however, such claims are subordinate to any

2016 secured claim.

2017 Section 23. Subsections (2) and (3) of section 651.091,

2018 Florida Statutes, are amended, and subsection (4) of that

2019 section is republished, to read:

2020 651.091 Availability, distribution, and posting of reports

2021 and records; requirement of full disclosure.—

2022 (2) Every continuing care facility shall:

2023 (a) Display the certificate of authority in a conspicuous

2024 place inside the facility.

2025 (b) Post in a prominent position in the facility which is

2026 accessible to all residents and the general public a concise  
2027 summary of the last examination report issued by the office,  
2028 with references to the page numbers of the full report noting  
2029 any deficiencies found by the office, and the actions taken by  
2030 the provider to rectify such deficiencies, indicating in such  
2031 summary where the full report may be inspected in the facility.

2032 (c) Post in a prominent position in the facility,  
2033 accessible to all residents and the general public, a notice  
2034 containing the contact information for the office and the  
2035 Division of Consumer Services of the department and stating that  
2036 the division or office may be contacted for the submission of  
2037 inquiries and complaints with respect to potential violations of  
2038 this chapter committed by a provider. Such contact information  
2039 must include the division's website and the toll-free consumer  
2040 helpline and the office's website and telephone number.

2041 (d) Provide notice to the president or chair of the  
2042 residents' council within 10 business days after issuance of a  
2043 final examination report or the initiation of any legal or  
2044 administrative proceeding by the office or the department and  
2045 include a copy of such document.

2046 (e)-(e) Post in a prominent position in the facility which  
2047 is accessible to all residents and the general public a summary  
2048 of the latest annual statement, indicating in the summary where  
2049 the full annual statement may be inspected in the facility. A  
2050 listing of any proposed changes in policies, programs, and

2051 services must also be posted.

2052 (f)~~(d)~~ Distribute a copy of the full annual statement and  
2053 a copy of the most recent third-party ~~third party~~ financial  
2054 audit filed with the annual report to the president or chair of  
2055 the residents' council within 30 days after filing the annual  
2056 report with the office, and designate a staff person to provide  
2057 explanation thereof.

2058 (g)~~(e)~~ Deliver the information described in s. 651.085(4)  
2059 in writing to the president or chair of the residents' council  
2060 and make supporting documentation available upon request ~~Notify~~  
2061 ~~the residents' council of any plans filed with the office to~~  
2062 ~~obtain new financing, additional financing, or refinancing for~~  
2063 ~~the facility and of any applications to the office for any~~  
2064 ~~expansion of the facility.~~

2065 (h)~~(f)~~ Deliver to the president or chair of the residents'  
2066 council a summary of entrance fees collected and refunds made  
2067 during the time period covered in the annual report and the  
2068 refund balances due at the end of the report period.

2069 (i)~~(g)~~ Deliver to the president or chair of the residents'  
2070 council a copy of each quarterly statement within 30 days after  
2071 the quarterly statement is filed with the office if the facility  
2072 is required to file quarterly.

2073 (j)~~(h)~~ Upon request, deliver to the president or chair of  
2074 the residents' council a copy of any newly approved continuing  
2075 care or continuing care at-home contract within 30 days after

2076 approval by the office.

2077 (k) Provide to the president or chair of the residents'  
 2078 council a copy of any notice filed with the office relating to  
 2079 any change in ownership within 10 business days after such  
 2080 filing by the provider.

2081 (l) Make the information available to prospective  
 2082 residents pursuant to paragraph (3) (d) available to current  
 2083 residents and provide notice of changes to that information to  
 2084 the president or chair of the residents' council within 3  
 2085 business days.

2086 (3) Before entering into a contract to furnish continuing  
 2087 care or continuing care at-home, the provider undertaking to  
 2088 furnish the care, or the agent of the provider, shall make full  
 2089 disclosure, and provide copies of the disclosure documents to  
 2090 the prospective resident or his or her legal representative, of  
 2091 the following information:

2092 (a) The contract to furnish continuing care or continuing  
 2093 care at-home.

2094 (b) The summary listed in paragraph (2) (b) .

2095 (c) All ownership interests and lease agreements,  
 2096 including information specified in s. 651.022(2) (b) 8.

2097 (d) In keeping with the intent of this subsection relating  
 2098 to disclosure, the provider shall make available for review  
 2099 master plans approved by the provider's governing board and any  
 2100 plans for expansion or phased development, to the extent that

2101 the availability of such plans does not put at risk real estate,  
2102 financing, acquisition, negotiations, or other implementation of  
2103 operational plans and thus jeopardize the success of  
2104 negotiations, operations, and development.

2105 (e) Copies of the rules and regulations of the facility  
2106 and an explanation of the responsibilities of the resident.

2107 (f) The policy of the facility with respect to admission  
2108 to and discharge from the various levels of health care offered  
2109 by the facility.

2110 ~~(g) The amount and location of any reserve funds required~~  
2111 ~~by this chapter, and the name of the person or entity having a~~  
2112 ~~claim to such funds in the event of a bankruptcy, foreclosure,~~  
2113 ~~or rehabilitation proceeding.~~

2114 (g)~~(h)~~ A copy of s. 651.071.

2115 (h)~~(i)~~ A copy of the resident's rights as described in s.  
2116 651.083.

2117 (i) Notice of the issuance of a final examination report  
2118 or the initiation of any legal or administrative proceeding by  
2119 the office or the department, including where the report or  
2120 filing may be inspected in the facility, and that, upon request,  
2121 an electronic copy or specific website address will be provided  
2122 from which the document can be downloaded at no cost.

2123 (j) Notice that the entrance fee is the property of the  
2124 provider after the expiration of the 7-day escrow requirement  
2125 under s. 651.055(2).

2126           (k) A statement that distribution of assets or income may  
 2127 occur or a statement that such distributions will not occur.

2128           (l) Notice of any holding company system or obligated  
 2129 group of which the provider is a member.

2130           (4) A true and complete copy of the full disclosure  
 2131 document to be used must be filed with the office before use. A  
 2132 resident or prospective resident or his or her legal  
 2133 representative may inspect the full reports referred to in  
 2134 paragraph (2) (b); the charter or other agreement or instrument  
 2135 required to be filed with the office pursuant to s. 651.022(2),  
 2136 together with all amendments thereto; and the bylaws of the  
 2137 corporation or association, if any. Upon request, copies of the  
 2138 reports and information shall be provided to the individual  
 2139 requesting them if the individual agrees to pay a reasonable  
 2140 charge to cover copying costs.

2141           Section 24. Subsection (4) of section 651.095, Florida  
 2142 Statutes, is amended to read:

2143           651.095 Advertisements; requirements; penalties.—

2144           (4) It is unlawful for any person, other than a provider  
 2145 licensed pursuant to this chapter, to advertise or market to the  
 2146 general public any product similar to continuing care through  
 2147 the use of such terms as "life care," "life plan," "life plan  
 2148 at-home," "continuing care," or "guaranteed care for life," or  
 2149 similar terms, words, or phrases.

2150           Section 25. Section 651.105, Florida Statutes, is amended

2151 to read:

2152 651.105 Examination ~~and inspections.~~

2153 (1) The office may at any time, and shall at least once  
2154 every 3 years, examine the business of any applicant for a  
2155 certificate of authority and any provider engaged in the  
2156 execution of care contracts or engaged in the performance of  
2157 obligations under such contracts, in the same manner as is  
2158 provided for the examination of insurance companies pursuant to  
2159 ss. 624.316 and 624.318 ~~s. 624.316~~. For a provider as described  
2160 ~~defined~~ in s. 651.028, such examinations must ~~shall~~ take place  
2161 at least once every 5 years. Such examinations must ~~shall~~ be  
2162 made by a representative or examiner designated by the office  
2163 whose compensation will be fixed by the office pursuant to s.  
2164 624.320. Routine examinations may be made by having the  
2165 necessary documents submitted to the office; and, for this  
2166 purpose, financial documents and records conforming to commonly  
2167 accepted accounting principles and practices, as required under  
2168 s. 651.026, are deemed adequate. The final written report of  
2169 each examination must be filed with the office and, when so  
2170 filed, constitutes a public record. Any provider being examined  
2171 shall, upon request, give reasonable and timely access to all of  
2172 its records. The representative or examiner designated by the  
2173 office may at any time examine the records and affairs and  
2174 inspect the physical property of any provider, whether in  
2175 connection with a formal examination or not.

2176 (2) Any duly authorized officer, employee, or agent of the  
2177 office may, upon presentation of proper identification, have  
2178 access to, and inspect, any records, with or without advance  
2179 notice, to secure compliance with, or to prevent a violation of,  
2180 any provision of this chapter.

2181 (3) Reports of the results of such financial examinations  
2182 must be kept on file by the office. Any investigatory records,  
2183 reports, or documents held by the office are confidential and  
2184 exempt from the provisions of s. 119.07(1), until the  
2185 investigation is completed or ceases to be active. For the  
2186 purpose of this section, an investigation is active while it is  
2187 being conducted by the office with a reasonable, good faith  
2188 belief that it could lead to the filing of administrative,  
2189 civil, or criminal proceedings. An investigation does not cease  
2190 to be active if the office is proceeding with reasonable  
2191 dispatch and has a good faith belief that action could be  
2192 initiated by the office or other administrative or law  
2193 enforcement agency.

2194 (4) The office shall notify the provider and the executive  
2195 officer of the governing body of the provider in writing of all  
2196 deficiencies in its compliance with the provisions of this  
2197 chapter and the rules adopted pursuant to this chapter and shall  
2198 set a reasonable length of time for compliance by the provider.  
2199 In addition, the office shall require corrective action or  
2200 request a corrective action plan from the provider which plan

2201 demonstrates a good faith attempt to remedy the deficiencies by  
2202 a specified date. If the provider fails to comply within the  
2203 established length of time, the office may initiate action  
2204 against the provider in accordance with the provisions of this  
2205 chapter.

2206       (5) A provider shall respond to written correspondence  
2207 from the office and provide data, financial statements, and  
2208 pertinent information as requested by the office or by the  
2209 office's investigators, examiners, or inspectors. The office has  
2210 standing to petition a circuit court for mandatory injunctive  
2211 relief to compel access to and require the provider to produce  
2212 the documents, data, records, and other information requested by  
2213 the office or its investigators, examiners, or inspectors. The  
2214 office may petition the circuit court in the county in which the  
2215 facility is situated or the Circuit Court of Leon County to  
2216 enforce this section ~~At the time of the routine examination, the~~  
2217 ~~office shall determine if all disclosures required under this~~  
2218 ~~chapter have been made to the president or chair of the~~  
2219 ~~residents' council and the executive officer of the governing~~  
2220 ~~body of the provider.~~

2221       (6) A representative of the provider must give a copy of  
2222 the final examination report and corrective action plan, if one  
2223 is required by the office, to the executive officer of the  
2224 governing body of the provider within 60 days after issuance of  
2225 the report.

2226 (7) Unless a provider or facility is impaired or subject  
 2227 to a regulatory action level event, any parent, subsidiary, or  
 2228 affiliate is not subject to examination by the office as part of  
 2229 a routine examination. However, if a provider or facility relies  
 2230 on a contractual or financial relationship with a parent, a  
 2231 subsidiary, or an affiliate in order to meet the financial  
 2232 requirements of this chapter, the office may examine any parent,  
 2233 subsidiary, or affiliate that has a contractual or financial  
 2234 relationship with the provider or facility to the extent  
 2235 necessary to ascertain the financial condition of the provider.

2236 (8) If a provider voluntarily contracts with an actuary  
 2237 for an actuarial study or review at regular intervals, the  
 2238 office may not use any recommendations made by the actuary as a  
 2239 measure of performance when conducting an examination or  
 2240 inspection. The office may not request, as part of the  
 2241 examination or inspection, documents associated with an  
 2242 actuarial study or review marked "restricted distribution" if  
 2243 the study or review is not required by this chapter.

2244 Section 26. Section 651.106, Florida Statutes, is amended  
 2245 to read:

2246 651.106 Grounds for discretionary refusal, suspension, or  
 2247 revocation of certificate of authority.—The office may deny an  
 2248 application or~~7~~ suspend~~7~~ or revoke the provisional certificate  
 2249 of authority or the certificate of authority of any applicant or  
 2250 provider if it finds that any one or more of the following

2251 grounds applicable to the applicant or provider exist:

2252 (1) Failure by the provider to continue to meet the

2253 requirements for the authority originally granted.

2254 (2) Failure by the provider to meet one or more of the

2255 qualifications for the authority specified by this chapter.

2256 (3) Material misstatement, misrepresentation, or fraud in

2257 obtaining the authority, or in attempting to obtain the same.

2258 (4) Demonstrated lack of fitness or trustworthiness.

2259 (5) Fraudulent or dishonest practices of management in the

2260 conduct of business.

2261 (6) Misappropriation, conversion, or withholding of

2262 moneys.

2263 (7) Failure to comply with, or violation of, any proper

2264 order or rule of the office or commission or violation of any

2265 provision of this chapter.

2266 (8) The insolvent or impaired condition of the provider or

2267 the provider's being in such condition or using such methods and

2268 practices in the conduct of its business as to render its

2269 further transactions in this state hazardous or injurious to the

2270 public.

2271 (9) Refusal by the provider to be examined or to produce

2272 its accounts, records, and files for examination, or refusal by

2273 any of its officers to give information with respect to its

2274 affairs or to perform any other legal obligation under this

2275 chapter when required by the office.

2276 (10) Failure by the provider to comply with the  
 2277 requirements of s. 651.026 or s. 651.033.

2278 (11) Failure by the provider to maintain escrow accounts  
 2279 or funds as required by this chapter.

2280 (12) Failure by the provider to meet the requirements of  
 2281 this chapter for disclosure of information to residents  
 2282 concerning the facility, its ownership, its management, its  
 2283 development, or its financial condition or failure to honor its  
 2284 continuing care or continuing care at-home contracts.

2285 (13) Any cause for which issuance of the license could  
 2286 have been refused had it then existed and been known to the  
 2287 office.

2288 (14) Having been found guilty of, or having pleaded guilty  
 2289 or nolo contendere to, a felony in this state or any other  
 2290 state, without regard to whether a judgment or conviction has  
 2291 been entered by the court having jurisdiction of such cases.

2292 (15) In the conduct of business under the license,  
 2293 engaging in unfair methods of competition or in unfair or  
 2294 deceptive acts or practices prohibited under part IX of chapter  
 2295 626.

2296 (16) A pattern of bankrupt enterprises.

2297 (17) The ownership, control, or management of the  
 2298 organization includes any person:

2299 (a) Who is not reputable and of responsible character;

2300 (b) Who is so lacking in management expertise as to make

2301 the operation of the provider hazardous to potential and  
2302 existing residents;

2303 (c) Who is so lacking in management experience, ability,  
2304 and standing as to jeopardize the reasonable promise of  
2305 successful operation;

2306 (d) Who is affiliated, directly or indirectly, through  
2307 ownership or control, with any person or persons whose business  
2308 operations are or have been marked by business practices or  
2309 conduct that is detrimental to the public, contract holders,  
2310 investors, or creditors by manipulation of assets, finances, or  
2311 accounts or by bad faith; or

2312 (e) Whose business operations are or have been marked by  
2313 business practices or conduct that is detrimental to the public,  
2314 contract holders, investors, or creditors by manipulation of  
2315 assets, finances, or accounts or by bad faith.

2316 (18) The provider has not filed a notice of change in  
2317 management, fails to remove a disapproved manager, or persists  
2318 in appointing disapproved managers.

2319  
2320 Revocation of a certificate of authority under this section does  
2321 not relieve a provider from the provider's obligation to  
2322 residents under the terms and conditions of any continuing care  
2323 or continuing care at-home contract between the provider and  
2324 residents or the provisions of this chapter. The provider shall  
2325 continue to file its annual statement and pay license fees to

2326 | the office as required under this chapter as if the certificate  
 2327 | of authority had continued in full force, but the provider shall  
 2328 | not issue any new contracts. The office may seek an action in  
 2329 | the Circuit Court of Leon County to enforce the office's order  
 2330 | and the provisions of this section.

2331 | Section 27. Section 651.1065, Florida Statutes, is created  
 2332 | to read:

2333 | 651.1065 Soliciting or accepting new continuing care  
 2334 | contracts by impaired or insolvent facilities or providers.-

2335 | (1) Regardless of whether delinquency proceedings as to a  
 2336 | continuing care facility have been or are to be initiated, a  
 2337 | proprietor, a general partner, a member, an officer, a director,  
 2338 | a trustee, or a manager of a continuing care facility may not  
 2339 | actively solicit, approve the solicitation or acceptance of, or  
 2340 | accept new continuing care contracts in this state after the  
 2341 | proprietor, general partner, member, officer, director, trustee,  
 2342 | or manager knew, or reasonably should have known, that the  
 2343 | continuing care facility was impaired or insolvent except with  
 2344 | the written permission of the office. If the facility has  
 2345 | declared bankruptcy, the bankruptcy court or trustee appointed  
 2346 | by the court has jurisdiction over such matters. The office must  
 2347 | approve or disapprove the continued marketing of new contracts  
 2348 | within 15 days after receiving a request from a provider.

2349 | (2) A proprietor, a general partner, a member, an officer,  
 2350 | a director, a trustee, or a manager who violates this section

2351 commits a felony of the third degree, punishable as provided in  
 2352 s. 775.082, s. 775.083, or s. 775.084.

2353 Section 28. Subsections (1) and (3) of section 651.111,  
 2354 Florida Statutes, are amended to read:

2355 651.111 Requests for inspections.—

2356 (1) Any interested party may request an inspection of the  
 2357 records and related financial affairs of a provider providing  
 2358 care in accordance with ~~the provisions of~~ this chapter by  
 2359 transmitting to the office notice of an alleged violation of  
 2360 applicable requirements prescribed by statute or by rule,  
 2361 specifying to a reasonable extent the details of the alleged  
 2362 violation, which notice must ~~shall~~ be signed by the complainant.  
 2363 As used in this section, the term "inspection" means an inquiry  
 2364 into a provider's compliance with this chapter.

2365 (3) Upon receipt of a complaint, the office shall make a  
 2366 preliminary review to determine if the complaint alleges a  
 2367 violation of this chapter; and, unless the office determines  
 2368 that the complaint does not allege a violation of this chapter  
 2369 or is without any reasonable basis, the office shall make an  
 2370 inspection. The office shall provide the complainant with a  
 2371 written acknowledgment of the complaint within 15 days after  
 2372 receipt by the office. The complainant shall be advised, within  
 2373 30 days after the receipt of the complaint by the office, of the  
 2374 office's determination that the complaint does not allege a  
 2375 violation of this chapter, that the complaint is without any

2376 reasonable basis, or that the office will make an inspection.  
 2377 The notice must include an estimated timeframe for completing  
 2378 the inspection and a contact number. If the inspection is not  
 2379 completed within the estimated timeframe, the office must  
 2380 provide the complainant with a revised timeframe. Within 15 days  
 2381 after completing an inspection, the office shall provide the  
 2382 complainant and the provider a written statement specifying any  
 2383 violations of this chapter and any actions taken or that no such  
 2384 violation was found ~~proposed course of action of the office.~~

2385 Section 29. Section 651.114, Florida Statutes, is amended  
 2386 to read:

2387 651.114 Delinquency proceedings; remedial rights.—

2388 (1) Upon determination by the office that a provider is  
 2389 not in compliance with this chapter, the office may notify the  
 2390 chair of the Continuing Care Advisory Council, who may assist  
 2391 the office in formulating a corrective action plan.

2392 (2) Within 30 days after a request by either the advisory  
 2393 council or the office, a provider shall make a plan for  
 2394 obtaining compliance or solvency available to the advisory  
 2395 council and the office, ~~within 30 days after being requested to~~  
 2396 ~~do so by the council, a plan for obtaining compliance or~~  
 2397 ~~solvency.~~

2398 (3) Within 30 days after receipt of a plan for obtaining  
 2399 compliance or solvency, the office or, at the request of the  
 2400 office, ~~notification,~~ the advisory council shall:

2401 (a) Consider and evaluate the plan submitted by the  
2402 provider.

2403 (b) Discuss the problem and solutions with the provider.

2404 (c) Conduct such other business as is necessary.

2405 (d) Report its findings and recommendations to the office,  
2406 which may require additional modification of the plan.

2407

2408 This subsection may not be construed to delay or prevent the  
2409 office from taking any regulatory measures it deems necessary  
2410 regarding the provider that submitted the plan.

2411 (4) If the financial condition of a continuing care  
2412 facility or provider is impaired or is such that if not modified  
2413 or corrected, its continued operation would result in  
2414 insolvency, the office may direct the provider to formulate and  
2415 file with the office a corrective action plan. If the provider  
2416 fails to submit a plan within 30 days after the office's  
2417 directive or submits a plan that is insufficient to correct the  
2418 condition, the office may specify a plan and direct the provider  
2419 to implement the plan. Before specifying a plan, the office may  
2420 seek a recommended plan from the advisory council.

2421 (5)~~(4)~~ After receiving approval of a plan by the office,  
2422 the provider shall submit a progress report monthly to the  
2423 advisory council or the office, or both, in a manner prescribed  
2424 by the office. After 3 months, or at any earlier time deemed  
2425 necessary, the council shall evaluate the progress by the

2426 provider and shall advise the office of its findings.

2427 ~~(6)~~~~(5)~~ ~~If Should~~ the office finds ~~find~~ that sufficient  
2428 grounds exist for rehabilitation, liquidation, conservation,  
2429 reorganization, seizure, or summary proceedings of an insurer as  
2430 set forth in ss. 631.051, 631.061, and 631.071, the department  
2431 ~~office~~ may petition for an appropriate court order or may pursue  
2432 such other relief as is afforded in part I of chapter 631.  
2433 Before invoking its powers under part I of chapter 631, the  
2434 department ~~office~~ shall notify the chair of the advisory  
2435 council.

2436 (7) Notwithstanding s. 631.011, impairment of a provider,  
2437 for purposes of s. 631.051, has the same meaning as the term  
2438 "impaired" in s. 651.011.

2439 ~~(8)~~~~(6)~~ In the event an order of conservation,  
2440 rehabilitation, liquidation, or ~~conservation, reorganization,~~  
2441 ~~seizure, or summary proceeding~~ has been entered against a  
2442 provider, the department and office are vested with all of the  
2443 powers and duties they have under ~~the provisions of~~ part I of  
2444 chapter 631 in regard to delinquency proceedings of insurance  
2445 companies. A provider shall give written notice of the  
2446 proceeding to its residents within 3 business days after the  
2447 initiation of a delinquency proceeding under chapter 631 and  
2448 shall include a notice of the delinquency proceeding in any  
2449 written materials provided to prospective residents

2450 ~~(7) If the financial condition of the continuing care~~

2451 ~~facility or provider is such that, if not modified or corrected,~~  
2452 ~~its continued operation would result in insolvency, the office~~  
2453 ~~may direct the provider to formulate and file with the office a~~  
2454 ~~corrective action plan. If the provider fails to submit a plan~~  
2455 ~~within 30 days after the office's directive or submits a plan~~  
2456 ~~that is insufficient to correct the condition, the office may~~  
2457 ~~specify a plan and direct the provider to implement the plan.~~

2458 (9) A provider subject to an order to show cause entered  
2459 pursuant to chapter 631 must file its written response to the  
2460 order, together with any defenses it may have to the  
2461 department's allegations, not later than 20 days after service  
2462 of the order to show cause, but not less than 15 days before the  
2463 date of the hearing set by the order to show cause.

2464 (10) A hearing held pursuant to chapter 631 to determine  
2465 whether cause exists for the department to be appointed receiver  
2466 must be commenced within 60 days after an order directing a  
2467 provider to show cause.

2468 (11) (a)-(8) (a) The rights of the office described in this  
2469 section are subordinate to the rights of a trustee or lender  
2470 pursuant to the terms of a resolution, ordinance, loan  
2471 agreement, indenture of trust, mortgage, lease, security  
2472 agreement, or other instrument creating or securing bonds or  
2473 notes issued to finance a facility, and the office, subject to  
2474 ~~the provisions of~~ paragraph (c), may ~~shall~~ not exercise its  
2475 remedial rights provided under this section and ss. 651.018,

2476 651.106, 651.108, and 651.116 with respect to a facility that is  
2477 subject to a lien, mortgage, lease, or other encumbrance or  
2478 trust indenture securing bonds or notes issued in connection  
2479 with the financing of the facility, if the trustee or lender, by  
2480 inclusion or by amendment to the loan documents or by a separate  
2481 contract with the office, agrees that the rights of residents  
2482 under a continuing care or continuing care at-home contract will  
2483 be honored and will not be disturbed by a foreclosure or  
2484 conveyance in lieu thereof as long as the resident:

2485 1. Is current in the payment of all monetary obligations  
2486 required by the contract;

2487 2. Is in compliance and continues to comply with all  
2488 provisions of the contract; and

2489 3. Has asserted no claim inconsistent with the rights of  
2490 the trustee or lender.

2491 (b) This subsection does not require a trustee or lender  
2492 to:

2493 1. Continue to engage in the marketing or resale of new  
2494 continuing care or continuing care at-home contracts;

2495 2. Pay any rebate of entrance fees as may be required by a  
2496 resident's continuing care or continuing care at-home contract  
2497 as of the date of acquisition of the facility by the trustee or  
2498 lender and until expiration of the period described in paragraph

2499 (d);

2500 3. Be responsible for any act or omission of any owner or

2501 operator of the facility arising before the acquisition of the  
2502 facility by the trustee or lender; or

2503 4. Provide services to the residents to the extent that  
2504 the trustee or lender would be required to advance or expend  
2505 funds that have not been designated or set aside for such  
2506 purposes.

2507 (c) If ~~Should~~ the office determines ~~determine~~, at any time  
2508 during the suspension of its remedial rights as provided in  
2509 paragraph (a), that:

2510 1. The trustee or lender is not in compliance with  
2511 paragraph (a); ~~or that~~

2512 2. A lender or trustee has assigned or has agreed to  
2513 assign all or a portion of a delinquent or defaulted loan to a  
2514 third party without the office's written consent; ~~or~~

2515 3. The provider engaged in the misappropriation,  
2516 conversion, or illegal commitment or withdrawal of minimum  
2517 liquid reserve or escrowed funds required under this chapter;

2518 4. The provider refused to be examined by the office  
2519 pursuant to s. 651.105(1); or

2520 5. The provider refused to produce any relevant accounts,  
2521 records, and files requested as part of an examination,

2522  
2523 the office shall notify the trustee or lender in writing of its  
2524 determination, setting forth the reasons giving rise to the  
2525 determination and specifying those remedial rights afforded to

2526 the office which the office shall then reinstate.

2527 (d) Upon acquisition of a facility by a trustee or lender  
2528 and evidence satisfactory to the office that the requirements of  
2529 paragraph (a) have been met, the office shall issue a 90-day  
2530 temporary certificate of authority granting the trustee or  
2531 lender the authority to engage in the business of providing  
2532 continuing care or continuing care at-home and to issue  
2533 continuing care or continuing care at-home contracts subject to  
2534 the office's right to immediately suspend or revoke the  
2535 temporary certificate of authority if the office determines that  
2536 any of the grounds described in s. 651.106 apply to the trustee  
2537 or lender or that the terms of the contract used as the basis  
2538 for the issuance of the temporary certificate of authority by  
2539 the office have not been or are not being met by the trustee or  
2540 lender since the date of acquisition.

2541 Section 30. Section 651.1141, Florida Statutes, is created  
2542 to read:

2543 651.1141 Immediate final orders.—The Office of Insurance  
2544 Regulation may issue an immediate final order to cease and  
2545 desist if the office finds any of the following have occurred:

2546 (1) The installation of a general partner of a provider or  
2547 assumption of ownership or possession or control of 10 percent  
2548 or more of a provider's assets in violation of s. 651.024 or s.  
2549 651.0245;

2550 (2) The removal or commitment of 10 percent or more of the

2551 required minimum liquid reserve funds in violation of s.  
 2552 651.035; or

2553 (3) The assumption of control over a facility's operations  
 2554 in violation of s. 651.043.

2555 Section 31. Subsection (1) of section 651.121, Florida  
 2556 Statutes, is amended to read:

2557 651.121 Continuing Care Advisory Council.—

2558 (1) The Continuing Care Advisory Council to the office is  
 2559 created consisting of 10 members ~~who are residents of this state~~  
 2560 appointed by the Governor and geographically representative of  
 2561 this state. Three members shall be representatives  
 2562 ~~administrators~~ of facilities that hold valid certificates of  
 2563 authority under this chapter and ~~shall~~ have been actively  
 2564 engaged in the offering of continuing care contracts in this  
 2565 state for 5 years before appointment. The remaining members  
 2566 include:

2567 (a) A representative of the business community whose  
 2568 expertise is in the area of management.

2569 (b) A representative of the financial community who is not  
 2570 a facility owner or administrator.

2571 (c) A certified public accountant.

2572 ~~(d) An attorney.~~

2573 (d)(e) Four ~~Three~~ residents who hold continuing care or  
 2574 continuing care at-home contracts with a facility certified in  
 2575 this state.

2576 Section 32. Subsections (1) and (4) of section 651.125,  
2577 Florida Statutes, are amended to read:

2578 651.125 Criminal penalties; injunctive relief.—

2579 (1) Any person who maintains, enters into, or, as manager  
2580 or officer or in any other administrative capacity, assists in  
2581 entering into, maintaining, or performing any continuing care or  
2582 continuing care at-home contract subject to this chapter without  
2583 ~~doing so in pursuance of~~ a valid provisional certificate of  
2584 authority or certificate of authority ~~or renewal thereof~~, as  
2585 contemplated by or provided in this chapter, or who otherwise  
2586 violates any provision of this chapter or rule adopted in  
2587 pursuance of this chapter, commits a felony of the third degree,  
2588 punishable as provided in s. 775.082 or s. 775.083. Each  
2589 violation of this chapter constitutes a separate offense.

2590 (4) Any action brought by the office against a provider  
2591 shall not abate by reason of a sale or other transfer of  
2592 ownership of the facility used to provide care, which provider  
2593 is a party to the action, except with the express written  
2594 consent of the ~~director of the~~ office.

2595 Section 33. Except as otherwise expressly provided in this  
2596 act and except for this section, which shall take effect July 1,  
2597 2019, this act shall take effect January 1, 2020.