

By the Committee on Banking and Insurance; and Senator Lee

597-02920-19

20191070c1

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.

597-02920-19

20191070c1

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.;

597-02920-19

20191070c1

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 within a
71 certain timeframe to the office under certain
72 circumstances; amending s. 651.033, F.S.; revising
73 applicability of escrow requirements; revising
74 requirements for escrow accounts and agreements;
75 revising the office's authority to allow a withdrawal
76 of a specified percentage of the required minimum
77 liquid reserve; revising applicability of requirements
78 relating to the deposit of certain funds in escrow
79 accounts; prohibiting an escrow agent, except under
80 certain circumstances, from releasing or allowing the
81 transfer of funds; creating s. 651.034, F.S.;
82 specifying requirements for the office if a regulatory
83 action 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 costs and expenses relating

597-02920-19

20191070c1

88 to such consultants; specifying requirements for, and
89 authorized actions of, the office and the Department
90 of Financial Services if an impairment occurs;
91 providing construction; authorizing the office to
92 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; requiring increases in the minimum liquid
103 reserve to be funded within a certain timeframe;
104 requiring providers to fund shortfalls in minimum
105 liquid reserves under certain circumstances within a
106 certain timeframe; creating s. 651.043, F.S.;
107 specifying requirements for certain management company
108 contracts; specifying requirements, procedures, and
109 authorized actions relating to changes in provider
110 management and to the office's review of such changes;
111 requiring that disapproved management be removed
112 within a certain timeframe; authorizing the office to
113 take certain disciplinary actions under certain
114 circumstances; requiring providers to immediately
115 remove management under certain circumstances;
116 amending s. 651.051, F.S.; revising requirements for

597-02920-19

20191070c1

117 the maintenance of provider records and assets;
118 amending s. 651.055, F.S.; revising a required
119 statement in continuing care contracts; amending s.
120 651.057, F.S.; conforming provisions to changes made
121 by the act; amending s. 651.071, F.S.; specifying the
122 priority of continuing care contracts and continuing
123 care at-home contracts in receivership or liquidation
124 proceedings against a provider; amending s. 651.091,
125 F.S.; revising requirements for continuing care
126 facilities relating to posting or providing notices;
127 amending s. 651.095, F.S.; adding terms to a list of
128 prohibited terms in certain advertisements; amending
129 s. 651.105, F.S.; adding a certain Florida Insurance
130 Code provision to the office's authority to examine
131 certain providers and applicants; requiring providers
132 to respond to the office's written correspondence and
133 to provide certain information; providing standing to
134 the office to petition certain circuit courts for
135 certain relief; revising, and specifying limitations
136 on, the office's examination authority; amending s.
137 651.106, F.S.; authorizing the office to deny
138 applications on specified grounds; adding and revising
139 grounds for suspension or revocation of provisional
140 certificates of authority and certificates of
141 authority; creating s. 651.1065, F.S.; prohibiting
142 certain actions by certain persons of an impaired or
143 insolvent continuing care facility; providing that
144 bankruptcy courts or trustees have jurisdiction over
145 certain matters; requiring the office to approve or

597-02920-19

20191070c1

146 disapprove the continued marketing of new contracts
147 within a certain timeframe; providing a criminal
148 penalty; amending s. 651.111, F.S.; defining the term
149 "inspection"; revising procedures and requirements
150 relating to requests for inspections to the office;
151 amending s. 651.114, F.S.; revising and specifying
152 requirements, procedures, and authorized actions
153 relating to providers' corrective action plans;
154 providing construction; revising and specifying
155 requirements and procedures relating to delinquency
156 proceedings against a provider; revising circumstances
157 under which the office must provide a certain notice
158 to trustees or lenders; creating s. 651.1141, F.S.;
159 providing legislative findings; authorizing the office
160 to issue certain immediate final orders under certain
161 circumstances; amending s. 651.121, F.S.; revising the
162 composition of the Continuing Care Advisory Council;
163 amending s. 651.125, F.S.; revising a prohibition to
164 include certain actions performed without a valid
165 provisional certificate of authority; providing
166 effective dates.

167

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

169

170 Section 1. Section 651.011, Florida Statutes, is amended to
171 read:

172 651.011 Definitions.—As used in this chapter, the term:

173 (1) "Actuarial opinion" means an opinion issued by an

174 actuary in accordance with Actuarial Standards of Practice No. 3

597-02920-19

20191070c1

175 for Continuing Care Retirement Communities, Revised Edition,
176 effective May 1, 2011.

177 (2) "Actuarial study" means an analysis prepared for an
178 individual facility, or consolidated for multiple facilities,
179 for either a certified provider, as of a current valuation date
180 or the most recent fiscal year, or for an applicant, as of a
181 projected future valuation date, which includes an actuary's
182 opinion as to whether such provider or applicant is in
183 satisfactory actuarial balance in accordance with Actuarial
184 Standards of Practice No. 3 for Continuing Care Retirement
185 Communities, Revised Edition, effective May 1, 2011.

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

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

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

203 (6)~~(3)~~ "Continuing Care Advisory Council" or "advisory

597-02920-19

20191070c1

204 council" means the council established in s. 651.121.

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

213 (8) "Controlling company" means any corporation, trust, or
214 association that directly or indirectly owns 25 percent or more
215 of:

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

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

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

223 (10) "Days cash on hand" means the quotient obtained by
224 dividing the value of paragraph (a) by the value of paragraph
225 (b).

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

229 (b) Operating expenses less depreciation, amortization, and
230 other noncash expenses and nonoperating losses, divided by 365.
231 Operating expenses, depreciation, amortization, and other
232 noncash expenses and nonoperating losses are each the sum of

597-02920-19

20191070c1

233 their respective values over the 12-month period ending on the
234 reporting date.

235

236 With prior written approval of the office, a demand note or
237 other parental guarantee may be considered a short-term or long-
238 term investment for the purposes of paragraph (a). However, the
239 total of all demand notes issued by the parent may not, at any
240 time, be more than the sum of unrestricted cash and unrestricted
241 short-term and long-term investments held by the parent.

242 (11) "Debt service coverage ratio" means the quotient
243 obtained by dividing the value of paragraph (a) by the value of
244 paragraph (b).

245 (a) The sum of total expenses less interest expense on the
246 debt facility, depreciation, amortization, and other noncash
247 expense and nonoperating losses, subtracted from the sum of
248 total revenues, excluding noncash revenues and nonoperating
249 gains, and gross entrance fees received less earned entrance
250 fees and refunds paid. Expenses, interest expense on the debt
251 facility, depreciation, amortization, and other noncash expense
252 and nonoperating losses, revenues, noncash revenues,
253 nonoperating gains, gross entrance fees, earned entrance fees,
254 and refunds are each the sum of their respective values over the
255 12-month period ending on the reporting date.

256 (b) Total annual principal and interest expense due on the
257 debt facility over the 12-month period ending on the reporting
258 date. For the purposes of this paragraph, principal excludes any
259 balloon principal payment amounts, and interest expense due is
260 the sum of the interest over the 12-month period immediately
261 preceding the reporting date.

597-02920-19

20191070c1

262 (12) "Department" means the Department of Financial
263 Services.

264 (13)~~(5)~~ "Entrance fee" means an initial or deferred payment
265 of a sum of money or property made as full or partial payment
266 for continuing care or continuing care at-home. An accommodation
267 fee, admission fee, member fee, or other fee of similar form and
268 application are considered to be an entrance fee.

269 (14)~~(6)~~ "Facility" means a place where continuing care is
270 furnished and may include one or more physical plants on a
271 primary or contiguous site or an immediately accessible site. As
272 used in this subsection, the term "immediately accessible site"
273 means a parcel of real property separated by a reasonable
274 distance from the facility as measured along public
275 thoroughfares, and the term "primary or contiguous site" means
276 the real property contemplated in the feasibility study required
277 by this chapter.

278 ~~(7) "Generally accepted accounting principles" means those~~
279 ~~accounting principles and practices adopted by the Financial~~
280 ~~Accounting Standards Board and the American Institute of~~
281 ~~Certified Public Accountants, including Statement of Position~~
282 ~~90-8 with respect to any full year to which the statement~~
283 ~~applies.~~

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

286 (a) A provider has failed to maintain its minimum liquid
287 reserve as required under s. 651.035, unless the provider has
288 received prior written approval from the office for a withdrawal
289 pursuant to s. 651.035(6) and is compliant with the approved
290 payment schedule.

597-02920-19

20191070c1

291 (b) Beginning January 1, 2021:

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

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

299

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

304 (16)(8) "Insolvency" means the condition in which a ~~the~~
305 provider is unable to pay its obligations as they come due in
306 the normal course of business.

307 (17)(9) "Licensed" means that a ~~the~~ provider has obtained a
308 certificate of authority from the ~~office~~ department.

309 (18) "Manager", "management," or "management company" means
310 a person who administers the day-to-day business operations of a
311 facility for a provider, subject to the policies, directives,
312 and oversight of the provider.

313 (19)(10) "Nursing care" means those services or acts
314 rendered to a resident by an individual licensed or certified
315 pursuant to chapter 464.

316 (20) "Obligated group" means one or more entities that
317 jointly agree to be bound by a financing structure containing
318 security provisions and covenants applicable to the group. For
319 the purposes of this subsection, debt issued under such a

597-02920-19

20191070c1

320 financing structure must be a joint and several obligation of
321 each member of the group.

322 (21) "Occupancy" means the total number of occupied
323 independent living units, assisted living units, and skilled
324 nursing beds in a facility divided by the total number of units
325 and beds in that facility, excluding units and beds that are
326 unavailable to market or that are reserved by prospective
327 residents.

328 (22)~~(11)~~ "Personal services" has the same meaning as in s.
329 429.02.

330 (23)~~(12)~~ "Provider" means the owner or operator, whether a
331 natural person, partnership or other unincorporated association,
332 however organized, trust, or corporation, of an institution,
333 building, residence, or other place, whether operated for profit
334 or not, which owner or operator provides continuing care or
335 continuing care at-home for a fixed or variable fee, or for any
336 other remuneration of any type, whether fixed or variable, for
337 the period of care, payable in a lump sum or lump sum and
338 monthly maintenance charges or in installments. The term does
339 not apply to an entity that has existed and continuously
340 operated a facility located on at least 63 acres in this state
341 providing residential lodging to members and their spouses for
342 at least 66 years on or before July 1, 1989, and has the
343 residential capacity of 500 persons, is directly or indirectly
344 owned or operated by a nationally recognized fraternal
345 organization, is not open to the public, and accepts only its
346 members and their spouses as residents.

347 (24)~~(13)~~ "Records" means all documents, correspondence, and
348 the permanent financial, directory, and personnel information

597-02920-19

20191070c1

349 and data maintained by a provider pursuant to this chapter,
350 regardless of the physical form, characteristics, or means of
351 transmission.

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

354 (a) The provider's debt service coverage ratio is less than
355 the minimum ratio specified in the provider's bond covenants or
356 lending agreement for long-term financing, or, if the provider
357 does not have a debt service coverage ratio required by its
358 lending institution, the provider's debt service coverage ratio
359 is less than 1.20:1 as of the most recent report filed with the
360 office. If the provider is a member of an obligated group having
361 cross-collateralized debt, the obligated group's debt service
362 coverage ratio must be used as the provider's debt service
363 coverage ratio.

364 (b) The provider's days cash on hand is less than the
365 minimum number of days cash on hand specified in the provider's
366 bond covenants or lending agreement for long-term financing. If
367 the provider does not have a days cash on hand required by its
368 lending institution, the days cash on hand may not be less than
369 100 as of the most recent report filed with the office. If the
370 provider is a member of an obligated group having cross-
371 collateralized debt, the days cash on hand of the obligated
372 group must be used as the provider's days cash on hand.

373 (c) The 12-month average occupancy of the provider's
374 facility is less than 80 percent. The average occupancy must be
375 calculated using the facility's occupancy as of the last day of
376 each month.

377 (26) ~~(14)~~ "Resident" means a purchaser of, a nominee of, or

597-02920-19

20191070c1

378 a subscriber to a continuing care or continuing care at-home
 379 contract. Such contract does not give the resident a part
 380 ownership of the facility in which the resident is to reside,
 381 unless expressly provided in the contract.

382 (27) ~~(15)~~ "Shelter" means an independent living unit, room,
 383 apartment, cottage, villa, personal care unit, nursing bed, or
 384 other living area within a facility set aside for the exclusive
 385 use of one or more identified residents.

386 Section 2. Section 651.012, Florida Statutes, is amended to
 387 read:

388 651.012 Exempted facility; written disclosure of
 389 exemption.—Any facility exempted under ss. 632.637(1)(e) and
 390 651.011(23) ~~651.011(12)~~ must provide written disclosure of such
 391 exemption to each person admitted to the facility ~~after October~~
 392 ~~1, 1996~~. This disclosure must be written using language likely
 393 to be understood by the person and must briefly explain the
 394 exemption.

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

397 651.013 Chapter exclusive; applicability of other laws.—

398 (2) In addition to other applicable provisions cited in
 399 this chapter, the office has the authority granted under ss.
 400 624.302 and 624.303, 624.307-624.312, 624.318 ~~624.308-624.312,~~
 401 624.319(1)-(3), 624.320-624.321, 624.324, ~~and~~ 624.34, and
 402 624.422 of the Florida Insurance Code to regulate providers of
 403 continuing care and continuing care at-home.

404 Section 4. Section 651.019, Florida Statutes, is amended to
 405 read:

406 651.019 New financing, additional financing, or

597-02920-19

20191070c1

407 refinancing.-

408 (1) (a) A provider shall provide a written general outline
409 of the amount and the anticipated terms of any new financing or
410 refinancing, and the intended use of proceeds, to the residents'
411 council at least 30 days before the closing date of the
412 financing or refinancing transaction. If there is a material
413 change in the noticed information, a provider shall provide an
414 updated notice to the residents' council within 10 business days
415 after the provider becomes aware of such change.

416 (b) If the facility does not have a residents' council, the
417 facility must make available, in the same manner as other
418 community notices, the information required under paragraph (a)
419 ~~After issuance of a certificate of authority, the provider shall~~
420 ~~submit to the office a general outline, including intended use~~
421 ~~of proceeds, with respect to any new financing, additional~~
422 ~~financing, or refinancing at least 30 days before the closing~~
423 ~~date of such financing transaction.~~

424 (2) Within 30 days after the closing date of such financing
425 or refinancing transaction, The provider shall furnish any
426 ~~information the office may reasonably request in connection with~~
427 ~~any new financing, additional financing, or refinancing,~~
428 ~~including, but not limited to, the financing agreements and any~~
429 ~~related documents, escrow or trust agreements, and statistical~~
430 ~~or financial data. the provider shall also submit to the office~~
431 copies of executed financing documents, escrow or trust
432 agreements prepared in support of such financing or refinancing
433 transaction, and a copy of all documents required to be
434 submitted to the residents' council under paragraph (1) (a)
435 ~~within 30 days after the closing date.~~

597-02920-19

20191070c1

436 Section 5. Section 651.021, Florida Statutes, is amended to
437 read:

438 651.021 Certificate of authority required.-

439 ~~(1) A~~ No person may not engage in the business of providing
440 continuing care, issuing contracts for continuing care or
441 continuing care at-home, or constructing a facility for the
442 purpose of providing continuing care in this state without a
443 certificate of authority obtained from the office as provided in
444 this chapter. This section ~~subsection~~ does not prohibit the
445 preparation of a construction site or construction of a model
446 residence unit for marketing purposes, or both. The office may
447 allow the purchase of an existing building for the purpose of
448 providing continuing care if the office determines that the
449 purchase is not being made to circumvent the prohibitions in
450 this section.

451 ~~(2) Written approval must be obtained from the office~~
452 ~~before commencing construction or marketing for an expansion of~~
453 ~~a certificated facility equivalent to the addition of at least~~
454 ~~20 percent of existing units or 20 percent or more in the number~~
455 ~~of continuing care at-home contracts. This provision does not~~
456 ~~apply to construction for which a certificate of need from the~~
457 ~~Agency for Health Care Administration is required.~~

458 ~~(a) For providers that offer both continuing care and~~
459 ~~continuing care at-home, the 20 percent is based on the total of~~
460 ~~both existing units and existing contracts for continuing care~~
461 ~~at-home. For purposes of this subsection, an expansion includes~~
462 ~~increases in the number of constructed units or continuing care~~
463 ~~at-home contracts or a combination of both.~~

464 ~~(b) The application for such approval shall be on forms~~

597-02920-19

20191070c1

465 ~~adopted by the commission and provided by the office. The~~
466 ~~application must include the feasibility study required by s.~~
467 ~~651.022(3) or s. 651.023(1)(b) and such other information as~~
468 ~~required by s. 651.023. If the expansion is only for continuing~~
469 ~~care at home contracts, an actuarial study prepared by an~~
470 ~~independent actuary in accordance with standards adopted by the~~
471 ~~American Academy of Actuaries which presents the financial~~
472 ~~impact of the expansion may be substituted for the feasibility~~
473 ~~study.~~

474 ~~(c) In determining whether an expansion should be approved,~~
475 ~~the office shall use the criteria provided in ss. 651.022(6) and~~
476 ~~651.023(4).~~

477 Section 6. Section 651.0215, Florida Statutes, is created
478 to read:

479 651.0215 Consolidated application for a provisional
480 certificate of authority and a certificate of authority;
481 required restrictions on use of entrance fees.-

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

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

490 (b) The reservation deposit may not exceed the lesser of
491 \$40,000 or 10 percent of the then-current fee for the unit
492 selected by a resident and must be refundable at any time before
493 the resident takes occupancy of the selected unit.

597-02920-19

20191070c1

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

498 (2) The consolidated application must be on a form
499 prescribed by the commission and must contain all of the
500 following information:

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

502 (b) A feasibility study prepared by an independent
503 consultant which contains all of the information required by s.
504 651.022(3) and financial forecasts or projections prepared in
505 accordance with standards adopted by the American Institute of
506 Certified Public Accountants or in accordance with standards for
507 feasibility studies for continuing care retirement communities
508 adopted by the Actuarial Standards Board.

509 1. The feasibility study must take into account project
510 costs, actual marketing results to date and marketing
511 projections, resident fees and charges, competition, resident
512 contract provisions, and other factors that affect the
513 feasibility of operating the facility.

514 2. If the feasibility study is prepared by an independent
515 certified public accountant, it must contain an examination
516 report, or a compilation report acceptable to the office,
517 containing a financial forecast or projections for the first 5
518 years of operations which take into account an actuary's
519 mortality and morbidity assumptions as the study relates to
520 turnover, rates, fees, and charges. If the study is prepared by
521 an independent consulting actuary, it must contain mortality and
522 morbidity assumptions as it relates to turnover, rates, fees,

597-02920-19

20191070c1

523 and charges and an actuary's signed opinion that the project as
524 proposed is feasible and that the study has been prepared in
525 accordance with Actuarial Standards of Practice No. 3 for
526 Continuing Care Retirement Communities, Revised Edition,
527 effective May 1, 2011.

528 (c) Documents evidencing that commitments have been secured
529 for construction financing and long-term financing or that a
530 documented plan acceptable to the office has been adopted by the
531 applicant for long-term financing.

532 (d) Documents evidencing that all conditions of the lender
533 have been satisfied to activate the commitment to disburse
534 funds, other than the obtaining of the certificate of authority,
535 the completion of construction, or the closing of the purchase
536 of realty or buildings for the facility.

537 (e) Documents evidencing that the aggregate amount of
538 entrance fees received by or pledged to the applicant, plus
539 anticipated proceeds from any long-term financing commitment and
540 funds from all other sources in the actual possession of the
541 applicant, equal at least 100 percent of the aggregate cost of
542 constructing or purchasing, equipping, and furnishing the
543 facility plus 100 percent of the anticipated startup losses of
544 the facility.

545 (f) A complete audited financial report of the applicant,
546 prepared by an independent certified public accountant in
547 accordance with generally accepted accounting principles, as of
548 the date the applicant commenced business operations or for the
549 fiscal year that ended immediately preceding the date of
550 application, whichever is later; and complete unaudited
551 quarterly financial statements attested to by the applicant

597-02920-19

20191070c1

552 after the date of the last audit.

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

555 (h) Such other reasonable data, financial statements, and
556 pertinent information as the commission or office may require
557 with respect to the applicant or the facility to determine the
558 financial status of the facility and the management capabilities
559 of its managers and owners.

560
561 If any material change occurs in the facts set forth in an
562 application filed with the office pursuant to this subsection,
563 an amendment setting forth such change must be filed with the
564 office within 10 business days after the applicant becomes aware
565 of such change, and a copy of the amendment must be sent by
566 registered mail to the principal office of the facility and to
567 the principal office of the controlling company.

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

572 (4) Within 45 days after receipt of the information
573 required under subsection (2), the office shall examine the
574 information and notify the applicant in writing, specifically
575 requesting any additional information that the office is
576 authorized to require. An application is deemed complete when
577 the office receives all requested information and the applicant
578 corrects any error or omission of which the applicant was timely
579 notified or when the time for such notification has expired.
580 Within 15 days after receipt of all of the requested additional

597-02920-19

20191070c1

581 information, the office shall notify the applicant in writing
582 that all of the requested information has been received and that
583 the application is deemed complete as of the date of the notice.
584 Failure to notify the applicant in writing within the 15-day
585 period constitutes acknowledgment by the office that it has
586 received all requested additional information, and the
587 application is deemed complete for purposes of review on the
588 date the applicant files all of the required additional
589 information.

590 (5) Within 45 days after an application is deemed complete
591 as set forth in subsection (4) and upon completion of the
592 remaining requirements of this section, the office shall
593 complete its review and issue or deny a certificate of authority
594 to the applicant. If a certificate of authority is denied, the
595 office shall notify the applicant in writing, citing the
596 specific failures to satisfy this chapter, and the applicant is
597 entitled to an administrative hearing pursuant to chapter 120.

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

603 (7) The issuance of a certificate of authority entitles the
604 applicant to begin construction and collect reservation deposits
605 and entrance fees from prospective residents. The reservation
606 contract must state the cancellation policy and the terms of the
607 continuing care contract. All or any part of an entrance fee or
608 reservation deposit collected must be placed in an escrow
609 account or on deposit with the department pursuant to s.

597-02920-19

20191070c1

610 651.033.

611 (8) The provider is entitled to secure release of the
612 moneys held in escrow within 7 days after the office receives an
613 affidavit from the provider, along with appropriate
614 documentation to verify, and notification is provided to the
615 escrow agent by certified mail, that all of the following
616 conditions have been satisfied:

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

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

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

628 (d) Documents evidencing the intended application of the
629 proceeds upon release and documents evidencing that the entrance
630 fees, when released, will be applied as represented to the
631 office.

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 to
637 a facility that does not have a component that is to be licensed
638 pursuant to part II of chapter 400 or part I of chapter 429, or

597-02920-19

20191070c1

639 that does not offer personal services or nursing services
640 through written contractual agreement. A written contractual
641 agreement must be disclosed in the contract for continuing care
642 or continuing care at-home and is subject to s. 651.1151.

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

646 651.022 Provisional certificate of authority; application.-

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

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

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

657 1. The proprietor, if the applicant or provider is an
658 individual.

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

664 3. The principal partners or members, if the applicant or
665 provider is a partnership or other unincorporated association,
666 however organized, having 50 or more partners or members,
667 together with the business name and business address of the

597-02920-19

20191070c1

668 partnership or other organization. If such unincorporated
669 organization has officers and a board of directors, the full
670 name and business address of each officer and director may be
671 set forth in lieu of the full name and business address of its
672 principal members.

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

675 5. Every trustee and officer, if the applicant or provider
676 is a trust.

677 6. The manager, whether an individual, corporation,
678 partnership, or association.

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

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

695 9. Any person, corporation, partnership, association, or
696 trust owning land or property leased to the facility, along with

597-02920-19

20191070c1

697 a copy of the lease agreement.

698 10. Any affiliated parent or subsidiary corporation or
699 partnership.

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

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

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

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

720 b. Is subject to a currently effective injunctive or
721 restrictive order or federal or state administrative order
722 relating to business activity or health care as a result of an
723 action brought by a public agency or department, including,
724 without limitation, an action affecting a license under chapter
725 400 or chapter 429.

597-02920-19

20191070c1

726

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

734

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

740

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

742

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

750

(g) The forms of the residency contracts, reservation
751 contracts, escrow agreements, and wait list contracts, if
752 applicable, which are proposed to be used by the provider in the
753 furnishing of care. The office shall approve contracts and
754 escrow agreements that comply with ss. 651.023(1)(c), 651.033,

597-02920-19

20191070c1

755 651.055, and 651.057. Thereafter, no other form of contract or
756 agreement may be used by the provider until it has been
757 submitted to the office and approved.

758

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

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

772 (a) A description of the proposed facility, including the
773 location, size, anticipated completion date, and the proposed
774 construction program.

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

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

782 (d) Projected expenses, including staffing requirements and
783 salaries; cost of property, plant, and equipment, including

597-02920-19

20191070c1

784 depreciation expense; interest expense; marketing expense; and
785 other operating expenses.

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

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

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

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

799 (i) Appropriate population projections, including morbidity
800 and mortality assumptions.

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

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

809 (5) (a) Within 30 days after receipt of an application for a
810 provisional certificate of authority, the office shall examine
811 the application and shall notify the applicant in writing,
812 specifically setting forth and specifically requesting any

597-02920-19

20191070c1

813 additional information the office is permitted by law to
814 require. If the application submitted is determined by the
815 office to be substantially incomplete so as to require
816 substantial additional information, including biographical
817 information, the office may return the application to the
818 applicant with a written notice that the application as received
819 is substantially incomplete and, therefore, unacceptable for
820 filing without further action required by the office. Any filing
821 fee received shall be refunded to the applicant.

822 (b) Within 15 days after receipt of all of the requested
823 additional information, the office shall notify the applicant in
824 writing that all of the requested information has been received
825 and the application is deemed to be complete as of the date of
826 the notice. Failure to so notify the applicant in writing within
827 the 15-day period shall constitute acknowledgment by the office
828 that it has received all requested additional information, and
829 the application shall be deemed to be complete for purposes of
830 review upon the date of the filing of all of the requested
831 additional information.

832 (6) Within 45 days after the date an application is deemed
833 complete as set forth in paragraph (5)(b), the office shall
834 complete its review and issue a provisional certificate of
835 authority to the applicant based upon its review and a
836 determination that the application meets all requirements of
837 law, that the feasibility study was based on sufficient data and
838 reasonable assumptions, and that the applicant will be able to
839 provide continuing care or continuing care at-home as proposed
840 and meet all financial and contractual obligations related to
841 its operations, including the financial requirements of this

597-02920-19

20191070c1

842 chapter. If the application is denied, the office shall notify
843 the applicant in writing, citing the specific failures to meet
844 the provisions of this chapter. Such denial entitles the
845 applicant to a hearing pursuant to chapter 120.

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

850 Section 8. Subsections (1) and (4) through (9) of section
851 651.023, Florida Statutes, are amended, and subsection (2) of
852 that section is republished, to read:

853 651.023 Certificate of authority; application.—

854 (1) After issuance of a provisional certificate of
855 authority, the office shall issue to the holder of such
856 provisional certificate a certificate of authority if the holder
857 of the provisional certificate provides the office with the
858 following information:

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

862 (b) A feasibility study prepared by an independent
863 consultant which contains all of the information required by s.
864 651.022(3) and financial forecasts or projections prepared in
865 accordance with standards adopted by the American Institute of
866 Certified Public Accountants or in accordance with standards for
867 feasibility studies or continuing care retirement communities
868 adopted by the Actuarial Standards Board.

869 ~~1. The study must also contain an independent evaluation~~
870 ~~and examination opinion, or a comparable opinion acceptable to~~

597-02920-19

20191070c1

871 ~~the office, by the consultant who prepared the study, of the~~
872 ~~underlying assumptions used as a basis for the forecasts or~~
873 ~~projections in the study and that the assumptions are reasonable~~
874 ~~and proper and the project as proposed is feasible.~~

875 1.2. The study must take into account project costs, actual
876 marketing results to date and marketing projections, resident
877 fees and charges, competition, resident contract provisions, and
878 any other factors which affect the feasibility of operating the
879 facility.

880 2.3. If the study is prepared by an independent certified
881 public accountant, it must contain an examination opinion or a
882 compilation report acceptable to the office containing a
883 financial forecast or projections for the first 5 3 years of
884 operations which take into account an actuary's mortality and
885 morbidity assumptions as the study relates to turnover, rates,
886 fees, and charges ~~and financial projections having a compilation~~
887 ~~opinion for the next 3 years.~~ If the study is prepared by an
888 independent consulting actuary, it must contain mortality and
889 morbidity assumptions as the study relates to turnover, rates,
890 fees, and charges ~~data~~ and an actuary's signed opinion that the
891 project as proposed is feasible and that the study has been
892 prepared in accordance with standards adopted by the American
893 Academy of Actuaries.

894 (c) Subject to subsection (4), a provider may submit an
895 application for a certificate of authority and any required
896 exhibits upon submission of documents evidencing ~~proof~~ that the
897 project has a minimum of 30 percent of the units reserved for
898 which the provider is charging an entrance fee. ~~This does not~~
899 ~~apply to an application for a certificate of authority for the~~

597-02920-19

20191070c1

900 ~~acquisition of a facility for which a certificate of authority~~
901 ~~was issued before October 1, 1983, to a provider who~~
902 ~~subsequently becomes a debtor in a case under the United States~~
903 ~~Bankruptcy Code, 11 U.S.C. ss. 101 et seq., or to a provider for~~
904 ~~which the department has been appointed receiver pursuant to~~
905 ~~part II of chapter 631.~~

906 (d) Documents evidencing Proof that commitments have been
907 secured for both construction financing and long-term financing
908 or a documented plan acceptable to the office has been adopted
909 by the applicant for long-term financing.

910 (e) Documents evidencing Proof that all conditions of the
911 lender have been satisfied to activate the commitment to
912 disburse funds other than the obtaining of the certificate of
913 authority, the completion of construction, or the closing of the
914 purchase of realty or buildings for the facility.

915 (f) Documents evidencing Proof that the aggregate amount of
916 entrance fees received by or pledged to the applicant, plus
917 anticipated proceeds from any long-term financing commitment,
918 plus funds from all other sources in the actual possession of
919 the applicant, equal at least 100 percent of the aggregate cost
920 of constructing or purchasing, equipping, and furnishing the
921 facility plus 100 percent of the anticipated startup losses of
922 the facility.

923 (g) A complete audited financial report statements of the
924 applicant, prepared by an independent certified public
925 accountant in accordance with generally accepted accounting
926 principles, as of the date the applicant commenced business
927 operations or for the fiscal year that ended immediately
928 preceding the date of application, whichever is later, and

597-02920-19

20191070c1

929 complete unaudited quarterly financial statements attested to by
930 the applicant after the date of the last audit.

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

934 (i) Such other reasonable data, financial statements, and
935 pertinent information as the commission or office may require
936 with respect to the applicant or the facility, to determine the
937 financial status of the facility and the management capabilities
938 of its managers and owners.

939
940 If any material change occurs in the facts set forth in an
941 application filed with the office pursuant to this subsection,
942 an amendment setting forth such change must be filed with the
943 office within 10 business days after the applicant becomes aware
944 of such change, and a copy of the amendment must be sent by
945 registered mail to the principal office of the facility and to
946 the principal office of the controlling company.

947 (2) Within 30 days after receipt of the information
948 required under subsection (1), the office shall examine such
949 information and notify the provider in writing, specifically
950 requesting any additional information the office is permitted by
951 law to require. Within 15 days after receipt of all of the
952 requested additional information, the office shall notify the
953 provider in writing that all of the requested information has
954 been received and the application is deemed to be complete as of
955 the date of the notice. Failure to notify the applicant in
956 writing within the 15-day period constitutes acknowledgment by
957 the office that it has received all requested additional

597-02920-19

20191070c1

958 information, and the application shall be deemed complete for
959 purposes of review on the date of filing all of the required
960 additional information.

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

966 (a) ~~A Notwithstanding satisfaction of the 30 percent~~
967 ~~minimum reservation requirement of paragraph (1)(c), no~~
968 certificate of authority may not ~~shall~~ be issued until
969 documentation evidencing that the project has a minimum of 50
970 percent of the units reserved for which the provider is charging
971 an entrance fee, ~~and proof~~ is provided to the office. If a
972 provider offering continuing care at-home is applying for a
973 certificate of authority ~~or approval of an expansion pursuant to~~
974 ~~s. 651.021(2)~~, the same minimum reservation requirements must be
975 met for the continuing care and continuing care at-home
976 contracts, independently of each other.

977 (b) In order for a unit to be considered reserved under
978 this section, the provider must collect a minimum deposit of the
979 lesser of \$40,000 or 10 percent of the then-current entrance fee
980 for that unit, and may assess a forfeiture penalty of 2 percent
981 of the entrance fee due to termination of the reservation
982 contract after 30 days for any reason other than the death or
983 serious illness of the resident, the failure of the provider to
984 meet its obligations under the reservation contract, or other
985 circumstances beyond the control of the resident that equitably
986 entitle the resident to a refund of the resident's deposit. The

597-02920-19

20191070c1

987 reservation contract must state the cancellation policy and the
988 terms of the continuing care or continuing care at-home contract
989 to be entered into.

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

996 ~~(a)~~ A minimum of 75 percent of the moneys paid for all or
997 any part of an initial entrance fee collected for continuing
998 care or continuing care at-home must ~~shall~~ be placed in an
999 escrow account or on deposit with the department as prescribed
1000 in s. 651.033.

1001 ~~(b) For an expansion as provided in s. 651.021(2), a~~
1002 ~~minimum of 75 percent of the moneys paid for all or any part of~~
1003 ~~an initial entrance fee collected for continuing care and 50~~
1004 ~~percent of the moneys paid for all or any part of an initial fee~~
1005 ~~collected for continuing care at-home shall be placed in an~~
1006 ~~escrow account or on deposit with the department as prescribed~~
1007 ~~in s. 651.033.~~

1008 (6) The provider is entitled to secure release of the
1009 moneys held in escrow within 7 days after receipt by the office
1010 of an affidavit from the provider, along with appropriate copies
1011 to verify, and notification to the escrow agent by certified
1012 mail, that the following conditions have been satisfied:

1013 (a) A certificate of occupancy has been issued.

1014 (b) Payment in full has been received for at least 70
1015 percent of the total units of a phase or of the total of the

597-02920-19

20191070c1

1016 combined phases constructed. If a provider offering continuing
1017 care at-home is applying for a release of escrowed entrance
1018 fees, the same minimum requirement must be met for the
1019 continuing care and continuing care at-home contracts,
1020 independently of each other.

1021 ~~(e) The consultant who prepared the feasibility study~~
1022 ~~required by this section or a substitute approved by the office~~
1023 ~~certifies within 12 months before the date of filing for office~~
1024 ~~approval that there has been no material adverse change in~~
1025 ~~status with regard to the feasibility study. If a material~~
1026 ~~adverse change exists at the time of submission, sufficient~~
1027 ~~information acceptable to the office and the feasibility~~
1028 ~~consultant must be submitted which remedies the adverse~~
1029 ~~condition.~~

1030 (c)~~(d)~~ Documents evidencing Proof that commitments have
1031 been secured or a documented plan adopted by the applicant has
1032 been approved by the office for long-term financing.

1033 (d)~~(e)~~ Documents evidencing Proof that the provider has
1034 sufficient funds to meet the requirements of s. 651.035, which
1035 may include funds deposited in the initial entrance fee account.

1036 (e)~~(f)~~ Documents evidencing Proof ~~as to~~ the intended
1037 application of the proceeds upon release and documentation ~~proof~~
1038 that the entrance fees when released will be applied as
1039 represented to the office.

1040 (f) If any material change occurred in the facts set forth
1041 in the application filed with the office pursuant to subsection
1042 (1), the applicant timely filed the amendment setting forth such
1043 change with the office and sent copies of the amendment to the
1044 principal office of the facility and to the principal office of

597-02920-19

20191070c1

1045 the controlling company as required under that subsection.

1046
1047 Notwithstanding chapter 120, no person, other than the provider,
1048 the escrow agent, and the office, may have a substantial
1049 interest in any office decision regarding release of escrow
1050 funds in any proceedings under chapter 120 or this chapter
1051 regarding release of escrow funds.

1052 (7) In lieu of the provider fulfilling the requirements in
1053 subsection (5) and paragraphs (6) (b) and (c) ~~(d)~~, the office may
1054 authorize the release of escrowed funds to retire all
1055 outstanding debts on the facility and equipment upon application
1056 of the provider and upon the provider's showing that the
1057 provider will grant to the residents a first mortgage on the
1058 land, buildings, and equipment that constitute the facility, and
1059 that the provider has satisfied paragraphs (6) (a), ~~(e)~~, and (d)
1060 ~~(e)~~. Such mortgage shall secure the refund of the entrance fee
1061 in the amount required by this chapter. The granting of such
1062 mortgage is subject to the following:

1063 (a) The first mortgage is granted to an independent trust
1064 that is beneficially held by the residents. The document
1065 creating the trust must include a provision that agrees to an
1066 annual audit and will furnish to the office all information the
1067 office may reasonably require. The mortgage may secure payment
1068 on bonds issued to the residents or trustee. Such bonds are
1069 redeemable after termination of the residency contract in the
1070 amount and manner required by this chapter for the refund of an
1071 entrance fee.

1072 (b) Before granting a first mortgage to the residents, all
1073 construction must be substantially completed and substantially

597-02920-19

20191070c1

1074 all equipment must be purchased. No part of the entrance fees
1075 may be pledged as security for a construction loan or otherwise
1076 used for construction expenses before the completion of
1077 construction.

1078 (c) If the provider is leasing the land or buildings used
1079 by the facility, the leasehold interest must be for a term of at
1080 least 30 years.

1081 (8) ~~The timeframes provided under s. 651.022(5) and (6)~~
1082 ~~apply to applications submitted under s. 651.021(2).~~ The office
1083 may not issue a certificate of authority to a facility that does
1084 not have a component that is to be licensed pursuant to part II
1085 of chapter 400 or to part I of chapter 429 or that does not
1086 offer personal services or nursing services through written
1087 contractual agreement. A written contractual agreement must be
1088 disclosed in the contract for continuing care or continuing care
1089 at-home and is subject to ~~the provisions of~~ s. 651.1151,
1090 relating to administrative, vendor, and management contracts.

1091 (9) The office may not approve an application that includes
1092 in the plan of financing any encumbrance of the operating
1093 reserves or renewal and replacement reserves required by this
1094 chapter.

1095 Section 9. Section 651.024, Florida Statutes, is amended to
1096 read:

1097 651.024 Acquisition.—

1098 (1) A person who seeks to assume the role of general
1099 partner of a provider or to otherwise assume ownership or
1100 possession of, or control over, 10 percent or more of a
1101 provider, a controlling company of the provider, or a provider's
1102 assets, based on the balance sheet from the most recent

597-02920-19

20191070c1

1103 ~~financial audit report filed with the office, is issued a~~
1104 ~~certificate of authority to operate a continuing care facility~~
1105 ~~or a provisional certificate of authority shall be subject to~~
1106 ~~the provisions of s. 628.4615 and is not required to make~~
1107 ~~filings pursuant to s. 651.022, s. 651.023, or s. 651.0245.~~

1108 (2) A person who seeks to acquire and become the provider
1109 for a facility is subject to s. 651.0245 and is not required to
1110 make filings pursuant to ss. 628.4615, 651.022, and 651.023.

1111 (3) A person may rebut a presumption of control by filing a
1112 disclaimer of control with the office on a form prescribed by
1113 the commission. The disclaimer must fully disclose all material
1114 relationships and bases for affiliation between the person and
1115 the provider or facility, as well as the basis for disclaiming
1116 the affiliation. In lieu of such form, a person or acquiring
1117 party may file with the office a copy of a Schedule 13G filed
1118 with the Securities and Exchange Commission pursuant to Rule
1119 13d-1(b) or (c), 17 C.F.R. s. 240.13d-1, under the Securities
1120 Exchange Act of 1934, as amended. After a disclaimer has been
1121 filed, the provider or facility is relieved of any duty to
1122 register or report under this section which may arise out of the
1123 provider's or facility's relationship with the person, unless
1124 the office disallows the disclaimer.

1125 (4) In addition to the provider, the facility, or the
1126 controlling company, the office has standing to petition a
1127 circuit court as described in s. 628.4615(9).

1128 Section 10. Section 651.0245, Florida Statutes, is created
1129 to read:

1130 651.0245 Application for the simultaneous acquisition of a
1131 facility and issuance of a certificate of authority.-

597-02920-19

20191070c1

1132 (1) Except with the prior written approval of the office, a
1133 person may not, individually or in conjunction with any
1134 affiliated person of such person, directly or indirectly acquire
1135 a facility operating under a subsisting certificate of authority
1136 and engage in the business of providing continuing care.

1137 (2) An applicant seeking simultaneous acquisition of a
1138 facility and issuance of a certificate of authority must:

1139 (a) Comply with the notice requirements of s.

1140 628.4615(2) (a); and

1141 (b) File an application in the form required by the office
1142 and cooperate with the office's review of the application.

1143 (3) The commission shall adopt by rule application
1144 requirements equivalent to those described in ss. 628.4615(4)
1145 and (5), 651.022(2), and 651.023(1) (b). The office shall review
1146 the application and issue an approval or disapproval of the
1147 filing in accordance with ss. 628.4615(6) (a) and (c), (7)-(10),
1148 and (14); and 651.023(1) (b).

1149 (4) In addition to the facility, the provider, or the
1150 controlling company, the office has standing to petition a
1151 circuit court as described in s. 628.4615(9).

1152 (5) A person may rebut a presumption of control by filing a
1153 disclaimer of control with the office on a form prescribed by
1154 the commission. The disclaimer must fully disclose all material
1155 relationships and bases for affiliation between the person and
1156 the provider or facility, as well as the basis for disclaiming
1157 the affiliation. In lieu of such form, a person or acquiring
1158 party may file with the office a copy of a Schedule 13G filed
1159 with the Securities and Exchange Commission pursuant to Rule
1160 13d-1(b) or (c), 17 C.F.R. s. 240.13d-1, under the Securities

597-02920-19

20191070c1

1161 Exchange Act of 1934, as amended. After a disclaimer has been
1162 filed, the provider or facility is relieved of any duty to
1163 register or report under this section which may arise out of the
1164 provider's or facility's relationship with the person, unless
1165 the office disallows the disclaimer.

1166 (6) The commission may adopt rules as necessary to
1167 administer this section.

1168 Section 11. Section 651.0246, Florida Statutes, is created
1169 to read:

1170 651.0246 Expansions.—

1171 (1) (a) A provider must obtain written approval from the
1172 office before commencing construction or marketing for an
1173 expansion of a certificated facility equivalent to the addition
1174 of at least 20 percent of existing units or 20 percent or more
1175 of the number of continuing care at-home contracts. If the
1176 provider has exceeded the current statewide median for days cash
1177 on hand, debt service coverage ratio, and total facility
1178 occupancy for two consecutive annual reporting periods, the
1179 provider is automatically granted approval to expand the total
1180 number of existing units by up to 35 percent upon submitting a
1181 letter to the office indicating the total number of planned
1182 units in the expansion, the proposed sources and uses of funds,
1183 and an attestation that the provider understands and pledges to
1184 comply with all minimum liquid reserve and escrow account
1185 requirements. As used in this section, the term "existing units"
1186 means the sum of the total number of independent living units
1187 and assisted living units identified in the most recent annual
1188 report filed with the office pursuant to s. 651.026. For
1189 purposes of this section, the statewide median for days cash on

597-02920-19

20191070c1

1190 hand, debt service coverage ratio, and total facility occupancy
1191 is the median calculated in the most recent annual report
1192 submitted by the office to the Continuing Care Advisory Council
1193 pursuant to s. 651.121(8). This section does not apply to
1194 construction for which a certificate of need from the Agency for
1195 Health Care Administration is required.

1196 (b) The application for the approval of an addition
1197 consisting of 20 percent or more of existing units or continuing
1198 care at-home contracts must be on forms adopted by the
1199 commission and provided by the office. The application must
1200 include the feasibility study required by this section and such
1201 other information as reasonably requested by the office. If the
1202 expansion is only for continuing care at-home contracts, an
1203 actuarial study prepared by an independent actuary in accordance
1204 with standards adopted by the American Academy of Actuaries
1205 which presents the financial impact of the expansion may be
1206 substituted for the feasibility study.

1207 (c) In determining whether an expansion should be approved,
1208 the office shall consider:

1209 1. Whether the application meets all requirements of law;

1210 2. Whether the feasibility study was based on sufficient
1211 data and reasonable assumptions; and

1212 3. Whether the applicant will be able to provide continuing
1213 care or continuing care at-home as proposed and meet all
1214 financial obligations related to its operations, including the
1215 financial requirements of this chapter.

1216

1217 If the application is denied, the office must notify the
1218 applicant in writing, citing the specific failures to meet the

597-02920-19

20191070c1

1219 provisions of this chapter. A denial entitles the applicant to a
1220 hearing pursuant to chapter 120.

1221 (2) A provider applying for expansion of a certificated
1222 facility must submit all of the following:

1223 (a) A feasibility study prepared by an independent
1224 certified public accountant. The feasibility study must include
1225 at least the following information:

1226 1. A description of the facility and proposed expansion,
1227 including the location, the size, the anticipated completion
1228 date, and the proposed construction program.

1229 2. An identification and evaluation of the primary and, if
1230 applicable, secondary market areas of the facility and the
1231 projected unit sales per month.

1232 3. Projected revenues, including anticipated entrance fees;
1233 monthly service fees; nursing care revenues, if applicable; and
1234 all other sources of revenue.

1235 4. Projected expenses, including for staffing requirements
1236 and salaries; the cost of property, plant, and equipment,
1237 including depreciation expense; interest expense; marketing
1238 expense; and other operating expenses.

1239 5. A projected balance sheet of the applicant.

1240 6. The expectations for the financial condition of the
1241 project, including the projected cash flow and an estimate of
1242 the funds anticipated to be necessary to cover startup losses.

1243 7. The inflation factor, if any, assumed in the study for
1244 the proposed expansion and how and where it is applied.

1245 8. Project costs; the total amount of debt financing
1246 required; marketing projections; resident rates, fees, and
1247 charges; the competition; resident contract provisions; and

597-02920-19

20191070c1

1248 other factors that affect the feasibility of the facility.

1249 9. Appropriate population projections, including morbidity
1250 and mortality assumptions.

1251 10. The name of the person who prepared the feasibility
1252 study and his or her experience in preparing similar studies or
1253 otherwise consulting in the field of continuing care.

1254 11. Financial forecasts or projections prepared in
1255 accordance with standards adopted by the American Institute of
1256 Certified Public Accountants or in accordance with standards for
1257 feasibility studies for continuing care retirement communities
1258 adopted by the Actuarial Standards Board.

1259 12. An independent evaluation and examination opinion for
1260 the first 5 years of operations, or a comparable opinion
1261 acceptable to the office, by the consultant who prepared the
1262 study, of the underlying assumptions used as a basis for the
1263 forecasts or projections in the study and that the assumptions
1264 are reasonable and proper and the project as proposed is
1265 feasible.

1266 13. Any other information that the provider deems relevant
1267 and appropriate to provide to enable the office to make a more
1268 informed determination.

1269 (b) Such other reasonable data, financial statements, and
1270 pertinent information as the commission or office may require
1271 with respect to the applicant or the facility to determine the
1272 financial status of the facility and the management capabilities
1273 of its managers and owners.

1274
1275 If any material change occurs in the facts set forth in an
1276 application filed with the office pursuant to this section, an

597-02920-19

20191070c1

1277 amendment setting forth such change must be filed with the
1278 office within 10 business days after the applicant becomes aware
1279 of such change, and a copy of the amendment must be sent by
1280 registered mail to the principal office of the facility and to
1281 the principal office of the controlling company.

1282 (3) A minimum of 75 percent of the moneys paid for all or
1283 any part of an initial entrance fee or reservation deposit
1284 collected for units in the expansion and 50 percent of the
1285 moneys paid for all or any part of an initial fee collected for
1286 continuing care at-home contracts in the expansion must be
1287 placed in an escrow account or on deposit with the department as
1288 prescribed in s. 651.033. Up to 25 percent of the moneys paid
1289 for all or any part of an initial entrance fee or reservation
1290 deposit may be included or pledged for the construction or
1291 purchase of the facility or as security for long-term financing.
1292 As used in this section, the term "initial entrance fee" means
1293 the total entrance fee charged by the facility to the first
1294 occupant of a unit.

1295 (4) The provider is entitled to secure release of the
1296 moneys held in escrow within 7 days after receipt by the office
1297 of an affidavit from the provider, along with appropriate copies
1298 to verify, and notification to the escrow agent by certified
1299 mail that the following conditions have been satisfied:

1300 (a) A certificate of occupancy has been issued.

1301 (b) Payment in full has been received for at least 50
1302 percent of the total units of a phase or of the total of the
1303 combined phases constructed. If a provider offering continuing
1304 care at-home is applying for a release of escrowed entrance
1305 fees, the same minimum requirement must be met for the

597-02920-19

20191070c1

1306 continuing care and continuing care at-home contracts
1307 independently of each other.

1308 (c) Documents evidencing that commitments have been secured
1309 or that a documented plan adopted by the applicant has been
1310 approved by the office for long-term financing.

1311 (d) Documents evidencing that the provider has sufficient
1312 funds to meet the requirements of s. 651.035, which may include
1313 funds deposited in the initial entrance fee account.

1314 (e) Documents evidencing the intended application of the
1315 proceeds upon release and documentation that the entrance fees,
1316 when released, will be applied as represented to the office.

1317
1318 Notwithstanding chapter 120, only the provider, the escrow
1319 agent, and the office have a substantial interest in any office
1320 decision regarding release of escrow funds in any proceedings
1321 under chapter 120 or this chapter.

1322 (5) (a) Within 30 days after receipt of an application for
1323 expansion, the office shall examine the application and shall
1324 notify the applicant in writing, specifically requesting any
1325 additional information that the office is authorized to require.
1326 Within 15 days after the office receives all the requested
1327 additional information, the office shall notify the applicant in
1328 writing that the requested information has been received and
1329 that the application is deemed complete as of the date of the
1330 notice. If the office chooses not to notify the applicant within
1331 the 15-day period, the application is deemed complete for
1332 purposes of review on the date the applicant files the
1333 additional requested information. If the application submitted
1334 is determined by the office to be substantially incomplete so as

597-02920-19

20191070c1

1335 to require substantial additional information, including
1336 biographical information, the office may return the application
1337 to the applicant with a written notice stating that the
1338 application as received is substantially incomplete and,
1339 therefore, is unacceptable for filing without further action
1340 required by the office. Any filing fee received must be refunded
1341 to the applicant.

1342 (b) An application is deemed complete upon the office
1343 receiving all requested information and the applicant correcting
1344 any error or omission of which the applicant was timely notified
1345 or when the time for such notification has expired. The office
1346 shall notify the applicant in writing of the date on which the
1347 application was deemed complete.

1348 (6) Within 45 days after the date on which an application
1349 is deemed complete as provided in paragraph (5) (b), the office
1350 shall complete its review and, based upon its review, approve an
1351 expansion by the applicant and issue a determination that the
1352 application meets all requirements of law, that the feasibility
1353 study was based on sufficient data and reasonable assumptions,
1354 and that the applicant will be able to provide continuing care
1355 or continuing care at-home as proposed and meet all financial
1356 and contractual obligations related to its operations, including
1357 the financial requirements of this chapter. If the office
1358 requests additional information and the applicant provides it
1359 within 5 business days after notification, the period for
1360 reviewing or approving an application may not be extended beyond
1361 the period specified in paragraph (5) (a). If the application is
1362 denied, the office must notify the applicant in writing, citing
1363 the specific failures to meet the requirements of this chapter.

597-02920-19

20191070c1

1364 The denial entitles the applicant to a hearing pursuant to
1365 chapter 120.

1366 Section 12. Paragraphs (b) and (c) of subsection (2) and
1367 subsection (3) of section 651.026, Florida Statutes, are
1368 amended, subsection (10) is added to that section, and paragraph
1369 (a) of subsection (2) of that section is republished, to read:

1370 651.026 Annual reports.—

1371 (2) The annual report shall be in such form as the
1372 commission prescribes and shall contain at least the following:

1373 (a) Any change in status with respect to the information
1374 required to be filed under s. 651.022(2).

1375 (b) A financial report ~~statements~~ audited by an independent
1376 certified public accountant which must contain, for two or more
1377 periods if the facility has been in existence that long, all of
1378 the following:

1379 1. An accountant's opinion and, in accordance with
1380 generally accepted accounting principles:

- 1381 a. A balance sheet;
1382 b. A statement of income and expenses;
1383 c. A statement of equity or fund balances; and
1384 d. A statement of changes in cash flows.

1385 2. Notes to the financial report ~~statements~~ considered
1386 customary or necessary for full disclosure or adequate
1387 understanding of the financial report ~~statements~~, financial
1388 condition, and operation.

1389 (c) The following financial information:

1390 1. A detailed listing of the assets maintained in the
1391 liquid reserve as required under s. 651.035 and in accordance
1392 with part II of chapter 625;

597-02920-19

20191070c1

1393 2. A schedule giving additional information relating to
1394 property, plant, and equipment having an original cost of at
1395 least \$25,000, so as to show in reasonable detail with respect
1396 to each separate facility original costs, accumulated
1397 depreciation, net book value, appraised value or insurable value
1398 and date thereof, insurance coverage, encumbrances, and net
1399 equity of appraised or insured value over encumbrances. Any
1400 property not used in continuing care must be shown separately
1401 from property used in continuing care;

1402 3. The level of participation in Medicare or Medicaid
1403 programs, or both;

1404 4. A statement of all fees required of residents,
1405 including, but not limited to, a statement of the entrance fee
1406 charged, the monthly service charges, the proposed application
1407 of the proceeds of the entrance fee by the provider, and the
1408 plan by which the amount of the entrance fee is determined if
1409 the entrance fee is not the same in all cases; ~~and~~

1410 5. Any change or increase in fees if the provider changes
1411 the scope of, or the rates for, care or services, regardless of
1412 whether the change involves the basic rate or only those
1413 services available at additional costs to the resident;:-

1414 6. If the provider has more than one certificated facility,
1415 or has operations that are not licensed under this chapter, it
1416 shall submit a balance sheet, statement of income and expenses,
1417 statement of equity or fund balances, and statement of cash
1418 flows for each facility licensed under this chapter as
1419 supplemental information to the audited financial report
1420 ~~statements~~ required under paragraph (b); and-

1421 7. The management's calculation of the provider's debt

597-02920-19

20191070c1

1422 service coverage ratio, occupancy, and days cash on hand for the
1423 current reporting period.

1424 (3) The commission shall adopt by rule additional
1425 ~~meaningful~~ measures of assessing the financial viability of a
1426 provider. ~~The rule may include the following factors:~~

1427 ~~(a) Debt service coverage ratios.~~

1428 ~~(b) Current ratios.~~

1429 ~~(c) Adjusted current ratios.~~

1430 ~~(d) Cash flows.~~

1431 ~~(e) Occupancy rates.~~

1432 ~~(f) Other measures, ratios, or trends.~~

1433 ~~(g) Other factors as may be appropriate.~~

1434 (10) By August 1 annually, the office shall publish an
1435 industry benchmarking report for the preceding calendar year
1436 which contains all of the following:

1437 (a) The median days cash on hand for all providers.

1438 (b) The median debt service coverage ratio for all
1439 providers.

1440 (c) The median occupancy rate for all providers by setting,
1441 including independent living, assisted living, skilled nursing,
1442 and the entire facility.

1443 Section 13. Section 651.0261, Florida Statutes, is amended
1444 to read:

1445 651.0261 Quarterly and monthly statements.—

1446 (1) Within 45 days after the end of each fiscal quarter,
1447 each provider shall file a quarterly unaudited financial
1448 statement of the provider or of the facility in the form
1449 prescribed by commission rule and days cash on hand, occupancy,
1450 debt service coverage ratio, and a detailed listing of the

597-02920-19

20191070c1

1451 assets maintained in the liquid reserve as required under s.
1452 651.035. This requirement may be waived by the office upon
1453 written request from a provider that is accredited without
1454 conditions or stipulations or that has obtained an investment
1455 grade credit rating from a United States credit rating agency as
1456 authorized under s. 651.028. The last quarterly statement for a
1457 fiscal year is not required if a provider does not have pending
1458 a regulatory action level event or a corrective action plan. The
1459 office may not waive the quarterly reporting requirement for a
1460 period of 12 months for any provider that is impaired, or does
1461 not comply with a requirement for debt service coverage ratio,
1462 days cash on hand, or average facility occupancy under s.
1463 651.011(25).

1464 (2) If the office finds, pursuant to rules of the
1465 commission, that such information is needed to properly monitor
1466 the financial condition of a provider or facility or is
1467 otherwise needed to protect the public interest, the office may
1468 require the provider to file:

1469 (a) Within 25 days after the end of each month, a monthly
1470 unaudited financial statement of the provider or of the facility
1471 in the form prescribed by the commission by rule and a detailed
1472 listing of the assets maintained in the liquid reserve as
1473 required under s. 651.035, within 45 days after the end of each
1474 fiscal quarter, a quarterly unaudited financial statement of the
1475 provider or of the facility in the form prescribed by the
1476 commission by rule. The commission may by rule require all or
1477 part of the statements or filings required under this section to
1478 be submitted by electronic means in a computer-readable form
1479 compatible with the electronic data format specified by the

597-02920-19

20191070c1

1480 ~~commission.~~

1481 (b) Such other data, financial statements, and pertinent
1482 information as the commission or office may reasonably require
1483 with respect to the provider or the facility, its directors or
1484 trustees, or, with respect to any parent, subsidiary, or
1485 affiliate, if the provider or facility relies on a contractual
1486 or financial relationship with such parent, subsidiary, or
1487 affiliate in order to meet the financial requirements of this
1488 chapter, to determine the financial status of the provider or of
1489 the facility and the management capabilities of its managers and
1490 owners.

1491 (3) A filing under subsection (2) may be required if any of
1492 the following applies:

1493 (a) The provider is:

1494 1. Subject to administrative supervision proceedings;
1495 2. Subject to a corrective action plan resulting from a
1496 regulatory action level event for up to 2 years after the
1497 factors that caused the regulatory action level event have been
1498 corrected; or

1499 3. Subject to delinquency or receivership proceedings or
1500 has filed for bankruptcy.

1501 (b) The provider or facility displays a declining financial
1502 position.

1503 (c) A change of ownership of the provider or facility has
1504 occurred within the previous 2 years.

1505 (d) The facility is found to be impaired.

1506 (4) The commission may by rule require all or part of the
1507 statements or filings required under this section to be
1508 submitted by electronic means in a computer-readable format

597-02920-19

20191070c1

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

1511 Section 14. Section 651.028, Florida Statutes, is amended
1512 to read:

1513 651.028 Accredited or certain credit-rated facilities.—If a
1514 provider or obligated group is accredited without stipulations
1515 or conditions by a process found by the office to be acceptable
1516 and substantially equivalent to the provisions of this chapter
1517 or has obtained an investment grade credit rating from a
1518 nationally recognized credit rating agency, as applicable, from
1519 Moody's Investors Service, Standard & Poor's, or Fitch Ratings,
1520 the office may, pursuant to rule of the commission, waive the
1521 quarterly filing any requirements under s. 651.0261 of this
1522 ~~chapter~~ with respect to the provider if the office finds that
1523 such waivers are not inconsistent with the security protections
1524 intended by this chapter. A provider or obligated group that is
1525 accredited without stipulations or conditions or that has
1526 obtained such an investment grade credit rating shall provide
1527 documentation substantiating such accreditation or investment
1528 grade rating in its request for the waiver. If the office grants
1529 a waiver to the provider or obligated group, the provider or
1530 obligated group must notify the office within 10 business days
1531 after any changes in the accreditation or investment grade
1532 rating.

1533 Section 15. Subsections (1), (2), (3), and (5) of section
1534 651.033, Florida Statutes, are amended, and subsection (6) is
1535 added to that section, to read:

1536 651.033 Escrow accounts.—

1537 (1) When funds are required to be deposited in an escrow

597-02920-19

20191070c1

1538 account pursuant to s. 651.0215, s. 651.022, s. 651.023, s.
1539 651.0246, s. 651.035, or s. 651.055:

1540 (a) The escrow account must ~~shall~~ be established in a
1541 Florida bank, Florida savings and loan association, ~~or~~ Florida
1542 trust company, or a national bank that is chartered and
1543 supervised by the Office of the Comptroller of the Currency
1544 within the United States Department of the Treasury and that has
1545 either a branch or a license to operate in this state, which is
1546 acceptable to the office, or such funds must be deposited ~~on~~
1547 ~~deposit~~ with the department; and ~~the funds deposited therein~~
1548 ~~shall~~ be kept and maintained in an account separate and apart
1549 from the provider's business accounts.

1550 (b) An escrow agreement shall be entered into between the
1551 bank, savings and loan association, or trust company and the
1552 provider of the facility; the agreement shall state that its
1553 purpose is to protect the resident or the prospective resident;
1554 and, upon presentation of evidence of compliance with applicable
1555 portions of this chapter, or upon order of a court of competent
1556 jurisdiction, the escrow agent shall release and pay over the
1557 funds, or portions thereof, together with any interest accrued
1558 thereon or earned from investment of the funds, to the provider
1559 or resident as directed.

1560 (c) Any agreement establishing an escrow account required
1561 under ~~the provisions of~~ this chapter is ~~shall be~~ subject to
1562 approval by the office. The agreement must ~~shall~~ be in writing
1563 and ~~shall~~ contain, in addition to any other provisions required
1564 by law, a provision whereby the escrow agent agrees to abide by
1565 the duties imposed by paragraphs (b) and (e), (3) (a), (3) (b),
1566 and (5) (a) and subsection (6) under this section.

597-02920-19

20191070c1

1567 (d) All funds deposited in an escrow account, if invested,
1568 shall be invested as set forth in part II of chapter 625;
1569 however, such investment may not diminish the funds held in
1570 escrow below the amount required by this chapter. Funds
1571 deposited in an escrow account are not subject to charges by the
1572 escrow agent except escrow agent fees associated with
1573 administering the accounts, or subject to any liens, judgments,
1574 garnishments, creditor's claims, or other encumbrances against
1575 the provider or facility except as provided in s. 651.035(1).

1576 (e) At the request of either the provider or the office,
1577 the escrow agent shall issue a statement indicating the status
1578 of the escrow account.

1579 (2) Notwithstanding s. 651.035(7), ~~In addition, the escrow~~
1580 ~~agreement shall provide that the escrow agent or another person~~
1581 ~~designated to act in the escrow agent's place and the provider,~~
1582 ~~except as otherwise provided in s. 651.035, shall notify the~~
1583 ~~office in writing at least 10 days before the withdrawal of any~~
1584 ~~portion of any funds required to be escrowed under the~~
1585 ~~provisions of s. 651.035. However,~~ in the event of an emergency
1586 and upon petition by the provider, the office may ~~waive the 10-~~
1587 ~~day notification period and~~ allow a withdrawal of up to 10
1588 percent of the required minimum liquid reserve. The office shall
1589 have 3 working days to deny the petition for the emergency 10-
1590 percent withdrawal. If the office fails to deny the petition
1591 within 3 working days, the petition is ~~shall be~~ deemed to have
1592 been granted by the office. For purposes ~~the purpose~~ of this
1593 section, the term "working day" means each day that is not a
1594 Saturday, Sunday, or legal holiday as defined by Florida law.
1595 Also, for purposes ~~the purpose~~ of this section, the day the

597-02920-19

20191070c1

1596 petition is received by the office is ~~shall~~ not be counted as
1597 one of the 3 days.

1598 (3) ~~In addition,~~ When entrance fees are required to be
1599 deposited in an escrow account pursuant to s. 651.0215, s.
1600 651.022, s. 651.023, s. 651.0246, or s. 651.055:

1601 (a) The provider shall deliver to the resident a written
1602 receipt. The receipt must show the payor's name and address, the
1603 date, the price of the care contract, and the amount of money
1604 paid. A copy of each receipt, together with the funds, must
1605 ~~shall~~ be deposited with the escrow agent or as provided in
1606 paragraph (c). The escrow agent must ~~shall~~ release such funds to
1607 the provider 7 days after the date of receipt of the funds by
1608 the escrow agent if the provider, operating under a certificate
1609 of authority issued by the office, has met the requirements of
1610 s. 651.0215(8), s. 651.023(6), or s. 651.0246. However, if the
1611 resident rescinds the contract within the 7-day period, the
1612 escrow agent must ~~shall~~ release the escrowed fees to the
1613 resident.

1614 (b) At the request of an individual resident of a facility,
1615 the escrow agent shall issue a statement indicating the status
1616 of the resident's portion of the escrow account.

1617 (c) At the request of an individual resident of a facility,
1618 the provider may hold the check for the 7-day period and may
1619 ~~shall~~ not deposit it during this time period. If the resident
1620 rescinds the contract within the 7-day period, the check must
1621 ~~shall~~ be immediately returned to the resident. Upon the
1622 expiration of the 7 days, the provider shall deposit the check.

1623 (d) A provider may assess a nonrefundable fee, which is
1624 separate from the entrance fee, for processing a prospective

597-02920-19

20191070c1

1625 resident's application for continuing care or continuing care
1626 at-home.

1627 (5) When funds are required to be deposited in an escrow
1628 account pursuant to s. 651.0215, s. 651.022, s. 651.023, s.
1629 651.0246, or s. 651.035, the following ~~shall~~ apply:

1630 (a) The escrow agreement must ~~shall~~ require that the escrow
1631 agent furnish the provider with a quarterly statement indicating
1632 the amount of any disbursements from or deposits to the escrow
1633 account and the condition of the account during the period
1634 covered by the statement. The agreement must ~~shall~~ require that
1635 the statement be furnished to the provider by the escrow agent
1636 on or before the 10th day of the month following the end of the
1637 quarter for which the statement is due. If the escrow agent does
1638 not provide the quarterly statement to the provider on or before
1639 the 10th day of the month following the month for which the
1640 statement is due, the office may, in its discretion, levy
1641 against the escrow agent a fine not to exceed \$25 a day for each
1642 day of noncompliance with the provisions of this subsection.

1643 (b) If the escrow agent does not provide the quarterly
1644 statement to the provider on or before the 10th day of the month
1645 following the quarter for which the statement is due, the
1646 provider shall, on or before the 15th day of the month following
1647 the quarter for which the statement is due, send a written
1648 request for the statement to the escrow agent by certified mail
1649 return receipt requested.

1650 (c) On or before the 20th day of the month following the
1651 quarter for which the statement is due, the provider shall file
1652 with the office a copy of the escrow agent's statement or, if
1653 the provider has not received the escrow agent's statement, a

597-02920-19

20191070c1

1654 copy of the written request to the escrow agent for the
1655 statement.

1656 (d) The office may, in its discretion, in addition to any
1657 other penalty that may be provided for under this chapter, levy
1658 a fine against the provider not to exceed \$25 a day for each day
1659 the provider fails to comply with the provisions of this
1660 subsection.

1661 (e) Funds held on deposit with the department are exempt
1662 from the reporting requirements of this subsection.

1663 (6) Except as described in paragraph (3) (a), the escrow
1664 agent may not release or otherwise allow the transfer of funds
1665 without the written approval of the office, unless the
1666 withdrawal is from funds in excess of the amounts required by
1667 ss. 651.0215, 651.022, 651.023, 651.0246, 651.035, and 651.055.

1668 Section 16. Section 651.034, Florida Statutes, is created
1669 to read:

1670 651.034 Financial and operating requirements for
1671 providers.-

1672 (1) (a) If a regulatory action level event occurs, the
1673 office must:

1674 1. Require the provider to prepare and submit a corrective
1675 action plan or, if applicable, a revised corrective action plan;

1676 2. Perform an examination pursuant to s. 651.105 or an
1677 analysis, as the office considers necessary, of the assets,
1678 liabilities, and operations of the provider, including a review
1679 of the corrective action plan or the revised corrective action
1680 plan; and

1681 3. After the examination or analysis, issue a corrective
1682 order, if necessary, specifying any corrective actions that the

597-02920-19

20191070c1

1683 office determines are required.

1684 (b) In determining corrective actions, the office shall
1685 consider any factor relevant to the provider based upon the
1686 office's examination or analysis of the assets, liabilities, and
1687 operations of the provider. The provider must submit the
1688 corrective action plan or the revised corrective action plan
1689 within 30 days after the occurrence of the regulatory action
1690 level event. The office shall review and approve or disapprove
1691 the corrective action plan within 45 business days.

1692 (c) The office may use members of the Continuing Care
1693 Advisory Council, individually or as a group, or may retain
1694 actuaries, investment experts, and other consultants to review a
1695 provider's corrective action plan or revised corrective action
1696 plan, examine or analyze the assets, liabilities, and operations
1697 of a provider, and formulate the corrective order with respect
1698 to the provider. The costs and expenses relating to consultants
1699 must be borne by the affected provider.

1700 (2) If an impairment occurs and except when s.
1701 651.114(11) (a) applies, the office must take action necessary to
1702 place the provider under regulatory control, including any
1703 remedy available under part I of chapter 631. An impairment is
1704 sufficient grounds for the department to be appointed as
1705 receiver as provided in chapter 631. Except when s.
1706 651.114(11) (a) is applicable, the department may appoint a
1707 receiver. If s. 651.114(11) (a) applies, the provider must make
1708 available to the office copies of any corrective action plan
1709 approved by the third-party lender or trustee to cure the
1710 impairment and any related required report. Notwithstanding s.
1711 631.011, impairment of a provider, for purposes of s. 631.051,

597-02920-19

20191070c1

1712 is defined according to the term "impaired" under s. 651.011.
1713 The office may forego taking action for up to 180 days after the
1714 impairment if the office finds there is a reasonable expectation
1715 that the impairment may be eliminated within the 180-day period.

1716 (3) There is no liability on the part of, and a cause of
1717 action may not arise against, the commission, department, or
1718 office, or their employees or agents, for any action they take
1719 in the performance of their powers and duties under this
1720 section.

1721 (4) The office shall transmit any notice that may result in
1722 regulatory action by registered mail, certified mail, or any
1723 other method of transmission which includes documentation of
1724 receipt by the provider. Notice is effective when the provider
1725 receives it.

1726 (5) This section is supplemental to the other laws of this
1727 state and does not preclude or limit any power or duty of the
1728 department or office under those laws or under the rules adopted
1729 pursuant to those laws.

1730 (6) The office may exempt a provider from subsection (1) or
1731 subsection (2) until stabilized occupancy is reached or until
1732 the time projected to achieve stabilized occupancy as reported
1733 in the last feasibility study required by the office as part of
1734 an application filing under s. 651.0215, s. 651.023, s. 651.024,
1735 or s. 651.0246 has elapsed, but for no longer than 5 years after
1736 the date of issuance of the certificate of occupancy.

1737 (7) The commission may adopt rules to administer this
1738 section, including, but not limited to, rules regarding
1739 corrective action plans, revised corrective action plans,
1740 corrective orders, and procedures to be followed in the event of

597-02920-19

20191070c1

1741 a regulatory action level event or an impairment.

1742 Section 17. Paragraphs (a), (b), and (c) of subsection (1)
1743 of section 651.035, Florida Statutes, are amended, and
1744 subsections (7) through (11) are added to that section, to read:
1745 651.035 Minimum liquid reserve requirements.—

1746 (1) A provider shall maintain in escrow a minimum liquid
1747 reserve consisting of the following reserves, as applicable:

1748 (a) Each provider shall maintain in escrow as a debt
1749 service reserve the aggregate amount of all principal and
1750 interest payments due during the fiscal year on any mortgage
1751 loan or other long-term financing of the facility, including
1752 property taxes as recorded in the audited financial report
1753 ~~statements~~ required under s. 651.026. The amount must include
1754 any leasehold payments and all costs related to such payments.
1755 If principal payments are not due during the fiscal year, the
1756 provider must ~~shall~~ maintain in escrow as a minimum liquid
1757 reserve an amount equal to interest payments due during the next
1758 12 months on any mortgage loan or other long-term financing of
1759 the facility, including property taxes. If a provider does not
1760 have a mortgage loan or other financing on the facility, the
1761 provider must deposit monthly in escrow as a minimum liquid
1762 reserve an amount equal to one-twelfth of the annual property
1763 tax liability as indicated in the most recent tax notice
1764 provided pursuant to s. 197.322(3), and must annually pay
1765 property taxes out of such escrow.

1766 (b) A provider that has outstanding indebtedness that
1767 requires a debt service reserve to be held in escrow pursuant to
1768 a trust indenture or mortgage lien on the facility and for which
1769 the debt service reserve may only be used to pay principal and

597-02920-19

20191070c1

1770 interest payments on the debt that the debtor is obligated to
1771 pay, and which may include property taxes and insurance, may
1772 include such debt service reserve in computing the minimum
1773 liquid reserve needed to satisfy this subsection if the provider
1774 furnishes to the office a copy of the agreement under which such
1775 debt service is held, together with a statement of the amount
1776 being held in escrow for the debt service reserve, certified by
1777 the lender or trustee and the provider to be correct. The
1778 trustee shall provide the office with any information concerning
1779 the debt service reserve account upon request of the provider or
1780 the office. Any such separate debt service reserves are not
1781 subject to the transfer provisions set forth in subsection (8).

1782 (c) Each provider shall maintain in escrow an operating
1783 reserve equal to 30 percent of the total operating expenses
1784 projected in the feasibility study required by s. 651.023 for
1785 the first 12 months of operation. Thereafter, each provider
1786 shall maintain in escrow an operating reserve equal to 15
1787 percent of the total operating expenses in the annual report
1788 filed pursuant to s. 651.026. If a provider has been in
1789 operation for more than 12 months, the total annual operating
1790 expenses must ~~shall~~ be determined by averaging the total annual
1791 operating expenses reported to the office by the number of
1792 annual reports filed with the office within the preceding 3-year
1793 period subject to adjustment if there is a change in the number
1794 of facilities owned. For purposes of this subsection, total
1795 annual operating expenses include all expenses of the facility
1796 except+ depreciation and amortization; interest and property
1797 taxes included in paragraph (a); extraordinary expenses that are
1798 adequately explained and documented in accordance with generally

597-02920-19

20191070c1

1799 accepted accounting principles; liability insurance premiums in
1800 excess of those paid in calendar year 1999; and changes in the
1801 obligation to provide future services to current residents. For
1802 providers initially licensed during or after calendar year 1999,
1803 liability insurance must ~~shall~~ be included in the total
1804 operating expenses in an amount not to exceed the premium paid
1805 during the first 12 months of facility operation. ~~Beginning~~
1806 ~~January 1, 1993,~~ The operating reserves required under this
1807 subsection must ~~shall~~ be in an unencumbered account held in
1808 escrow for the benefit of the residents. Such funds may not be
1809 encumbered or subject to any liens or charges by the escrow
1810 agent or judgments, garnishments, or creditors' claims against
1811 the provider or facility. However, if a facility had a lien,
1812 mortgage, trust indenture, or similar debt instrument in place
1813 before January 1, 1993, which encumbered all or any part of the
1814 reserves required by this subsection and such funds were used to
1815 meet the requirements of this subsection, then such arrangement
1816 may be continued, unless a refinancing or acquisition has
1817 occurred, and the provider is ~~shall be~~ in compliance with this
1818 subsection.

1819 (7) (a) A provider may withdraw funds held in escrow without
1820 the approval of the office if the amount held in escrow exceeds
1821 the requirements of this section and if the withdrawal will not
1822 affect compliance with this section.

1823 (b)1. For all other proposed withdrawals, in order to
1824 receive the consent of the office, the provider must file
1825 documentation showing why the withdrawal is necessary for the
1826 continued operation of the facility and such additional
1827 information as the office reasonably requires.

597-02920-19

20191070c1

1828 2. The office shall notify the provider when the filing is
1829 deemed complete. If the provider has complied with all prior
1830 requests for information, the filing is deemed complete after 30
1831 days without communication from the office.

1832 3. Within 30 days after the date a file is deemed complete,
1833 the office shall provide the provider with written notice of its
1834 approval or disapproval of the request. The office may
1835 disapprove any request to withdraw such funds if it determines
1836 that the withdrawal is not in the best interest of the
1837 residents.

1838 (8) The office may order the immediate transfer of up to
1839 100 percent of the funds held in the minimum liquid reserve to
1840 the custody of the department pursuant to part III of chapter
1841 625 if the office finds that the provider is impaired or
1842 insolvent. The office may order such a transfer regardless of
1843 whether the office has suspended or revoked, or intends to
1844 suspend or revoke, the certificate of authority of the provider.

1845 (9) Each facility shall file with the office annually,
1846 together with the annual report required by s. 651.026, a
1847 calculation of its minimum liquid reserve determined in
1848 accordance with this section on a form prescribed by the
1849 commission.

1850 (10) Any increase in the minimum liquid reserve must be
1851 funded not later than 61 days after the minimum liquid reserve
1852 calculation is due to be filed as provided in s. 651.026.

1853 (11) Notwithstanding subsection (6), if the market value of
1854 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.

597-02920-19

20191070c1

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 after
1861 July 1, 2019, must be in writing and include a provision that
1862 the contract will be canceled upon issuance of an order by the
1863 office pursuant to this section and without the application of a
1864 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 has
1878 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:

597-02920-19

20191070c1

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 30 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

597-02920-19

20191070c1

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 when
1922 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

597-02920-19

20191070c1

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

597-02920-19

20191070c1

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 following
1985 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 contract;

1990 3. An actuarial study prepared by an independent actuary in
1991 accordance with the standards adopted by the American Academy of
1992 Actuaries which presents the impact of providing continuing care
1993 at-home on the overall operation of the facility; and

1994 4. A ~~market~~ feasibility study that meets the requirements
1995 of s. 651.022(3) and documents that there is sufficient interest
1996 in continuing care at-home contracts to support such a program;

1997 (b) Demonstrate to the office that the proposal to offer
1998 continuing care at-home contracts to individuals who do not
1999 immediately move into the facility will not place the provider
2000 in an unsound financial condition;

2001 (c) Comply with the requirements of s. 651.0246(1) ~~s.~~

597-02920-19

20191070c1

2002 ~~651.021(2)~~, except that an actuarial study may be substituted
2003 for the feasibility study; and

2004 (d) Comply with the requirements of this chapter.

2005 Section 22. Subsection (1) of section 651.071, Florida
2006 Statutes, is amended to read:

2007 651.071 Contracts as preferred claims on liquidation or
2008 receivership.—

2009 (1) In the event of receivership or liquidation proceedings
2010 against a provider, all continuing care and continuing care at-
2011 home contracts executed by a provider are ~~shall be~~ deemed
2012 preferred claims or policyholder loss preferred claims pursuant
2013 to s. 631.271(1)(b) against all assets owned by the provider;
2014 however, such claims are subordinate to any secured claim.

2015 Section 23. Subsection (2) and present paragraph (g) of
2016 subsection (3) of section 651.091, Florida Statutes, are
2017 amended, and a new paragraph (i) and paragraphs (j), (k), and
2018 (l) are added to that subsection, and paragraph (d) of
2019 subsection (3) and subsection (4) of that section are
2020 republished, to read:

2021 651.091 Availability, distribution, and posting of reports
2022 and records; requirement of full disclosure.—

2023 (2) Every continuing care facility shall:

2024 (a) Display the certificate of authority in a conspicuous
2025 place inside the facility.

2026 (b) Post in a prominent position in the facility which is
2027 accessible to all residents and the general public a concise
2028 summary of the last examination report issued by the office,
2029 with references to the page numbers of the full report noting
2030 any deficiencies found by the office, and the actions taken by

597-02920-19

20191070c1

2031 the provider to rectify such deficiencies, indicating in such
2032 summary where the full report may be inspected in the facility.

2033 (c) Post in a prominent position in the facility,
2034 accessible to all residents and the general public, a notice
2035 containing the contact information for the office and the
2036 Division of Consumer Services of the department and stating that
2037 the division or office may be contacted for the submission of
2038 inquiries and complaints with respect to potential violations of
2039 this chapter committed by a provider. Such contact information
2040 must include the division's website and the toll-free consumer
2041 helpline and the office's website and telephone number.

2042 (d) Provide notice to the president or chair of the
2043 residents' council within 10 business days after issuance of a
2044 final examination report or the initiation of any legal or
2045 administrative proceeding by the office or the department and
2046 include a copy of such document.

2047 (e)-~~e~~ Post in a prominent position in the facility which
2048 is accessible to all residents and the general public a summary
2049 of the latest annual statement, indicating in the summary where
2050 the full annual statement may be inspected in the facility. A
2051 listing of any proposed changes in policies, programs, and
2052 services must also be posted.

2053 (f)-~~d~~ Distribute a copy of the full annual statement and a
2054 copy of the most recent third-party ~~third party~~ financial audit
2055 filed with the annual report to the president or chair of the
2056 residents' council within 30 days after filing the annual report
2057 with the office, and designate a staff person to provide
2058 explanation thereof.

2059 (g)-~~e~~ Deliver the information described in s. 651.085(4)

597-02920-19

20191070c1

2060 in writing to the president or chair of the residents' council
2061 and make supporting documentation available upon request ~~Notify~~
2062 ~~the residents' council of any plans filed with the office to~~
2063 ~~obtain new financing, additional financing, or refinancing for~~
2064 ~~the facility and of any applications to the office for any~~
2065 ~~expansion of the facility.~~

2066 (h) ~~(f)~~ Deliver to the president or chair of the residents'
2067 council a summary of entrance fees collected and refunds made
2068 during the time period covered in the annual report and the
2069 refund balances due at the end of the report period.

2070 (i) ~~(g)~~ Deliver to the president or chair of the residents'
2071 council a copy of each quarterly statement within 30 days after
2072 the quarterly statement is filed with the office if the facility
2073 is required to file quarterly.

2074 (j) ~~(h)~~ Upon request, deliver to the president or chair of
2075 the residents' council a copy of any newly approved continuing
2076 care or continuing care at-home contract within 30 days after
2077 approval by the office.

2078 (k) Provide to the president or chair of the residents'
2079 council a copy of any notice filed with the office relating to
2080 any change in ownership within 10 business days after such
2081 filing by the provider.

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

597-02920-19

20191070c1

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 (d) In keeping with the intent of this subsection relating
2093 to disclosure, the provider shall make available for review
2094 master plans approved by the provider's governing board and any
2095 plans for expansion or phased development, to the extent that
2096 the availability of such plans does not put at risk real estate,
2097 financing, acquisition, negotiations, or other implementation of
2098 operational plans and thus jeopardize the success of
2099 negotiations, operations, and development.

2100 ~~(g) The amount and location of any reserve funds required~~
2101 ~~by this chapter, and the name of the person or entity having a~~
2102 ~~claim to such funds in the event of a bankruptcy, foreclosure,~~
2103 ~~or rehabilitation proceeding.~~

2104 (i) Notice of the issuance of a final examination report or
2105 the initiation of any legal or administrative proceeding by the
2106 office or the department, including where the report or filing
2107 may be inspected in the facility, and that, upon request, an
2108 electronic copy or specific website address will be provided
2109 from which the document can be downloaded at no cost.

2110 (j) Notice that the entrance fee is the property of the
2111 provider after the expiration of the 7-day escrow requirement
2112 under s. 651.055(2).

2113 (k) A statement that distribution of assets or income may
2114 occur or a statement that such distributions will not occur.

2115 (l) Notice of any holding company system or obligated group
2116 of which the provider is a member.

2117 (4) A true and complete copy of the full disclosure

597-02920-19

20191070c1

2118 document to be used must be filed with the office before use. A
2119 resident or prospective resident or his or her legal
2120 representative may inspect the full reports referred to in
2121 paragraph (2) (b); the charter or other agreement or instrument
2122 required to be filed with the office pursuant to s. 651.022(2),
2123 together with all amendments thereto; and the bylaws of the
2124 corporation or association, if any. Upon request, copies of the
2125 reports and information shall be provided to the individual
2126 requesting them if the individual agrees to pay a reasonable
2127 charge to cover copying costs.

2128 Section 24. Subsection (4) of section 651.095, Florida
2129 Statutes, is amended to read:

2130 651.095 Advertisements; requirements; penalties.—

2131 (4) It is unlawful for any person, other than a provider
2132 licensed pursuant to this chapter, to advertise or market to the
2133 general public any product similar to continuing care through
2134 the use of such terms as "life care," "life plan," "life plan
2135 at-home," "continuing care," or "guaranteed care for life," or
2136 similar terms, words, or phrases.

2137 Section 25. Section 651.105, Florida Statutes, is amended
2138 to read:

2139 651.105 Examination ~~and inspections~~.—

2140 (1) The office may at any time, and shall at least once
2141 every 3 years, examine the business of any applicant for a
2142 certificate of authority and any provider engaged in the
2143 execution of care contracts or engaged in the performance of
2144 obligations under such contracts, in the same manner as is
2145 provided for the examination of insurance companies pursuant to
2146 ss. 624.316 and 624.318 ~~s. 624.316~~. For a provider as described

597-02920-19

20191070c1

2147 ~~defined~~ in s. 651.028, such examinations must ~~shall~~ take place
2148 at least once every 5 years. Such examinations must ~~shall~~ be
2149 made by a representative or examiner designated by the office
2150 whose compensation will be fixed by the office pursuant to s.
2151 624.320. Routine examinations may be made by having the
2152 necessary documents submitted to the office; and, for this
2153 purpose, financial documents and records conforming to commonly
2154 accepted accounting principles and practices, as required under
2155 s. 651.026, are deemed adequate. The final written report of
2156 each examination must be filed with the office and, when so
2157 filed, constitutes a public record. Any provider being examined
2158 shall, upon request, give reasonable and timely access to all of
2159 its records. The representative or examiner designated by the
2160 office may at any time examine the records and affairs and
2161 inspect the physical property of any provider, whether in
2162 connection with a formal examination or not.

2163 (2) Any duly authorized officer, employee, or agent of the
2164 office may, upon presentation of proper identification, have
2165 access to, and inspect, any records, with or without advance
2166 notice, to secure compliance with, or to prevent a violation of,
2167 any provision of this chapter.

2168 (3) Reports of the results of such financial examinations
2169 must be kept on file by the office. Any investigatory records,
2170 reports, or documents held by the office are confidential and
2171 exempt from the provisions of s. 119.07(1), until the
2172 investigation is completed or ceases to be active. For the
2173 purpose of this section, an investigation is active while it is
2174 being conducted by the office with a reasonable, good faith
2175 belief that it could lead to the filing of administrative,

597-02920-19

20191070c1

2176 civil, or criminal proceedings. An investigation does not cease
2177 to be active if the office is proceeding with reasonable
2178 dispatch and has a good faith belief that action could be
2179 initiated by the office or other administrative or law
2180 enforcement agency.

2181 (4) The office shall notify the provider and the executive
2182 officer of the governing body of the provider in writing of all
2183 deficiencies in its compliance with the provisions of this
2184 chapter and the rules adopted pursuant to this chapter and shall
2185 set a reasonable length of time for compliance by the provider.
2186 In addition, the office shall require corrective action or
2187 request a corrective action plan from the provider which plan
2188 demonstrates a good faith attempt to remedy the deficiencies by
2189 a specified date. If the provider fails to comply within the
2190 established length of time, the office may initiate action
2191 against the provider in accordance with the provisions of this
2192 chapter.

2193 (5) A provider shall respond to written correspondence from
2194 the office and provide data, financial statements, and pertinent
2195 information as requested by the office or by the office's
2196 investigators, examiners, or inspectors. The office has standing
2197 to petition a circuit court for mandatory injunctive relief to
2198 compel access to and require the provider to produce the
2199 documents, data, records, and other information requested by the
2200 office or its investigators, examiners, or inspectors. The
2201 office may petition the circuit court in the county in which the
2202 facility is situated or the Circuit Court of Leon County to
2203 enforce this section ~~At the time of the routine examination, the~~
2204 ~~office shall determine if all disclosures required under this~~

597-02920-19

20191070c1

2205 ~~chapter have been made to the president or chair of the~~
2206 ~~residents' council and the executive officer of the governing~~
2207 ~~body of the provider.~~

2208 (6) A representative of the provider must give a copy of
2209 the final examination report and corrective action plan, if one
2210 is required by the office, to the executive officer of the
2211 governing body of the provider within 60 days after issuance of
2212 the report.

2213 (7) Unless a provider or facility is impaired or subject to
2214 a regulatory action level event, any parent, subsidiary, or
2215 affiliate is not subject to examination by the office as part of
2216 a routine examination. However, if a provider or facility relies
2217 on a contractual or financial relationship with a parent, a
2218 subsidiary, or an affiliate in order to meet the financial
2219 requirements of this chapter, the office may examine any parent,
2220 subsidiary, or affiliate that has a contractual or financial
2221 relationship with the provider or facility to the extent
2222 necessary to ascertain the financial condition of the provider.

2223 Section 26. Section 651.106, Florida Statutes, is amended
2224 to read:

2225 651.106 Grounds for discretionary refusal, suspension, or
2226 revocation of certificate of authority.—The office may deny an
2227 application or suspend or revoke the provisional certificate
2228 of authority or the certificate of authority of any applicant or
2229 provider if it finds that any one or more of the following
2230 grounds applicable to the applicant or provider exist:

2231 (1) Failure by the provider to continue to meet the
2232 requirements for the authority originally granted.

2233 (2) Failure by the provider to meet one or more of the

597-02920-19

20191070c1

2234 qualifications for the authority specified by this chapter.

2235 (3) Material misstatement, misrepresentation, or fraud in
2236 obtaining the authority, or in attempting to obtain the same.

2237 (4) Demonstrated lack of fitness or trustworthiness.

2238 (5) Fraudulent or dishonest practices of management in the
2239 conduct of business.

2240 (6) Misappropriation, conversion, or withholding of moneys.

2241 (7) Failure to comply with, or violation of, any proper
2242 order or rule of the office or commission or violation of any
2243 provision of this chapter.

2244 (8) The insolvent or impaired condition of the provider or
2245 the provider's being in such condition or using such methods and
2246 practices in the conduct of its business as to render its
2247 further transactions in this state hazardous or injurious to the
2248 public.

2249 (9) Refusal by the provider to be examined or to produce
2250 its accounts, records, and files for examination, or refusal by
2251 any of its officers to give information with respect to its
2252 affairs or to perform any other legal obligation under this
2253 chapter when required by the office.

2254 (10) Failure by the provider to comply with the
2255 requirements of s. 651.026 or s. 651.033.

2256 (11) Failure by the provider to maintain escrow accounts or
2257 funds as required by this chapter.

2258 (12) Failure by the provider to meet the requirements of
2259 this chapter for disclosure of information to residents
2260 concerning the facility, its ownership, its management, its
2261 development, or its financial condition or failure to honor its
2262 continuing care or continuing care at-home contracts.

597-02920-19

20191070c1

2263 (13) Any cause for which issuance of the license could have
2264 been refused had it then existed and been known to the office.

2265 (14) Having been found guilty of, or having pleaded guilty
2266 or nolo contendere to, a felony in this state or any other
2267 state, without regard to whether a judgment or conviction has
2268 been entered by the court having jurisdiction of such cases.

2269 (15) In the conduct of business under the license, engaging
2270 in unfair methods of competition or in unfair or deceptive acts
2271 or practices prohibited under part IX of chapter 626.

2272 (16) A pattern of bankrupt enterprises.

2273 (17) The ownership, control, or management of the
2274 organization includes any person:

2275 (a) Who is not reputable and of responsible character;

2276 (b) Who is so lacking in management expertise as to make
2277 the operation of the provider hazardous to potential and
2278 existing residents;

2279 (c) Who is so lacking in management experience, ability,
2280 and standing as to jeopardize the reasonable promise of
2281 successful operation;

2282 (d) Who is affiliated, directly or indirectly, through
2283 ownership or control, with any person or persons whose business
2284 operations are or have been marked by business practices or
2285 conduct that is detrimental to the public, contract holders,
2286 investors, or creditors by manipulation of assets, finances, or
2287 accounts or by bad faith; or

2288 (e) Whose business operations are or have been marked by
2289 business practices or conduct that is detrimental to the public,
2290 contract holders, investors, or creditors by manipulation of
2291 assets, finances, or accounts or by bad faith.

597-02920-19

20191070c1

2292 (18) The provider has not filed a notice of change in
2293 management, fails to remove a disapproved manager, or persists
2294 in appointing disapproved managers.

2295
2296 Revocation of a certificate of authority under this section does
2297 not relieve a provider from the provider's obligation to
2298 residents under the terms and conditions of any continuing care
2299 or continuing care at-home contract between the provider and
2300 residents or the provisions of this chapter. The provider shall
2301 continue to file its annual statement and pay license fees to
2302 the office as required under this chapter as if the certificate
2303 of authority had continued in full force, but the provider shall
2304 not issue any new contracts. The office may seek an action in
2305 the Circuit Court of Leon County to enforce the office's order
2306 and the provisions of this section.

2307 Section 27. Section 651.1065, Florida Statutes, is created
2308 to read:

2309 651.1065 Soliciting or accepting new continuing care
2310 contracts by impaired or insolvent facilities or providers.-

2311 (1) Regardless of whether delinquency proceedings as to a
2312 continuing care facility have been or are to be initiated, a
2313 proprietor, a general partner, a member, an officer, a director,
2314 a trustee, or a manager of a continuing care facility may not
2315 actively solicit, approve the solicitation or acceptance of, or
2316 accept new continuing care contracts in this state after the
2317 proprietor, general partner, member, officer, director, trustee,
2318 or manager knew, or reasonably should have known, that the
2319 continuing care facility was impaired or insolvent except with
2320 the written permission of the office. If the facility has

597-02920-19

20191070c1

2321 declared bankruptcy, the bankruptcy court or trustee appointed
2322 by the court has jurisdiction over such matters. The office must
2323 approve or disapprove the continued marketing of new contracts
2324 within 15 days after receiving a request from a provider.

2325 (2) A proprietor, a general partner, a member, an officer,
2326 a director, a trustee, or a manager who violates this section
2327 commits a felony of the third degree, punishable as provided in
2328 s. 775.082, s. 775.083, or s. 775.084.

2329 Section 28. Subsections (1) and (3) of section 651.111,
2330 Florida Statutes, are amended to read:

2331 651.111 Requests for inspections.—

2332 (1) Any interested party may request an inspection of the
2333 records and related financial affairs of a provider providing
2334 care in accordance with ~~the provisions of~~ this chapter by
2335 transmitting to the office notice of an alleged violation of
2336 applicable requirements prescribed by statute or by rule,
2337 specifying to a reasonable extent the details of the alleged
2338 violation, which notice must ~~shall~~ be signed by the complainant.
2339 As used in this section, the term "inspection" means an inquiry
2340 into a provider's compliance with this chapter.

2341 (3) Upon receipt of a complaint, the office shall make a
2342 preliminary review to determine if the complaint alleges a
2343 violation of this chapter; and, unless the office determines
2344 that the complaint does not allege a violation of this chapter
2345 or is without any reasonable basis, the office shall make an
2346 inspection. The office shall provide the complainant with a
2347 written acknowledgment of the complaint within 15 days after
2348 receipt by the office. The complainant shall be advised, within
2349 30 days after the receipt of the complaint by the office, of the

597-02920-19

20191070c1

2350 office's determination that the complaint does not allege a
2351 violation of this chapter, that the complaint is without any
2352 reasonable basis, or that the office will make an inspection.
2353 The notice must include an estimated timeframe for completing
2354 the inspection and a contact number. If the inspection is not
2355 completed within the estimated timeframe, the office must
2356 provide the complainant with a revised timeframe. Within 15 days
2357 after completing an inspection, the office shall provide the
2358 complainant and the provider a written statement specifying any
2359 violations of this chapter and any actions taken or that no such
2360 violation was found ~~proposed course of action of the office.~~

2361 Section 29. Section 651.114, Florida Statutes, is amended
2362 to read:

2363 651.114 Delinquency proceedings; remedial rights.—

2364 (1) Upon determination by the office that a provider is not
2365 in compliance with this chapter, the office may notify the chair
2366 of the Continuing Care Advisory Council, who may assist the
2367 office in formulating a corrective action plan.

2368 (2) Within 30 days after a request by either the advisory
2369 council or the office, a provider shall make a plan for
2370 obtaining compliance or solvency available to the advisory
2371 council and the office, ~~within 30 days after being requested to~~
2372 ~~do so by the council, a plan for obtaining compliance or~~
2373 ~~solvency.~~

2374 (3) Within 30 days after receipt of a plan for obtaining
2375 compliance or solvency, the office or, at the request of the
2376 office, notification, the advisory council shall:

2377 (a) Consider and evaluate the plan submitted by the
2378 provider.

597-02920-19

20191070c1

2379 (b) Discuss the problem and solutions with the provider.

2380 (c) Conduct such other business as is necessary.

2381 (d) Report its findings and recommendations to the office,
2382 which may require additional modification of the plan.

2383

2384 This subsection may not be construed to delay or prevent the
2385 office from taking any regulatory measures it deems necessary
2386 regarding the provider that submitted the plan.

2387 (4) If the financial condition of a continuing care
2388 facility or provider is impaired or is such that if not modified
2389 or corrected, its continued operation would result in
2390 insolvency, the office may direct the provider to formulate and
2391 file with the office a corrective action plan. If the provider
2392 fails to submit a plan within 30 days after the office's
2393 directive or submits a plan that is insufficient to correct the
2394 condition, the office may specify a plan and direct the provider
2395 to implement the plan. Before specifying a plan, the office may
2396 seek a recommended plan from the advisory council.

2397 (5)~~(4)~~ After receiving approval of a plan by the office,
2398 the provider shall submit a progress report monthly to the
2399 advisory council or the office, or both, in a manner prescribed
2400 by the office. After 3 months, or at any earlier time deemed
2401 necessary, the council shall evaluate the progress by the
2402 provider and shall advise the office of its findings.

2403 (6)~~(5)~~ If ~~Should~~ the office finds ~~find~~ that sufficient
2404 grounds exist for rehabilitation, liquidation, conservation,
2405 reorganization, seizure, or summary proceedings of an insurer as
2406 set forth in ss. 631.051, 631.061, and 631.071, the department
2407 ~~office~~ may petition for an appropriate court order or may pursue

597-02920-19

20191070c1

2408 such other relief as is afforded in part I of chapter 631.
2409 Before invoking its powers under part I of chapter 631, the
2410 department office shall notify the chair of the advisory
2411 council.

2412 (7) Notwithstanding s. 631.011, impairment of a provider,
2413 for purposes of s. 631.051, has the same meaning as the term
2414 "impaired" in s. 651.011.

2415 (8)~~(6)~~ In the event an order of conservation,
2416 rehabilitation, liquidation, or ~~conservation, reorganization,~~
2417 ~~seizure, or summary proceeding~~ has been entered against a
2418 provider, the department and office are vested with all of the
2419 powers and duties they have under ~~the provisions of~~ part I of
2420 chapter 631 in regard to delinquency proceedings of insurance
2421 companies. A provider shall give written notice of the
2422 proceeding to its residents within 3 business days after the
2423 initiation of a delinquency proceeding under chapter 631 and
2424 shall include a notice of the delinquency proceeding in any
2425 written materials provided to prospective residents

2426 ~~(7) If the financial condition of the continuing care~~
2427 ~~facility or provider is such that, if not modified or corrected,~~
2428 ~~its continued operation would result in insolvency, the office~~
2429 ~~may direct the provider to formulate and file with the office a~~
2430 ~~corrective action plan. If the provider fails to submit a plan~~
2431 ~~within 30 days after the office's directive or submits a plan~~
2432 ~~that is insufficient to correct the condition, the office may~~
2433 ~~specify a plan and direct the provider to implement the plan.~~

2434 (9) A provider subject to an order to show cause entered
2435 pursuant to chapter 631 must file its written response to the
2436 order, together with any defenses it may have to the

597-02920-19

20191070c1

2437 department's allegations, not later than 20 days after service
2438 of the order to show cause, but not less than 15 days before the
2439 date of the hearing set by the order to show cause.

2440 (10) A hearing held pursuant to chapter 631 to determine
2441 whether cause exists for the department to be appointed receiver
2442 must be commenced within 60 days after an order directing a
2443 provider to show cause.

2444 (11) (a) ~~(8) (a)~~ The rights of the office described in this
2445 section are subordinate to the rights of a trustee or lender
2446 pursuant to the terms of a resolution, ordinance, loan
2447 agreement, indenture of trust, mortgage, lease, security
2448 agreement, or other instrument creating or securing bonds or
2449 notes issued to finance a facility, and the office, subject to
2450 ~~the provisions of~~ paragraph (c), may ~~shall~~ not exercise its
2451 remedial rights provided under this section and ss. 651.018,
2452 651.106, 651.108, and 651.116 with respect to a facility that is
2453 subject to a lien, mortgage, lease, or other encumbrance or
2454 trust indenture securing bonds or notes issued in connection
2455 with the financing of the facility, if the trustee or lender, by
2456 inclusion or by amendment to the loan documents or by a separate
2457 contract with the office, agrees that the rights of residents
2458 under a continuing care or continuing care at-home contract will
2459 be honored and will not be disturbed by a foreclosure or
2460 conveyance in lieu thereof as long as the resident:

2461 1. Is current in the payment of all monetary obligations
2462 required by the contract;

2463 2. Is in compliance and continues to comply with all
2464 provisions of the contract; and

2465 3. Has asserted no claim inconsistent with the rights of

597-02920-19

20191070c1

2466 the trustee or lender.

2467 (b) This subsection does not require a trustee or lender
2468 to:

2469 1. Continue to engage in the marketing or resale of new
2470 continuing care or continuing care at-home contracts;

2471 2. Pay any rebate of entrance fees as may be required by a
2472 resident's continuing care or continuing care at-home contract
2473 as of the date of acquisition of the facility by the trustee or
2474 lender and until expiration of the period described in paragraph
2475 (d);

2476 3. Be responsible for any act or omission of any owner or
2477 operator of the facility arising before the acquisition of the
2478 facility by the trustee or lender; or

2479 4. Provide services to the residents to the extent that the
2480 trustee or lender would be required to advance or expend funds
2481 that have not been designated or set aside for such purposes.

2482 (c) If ~~Should~~ the office determines ~~determine~~, at any time
2483 during the suspension of its remedial rights as provided in
2484 paragraph (a), that:

2485 1. The trustee or lender is not in compliance with
2486 paragraph (a); ~~or that~~

2487 2. A lender or trustee has assigned or has agreed to assign
2488 all or a portion of a delinquent or defaulted loan to a third
2489 party without the office's written consent; ~~or~~

2490 3. The provider engaged in the misappropriation,
2491 conversion, or illegal commitment or withdrawal of minimum
2492 liquid reserve or escrowed funds required under this chapter;

2493 4. The provider refused to be examined by the office
2494 pursuant to s. 651.105(1); or

597-02920-19

20191070c1

2495 5. The provider refused to produce any relevant accounts,
2496 records, and files requested as part of an examination,

2497
2498 the office shall notify the trustee or lender in writing of its
2499 determination, setting forth the reasons giving rise to the
2500 determination and specifying those remedial rights afforded to
2501 the office which the office shall then reinstate.

2502 (d) Upon acquisition of a facility by a trustee or lender
2503 and evidence satisfactory to the office that the requirements of
2504 paragraph (a) have been met, the office shall issue a 90-day
2505 temporary certificate of authority granting the trustee or
2506 lender the authority to engage in the business of providing
2507 continuing care or continuing care at-home and to issue
2508 continuing care or continuing care at-home contracts subject to
2509 the office's right to immediately suspend or revoke the
2510 temporary certificate of authority if the office determines that
2511 any of the grounds described in s. 651.106 apply to the trustee
2512 or lender or that the terms of the contract used as the basis
2513 for the issuance of the temporary certificate of authority by
2514 the office have not been or are not being met by the trustee or
2515 lender since the date of acquisition.

2516 Section 30. Section 651.1141, Florida Statutes, is created
2517 to read:

2518 651.1141 Immediate final orders.-

2519 (1) The Legislature finds that the following actions
2520 constitute an imminent and immediate threat to the public
2521 health, safety, and welfare of the residents of this state:

2522 (a) The installation of a general partner of a provider or
2523 assumption of ownership or possession or control of 10 percent

597-02920-19

20191070c1

2524 or more of a provider's assets in violation of s. 651.024 or s.
2525 651.0245;

2526 (b) The removal or commitment of 10 percent or more of the
2527 required minimum liquid reserve funds in violation of s.
2528 651.035; or

2529 (c) The assumption of control over a facility's operations
2530 in violation of s. 651.043.

2531 (2) If it finds that a person or entity is engaging or has
2532 engaged in one or more of the above activities, the office may,
2533 pursuant to s. 120.569, issue an immediate final order:

2534 (a) Directing that such person or entity cease and desist
2535 that activity; or

2536 (b) Suspending the certificate of authority of the
2537 facility.

2538 Section 31. Subsection (1) of section 651.121, Florida
2539 Statutes, is amended to read:

2540 651.121 Continuing Care Advisory Council.—

2541 (1) The Continuing Care Advisory Council to the office is
2542 created consisting of 10 members ~~who are residents of this state~~
2543 appointed by the Governor and geographically representative of
2544 this state. Three members shall be representatives
2545 ~~administrators~~ of facilities that hold valid certificates of
2546 authority under this chapter and ~~shall~~ have been actively
2547 engaged in the offering of continuing care contracts in this
2548 state for 5 years before appointment. The remaining members
2549 include:

2550 (a) A representative of the business community whose
2551 expertise is in the area of management.

2552 (b) A representative of the financial community who is not

597-02920-19

20191070c1

2553 a facility owner or administrator.

2554 (c) A certified public accountant.

2555 ~~(d) An attorney.~~

2556 ~~(d)~~(e) ~~Four~~ Three residents who hold continuing care or
2557 continuing care at-home contracts with a facility certified in
2558 this state.

2559 Section 32. Subsections (1) and (4) of section 651.125,
2560 Florida Statutes, are amended to read:

2561 651.125 Criminal penalties; injunctive relief.—

2562 (1) Any person who maintains, enters into, or, as manager
2563 or officer or in any other administrative capacity, assists in
2564 entering into, maintaining, or performing any continuing care or
2565 continuing care at-home contract subject to this chapter without
2566 ~~doing so in pursuance of a valid~~ provisional certificate of
2567 authority or certificate of authority ~~or renewal thereof~~, as
2568 contemplated by or provided in this chapter, or who otherwise
2569 violates any provision of this chapter or rule adopted in
2570 pursuance of this chapter, commits a felony of the third degree,
2571 punishable as provided in s. 775.082 or s. 775.083. Each
2572 violation of this chapter constitutes a separate offense.

2573 (4) Any action brought by the office against a provider
2574 shall not abate by reason of a sale or other transfer of
2575 ownership of the facility used to provide care, which provider
2576 is a party to the action, except with the express written
2577 consent of the ~~director of the office~~.

2578 Section 33. Except as otherwise expressly provided in this
2579 act and except for this section, which shall take effect July 1,
2580 2019, this act shall take effect January 1, 2020.