

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

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

51 moneys; providing applicability and construction;
52 amending s. 651.026, F.S.; revising requirements for
53 annual reports filed by providers with the office;
54 revising the commission's rulemaking authority;
55 requiring the office to annually publish a specified
56 industry benchmarking report; amending s. 651.0261,
57 F.S.; requiring providers to file quarterly unaudited
58 financial statements; providing an exception for
59 filing a certain quarterly statement; revising
60 information that the office may require providers to
61 file and the circumstances under which such
62 information must be filed; revising the commission's
63 rulemaking authority; repealing s. 651.028, F.S.,
64 relating to accredited facilities; amending s.
65 651.033, F.S.; revising applicability of escrow
66 requirements; revising requirements for escrow
67 accounts and agreements; revising the office's
68 authority to allow a withdrawal of a specified
69 percentage of the required minimum liquid reserve;
70 revising applicability of requirements relating to the
71 deposit of certain funds in escrow accounts;
72 prohibiting an escrow agent, except under certain
73 circumstances, from releasing or allowing the transfer
74 of funds; creating s. 651.034, F.S.; specifying
75 requirements for the office if a regulatory action

76 | level event occurs; specifying requirements for
77 | corrective action plans; authorizing the office to use
78 | members of the Continuing Care Advisory Council and to
79 | retain consultants for certain purposes; requiring
80 | affected providers to bear costs and expenses relating
81 | to such consultants; specifying requirements for, and
82 | authorized actions of, the office and the Department
83 | of Financial Services if an impairment occurs;
84 | providing construction; authorizing the office to
85 | exempt a provider from certain requirements for a
86 | certain timeframe; authorizing the commission to adopt
87 | rules; amending s. 651.035, F.S.; revising minimum
88 | liquid reserve requirements for providers; specifying
89 | requirements, limitations, and procedures for a
90 | provider's withdrawal of funds held in escrow and the
91 | office's review of certain requests for withdrawal;
92 | authorizing the office to order certain transfers
93 | under certain circumstances; requiring facilities to
94 | annually file with the office a minimum liquid reserve
95 | calculation; requiring increases in the minimum liquid
96 | reserve to be funded within a certain timeframe;
97 | requiring providers to fund shortfalls in minimum
98 | liquid reserves under certain circumstances within a
99 | certain timeframe; creating s. 651.043, F.S.;
100 | specifying requirements for certain management company

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

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

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

161

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

163

164 Section 1. Section 651.011, Florida Statutes, is amended
 165 to read:

166 651.011 Definitions.—As used in this chapter, the term:

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

171 (2) "Actuarial study" means an analysis prepared for an
 172 individual facility, or consolidated for multiple facilities,
 173 for either a certified provider, as of a current valuation date
 174 or the most recent fiscal year, or for an applicant, as of a
 175 projected future valuation date, which includes an actuary's

176 opinion as to whether such provider or applicant is in
177 satisfactory actuarial balance in accordance with Actuarial
178 Standards of Practice No. 3 for Continuing Care Retirement
179 Communities, Revised Edition, effective May 1, 2011.

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

184 (4)~~(1)~~ "Advertising" means the dissemination of written,
185 visual, or electronic information by a provider, or any person
186 affiliated with or controlled by a provider, to potential
187 residents or their representatives for the purpose of inducing
188 such persons to subscribe to or enter into a contract for
189 continuing care or continuing care at-home.

190 (5)~~(2)~~ "Continuing care" or "care" means, pursuant to a
191 contract, furnishing shelter and nursing care or personal
192 services to a resident who resides in a facility, whether such
193 nursing care or personal services are provided in the facility
194 or in another setting designated in the contract for continuing
195 care, by an individual not related by consanguinity or affinity
196 to the resident, upon payment of an entrance fee.

197 (6)~~(3)~~ "Continuing Care Advisory Council" or "advisory
198 council" means the council established in s. 651.121.

199 (7)~~(4)~~ "Continuing care at-home" means, pursuant to a
200 contract other than a contract described in subsection (5) ~~(2)~~,

201 furnishing to a resident who resides outside the facility the
202 right to future access to shelter and nursing care or personal
203 services, whether such services are provided in the facility or
204 in another setting designated in the contract, by an individual
205 not related by consanguinity or affinity to the resident, upon
206 payment of an entrance fee.

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

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

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

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

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

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

223 (b) Operating expenses less depreciation, amortization,
224 and other noncash expenses and nonoperating losses divided by
225 365. Operating expenses, depreciation, amortization, and other

226 noncash expenses and nonoperating losses are each the sum of
227 their respective values over the 12-month period ending on the
228 reporting date.

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

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

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

250 (b) Total annual principal and interest expense due on the

251 debt facility over the 12-month period ending on the reporting
252 date. For the purposes of this paragraph, principal excludes any
253 balloon principal payment amounts, and interest expense due is
254 the sum of the interest over the 12-month period ending on the
255 reporting date.

256 (12) "Department" means the Department of Financial
257 Services.

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

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

273 ~~(7) "Generally accepted accounting principles" means those~~
274 ~~accounting principles and practices adopted by the Financial~~
275 ~~Accounting Standards Board and the American Institute of~~

276 ~~Certified Public Accountants, including Statement of Position~~
277 ~~90-8 with respect to any full year to which the statement~~
278 ~~applies.~~

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

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

286 (b) Beginning January 1, 2021:

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

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

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

299 (16)~~(8)~~ "Insolvency" means the condition in which a ~~the~~
300 provider is unable to pay its obligations as they come due in

301 the normal course of business.

302 ~~(17)-(9)~~ "Licensed" means that a ~~the~~ provider has obtained
 303 a certificate of authority from the office ~~department~~.

304 (18) "Manager," "management," or "management company"
 305 means a person who administers the day-to-day business
 306 operations of a facility for a provider, subject to the
 307 policies, directives, and oversight of the provider.

308 ~~(19)-(10)~~ "Nursing care" means those services or acts
 309 rendered to a resident by an individual licensed or certified
 310 pursuant to chapter 464.

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

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

323 ~~(22)-(11)~~ "Personal services" has the same meaning as in s.
 324 429.02.

325 ~~(23)-(12)~~ "Provider" means the owner or operator, whether a

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

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

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

349 (a) The provider's debt service coverage ratio is less
350 than the minimum ratio specified in the provider's bond

351 covenants or lending agreement for long-term financing, or, if
352 the provider does not have a debt service coverage ratio
353 required by its lending institution, the provider's debt service
354 coverage ratio is less than 1.20:1 as of the most recent annual
355 report filed with the office pursuant to s. 651.026. If the
356 provider is a member of an obligated group having cross-
357 collateralized debt, the obligated group's debt service coverage
358 ratio must be used as the provider's debt service coverage
359 ratio.

360 (b) The provider's days cash on hand is less than the
361 minimum number of days cash on hand specified in the provider's
362 bond covenants or lending agreement for long-term financing. If
363 the provider does not have a days cash on hand required by its
364 lending institution, the days cash on hand may not be less than
365 100 as of the most recent annual report filed with the office
366 pursuant to s. 651.026. If the provider is a member of an
367 obligated group having cross-collateralized debt, the days cash
368 on hand of the obligated group must be used as the provider's
369 days cash on hand.

370 (c) The occupancy of the provider's facility is less than
371 80 percent averaged over the 12-month period immediately
372 preceding the annual report filed with the office pursuant to s.
373 651.026.

374 (26)-(14) "Resident" means a purchaser of, a nominee of, or
375 a subscriber to a continuing care or continuing care at-home

376 contract. Such contract does not give the resident a part
 377 ownership of the facility in which the resident is to reside,
 378 unless expressly provided in the contract.

379 (27)~~(15)~~ "Shelter" means an independent living unit, room,
 380 apartment, cottage, villa, personal care unit, nursing bed, or
 381 other living area within a facility set aside for the exclusive
 382 use of one or more identified residents.

383 Section 2. Section 651.012, Florida Statutes, is amended
 384 to read:

385 651.012 Exempted facility; written disclosure of
 386 exemption.—Any facility exempted under ss. 632.637(1)(e) and
 387 651.011(23) ~~651.011(12)~~ must provide written disclosure of such
 388 exemption to each person admitted to the facility ~~after October~~
 389 ~~1, 1996~~. This disclosure must be written using language likely
 390 to be understood by the person and must briefly explain the
 391 exemption.

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

394 651.013 Chapter exclusive; applicability of other laws.—

395 (2) In addition to other applicable provisions cited in
 396 this chapter, the office has the authority granted under ss.
 397 624.302, ~~and~~ 624.303, 624.307-624.312, 624.318 ~~624.308-624.312~~,
 398 624.319(1)-(3), 624.320, 624.321 ~~624.320-624.321~~, 624.324, ~~and~~
 399 624.34, ~~and~~ 624.422 of the Florida Insurance Code to regulate
 400 providers of continuing care and continuing care at-home.

401 Section 4. Section 651.019, Florida Statutes, is amended
402 to read:

403 651.019 New financing, additional financing, or
404 refinancing.—

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

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

421 (2) Within 30 days after the closing date of such
422 financing or refinancing transaction, ~~The provider shall furnish~~
423 ~~any information the office may reasonably request in connection~~
424 ~~with any new financing, additional financing, or refinancing,~~
425 ~~including, but not limited to, the financing agreements and any~~

426 ~~related documents, escrow or trust agreements, and statistical~~
 427 ~~or financial data.~~ the provider shall also submit to the office
 428 copies of executed financing documents, escrow or trust
 429 agreements prepared in support of such financing or refinancing
 430 transaction, and a copy of all documents required to be
 431 submitted to the residents' council under paragraph (1) (a)
 432 ~~within 30 days after the closing date.~~

433 Section 5. Section 651.021, Florida Statutes, is amended
 434 to read:

435 651.021 Certificate of authority required.-

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

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

451 ~~20 percent of existing units or 20 percent or more in the number~~
452 ~~of continuing care at-home contracts. This provision does not~~
453 ~~apply to construction for which a certificate of need from the~~
454 ~~Agency for Health Care Administration is required.~~

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

461 ~~(b) The application for such approval shall be on forms~~
462 ~~adopted by the commission and provided by the office. The~~
463 ~~application must include the feasibility study required by s.~~
464 ~~651.022(3) or s. 651.023(1)(b) and such other information as~~
465 ~~required by s. 651.023. If the expansion is only for continuing~~
466 ~~care at-home contracts, an actuarial study prepared by an~~
467 ~~independent actuary in accordance with standards adopted by the~~
468 ~~American Academy of Actuaries which presents the financial~~
469 ~~impact of the expansion may be substituted for the feasibility~~
470 ~~study.~~

471 ~~(c) In determining whether an expansion should be~~
472 ~~approved, the office shall use the criteria provided in ss.~~
473 ~~651.022(6) and 651.023(4).~~

474 Section 6. Section 651.0215, Florida Statutes, is created
475 to read:

476 651.0215 Consolidated application for a provisional
 477 certificate of authority and a certificate of authority;
 478 required restrictions on use of entrance fees.-

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

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

487 (b) The reservation deposit may not exceed the lesser of
 488 \$40,000 or 10 percent of the then-current fee for the unit
 489 selected by a resident and must be refundable at any time before
 490 the resident takes occupancy of the selected unit.

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

495 (2) The consolidated application must be on a form
 496 prescribed by the commission and must contain all of the
 497 following information:

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

499 (b) A feasibility study prepared by an independent
 500 consultant which contains all of the information required by s.

501 651.022(3) and financial forecasts or projections prepared in
502 accordance with standards adopted by the American Institute of
503 Certified Public Accountants or in accordance with standards for
504 feasibility studies for continuing care retirement communities
505 adopted by the Actuarial Standards Board.

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

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

525 (c) Documents evidencing that commitments have been

526 secured for construction financing and long-term financing or
527 that a documented plan acceptable to the office has been adopted
528 by the applicant for long-term financing.

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

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

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

550 (g) Documents evidencing that the applicant will be able

551 to comply with s. 651.035.

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

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

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

569 (4) Within 45 days after receipt of the information
570 required under subsection (2), the office shall examine the
571 information and notify the applicant in writing, specifically
572 requesting any additional information that the office is
573 authorized to require. An application is deemed complete when
574 the office receives all requested information and the applicant
575 corrects any error or omission of which the applicant was timely

576 notified or when the time for such notification has expired.
577 Within 15 days after receipt of all of the requested additional
578 information, the office shall notify the applicant in writing
579 that all of the requested information has been received and that
580 the application is deemed complete as of the date of the notice.
581 Failure to notify the applicant in writing within the 15-day
582 period constitutes acknowledgment by the office that it has
583 received all requested additional information, and the
584 application is deemed complete for purposes of review on the
585 date the applicant files all of the required additional
586 information.

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

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

600 (7) The issuance of a certificate of authority entitles

601 the applicant to begin construction and collect reservation
602 deposits and entrance fees from prospective residents. The
603 reservation contract must state the cancellation policy and the
604 terms of the continuing care contract. All or any part of an
605 entrance fee or reservation deposit collected must be placed in
606 an escrow account or on deposit with the department pursuant to
607 s. 651.033.

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

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

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

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

625 (d) Documents evidencing the intended application of the

626 proceeds upon release and documents evidencing that the entrance
 627 fees, when released, will be applied as represented to the
 628 office.

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

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

641 Section 7. Subsections (2), (3), (6), and (8) of section
 642 651.022, Florida Statutes, are amended, and subsection (5) of
 643 that section is republished, to read:

644 651.022 Provisional certificate of authority;
 645 application.—

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

649 (a) If the applicant or provider is a corporation, a copy
 650 of the articles of incorporation and bylaws; if the applicant or

651 provider is a partnership or other unincorporated association, a
652 copy of the partnership agreement, articles of association, or
653 other membership agreement; and, if the applicant or provider is
654 a trust, a copy of the trust agreement or instrument.

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

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

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

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

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

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

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

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

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

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

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

699 (c)1. Evidence that the applicant is reputable and of
700 responsible character. If the applicant is a firm, association,

701 organization, partnership, business trust, corporation, or
702 company, the form must ~~shall~~ require evidence that the members
703 or shareholders ~~are reputable and of responsible character,~~ and
704 the person in charge of providing care under a certificate of
705 authority are ~~shall likewise be required to produce evidence of~~
706 ~~being~~ reputable and of responsible character.

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

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

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

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

725

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

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

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

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

749 (g) The forms of the residency contracts, reservation
750 contracts, escrow agreements, and wait list contracts, if

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

757
758 If any material change occurs in the facts set forth in an
759 application filed with the office pursuant to this subsection,
760 an amendment setting forth such change must be filed with the
761 office within 10 business days after the applicant becomes aware
762 of such change, and a copy of the amendment must be sent by
763 registered mail to the principal office of the facility and to
764 the principal office of the controlling company.

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

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

774 (b) An identification and evaluation of the primary and,
775 if appropriate, the secondary market areas of the facility and

776 the projected unit sales per month.

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

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

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

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

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

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

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

800 (j) The name of the person who prepared the feasibility

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

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

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

821 (b) Within 15 days after receipt of all of the requested
822 additional information, the office shall notify the applicant in
823 writing that all of the requested information has been received
824 and the application is deemed to be complete as of the date of
825 the notice. Failure to so notify the applicant in writing within

826 | the 15-day period shall constitute acknowledgment by the office
827 | that it has received all requested additional information, and
828 | the application shall be deemed to be complete for purposes of
829 | review upon the date of the filing of all of the requested
830 | additional information.

831 | (6) Within 45 days after the date an application is deemed
832 | complete as set forth in paragraph (5)(b), the office shall
833 | complete its review and issue a provisional certificate of
834 | authority to the applicant based upon its review and a
835 | determination that the application meets all requirements of
836 | law, that the feasibility study was based on sufficient data and
837 | reasonable assumptions, and that the applicant will be able to
838 | provide continuing care or continuing care at-home as proposed
839 | and meet all financial and contractual obligations related to
840 | its operations, including the financial requirements of this
841 | chapter. If the application is denied, the office shall notify
842 | the applicant in writing, citing the specific failures to meet
843 | the provisions of this chapter. Such denial entitles the
844 | applicant to a hearing pursuant to chapter 120.

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

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

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

852 651.023 Certificate of authority; application.—

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

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

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

868 ~~1. The study must also contain an independent evaluation
869 and examination opinion, or a comparable opinion acceptable to
870 the office, by the consultant who prepared the study, of the
871 underlying assumptions used as a basis for the forecasts or
872 projections in the study and that the assumptions are reasonable
873 and proper and the project as proposed is feasible.~~

874 1.2. The study must take into account project costs,
875 actual marketing results to date and marketing projections,

876 resident fees and charges, competition, resident contract
877 provisions, and any other factors which affect the feasibility
878 of operating the facility.

879 ~~2.3.~~ If the study is prepared by an independent certified
880 public accountant, it must contain an examination opinion or a
881 compilation report acceptable to the office containing a
882 financial forecast or projections for the first ~~5~~ 3 years of
883 operations which take into account an actuary's mortality and
884 morbidity assumptions as the study relates to turnover, rates,
885 fees, and charges ~~and financial projections having a compilation~~
886 ~~opinion for the next 3 years.~~ If the study is prepared by an
887 independent consulting actuary, it must contain mortality and
888 morbidity assumptions as the study relates to turnover, rates,
889 fees, and charges ~~data~~ and an actuary's signed opinion that the
890 project as proposed is feasible and that the study has been
891 prepared in accordance with standards adopted by the American
892 Academy of Actuaries.

893 (c) Subject to subsection (4), a provider may submit an
894 application for a certificate of authority and any required
895 exhibits upon submission of documents evidencing ~~proof~~ that the
896 project has a minimum of 30 percent of the units reserved for
897 which the provider is charging an entrance fee. ~~This does not~~
898 ~~apply to an application for a certificate of authority for the~~
899 ~~acquisition of a facility for which a certificate of authority~~
900 ~~was issued before October 1, 1983, to a provider who~~

901 ~~subsequently becomes a debtor in a case under the United States~~
902 ~~Bankruptcy Code, 11 U.S.C. ss. 101 et seq., or to a provider for~~
903 ~~which the department has been appointed receiver pursuant to~~
904 ~~part II of chapter 631.~~

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

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

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

922 (g) A complete audited financial report ~~statements~~ of the
923 applicant, prepared by an independent certified public
924 accountant in accordance with generally accepted accounting
925 principles, as of the date the applicant commenced business

926 operations or for the fiscal year that ended immediately
927 preceding the date of application, whichever is later, and
928 complete unaudited quarterly financial statements attested to by
929 the applicant after the date of the last audit.

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

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

938
939 If any material change occurs in the facts set forth in an
940 application filed with the office pursuant to this subsection,
941 an amendment setting forth such change must be filed with the
942 office within 10 business days after the applicant becomes aware
943 of such change, and a copy of the amendment must be sent by
944 registered mail to the principal office of the facility and to
945 the principal office of the controlling company.

946 (2) Within 30 days after receipt of the information
947 required under subsection (1), the office shall examine such
948 information and notify the provider in writing, specifically
949 requesting any additional information the office is permitted by
950 law to require. Within 15 days after receipt of all of the

951 requested additional information, the office shall notify the
952 provider in writing that all of the requested information has
953 been received and the application is deemed to be complete as of
954 the date of the notice. Failure to notify the applicant in
955 writing within the 15-day period constitutes acknowledgment by
956 the office that it has received all requested additional
957 information, and the application shall be deemed complete for
958 purposes of review on the date of filing all of the required
959 additional information.

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

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

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

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

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

1000 ~~(b) For an expansion as provided in s. 651.021(2), a~~

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

1007 (6) The provider is entitled to secure release of the
1008 moneys held in escrow within 7 days after receipt by the office
1009 of an affidavit from the provider, along with appropriate copies
1010 to verify, and notification to the escrow agent by certified
1011 mail, that the following conditions have been satisfied:

1012 (a) A certificate of occupancy has been issued.

1013 (b) Payment in full has been received for at least 70
1014 percent of the total units of a phase or of the total of the
1015 combined phases constructed. If a provider offering continuing
1016 care at-home is applying for a release of escrowed entrance
1017 fees, the same minimum requirement must be met for the
1018 continuing care and continuing care at-home contracts,
1019 independently of each other.

1020 ~~(c) The consultant who prepared the feasibility study~~
1021 ~~required by this section or a substitute approved by the office~~
1022 ~~certifies within 12 months before the date of filing for office~~
1023 ~~approval that there has been no material adverse change in~~
1024 ~~status with regard to the feasibility study. If a material~~
1025 ~~adverse change exists at the time of submission, sufficient~~

1026 ~~information acceptable to the office and the feasibility~~
1027 ~~consultant must be submitted which remedies the adverse~~
1028 ~~condition.~~

1029 (c)~~(d)~~ Documents evidencing Proof that commitments have
1030 been secured or a documented plan adopted by the applicant has
1031 been approved by the office for long-term financing.

1032 (d)~~(e)~~ Documents evidencing Proof that the provider has
1033 sufficient funds to meet the requirements of s. 651.035, which
1034 may include funds deposited in the initial entrance fee account.

1035 (e)~~(f)~~ Documents evidencing Proof ~~as to~~ the intended
1036 application of the proceeds upon release and documentation ~~proof~~
1037 that the entrance fees when released will be applied as
1038 represented to the office.

1039 (f) If any material change occurred in the facts set forth
1040 in the application filed with the office pursuant to subsection
1041 (1), the applicant timely filed the amendment setting forth such
1042 change with the office and sent copies of the amendment to the
1043 principal office of the facility and to the principal office of
1044 the controlling company as required under that subsection.

1045
1046 Notwithstanding chapter 120, no person, other than the provider,
1047 the escrow agent, and the office, may have a substantial
1048 interest in any office decision regarding release of escrow
1049 funds in any proceedings under chapter 120 or this chapter
1050 regarding release of escrow funds.

1051 (7) In lieu of the provider fulfilling the requirements in
1052 subsection (5) and paragraphs (6)(b) and (c) ~~(d)~~, the office may
1053 authorize the release of escrowed funds to retire all
1054 outstanding debts on the facility and equipment upon application
1055 of the provider and upon the provider's showing that the
1056 provider will grant to the residents a first mortgage on the
1057 land, buildings, and equipment that constitute the facility, and
1058 that the provider has satisfied paragraphs (6)(a), ~~(e)~~, and (d)
1059 ~~(e)~~. Such mortgage shall secure the refund of the entrance fee
1060 in the amount required by this chapter. The granting of such
1061 mortgage is subject to the following:

1062 (a) The first mortgage is granted to an independent trust
1063 that is beneficially held by the residents. The document
1064 creating the trust must include a provision that agrees to an
1065 annual audit and will furnish to the office all information the
1066 office may reasonably require. The mortgage may secure payment
1067 on bonds issued to the residents or trustee. Such bonds are
1068 redeemable after termination of the residency contract in the
1069 amount and manner required by this chapter for the refund of an
1070 entrance fee.

1071 (b) Before granting a first mortgage to the residents, all
1072 construction must be substantially completed and substantially
1073 all equipment must be purchased. No part of the entrance fees
1074 may be pledged as security for a construction loan or otherwise
1075 used for construction expenses before the completion of

1076 construction.

1077 (c) If the provider is leasing the land or buildings used
1078 by the facility, the leasehold interest must be for a term of at
1079 least 30 years.

1080 (8) ~~The timeframes provided under s. 651.022(5) and (6)~~
1081 ~~apply to applications submitted under s. 651.021(2).~~ The office
1082 may not issue a certificate of authority to a facility that does
1083 not have a component that is to be licensed pursuant to part II
1084 of chapter 400 or to part I of chapter 429 or that does not
1085 offer personal services or nursing services through written
1086 contractual agreement. A written contractual agreement must be
1087 disclosed in the contract for continuing care or continuing care
1088 at-home and is subject to ~~the provisions of~~ s. 651.1151,
1089 relating to administrative, vendor, and management contracts.

1090 (9) The office may not approve an application that
1091 includes in the plan of financing any encumbrance of the
1092 operating reserves or renewal and replacement reserves required
1093 by this chapter.

1094 Section 9. Section 651.024, Florida Statutes, is amended
1095 to read:

1096 651.024 Acquisition.—

1097 (1) A person who seeks to assume the role of general
1098 partner of a provider or to otherwise assume ownership or
1099 possession of, or control over, 10 percent or more of a
1100 provider, a controlling company of the provider, or a provider's

1101 assets, based on the balance sheet from the most recent
 1102 financial audit report filed with the office, is issued a
 1103 certificate of authority to operate a continuing care facility
 1104 or a provisional certificate of authority shall be subject to
 1105 the provisions of s. 628.4615 and is not required to make
 1106 filings pursuant to s. 651.022, s. 651.023, or s. 651.0245.

1107 (2) A person who seeks to acquire and become the provider
 1108 for a facility is subject to s. 651.0245 and is not required to
 1109 make filings pursuant to ss. 628.4615, 651.022, and 651.023.

1110 (3) In addition to the provider or the controlling
 1111 company, the office has standing to petition a circuit court
 1112 under s. 628.4615(9).

1113 Section 10. Section 651.0245, Florida Statutes, is created
 1114 to read:

1115 651.0245 Application for the simultaneous acquisition of a
 1116 facility and issuance of a certificate of authority.-

1117 (1) Except with the prior written approval of the office,
 1118 a person may not, individually or in conjunction with any
 1119 affiliated person of such person, directly or indirectly acquire
 1120 a facility operating under a subsisting certificate of authority
 1121 and engage in the business of providing continuing care.

1122 (2) An applicant seeking simultaneous acquisition of a
 1123 facility and issuance of a certificate of authority must:

1124 (a) Comply with the notice requirements of s.
 1125 628.4615(2) (a); and

1126 (b) File an application in the form required by the office
1127 and cooperate with the office's review of the application.

1128 (3) The commission shall adopt by rule application
1129 requirements equivalent to those described in ss. 628.4615(4)
1130 and (5), 651.022(2), and 651.023(1)(b). The office shall review
1131 the application and issue an approval or disapproval of the
1132 filing in accordance with ss. 628.4615(6)(a) and (c), (7)-(10),
1133 and (14); and 651.023(1)(b).

1134 (4) In addition to the provider or the controlling
1135 company, the office has standing to petition a circuit court
1136 under s. 628.4615(9).

1137 (5) A person may rebut a presumption of control by filing
1138 a disclaimer of control with the office on a form prescribed by
1139 the commission. The disclaimer must fully disclose all material
1140 relationships and bases for affiliation between the person and
1141 the provider or facility, as well as the basis for disclaiming
1142 the affiliation. In lieu of such form, a person or acquiring
1143 party may file with the office a copy of a Schedule 13G filed
1144 with the Securities and Exchange Commission pursuant to Rule
1145 13d-1(b) or (c), 17 C.F.R. s. 240.13d-1, under the Securities
1146 Exchange Act of 1934, as amended. After a disclaimer has been
1147 filed, the provider or facility is relieved of any duty to
1148 register or report under this section which may arise out of the
1149 provider's or facility's relationship with the person, unless
1150 the office disallows the disclaimer.

1151 (6) The commission may adopt rules as necessary to
1152 administer this section.

1153 Section 11. Section 651.0246, Florida Statutes, is created
1154 to read:

1155 651.0246 Expansions.—

1156 (1) (a) A provider must obtain written approval from the
1157 office before commencing construction or marketing for an
1158 expansion of a certificated facility equivalent to the addition
1159 of at least 20 percent of existing units or 20 percent or more
1160 of the number of continuing care at-home contracts. If the
1161 provider has exceeded the current statewide median for days cash
1162 on hand, debt service coverage ratio, and total facility
1163 occupancy for two consecutive annual reporting periods, the
1164 provider is automatically granted approval to expand the total
1165 number of existing units by up to 35 percent upon submitting a
1166 letter to the office indicating the total number of planned
1167 units in the expansion, the proposed sources and uses of funds,
1168 and an attestation that the provider understands and pledges to
1169 comply with all minimum liquid reserve and escrow account
1170 requirements. As used in this section, the term "existing units"
1171 means the sum of the total number of independent living units
1172 and assisted living units identified in the most recent annual
1173 report filed with the office pursuant to s. 651.026. For
1174 purposes of this section, the statewide median for days cash on
1175 hand, debt service coverage ratio, and total facility occupancy

1176 is the median calculated in the most recent annual report
1177 submitted by the office to the Continuing Care Advisory Council
1178 pursuant to s. 651.121(8). This section does not apply to
1179 construction for which a certificate of need from the Agency for
1180 Health Care Administration is required.

1181 (b) The application for the approval of an addition
1182 consisting of 20 percent or more of existing units or continuing
1183 care at-home contracts must be on forms adopted by the
1184 commission. The application must include the feasibility study
1185 required by this section and such other information as
1186 reasonably requested by the office. If the expansion is only for
1187 continuing care at-home contracts, an actuarial study prepared
1188 by an independent actuary in accordance with standards adopted
1189 by the American Academy of Actuaries which presents the
1190 financial impact of the expansion may be substituted for the
1191 feasibility study.

1192 (c) In determining whether an expansion should be
1193 approved, the office shall consider:

- 1194 1. Whether the application meets all requirements of law;
1195 2. Whether the feasibility study was based on sufficient
1196 data and reasonable assumptions; and
1197 3. Whether the applicant will be able to provide
1198 continuing care or continuing care at-home as proposed and meet
1199 all financial obligations related to its operations, including
1200 the financial requirements of this chapter.

1201
1202 If the application is denied, the office must notify the
1203 applicant in writing, citing the specific failures to meet the
1204 provisions of this chapter. A denial entitles the applicant to a
1205 hearing pursuant to chapter 120.

1206 (2) A provider applying for expansion of a certificated
1207 facility must submit all of the following:

1208 (a) A feasibility study prepared by an independent
1209 certified public accountant. The feasibility study must include
1210 at least the following information:

1211 1. A description of the facility and proposed expansion,
1212 including the location, the size, the anticipated completion
1213 date, and the proposed construction program.

1214 2. An identification and evaluation of the primary and, if
1215 applicable, secondary market areas of the facility and the
1216 projected unit sales per month.

1217 3. Projected revenues, including anticipated entrance
1218 fees; monthly service fees; nursing care revenues, if
1219 applicable; and all other sources of revenue.

1220 4. Projected expenses, including for staffing requirements
1221 and salaries; the cost of property, plant, and equipment,
1222 including depreciation expense; interest expense; marketing
1223 expense; and other operating expenses.

1224 5. A projected balance sheet of the applicant.

1225 6. The expectations for the financial condition of the

1226 project, including the projected cash flow and an estimate of
1227 the funds anticipated to be necessary to cover startup losses.

1228 7. The inflation factor, if any, assumed in the study for
1229 the proposed expansion and how and where it is applied.

1230 8. Project costs; the total amount of debt financing
1231 required; marketing projections; resident rates, fees, and
1232 charges; the competition; resident contract provisions; and
1233 other factors that affect the feasibility of the facility.

1234 9. Appropriate population projections, including morbidity
1235 and mortality assumptions.

1236 10. The name of the person who prepared the feasibility
1237 study and his or her experience in preparing similar studies or
1238 otherwise consulting in the field of continuing care.

1239 11. Financial forecasts or projections prepared in
1240 accordance with standards adopted by the American Institute of
1241 Certified Public Accountants or in accordance with standards for
1242 feasibility studies for continuing care retirement communities
1243 adopted by the Actuarial Standards Board.

1244 12. An independent evaluation and examination opinion for
1245 the first 5 years of operations, or a comparable opinion
1246 acceptable to the office, by the consultant who prepared the
1247 study, of the underlying assumptions used as a basis for the
1248 forecasts or projections in the study and that the assumptions
1249 are reasonable and proper and the project as proposed is
1250 feasible.

1251 13. Any other information that the provider deems relevant
1252 and appropriate to provide to enable the office to make a more
1253 informed determination.

1254 (b) Such other reasonable data, financial statements, and
1255 pertinent information as the commission or office may require
1256 with respect to the applicant or the facility to determine the
1257 financial status of the facility and the management capabilities
1258 of its managers and owners.

1259
1260 If any material change occurs in the facts set forth in an
1261 application filed with the office pursuant to this section, an
1262 amendment setting forth such change must be filed with the
1263 office within 10 business days after the applicant becomes aware
1264 of such change, and a copy of the amendment must be sent by
1265 registered mail to the principal office of the facility and to
1266 the principal office of the controlling company.

1267 (3) A minimum of 75 percent of the moneys paid for all or
1268 any part of an initial entrance fee or reservation deposit
1269 collected for units in the expansion and 50 percent of the
1270 moneys paid for all or any part of an initial fee collected for
1271 continuing care at-home contracts in the expansion must be
1272 placed in an escrow account or on deposit with the department as
1273 prescribed in s. 651.033. Up to 25 percent of the moneys paid
1274 for all or any part of an initial entrance fee or reservation
1275 deposit may be included or pledged for the construction or

1276 purchase of the facility or as security for long-term financing.
1277 As used in this section, the term "initial entrance fee" means
1278 the total entrance fee charged by the facility to the first
1279 occupant of a unit.

1280 (4) The provider is entitled to secure release of the
1281 moneys held in escrow within 7 days after receipt by the office
1282 of an affidavit from the provider, along with appropriate copies
1283 to verify, and notification to the escrow agent by certified
1284 mail that the following conditions have been satisfied:

1285 (a) A certificate of occupancy has been issued.

1286 (b) Payment in full has been received for at least 50
1287 percent of the total units of a phase or of the total of the
1288 combined phases constructed. If a provider offering continuing
1289 care at-home is applying for a release of escrowed entrance
1290 fees, the same minimum requirement must be met for the
1291 continuing care and continuing care at-home contracts
1292 independently of each other.

1293 (c) Documents evidencing that commitments have been
1294 secured or that a documented plan adopted by the applicant has
1295 been approved by the office for long-term financing.

1296 (d) Documents evidencing that the provider has sufficient
1297 funds to meet the requirements of s. 651.035, which may include
1298 funds deposited in the initial entrance fee account.

1299 (e) Documents evidencing the intended application of the
1300 proceeds upon release and documentation that the entrance fees,

1301 when released, will be applied as represented to the office.

1302
1303 Notwithstanding chapter 120, only the provider, the escrow
1304 agent, and the office have a substantial interest in any office
1305 decision regarding release of escrow funds in any proceedings
1306 under chapter 120 or this chapter.

1307 (5) (a) Within 30 days after receipt of an application for
1308 expansion, the office shall examine the application and shall
1309 notify the applicant in writing, specifically requesting any
1310 additional information that the office is authorized to require.
1311 Within 15 days after the office receives all the requested
1312 additional information, the office shall notify the applicant in
1313 writing that the requested information has been received and
1314 that the application is deemed complete as of the date of the
1315 notice. Failure to notify the applicant in writing within the
1316 15-day period constitutes acknowledgement by the office that it
1317 has received all requested additional information, and the
1318 application is deemed complete for purposes of review on the
1319 date the applicant files all of the required additional
1320 information. If the application submitted is determined by the
1321 office to be substantially incomplete so as to require
1322 substantial additional information, including biographical
1323 information, the office may return the application to the
1324 applicant with a written notice stating that the application as
1325 received is substantially incomplete and, therefore, is

1326 unacceptable for filing without further action required by the
1327 office. Any filing fee received must be refunded to the
1328 applicant.

1329 (b) An application is deemed complete upon the office
1330 receiving all requested information and the applicant correcting
1331 any error or omission of which the applicant was timely notified
1332 or when the time for such notification has expired. The office
1333 shall notify the applicant in writing of the date on which the
1334 application was deemed complete.

1335 (6) Within 45 days after the date on which an application
1336 is deemed complete as provided in paragraph (5) (b), the office
1337 shall complete its review and, based upon its review, approve an
1338 expansion by the applicant and issue a determination that the
1339 application meets all requirements of law, that the feasibility
1340 study was based on sufficient data and reasonable assumptions,
1341 and that the applicant will be able to provide continuing care
1342 or continuing care at-home as proposed and meet all financial
1343 and contractual obligations related to its operations, including
1344 the financial requirements of this chapter. If the application
1345 is denied, the office must notify the applicant in writing,
1346 citing the specific failures to meet the requirements of this
1347 chapter. The denial entitles the applicant to a hearing pursuant
1348 to chapter 120.

1349 Section 12. Paragraphs (b) and (c) of subsection (2) and
1350 subsection (3) of section 651.026, Florida Statutes, are

1351 amended, subsection (10) is added to that section, and paragraph
 1352 (a) of subsection (2) of that section is republished, to read:
 1353 651.026 Annual reports.—
 1354 (2) The annual report shall be in such form as the
 1355 commission prescribes and shall contain at least the following:
 1356 (a) Any change in status with respect to the information
 1357 required to be filed under s. 651.022(2).
 1358 (b) A financial report ~~statements~~ audited by an
 1359 independent certified public accountant which must contain, for
 1360 two or more periods if the facility has been in existence that
 1361 long, all of the following:
 1362 1. An accountant's opinion and, in accordance with
 1363 generally accepted accounting principles:
 1364 a. A balance sheet;
 1365 b. A statement of income and expenses;
 1366 c. A statement of equity or fund balances; and
 1367 d. A statement of changes in cash flows.
 1368 2. Notes to the financial report ~~statements~~ considered
 1369 customary or necessary for full disclosure or adequate
 1370 understanding of the financial report ~~statements~~, financial
 1371 condition, and operation.
 1372 (c) The following financial information:
 1373 1. A detailed listing of the assets maintained in the
 1374 liquid reserve as required under s. 651.035 and in accordance
 1375 with part II of chapter 625;

1376 2. A schedule giving additional information relating to
 1377 property, plant, and equipment having an original cost of at
 1378 least \$25,000, so as to show in reasonable detail with respect
 1379 to each separate facility original costs, accumulated
 1380 depreciation, net book value, appraised value or insurable value
 1381 and date thereof, insurance coverage, encumbrances, and net
 1382 equity of appraised or insured value over encumbrances. Any
 1383 property not used in continuing care must be shown separately
 1384 from property used in continuing care;

1385 3. The level of participation in Medicare or Medicaid
 1386 programs, or both;

1387 4. A statement of all fees required of residents,
 1388 including, but not limited to, a statement of the entrance fee
 1389 charged, the monthly service charges, the proposed application
 1390 of the proceeds of the entrance fee by the provider, and the
 1391 plan by which the amount of the entrance fee is determined if
 1392 the entrance fee is not the same in all cases; ~~and~~

1393 5. Any change or increase in fees if the provider changes
 1394 the scope of, or the rates for, care or services, regardless of
 1395 whether the change involves the basic rate or only those
 1396 services available at additional costs to the resident;;~~-~~

1397 6. If the provider has more than one certificated
 1398 facility, or has operations that are not licensed under this
 1399 chapter, it shall submit a balance sheet, statement of income
 1400 and expenses, statement of equity or fund balances, and

1401 statement of cash flows for each facility licensed under this
 1402 chapter as supplemental information to the audited financial
 1403 report statements required under paragraph (b); ~~and~~.

1404 7. The management's calculation of the provider's debt
 1405 service coverage ratio, occupancy, and days cash on hand for the
 1406 current reporting period.

1407 (3) The commission shall adopt by rule additional
 1408 ~~meaningful~~ measures of assessing the financial viability of a
 1409 provider. ~~The rule may include the following factors:~~

- 1410 ~~(a) Debt service coverage ratios.~~
- 1411 ~~(b) Current ratios.~~
- 1412 ~~(c) Adjusted current ratios.~~
- 1413 ~~(d) Cash flows.~~
- 1414 ~~(e) Occupancy rates.~~
- 1415 ~~(f) Other measures, ratios, or trends.~~
- 1416 ~~(g) Other factors as may be appropriate.~~

1417 (10) By August 1 annually, the office shall publish an
 1418 industry benchmarking report for the preceding calendar year
 1419 which contains all of the following:

- 1420 (a) The median days cash on hand for all providers.
- 1421 (b) The median debt service coverage ratio for all
 1422 providers.
- 1423 (c) The median occupancy rate for all providers by
 1424 setting, including independent living, assisted living, skilled
 1425 nursing, and the entire facility.

1426 Section 13. Section 651.0261, Florida Statutes, is amended
1427 to read:

1428 651.0261 Quarterly and monthly statements.-

1429 (1) Within 45 days after the end of each fiscal quarter,
1430 each provider shall file a quarterly unaudited financial
1431 statement of the provider or of the facility in the form
1432 prescribed by commission rule and days cash on hand, occupancy,
1433 debt service coverage ratio, and a detailed listing of the
1434 assets maintained in the liquid reserve as required under s.
1435 651.035. The last quarterly statement for a fiscal year is not
1436 required if a provider does not have pending a regulatory action
1437 level event or a corrective action plan. If a provider falls
1438 below two or more of the thresholds set forth in s. 651.011(25),
1439 the provider shall submit to the office, at the same time as the
1440 quarterly statement, an explanation of the circumstances and a
1441 description of the actions it will take to meet the
1442 requirements.

1443 (2) If the office finds, ~~pursuant to rules of the~~
1444 ~~commission,~~ that such information is needed to properly monitor
1445 the financial condition of a provider or facility or is
1446 otherwise needed to protect the public interest, the office may
1447 require the provider to file:

1448 (a) Within 25 days after the end of each month, a monthly
1449 unaudited financial statement of the provider or of the facility
1450 in the form prescribed by the commission by rule and a detailed

1451 listing of the assets maintained in the liquid reserve as
1452 required under s. 651.035, ~~within 45 days after the end of each~~
1453 ~~fiscal quarter, a quarterly unaudited financial statement of the~~
1454 ~~provider or of the facility in the form prescribed by the~~
1455 ~~commission by rule. The commission may by rule require all or~~
1456 ~~part of the statements or filings required under this section to~~
1457 ~~be submitted by electronic means in a computer-readable form~~
1458 ~~compatible with the electronic data format specified by the~~
1459 ~~commission.~~

1460 (b) Such other data, financial statements, and pertinent
1461 information as the commission or office may reasonably require
1462 with respect to the provider or the facility, its directors, or
1463 its trustees; or with respect to any parent, subsidiary, or
1464 affiliate, if the provider or facility relies on a contractual
1465 or financial relationship with such parent, subsidiary, or
1466 affiliate in order to meet the financial requirements of this
1467 chapter, to determine the financial status of the provider or of
1468 the facility and the management capabilities of its managers and
1469 owners.

1470 (3) A filing under subsection (2) may be required if any
1471 of the following applies:

1472 (a) The provider is:

1473 1. Subject to administrative supervision proceedings;

1474 2. Subject to a corrective action plan resulting from a
1475 regulatory action level event and for up to 2 years after the

1476 factors that caused the regulatory action level event have been
 1477 corrected; or

1478 3. Subject to delinquency or receivership proceedings or
 1479 has filed for bankruptcy.

1480 (b) The provider or facility displays a declining
 1481 financial position.

1482 (c) A change of ownership of the provider or facility has
 1483 occurred within the previous 2 years.

1484 (d) The provider is found to be impaired.

1485 (4) The commission may by rule require all or part of the
 1486 statements or filings required under this section to be
 1487 submitted by electronic means in a computer-readable format
 1488 compatible with an electronic data format specified by the
 1489 commission.

1490 Section 14. Section 651.028, Florida Statutes, is
 1491 repealed.

1492 Section 15. Subsections (1), (2), (3), and (5) of section
 1493 651.033, Florida Statutes, are amended, and subsection (6) is
 1494 added to that section, to read:

1495 651.033 Escrow accounts.—

1496 (1) When funds are required to be deposited in an escrow
 1497 account pursuant to s. 651.0215, s. 651.022, s. 651.023, s.
 1498 651.0246, s. 651.035, or s. 651.055:

1499 (a) The escrow account must ~~shall~~ be established in a
 1500 Florida bank, Florida savings and loan association, ~~or~~ Florida

1501 trust company, or a national bank that is chartered and
 1502 supervised by the Office of the Comptroller of the Currency
 1503 within the United States Department of the Treasury and that has
 1504 a branch in this state, which is acceptable to the office, or
 1505 such funds must be deposited ~~on deposit~~ with the department, and
 1506 ~~the funds deposited therein shall~~ be kept and maintained in an
 1507 account separate and apart from the provider's business
 1508 accounts.

1509 (b) An escrow agreement shall be entered into between the
 1510 bank, savings and loan association, or trust company and the
 1511 provider of the facility; the agreement shall state that its
 1512 purpose is to protect the resident or the prospective resident;
 1513 and, upon presentation of evidence of compliance with applicable
 1514 portions of this chapter, or upon order of a court of competent
 1515 jurisdiction, the escrow agent shall release and pay over the
 1516 funds, or portions thereof, together with any interest accrued
 1517 thereon or earned from investment of the funds, to the provider
 1518 or resident as directed.

1519 (c) Any agreement establishing an escrow account required
 1520 under ~~the provisions of~~ this chapter is ~~shall be~~ subject to
 1521 approval by the office. The agreement must ~~shall~~ be in writing
 1522 and ~~shall~~ contain, in addition to any other provisions required
 1523 by law, a provision whereby the escrow agent agrees to abide by
 1524 the duties imposed by paragraphs (b) and (e), (3) (a), (3) (b),
 1525 and (5) (a) and subsection (6) under this section.

1526 (d) All funds deposited in an escrow account, if invested,
1527 shall be invested as set forth in part II of chapter 625;
1528 however, such investment may not diminish the funds held in
1529 escrow below the amount required by this chapter. Funds
1530 deposited in an escrow account are not subject to charges by the
1531 escrow agent except escrow agent fees associated with
1532 administering the accounts, or subject to any liens, judgments,
1533 garnishments, creditor's claims, or other encumbrances against
1534 the provider or facility except as provided in s. 651.035(1).

1535 (e) At the request of either the provider or the office,
1536 the escrow agent shall issue a statement indicating the status
1537 of the escrow account.

1538 (2) Notwithstanding s. 651.035(7), ~~In addition, the escrow~~
1539 ~~agreement shall provide that the escrow agent or another person~~
1540 ~~designated to act in the escrow agent's place and the provider,~~
1541 ~~except as otherwise provided in s. 651.035, shall notify the~~
1542 ~~office in writing at least 10 days before the withdrawal of any~~
1543 ~~portion of any funds required to be escrowed under the~~
1544 ~~provisions of s. 651.035. However,~~ in the event of an emergency
1545 and upon petition by the provider, the office may ~~waive the 10-~~
1546 ~~day notification period~~ and allow a withdrawal of up to 10
1547 percent of the required minimum liquid reserve. The office shall
1548 have 3 working days to deny the petition for the emergency 10-
1549 percent withdrawal. If the office fails to deny the petition
1550 within 3 working days, the petition is ~~shall be~~ deemed to have

1551 | been granted by the office. For purposes ~~the purpose~~ of this
1552 | section, the term "working day" means each day that is not a
1553 | Saturday, Sunday, or legal holiday as defined by Florida law.
1554 | Also, for purposes ~~the purpose~~ of this section, the day the
1555 | petition is received by the office is ~~shall~~ not ~~be~~ counted as
1556 | one of the 3 days.

1557 | (3) ~~In addition,~~ When entrance fees are required to be
1558 | deposited in an escrow account pursuant to s. 651.0215, s.
1559 | 651.022, s. 651.023, s. 651.0246, or s. 651.055:

1560 | (a) The provider shall deliver to the resident a written
1561 | receipt. The receipt must show the payor's name and address, the
1562 | date, the price of the care contract, and the amount of money
1563 | paid. A copy of each receipt, together with the funds, must
1564 | ~~shall~~ be deposited with the escrow agent or as provided in
1565 | paragraph (c). The escrow agent must ~~shall~~ release such funds to
1566 | the provider 7 days after the date of receipt of the funds by
1567 | the escrow agent if the provider, operating under a certificate
1568 | of authority issued by the office, has met the requirements of
1569 | s. 651.0215(8), s. 651.023(6), or s. 651.0246. However, if the
1570 | resident rescinds the contract within the 7-day period, the
1571 | escrow agent must ~~shall~~ release the escrowed fees to the
1572 | resident.

1573 | (b) At the request of an individual resident of a
1574 | facility, the escrow agent shall issue a statement indicating
1575 | the status of the resident's portion of the escrow account.

1576 (c) At the request of an individual resident of a
1577 facility, the provider may hold the check for the 7-day period
1578 and may ~~shall~~ not deposit it during this time period. If the
1579 resident rescinds the contract within the 7-day period, the
1580 check must ~~shall~~ be immediately returned to the resident. Upon
1581 the expiration of the 7 days, the provider shall deposit the
1582 check.

1583 (d) A provider may assess a nonrefundable fee, which is
1584 separate from the entrance fee, for processing a prospective
1585 resident's application for continuing care or continuing care
1586 at-home.

1587 (5) When funds are required to be deposited in an escrow
1588 account pursuant to s. 651.0215, s. 651.022, s. 651.023, s.
1589 651.0246, or s. 651.035, the following ~~shall~~ apply:

1590 (a) The escrow agreement must ~~shall~~ require that the
1591 escrow agent furnish the provider with a quarterly statement
1592 indicating the amount of any disbursements from or deposits to
1593 the escrow account and the condition of the account during the
1594 period covered by the statement. The agreement must ~~shall~~
1595 require that the statement be furnished to the provider by the
1596 escrow agent on or before the 10th day of the month following
1597 the end of the quarter for which the statement is due. If the
1598 escrow agent does not provide the quarterly statement to the
1599 provider on or before the 10th day of the month following the
1600 month for which the statement is due, the office may, in its

1601 discretion, levy against the escrow agent a fine not to exceed
1602 \$25 a day for each day of noncompliance with the provisions of
1603 this subsection.

1604 (b) If the escrow agent does not provide the quarterly
1605 statement to the provider on or before the 10th day of the month
1606 following the quarter for which the statement is due, the
1607 provider shall, on or before the 15th day of the month following
1608 the quarter for which the statement is due, send a written
1609 request for the statement to the escrow agent by certified mail
1610 return receipt requested.

1611 (c) On or before the 20th day of the month following the
1612 quarter for which the statement is due, the provider shall file
1613 with the office a copy of the escrow agent's statement or, if
1614 the provider has not received the escrow agent's statement, a
1615 copy of the written request to the escrow agent for the
1616 statement.

1617 (d) The office may, in its discretion, in addition to any
1618 other penalty that may be provided for under this chapter, levy
1619 a fine against the provider not to exceed \$25 a day for each day
1620 the provider fails to comply with the provisions of this
1621 subsection.

1622 (e) Funds held on deposit with the department are exempt
1623 from the reporting requirements of this subsection.

1624 (6) Except as described in paragraph (3)(a), the escrow
1625 agent may not release or otherwise allow the transfer of funds

1626 without the written approval of the office, unless the
1627 withdrawal is from funds in excess of the amounts required by
1628 ss. 651.0215, 651.022, 651.023, 651.0246, 651.035, and 651.055.

1629 Section 16. Section 651.034, Florida Statutes, is created
1630 to read:

1631 651.034 Financial and operating requirements for
1632 providers.—

1633 (1) (a) If a regulatory action level event occurs, the
1634 office must:

1635 1. Require the provider to prepare and submit a corrective
1636 action plan or, if applicable, a revised corrective action plan;

1637 2. Perform an examination pursuant to s. 651.105 or an
1638 analysis, as the office considers necessary, of the assets,
1639 liabilities, and operations of the provider, including a review
1640 of the corrective action plan or the revised corrective action
1641 plan; and

1642 3. After the examination or analysis, issue a corrective
1643 order, if necessary, specifying any corrective actions that the
1644 office determines are required.

1645 (b) In determining corrective actions, the office shall
1646 consider any factor relevant to the provider based upon the
1647 office's examination or analysis of the assets, liabilities, and
1648 operations of the provider. The provider must submit the
1649 corrective action plan or the revised corrective action plan
1650 within 30 days after the occurrence of the regulatory action

1651 level event. The office shall review and approve or disapprove
1652 the corrective action plan within 45 business days.

1653 (c) The office may use members of the Continuing Care
1654 Advisory Council, individually or as a group, or may retain
1655 actuaries, investment experts, and other consultants to review a
1656 provider's corrective action plan or revised corrective action
1657 plan, examine or analyze the assets, liabilities, and operations
1658 of a provider, and formulate the corrective order with respect
1659 to the provider. The costs and expenses relating to consultants
1660 must be borne by the affected provider.

1661 (2) Except when the office's remedial rights are suspended
1662 pursuant to s. 651.114(11)(a), the office must take action
1663 necessary to place an impaired provider under regulatory
1664 control, including any remedy available under part I of chapter
1665 631. An impairment is sufficient grounds for the department to
1666 be appointed as receiver as provided in chapter 631, except when
1667 the office's remedial rights are suspended pursuant to s.
1668 651.114(11)(a). If the office's remedial rights are suspended
1669 pursuant to s. 651.114(11)(a), the impaired provider must make
1670 available to the office copies of any corrective action plan
1671 approved by the third-party lender or trustee to cure the
1672 impairment and any related required report. For purposes of s.
1673 631.051, impairment of a provider is defined according to the
1674 term "impaired" under s. 651.011. The office may forego taking
1675 action for up to 180 days after the impairment if the office

1676 finds there is a reasonable expectation that the impairment may
1677 be eliminated within the 180-day period.

1678 (3) There is no liability on the part of, and a cause of
1679 action may not arise against, the commission, department, or
1680 office, or their employees or agents, for any action they take
1681 in the performance of their powers and duties under this
1682 section.

1683 (4) The office shall transmit any notice that may result
1684 in regulatory action by registered mail, certified mail, or any
1685 other method of transmission which includes documentation of
1686 receipt by the provider. Notice is effective when the provider
1687 receives it.

1688 (5) This section is supplemental to the other laws of this
1689 state and does not preclude or limit any power or duty of the
1690 department or office under those laws or under the rules adopted
1691 pursuant to those laws.

1692 (6) The office may exempt a provider from subsection (1)
1693 or subsection (2) until stabilized occupancy is reached or until
1694 the time projected to achieve stabilized occupancy as reported
1695 in the last feasibility study required by the office as part of
1696 an application filing under s. 651.0215, s. 651.023, s. 651.024,
1697 or s. 651.0246 has elapsed, but for no longer than 5 years after
1698 the date of issuance of the certificate of occupancy.

1699 (7) The commission may adopt rules to administer this
1700 section, including, but not limited to, rules regarding

1701 corrective action plans, revised corrective action plans,
1702 corrective orders, and procedures to be followed in the event of
1703 a regulatory action level event or an impairment.

1704 Section 17. Paragraphs (a), (b), and (c) of subsection (1)
1705 of section 651.035, Florida Statutes, are amended, and
1706 subsections (7) through (11) are added to that section, to read:

1707 651.035 Minimum liquid reserve requirements.—

1708 (1) A provider shall maintain in escrow a minimum liquid
1709 reserve consisting of the following reserves, as applicable:

1710 (a) Each provider shall maintain in escrow as a debt
1711 service reserve the aggregate amount of all principal and
1712 interest payments due during the fiscal year on any mortgage
1713 loan or other long-term financing of the facility, including
1714 property taxes as recorded in the audited financial report
1715 ~~statements~~ required under s. 651.026. The amount must include
1716 any leasehold payments and all costs related to such payments.
1717 If principal payments are not due during the fiscal year, the
1718 provider must ~~shall~~ maintain in escrow as a minimum liquid
1719 reserve an amount equal to interest payments due during the next
1720 12 months on any mortgage loan or other long-term financing of
1721 the facility, including property taxes. If a provider does not
1722 have a mortgage loan or other financing on the facility, the
1723 provider must deposit monthly in escrow as a minimum liquid
1724 reserve an amount equal to one-twelfth of the annual property
1725 tax liability as indicated in the most recent tax notice

1726 provided pursuant to s. 197.322(3), and must annually pay
1727 property taxes out of such escrow.

1728 (b) A provider that has outstanding indebtedness that
1729 requires a debt service reserve to be held in escrow pursuant to
1730 a trust indenture or mortgage lien on the facility and for which
1731 the debt service reserve may only be used to pay principal and
1732 interest payments on the debt that the debtor is obligated to
1733 pay, and which may include property taxes and insurance, may
1734 include such debt service reserve in computing the minimum
1735 liquid reserve needed to satisfy this subsection if the provider
1736 furnishes to the office a copy of the agreement under which such
1737 debt service is held, together with a statement of the amount
1738 being held in escrow for the debt service reserve, certified by
1739 the lender or trustee and the provider to be correct. The
1740 trustee shall provide the office with any information concerning
1741 the debt service reserve account upon request of the provider or
1742 the office. Any such separate debt service reserves are not
1743 subject to the transfer provisions set forth in subsection (8).

1744 (c) Each provider shall maintain in escrow an operating
1745 reserve equal to 30 percent of the total operating expenses
1746 projected in the feasibility study required by s. 651.023 for
1747 the first 12 months of operation. Thereafter, each provider
1748 shall maintain in escrow an operating reserve equal to 15
1749 percent of the total operating expenses in the annual report
1750 filed pursuant to s. 651.026. If a provider has been in

1751 operation for more than 12 months, the total annual operating
1752 expenses must ~~shall~~ be determined by averaging the total annual
1753 operating expenses reported to the office by the number of
1754 annual reports filed with the office within the preceding 3-year
1755 period subject to adjustment if there is a change in the number
1756 of facilities owned. For purposes of this subsection, total
1757 annual operating expenses include all expenses of the facility
1758 except: depreciation and amortization; interest and property
1759 taxes included in paragraph (a); extraordinary expenses that are
1760 adequately explained and documented in accordance with generally
1761 accepted accounting principles; liability insurance premiums in
1762 excess of those paid in calendar year 1999; and changes in the
1763 obligation to provide future services to current residents. For
1764 providers initially licensed during or after calendar year 1999,
1765 liability insurance must ~~shall~~ be included in the total
1766 operating expenses in an amount not to exceed the premium paid
1767 during the first 12 months of facility operation. ~~Beginning~~
1768 ~~January 1, 1993,~~ The operating reserves required under this
1769 subsection must ~~shall~~ be in an unencumbered account held in
1770 escrow for the benefit of the residents. Such funds may not be
1771 encumbered or subject to any liens or charges by the escrow
1772 agent or judgments, garnishments, or creditors' claims against
1773 the provider or facility. However, if a facility had a lien,
1774 mortgage, trust indenture, or similar debt instrument in place
1775 before January 1, 1993, which encumbered all or any part of the

1776 reserves required by this subsection and such funds were used to
1777 meet the requirements of this subsection, then such arrangement
1778 may be continued, unless a refinancing or acquisition has
1779 occurred, and the provider is ~~shall be~~ in compliance with this
1780 subsection.

1781 (7) (a) A provider may withdraw funds held in escrow
1782 without the approval of the office if the amount held in escrow
1783 exceeds the requirements of this section and if the withdrawal
1784 will not affect compliance with this section.

1785 (b)1. For all other proposed withdrawals, in order to
1786 receive the consent of the office, the provider must file
1787 documentation showing why the withdrawal is necessary for the
1788 continued operation of the facility and such additional
1789 information as the office reasonably requires.

1790 2. The office shall notify the provider when the filing is
1791 deemed complete. If the provider has complied with all prior
1792 requests for information, the filing is deemed complete after 30
1793 days without communication from the office.

1794 3. Within 30 days after the date a file is deemed
1795 complete, the office shall provide the provider with written
1796 notice of its approval or disapproval of the request. The office
1797 may disapprove any request to withdraw such funds if it
1798 determines that the withdrawal is not in the best interest of
1799 the residents.

1800 (8) The office may order the immediate transfer of up to

1801 100 percent of the funds held in the minimum liquid reserve to
1802 the custody of the department pursuant to part III of chapter
1803 625 if the office finds that the provider is impaired or
1804 insolvent. The office may order such a transfer regardless of
1805 whether the office has suspended or revoked, or intends to
1806 suspend or revoke, the certificate of authority of the provider.

1807 (9) Each facility shall file with the office annually,
1808 together with the annual report required by s. 651.026, a
1809 calculation of its minimum liquid reserve determined in
1810 accordance with this section on a form prescribed by the
1811 commission.

1812 (10) Any increase in the minimum liquid reserve must be
1813 funded not later than 61 days after the minimum liquid reserve
1814 calculation is due to be filed as provided in s. 651.026.

1815 (11) If the minimum liquid reserve is less than the
1816 required minimum amount at the end of any fiscal quarter due to
1817 a change in the market value of the invested funds, the provider
1818 must fund the shortfall within 10 business days.

1819 Section 18. Effective July 1, 2019, section 651.043,
1820 Florida Statutes, is created to read:

1821 651.043 Approval of change in management.-

1822 (1) A contract with a management company entered into
1823 after July 1, 2019, must be in writing and include a provision
1824 that the contract will be canceled upon issuance of an order by
1825 the office pursuant to this section and without the application

1826 of a cancellation fee or penalty. If a provider contracts with a
1827 management company, a separate written contract is not required
1828 for the individual manager employed by the management company or
1829 contractor hired by the management company to oversee a
1830 facility. If a management company executes a contract with an
1831 individual manager or contractor, the contract is not required
1832 to be submitted to the office unless requested by the office.

1833 (2) A provider shall notify the office, in writing or
1834 electronically, of any change in management within 10 business
1835 days. For each new management company or manager not employed by
1836 a management company, the provider shall submit to the office
1837 the information required by s. 651.022(2) and a copy of the
1838 written management contract, if applicable.

1839 (3) For a provider that is found to be impaired or that
1840 has a regulatory action level event pending, the office may
1841 disapprove new management and order the provider to remove the
1842 new management after reviewing the information required under
1843 subsection (2).

1844 (4) For a provider other than that specified in subsection
1845 (3), the office may disapprove new management and order the
1846 provider to remove the new management after receiving the
1847 required information under subsection (2), if the office:

1848 (a) Finds that the new management is incompetent or
1849 untrustworthy;

1850 (b) Finds that the new management is so lacking in

1851 managerial experience as to make the proposed operation
1852 hazardous to the residents or potential residents;

1853 (c) Finds that the new management is so lacking in
1854 experience, ability, and standing as to jeopardize the
1855 reasonable promise of successful operation; or

1856 (d) Has good reason to believe that the new management is
1857 affiliated directly or indirectly through ownership, control, or
1858 business relations with any person or persons whose business
1859 operations are or have been marked by manipulation of assets or
1860 accounts or by bad faith, to the detriment of residents,
1861 stockholders, investors, creditors, or the public.

1862
1863 The office shall complete its review as required under
1864 subsections (3) and (4) and, if applicable, issue notice of
1865 disapproval of the new management within 30 business days after
1866 the filing is deemed complete. A filing is deemed complete upon
1867 the office's receipt of all requested information and the
1868 provider's correction of any error or omission for which the
1869 provider was timely notified. If the office does not issue
1870 notice of disapproval of the new management within 30 business
1871 days after the filing is deemed complete, the new management is
1872 deemed approved.

1873 (5) Management disapproved by the office must be removed
1874 within 30 days after receipt by the provider of notice of such
1875 disapproval.

1876 (6) The office may revoke, suspend, or take other
1877 administrative action against the certificate of authority of
1878 the provider if the provider:

1879 (a) Fails to timely remove management disapproved by the
1880 office;

1881 (b) Fails to timely notify the office of a change in
1882 management;

1883 (c) Appoints new management without a written contract
1884 when a written contract is required under this section; or

1885 (d) Repeatedly appoints management that was previously
1886 disapproved by the office or that is not approvable under
1887 subsection (4).

1888 (7) The provider shall remove any management immediately
1889 upon discovery of either of the following conditions, if the
1890 conditions were not disclosed in the notice to the office
1891 required under subsection (2):

1892 (a) That a manager has been found guilty of, or has pled
1893 guilty or no contest to, a felony charge, or has been held
1894 liable or has been enjoined in a civil action by final judgment,
1895 if the felony or civil action involved fraud, embezzlement,
1896 fraudulent conversion, or misappropriation of property.

1897 (b) That a manager is now, or was in the past, affiliated,
1898 directly or indirectly, through ownership interest of 10 percent
1899 or more in, or control of, any business, corporation, or other
1900 entity that has been found guilty of or has pled guilty or no

1901 contest to a felony charge, or has been held liable or has been
 1902 enjoined in a civil action by final judgment, if the felony or
 1903 civil action involved fraud, embezzlement, fraudulent
 1904 conversion, or misappropriation of property.

1905
 1906 The failure to remove such management is grounds for revocation
 1907 or suspension of the provider's certificate of authority.

1908 Section 19. Section 651.051, Florida Statutes, is amended
 1909 to read:

1910 651.051 Maintenance of assets and records in state.—All
 1911 records and assets of a provider must be maintained or readily
 1912 accessible in this state or, if the provider's corporate office
 1913 is located in another state, such records must be electronically
 1914 stored in a manner that will ensure that the records are readily
 1915 accessible to the office. No records or assets may be removed
 1916 from this state by a provider unless the office consents to such
 1917 removal in writing before such removal. Such consent must ~~shall~~
 1918 be based upon the provider's submitting satisfactory evidence
 1919 that the removal will facilitate and make more economical the
 1920 operations of the provider and will not diminish the service or
 1921 protection thereafter to be given the provider's residents in
 1922 this state. Before ~~Prior to~~ such removal, the provider shall
 1923 give notice to the president or chair of the facility's
 1924 residents' council. If such removal is part of a cash management
 1925 system which has been approved by the office, disclosure of the

1926 | system must ~~shall~~ meet the notification requirements. The
1927 | electronic storage of records on a web-based, secured storage
1928 | platform by contract with a third party is acceptable if the
1929 | records are readily accessible to the office.

1930 | Section 20. Subsection (3) of section 651.055, Florida
1931 | Statutes, is amended to read:

1932 | 651.055 Continuing care contracts; right to rescind.—

1933 | (3) The contract must include or be accompanied by a
1934 | statement, printed in boldfaced type, which reads: "This
1935 | facility and all other continuing care facilities (also known as
1936 | life plan communities) in the State of Florida are regulated by
1937 | the Office of Insurance Regulation pursuant to chapter 651,
1938 | Florida Statutes. A copy of the law is on file in this facility.
1939 | The law gives you or your legal representative the right to
1940 | inspect our most recent financial statement and inspection
1941 | report before signing the contract. There is no guaranty fund to
1942 | ensure that residents of insolvent continuing care providers are
1943 | protected as to the ongoing provision of continuing care
1944 | services or as to a refund of any portion of their entrance
1945 | fee."

1946 | Section 21. Subsection (2) of section 651.057, Florida
1947 | Statutes, is amended to read:

1948 | 651.057 Continuing care at-home contracts.—

1949 | (2) A provider that holds a certificate of authority and
1950 | wishes to offer continuing care at-home must also:

1951 (a) Submit a business plan to the office with the
 1952 following information:

1953 1. A description of the continuing care at-home services
 1954 that will be provided, the market to be served, and the fees to
 1955 be charged;

1956 2. A copy of the proposed continuing care at-home
 1957 contract;

1958 3. An actuarial study prepared by an independent actuary
 1959 in accordance with the standards adopted by the American Academy
 1960 of Actuaries which presents the impact of providing continuing
 1961 care at-home on the overall operation of the facility; and

1962 4. A ~~market~~ feasibility study that meets the requirements
 1963 of s. 651.022(3) and documents that there is sufficient interest
 1964 in continuing care at-home contracts to support such a program;

1965 (b) Demonstrate to the office that the proposal to offer
 1966 continuing care at-home contracts to individuals who do not
 1967 immediately move into the facility will not place the provider
 1968 in an unsound financial condition;

1969 (c) Comply with the requirements of s. 651.0246(1) ~~s.~~
 1970 ~~651.021(2)~~, except that an actuarial study may be substituted
 1971 for the feasibility study; and

1972 (d) Comply with the requirements of this chapter.

1973 Section 22. Subsection (1) of section 651.071, Florida
 1974 Statutes, is amended to read:

1975 651.071 Contracts as preferred claims on liquidation or

1976 receivership.—

1977 (1) In the event of receivership or liquidation
 1978 proceedings against a provider, all continuing care and
 1979 continuing care at-home contracts executed by a provider are
 1980 ~~shall be~~ deemed preferred claims against all assets owned by the
 1981 provider; however, such claims are subordinate to any secured
 1982 claim. For purposes of s. 631.271, such contracts are deemed
 1983 Class 2 claims.

1984 Section 23. Subsections (2) and (3) of section 651.091,
 1985 Florida Statutes, are amended, and subsection (4) of that
 1986 section is republished, to read:

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

1989 (2) Every continuing care facility shall:

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

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

1999 (c) Post in a prominent position in the facility,
 2000 accessible to all residents and the general public, a notice

2001 containing the contact information for the office and the
 2002 Division of Consumer Services of the department and stating that
 2003 the division or office may be contacted for the submission of
 2004 inquiries and complaints with respect to potential violations of
 2005 this chapter committed by a provider. Such contact information
 2006 must include the division's website and the toll-free consumer
 2007 helpline and the office's website and telephone number.

2008 (d) Provide notice to the president or chair of the
 2009 residents' council within 10 business days after issuance of a
 2010 final examination report or the initiation of any legal or
 2011 administrative proceeding by the office or the department and
 2012 include a copy of such document.

2013 (e)~~(e)~~ Post in a prominent position in the facility which
 2014 is accessible to all residents and the general public a summary
 2015 of the latest annual statement, indicating in the summary where
 2016 the full annual statement may be inspected in the facility. A
 2017 listing of any proposed changes in policies, programs, and
 2018 services must also be posted.

2019 (f)~~(d)~~ Distribute a copy of the full annual statement and
 2020 a copy of the most recent third-party ~~third party~~ financial
 2021 audit filed with the annual report to the president or chair of
 2022 the residents' council within 30 days after filing the annual
 2023 report with the office, and designate a staff person to provide
 2024 explanation thereof.

2025 (g)~~(e)~~ Deliver the information described in s. 651.085(4)

2026 in writing to the president or chair of the residents' council
 2027 and make supporting documentation available upon request Notify
 2028 ~~the residents' council of any plans filed with the office to~~
 2029 ~~obtain new financing, additional financing, or refinancing for~~
 2030 ~~the facility and of any applications to the office for any~~
 2031 ~~expansion of the facility.~~

2032 (h) ~~(f)~~ Deliver to the president or chair of the residents'
 2033 council a summary of entrance fees collected and refunds made
 2034 during the time period covered in the annual report and the
 2035 refund balances due at the end of the report period.

2036 (i) ~~(g)~~ Deliver to the president or chair of the residents'
 2037 council a copy of each quarterly statement within 30 days after
 2038 the quarterly statement is filed with the office if the facility
 2039 is required to file quarterly.

2040 (j) ~~(h)~~ Upon request, deliver to the president or chair of
 2041 the residents' council a copy of any newly approved continuing
 2042 care or continuing care at-home contract within 30 days after
 2043 approval by the office.

2044 (k) Provide to the president or chair of the residents'
 2045 council a copy of any notice filed with the office relating to
 2046 any change in ownership within 10 business days after such
 2047 filing by the provider.

2048 (l) Make the information available to prospective
 2049 residents pursuant to paragraph (3) (d) available to current
 2050 residents and provide notice of changes to that information to

2051 the president or chair of the residents' council within 3
 2052 business days.

2053 (3) Before entering into a contract to furnish continuing
 2054 care or continuing care at-home, the provider undertaking to
 2055 furnish the care, or the agent of the provider, shall make full
 2056 disclosure, and provide copies of the disclosure documents to
 2057 the prospective resident or his or her legal representative, of
 2058 the following information:

2059 (a) The contract to furnish continuing care or continuing
 2060 care at-home.

2061 (b) The summary listed in paragraph (2) (b) .

2062 (c) All ownership interests and lease agreements,
 2063 including information specified in s. 651.022(2) (b)8.

2064 (d) In keeping with the intent of this subsection relating
 2065 to disclosure, the provider shall make available for review
 2066 master plans approved by the provider's governing board and any
 2067 plans for expansion or phased development, to the extent that
 2068 the availability of such plans does not put at risk real estate,
 2069 financing, acquisition, negotiations, or other implementation of
 2070 operational plans and thus jeopardize the success of
 2071 negotiations, operations, and development.

2072 (e) Copies of the rules and regulations of the facility
 2073 and an explanation of the responsibilities of the resident.

2074 (f) The policy of the facility with respect to admission
 2075 to and discharge from the various levels of health care offered

2076 | by the facility.

2077 | ~~(g) The amount and location of any reserve funds required~~
 2078 | ~~by this chapter, and the name of the person or entity having a~~
 2079 | ~~claim to such funds in the event of a bankruptcy, foreclosure,~~
 2080 | ~~or rehabilitation proceeding.~~

2081 | (g)~~(h)~~ A copy of s. 651.071.

2082 | (h)~~(i)~~ A copy of the resident's rights as described in s.
 2083 | 651.083.

2084 | (i) Notice of the issuance of a final examination report
 2085 | or the initiation of any legal or administrative proceeding by
 2086 | the office or the department, including where the report or
 2087 | filing may be inspected in the facility, and that, upon request,
 2088 | an electronic copy or specific website address will be provided
 2089 | from which the document can be downloaded at no cost.

2090 | (j) Notice of a resident's 7-day right to rescind a
 2091 | continuing care contract under s. 651.055(2) and that, after the
 2092 | expiration of the 7-day escrow requirement under s.
 2093 | 651.033(3)(c), the entrance fee becomes property of the
 2094 | provider.

2095 | (k) A statement that distribution of the provider's assets
 2096 | or income may occur or a statement that such distributions will
 2097 | not occur.

2098 | (l) Notice of any holding company system or obligated
 2099 | group of which the provider is a member.

2100 | (4) A true and complete copy of the full disclosure

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2101 document to be used must be filed with the office before use. A
2102 resident or prospective resident or his or her legal
2103 representative may inspect the full reports referred to in
2104 paragraph (2)(b); the charter or other agreement or instrument
2105 required to be filed with the office pursuant to s. 651.022(2),
2106 together with all amendments thereto; and the bylaws of the
2107 corporation or association, if any. Upon request, copies of the
2108 reports and information shall be provided to the individual
2109 requesting them if the individual agrees to pay a reasonable
2110 charge to cover copying costs.

2111 Section 24. Subsection (4) of section 651.095, Florida
2112 Statutes, is amended to read:

2113 651.095 Advertisements; requirements; penalties.—

2114 (4) It is unlawful for any person, other than a provider
2115 licensed pursuant to this chapter, to advertise or market to the
2116 general public any product similar to continuing care through
2117 the use of such terms as "life care," "life plan," "life plan
2118 at-home," "continuing care," or "guaranteed care for life," or
2119 similar terms, words, or phrases.

2120 Section 25. Section 651.105, Florida Statutes, is amended
2121 to read:

2122 651.105 Examination ~~and inspections.~~—

2123 (1) The office may at any time, and shall at least once
2124 every 3 years, examine the business of any applicant for a
2125 certificate of authority and any provider engaged in the

2126 execution of care contracts or engaged in the performance of
2127 obligations under such contracts, in the same manner as is
2128 provided for the examination of insurance companies pursuant to
2129 ss. 624.316 and 624.318 ~~s. 624.316~~. For a provider as described
2130 ~~defined~~ in s. 651.028, such examinations must ~~shall~~ take place
2131 at least once every 5 years. Such examinations must ~~shall~~ be
2132 made by a representative or examiner designated by the office
2133 whose compensation will be fixed by the office pursuant to s.
2134 624.320. Routine examinations may be made by having the
2135 necessary documents submitted to the office; and, for this
2136 purpose, financial documents and records conforming to commonly
2137 accepted accounting principles and practices, as required under
2138 s. 651.026, are deemed adequate. The final written report of
2139 each examination must be filed with the office and, when so
2140 filed, constitutes a public record. Any provider being examined
2141 shall, upon request, give reasonable and timely access to all of
2142 its records. The representative or examiner designated by the
2143 office may at any time examine the records and affairs and
2144 inspect the physical property of any provider, whether in
2145 connection with a formal examination or not.

2146 (2) Any duly authorized officer, employee, or agent of the
2147 office may, upon presentation of proper identification, have
2148 access to, and examine ~~inspect~~, any records, with or without
2149 advance notice, to secure compliance with, or to prevent a
2150 violation of, any provision of this chapter.

2151 (3) Reports of the results of such financial examinations
2152 must be kept on file by the office. Any investigatory records,
2153 reports, or documents held by the office are confidential and
2154 exempt from the provisions of s. 119.07(1), until the
2155 investigation is completed or ceases to be active. For the
2156 purpose of this section, an investigation is active while it is
2157 being conducted by the office with a reasonable, good faith
2158 belief that it could lead to the filing of administrative,
2159 civil, or criminal proceedings. An investigation does not cease
2160 to be active if the office is proceeding with reasonable
2161 dispatch and has a good faith belief that action could be
2162 initiated by the office or other administrative or law
2163 enforcement agency.

2164 (4) The office shall notify the provider and the executive
2165 officer of the governing body of the provider in writing of all
2166 deficiencies in its compliance with the provisions of this
2167 chapter and the rules adopted pursuant to this chapter and shall
2168 set a reasonable length of time for compliance by the provider.
2169 In addition, the office shall require corrective action or
2170 request a corrective action plan from the provider which plan
2171 demonstrates a good faith attempt to remedy the deficiencies by
2172 a specified date. If the provider fails to comply within the
2173 established length of time, the office may initiate action
2174 against the provider in accordance with the provisions of this
2175 chapter.

2176 (5) A provider shall respond to written correspondence
2177 from the office and provide data, financial statements, and
2178 pertinent information as requested by the office. The office has
2179 standing to petition a circuit court for mandatory injunctive
2180 relief to compel access to and require the provider to produce
2181 the documents, data, records, and other information requested by
2182 the office. The office may petition the circuit court in the
2183 county in which the facility is situated or the Circuit Court of
2184 Leon County to enforce this section ~~At the time of the routine~~
2185 ~~examination, the office shall determine if all disclosures~~
2186 ~~required under this chapter have been made to the president or~~
2187 ~~chair of the residents' council and the executive officer of the~~
2188 ~~governing body of the provider.~~

2189 (6) A representative of the provider must give a copy of
2190 the final examination report and corrective action plan, if one
2191 is required by the office, to the executive officer of the
2192 governing body of the provider within 60 days after issuance of
2193 the report.

2194 (7) Unless a provider is impaired or subject to a
2195 regulatory action level event, any parent, subsidiary, or
2196 affiliate is not subject to examination by the office as part of
2197 a routine examination. However, if a provider or facility relies
2198 on a contractual or financial relationship with a parent, a
2199 subsidiary, or an affiliate in order to meet the financial
2200 requirements of this chapter, the office may examine any parent,

2201 subsidiary, or affiliate that has a contractual or financial
 2202 relationship with the provider or facility to the extent
 2203 necessary to ascertain the financial condition of the provider.

2204 Section 26. Section 651.106, Florida Statutes, is amended
 2205 to read:

2206 651.106 Grounds for discretionary refusal, suspension, or
 2207 revocation of certificate of authority.—The office may deny an
 2208 application or~~7~~ suspend~~7~~ or revoke the provisional certificate
 2209 of authority or the certificate of authority of any applicant or
 2210 provider if it finds that any one or more of the following
 2211 grounds applicable to the applicant or provider exist:

2212 (1) Failure by the provider to continue to meet the
 2213 requirements for the authority originally granted.

2214 (2) Failure by the provider to meet one or more of the
 2215 qualifications for the authority specified by this chapter.

2216 (3) Material misstatement, misrepresentation, or fraud in
 2217 obtaining the authority, or in attempting to obtain the same.

2218 (4) Demonstrated lack of fitness or trustworthiness.

2219 (5) Fraudulent or dishonest practices of management in the
 2220 conduct of business.

2221 (6) Misappropriation, conversion, or withholding of
 2222 moneys.

2223 (7) Failure to comply with, or violation of, any proper
 2224 order or rule of the office or commission or violation of any
 2225 provision of this chapter.

2226 (8) The insolvent or impaired condition of the provider or
2227 the provider's being in such condition or using such methods and
2228 practices in the conduct of its business as to render its
2229 further transactions in this state hazardous or injurious to the
2230 public.

2231 (9) Refusal by the provider to be examined or to produce
2232 its accounts, records, and files for examination, or refusal by
2233 any of its officers to give information with respect to its
2234 affairs or to perform any other legal obligation under this
2235 chapter when required by the office.

2236 (10) Failure by the provider to comply with the
2237 requirements of s. 651.026 or s. 651.033.

2238 (11) Failure by the provider to maintain escrow accounts
2239 or funds as required by this chapter.

2240 (12) Failure by the provider to meet the requirements of
2241 this chapter for disclosure of information to residents
2242 concerning the facility, its ownership, its management, its
2243 development, or its financial condition or failure to honor its
2244 continuing care or continuing care at-home contracts.

2245 (13) Any cause for which issuance of the license could
2246 have been refused had it then existed and been known to the
2247 office.

2248 (14) Having been found guilty of, or having pleaded guilty
2249 or nolo contendere to, a felony in this state or any other
2250 state, without regard to whether a judgment or conviction has

2251 | been entered by the court having jurisdiction of such cases.

2252 | (15) In the conduct of business under the license,
2253 | engaging in unfair methods of competition or in unfair or
2254 | deceptive acts or practices prohibited under part IX of chapter
2255 | 626.

2256 | (16) A pattern of bankrupt enterprises.

2257 | (17) The ownership, control, or management of the
2258 | organization includes any person:

2259 | (a) Who is not reputable and of responsible character;

2260 | (b) Who is so lacking in management expertise as to make
2261 | the operation of the provider hazardous to potential and
2262 | existing residents;

2263 | (c) Who is so lacking in management experience, ability,
2264 | and standing as to jeopardize the reasonable promise of
2265 | successful operation;

2266 | (d) Who is affiliated, directly or indirectly, through
2267 | ownership or control, with any person or persons whose business
2268 | operations are or have been marked by business practices or
2269 | conduct that is detrimental to the public, contract holders,
2270 | investors, or creditors, or by manipulation of assets, finances,
2271 | or accounts or by bad faith; or

2272 | (e) Whose business operations are or have been marked by
2273 | business practices or conduct that is detrimental to the public,
2274 | contract holders, investors, or creditors, or by manipulation of
2275 | assets, finances, or accounts or by bad faith.

2276 (18) The provider has not filed a notice of change in
 2277 management, fails to remove a disapproved manager, or persists
 2278 in appointing disapproved managers.

2279
 2280 Revocation of a certificate of authority under this section does
 2281 not relieve a provider from the provider's obligation to
 2282 residents under the terms and conditions of any continuing care
 2283 or continuing care at-home contract between the provider and
 2284 residents or the provisions of this chapter. The provider shall
 2285 continue to file its annual statement and pay license fees to
 2286 the office as required under this chapter as if the certificate
 2287 of authority had continued in full force, but the provider shall
 2288 not issue any new contracts. The office may seek an action in
 2289 the Circuit Court of Leon County to enforce the office's order
 2290 and the provisions of this section.

2291 Section 27. Section 651.1065, Florida Statutes, is created
 2292 to read:

2293 651.1065 Soliciting or accepting new continuing care
 2294 contracts by impaired or insolvent facilities or providers.-

2295 (1) Regardless of whether delinquency proceedings as to a
 2296 continuing care facility have been or are to be initiated, a
 2297 proprietor, a general partner, a member, an officer, a director,
 2298 a trustee, or a manager of a continuing care facility may not
 2299 actively solicit, approve the solicitation or acceptance of, or
 2300 accept new continuing care contracts in this state after the

2301 proprietor, general partner, member, officer, director, trustee,
 2302 or manager knew, or reasonably should have known, that the
 2303 continuing care facility was impaired or insolvent except with
 2304 the written permission of the office. If the facility has
 2305 declared bankruptcy, the bankruptcy court or trustee appointed
 2306 by the court has jurisdiction over such matters. The office must
 2307 approve or disapprove the continued marketing of new contracts
 2308 within 15 days after receiving a request from a provider.

2309 (2) A proprietor, a general partner, a member, an officer,
 2310 a director, a trustee, or a manager who violates this section
 2311 commits a felony of the third degree, punishable as provided in
 2312 s. 775.082, s. 775.083, or s. 775.084.

2313 Section 28. Subsections (1) and (3) of section 651.111,
 2314 Florida Statutes, are amended to read:

2315 651.111 Requests for inspections.—

2316 (1) Any interested party may request an inspection of the
 2317 records and related financial affairs of a provider providing
 2318 care in accordance with ~~the provisions of~~ this chapter by
 2319 transmitting to the office notice of an alleged violation of
 2320 applicable requirements prescribed by statute or by rule,
 2321 specifying to a reasonable extent the details of the alleged
 2322 violation, which notice must ~~shall~~ be signed by the complainant.
 2323 As used in this section, the term "inspection" means an inquiry
 2324 into a provider's compliance with this chapter.

2325 (3) Upon receipt of a complaint, the office shall make a

2326 preliminary review to determine if the complaint alleges a
 2327 violation of this chapter; and, unless the office determines
 2328 that the complaint does not allege a violation of this chapter
 2329 or is without any reasonable basis, the office shall make an
 2330 inspection. The office shall provide the complainant with a
 2331 written acknowledgment of the complaint within 15 days after
 2332 receipt by the office. The complainant shall be advised, within
 2333 30 days after the receipt of the complaint by the office, of the
 2334 office's determination that the complaint does not allege a
 2335 violation of this chapter, that the complaint is without any
 2336 reasonable basis, or that the office will make an inspection.
 2337 The notice must include an estimated timeframe for completing
 2338 the inspection and a contact number. If the inspection is not
 2339 completed within the estimated timeframe, the office must
 2340 provide the complainant with a revised timeframe. Within 15 days
 2341 after completing an inspection, the office shall provide the
 2342 complainant and the provider a written statement specifying any
 2343 violations of this chapter and any actions taken or that no such
 2344 violation was found ~~proposed course of action of the office.~~

2345 Section 29. Section 651.114, Florida Statutes, is amended
 2346 to read:

2347 651.114 Delinquency proceedings; remedial rights.—

2348 (1) Upon determination by the office that a provider is
 2349 not in compliance with this chapter, the office may notify the
 2350 chair of the Continuing Care Advisory Council, who may assist

2351 the office in formulating a corrective action plan.

2352 (2) Within 30 days after a request by either the advisory
2353 council or the office, a provider shall make a plan for
2354 obtaining compliance or solvency available to the advisory
2355 council and the office, ~~within 30 days after being requested to~~
2356 ~~do so by the council,~~ a plan for obtaining compliance or
2357 solvency.

2358 (3) Within 30 days after receipt of a plan for obtaining
2359 compliance or solvency, the office or, at the request of the
2360 office, ~~notification,~~ the advisory council shall:

2361 (a) Consider and evaluate the plan submitted by the
2362 provider.

2363 (b) Discuss the problem and solutions with the provider.

2364 (c) Conduct such other business as is necessary.

2365 (d) Report its findings and recommendations to the office,
2366 which may require additional modification of the plan.

2367
2368 This subsection may not be construed to delay or prevent the
2369 office from taking any regulatory measures it deems necessary
2370 regarding the provider that submitted the plan.

2371 (4) If the financial condition of a continuing care
2372 provider is impaired or is such that if not modified or
2373 corrected, its continued operation would result in insolvency,
2374 the office may direct the provider to formulate and file with
2375 the office a corrective action plan. If the provider fails to

2376 submit a plan within 30 days after the office's directive or
 2377 submits a plan that is insufficient to correct the condition,
 2378 the office may specify a plan and direct the provider to
 2379 implement the plan. Before specifying a plan, the office may
 2380 seek a recommended plan from the advisory council.

2381 (5)~~(4)~~ After receiving approval of a plan by the office,
 2382 the provider shall submit a progress report monthly to the
 2383 advisory council or the office, or both, in a manner prescribed
 2384 by the office. After 3 months, or at any earlier time deemed
 2385 necessary, the council shall evaluate the progress by the
 2386 provider and shall advise the office of its findings.

2387 (6)~~(5)~~ If ~~Should~~ the office finds ~~find~~ that sufficient
 2388 grounds exist for rehabilitation, liquidation, conservation,
 2389 reorganization, seizure, or summary proceedings of an insurer as
 2390 set forth in ss. 631.051, 631.061, and 631.071, the department
 2391 ~~office~~ may petition for an appropriate court order or may pursue
 2392 such other relief as is afforded in part I of chapter 631.
 2393 Before invoking its powers under part I of chapter 631, the
 2394 department ~~office~~ shall notify the chair of the advisory
 2395 council.

2396 (7) For purposes of s. 631.051, impairment of a provider
 2397 has the same meaning as the term "impaired" in s. 651.011.

2398 (8)~~(6)~~ In the event an order of conservation,
 2399 rehabilitation, liquidation, or ~~conservation, reorganization,~~
 2400 ~~seizure, or summary proceeding~~ has been entered against a

2401 provider, the department and office are vested with all of the
2402 powers and duties they have under ~~the provisions of~~ part I of
2403 chapter 631 in regard to delinquency proceedings of insurance
2404 companies. A provider shall give written notice of the
2405 proceeding to its residents within 3 business days after the
2406 initiation of a delinquency proceeding under chapter 631 and
2407 shall include a notice of the delinquency proceeding in any
2408 written materials provided to prospective residents

2409 ~~(7) If the financial condition of the continuing care~~
2410 ~~facility or provider is such that, if not modified or corrected,~~
2411 ~~its continued operation would result in insolvency, the office~~
2412 ~~may direct the provider to formulate and file with the office a~~
2413 ~~corrective action plan. If the provider fails to submit a plan~~
2414 ~~within 30 days after the office's directive or submits a plan~~
2415 ~~that is insufficient to correct the condition, the office may~~
2416 ~~specify a plan and direct the provider to implement the plan.~~

2417 (9) A provider subject to an order to show cause entered
2418 pursuant to chapter 631 must file its written response to the
2419 order, together with any defenses it may have to the
2420 department's allegations, according to the time periods
2421 specified in s. 631.031(3).

2422 (10) A hearing held pursuant to chapter 631 to determine
2423 whether cause exists for the department to be appointed receiver
2424 must be held in accordance with the time period specified in s.
2425 631.031(4).

2426 (11) (a) ~~(8) (a)~~ The rights of the office described in this
 2427 section are subordinate to the rights of a trustee or lender
 2428 pursuant to the terms of a resolution, ordinance, loan
 2429 agreement, indenture of trust, mortgage, lease, security
 2430 agreement, or other instrument creating or securing bonds or
 2431 notes issued to finance a facility, and the office, subject to
 2432 ~~the provisions of~~ paragraph (c), may ~~shall~~ not exercise its
 2433 remedial rights provided under this section and ss. 651.018,
 2434 651.106, 651.108, and 651.116 with respect to a facility that is
 2435 subject to a lien, mortgage, lease, or other encumbrance or
 2436 trust indenture securing bonds or notes issued in connection
 2437 with the financing of the facility, if the trustee or lender, by
 2438 inclusion or by amendment to the loan documents or by a separate
 2439 contract with the office, agrees that the rights of residents
 2440 under a continuing care or continuing care at-home contract will
 2441 be honored and will not be disturbed by a foreclosure or
 2442 conveyance in lieu thereof as long as the resident:

- 2443 1. Is current in the payment of all monetary obligations
 2444 required by the contract;
- 2445 2. Is in compliance and continues to comply with all
 2446 provisions of the contract; and
- 2447 3. Has asserted no claim inconsistent with the rights of
 2448 the trustee or lender.

2449 (b) This subsection does not require a trustee or lender
 2450 to:

- 2451 1. Continue to engage in the marketing or resale of new
 2452 continuing care or continuing care at-home contracts;
- 2453 2. Pay any rebate of entrance fees as may be required by a
 2454 resident's continuing care or continuing care at-home contract
 2455 as of the date of acquisition of the facility by the trustee or
 2456 lender and until expiration of the period described in paragraph
 2457 (d);
- 2458 3. Be responsible for any act or omission of any owner or
 2459 operator of the facility arising before the acquisition of the
 2460 facility by the trustee or lender; or
- 2461 4. Provide services to the residents to the extent that
 2462 the trustee or lender would be required to advance or expend
 2463 funds that have not been designated or set aside for such
 2464 purposes.
- 2465 (c) If ~~Should~~ the office determines ~~determine~~, at any time
 2466 during the suspension of its remedial rights as provided in
 2467 paragraph (a), that:
- 2468 1. The trustee or lender is not in compliance with
 2469 paragraph (a); ~~or that~~
- 2470 2. A lender or trustee has assigned or has agreed to
 2471 assign all or a portion of a delinquent or defaulted loan to a
 2472 third party without the office's written consent; ~~or~~
- 2473 3. The provider engaged in the misappropriation,
 2474 conversion, or illegal commitment or withdrawal of minimum
 2475 liquid reserve or escrowed funds required under this chapter;

2476 4. The provider refused to be examined by the office
2477 pursuant to s. 651.105(1); or

2478 5. The provider refused to produce any relevant accounts,
2479 records, and files requested as part of an examination,

2480
2481 the office shall notify the trustee or lender in writing of its
2482 determination, setting forth the reasons giving rise to the
2483 determination and specifying those remedial rights afforded to
2484 the office which the office shall then reinstate.

2485 (d) Upon acquisition of a facility by a trustee or lender
2486 and evidence satisfactory to the office that the requirements of
2487 paragraph (a) have been met, the office shall issue a 90-day
2488 temporary certificate of authority granting the trustee or
2489 lender the authority to engage in the business of providing
2490 continuing care or continuing care at-home and to issue
2491 continuing care or continuing care at-home contracts subject to
2492 the office's right to immediately suspend or revoke the
2493 temporary certificate of authority if the office determines that
2494 any of the grounds described in s. 651.106 apply to the trustee
2495 or lender or that the terms of the contract used as the basis
2496 for the issuance of the temporary certificate of authority by
2497 the office have not been or are not being met by the trustee or
2498 lender since the date of acquisition.

2499 Section 30. Section 651.1141, Florida Statutes, is created
2500 to read:

2501 651.1141 Immediate final orders.-

2502 (1) The Legislature finds that the following actions

2503 constitute an imminent and immediate threat to the public

2504 health, safety, and welfare of the residents of this state:

2505 (a) The installation of a general partner of a provider or

2506 assumption of ownership or possession or control of 10 percent

2507 or more of a provider's assets in violation of s. 651.024 or s.

2508 651.0245;

2509 (b) The removal or commitment of 10 percent or more of the

2510 required minimum liquid reserve funds in violation of s.

2511 651.035; or

2512 (c) The assumption of control over a facility's operations

2513 in violation of s. 651.043.

2514 (2) If it finds that a person or entity is engaging or has

2515 engaged in one or more of the above activities, the office may,

2516 pursuant to s. 120.569, issue an immediate final order:

2517 (a) Directing that such person or entity cease and desist

2518 that activity; or

2519 (b) Suspending the certificate of authority of the

2520 facility.

2521 Section 31. Subsection (1) of section 651.121, Florida

2522 Statutes, is amended to read:

2523 651.121 Continuing Care Advisory Council.-

2524 (1) The Continuing Care Advisory Council to the office is

2525 created consisting of 10 members ~~who are residents of this state~~

2526 appointed by the Governor and geographically representative of
 2527 this state. Three members shall be representatives
 2528 ~~administrators~~ of facilities that hold valid certificates of
 2529 authority under this chapter and ~~shall~~ have been actively
 2530 engaged in the offering of continuing care contracts in this
 2531 state for 5 years before appointment. The remaining members
 2532 include:

2533 (a) A representative of the business community whose
 2534 expertise is in the area of management.

2535 (b) A representative of the financial community who is not
 2536 a facility owner or administrator.

2537 (c) A certified public accountant.

2538 ~~(d) An attorney.~~

2539 (d)(e) Four ~~Three~~ residents who hold continuing care or
 2540 continuing care at-home contracts with a facility certified in
 2541 this state.

2542 Section 32. Subsections (1) and (4) of section 651.125,
 2543 Florida Statutes, are amended to read:

2544 651.125 Criminal penalties; injunctive relief.—

2545 (1) Any person who maintains, enters into, or, as manager
 2546 or officer or in any other administrative capacity, assists in
 2547 entering into, maintaining, or performing any continuing care or
 2548 continuing care at-home contract subject to this chapter without
 2549 ~~doing so in pursuance of~~ a valid provisional certificate of
 2550 authority or certificate of authority ~~or renewal thereof~~, as

2551 contemplated by or provided in this chapter, or who otherwise
2552 violates any provision of this chapter or rule adopted in
2553 pursuance of this chapter, commits a felony of the third degree,
2554 punishable as provided in s. 775.082 or s. 775.083. Each
2555 violation of this chapter constitutes a separate offense.

2556 (4) Any action brought by the office against a provider
2557 shall not abate by reason of a sale or other transfer of
2558 ownership of the facility used to provide care, which provider
2559 is a party to the action, except with the express written
2560 consent of the ~~director of the~~ office.

2561 Section 33. Except as otherwise expressly provided in this
2562 act and except for this section, which shall take effect July 1,
2563 2019, this act shall take effect January 1, 2020.