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1
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

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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

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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 report; amending s. 651.0261, F.S.; requiring
57 providers to file quarterly unaudited financial
58 statements; providing an exception for filing a
59 certain quarterly statement; revising information that
60 the office may require providers to file and the
61 circumstances under which such information must be
62 filed; revising the commission's rulemaking authority;
63 amending s. 651.028, F.S.; specifying applicability of
64 certain accreditations of providers or facilities;
65 deleting the authority of the office to waive
66 requirements for accredited facilities; providing that
67 the commission, rather than the office, must make
68 certain findings; amending s. 651.033, F.S.; revising
69 applicability of escrow requirements; revising
70 requirements for escrow accounts and agreements;
71 revising the office's authority to allow a withdrawal
72 of a specified percentage of the required minimum
73 liquid reserve; revising applicability of requirements
74 relating to the deposit of certain funds in escrow
75 accounts; prohibiting an escrow agent, except under

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

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

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

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

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

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

169 651.011 Definitions.—As used in this chapter, the term:

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

174 (2) "Actuarial study" means an analysis prepared for an
 175 individual facility, or consolidated for multiple facilities,

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

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

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

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

200 | (6)~~(3)~~ "Continuing Care Advisory Council" or "advisory

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

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

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

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

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

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

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

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

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226 (b) Operating expenses less depreciation, amortization,
227 and other noncash expenses and nonoperating losses divided by
228 365. Operating expenses, depreciation, amortization, and other
229 noncash expenses and nonoperating losses are each the sum of
230 their respective values over the 12-month period ending on the
231 reporting date.

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

239 (11) "Debt service coverage ratio" means the quotient
240 obtained by dividing the value of paragraph (a) by the value of
241 paragraph (b).

242 (a) The sum of total expenses less interest expense on the
243 debt facility, depreciation, amortization, and other noncash
244 expense and nonoperating losses, subtracted from the sum of
245 total revenues, excluding noncash revenues and nonoperating
246 gains, and gross entrance fees received less earned entrance
247 fees and refunds paid. Expenses, interest expense on the debt
248 facility, depreciation, amortization, and other noncash expense
249 and nonoperating losses, revenues, noncash revenues,
250 nonoperating gains, gross entrance fees, earned entrance fees,

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251 and refunds are each the sum of their respective values over the
252 12-month period ending on the reporting date.

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

259 (12) "Department" means the Department of Financial
260 Services.

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

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

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

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

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

289 (b) Beginning January 1, 2021:

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

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

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

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301 provider is impaired.

302 (16)~~(8)~~ "Insolvency" means the condition in which a ~~the~~
 303 provider is unable to pay its obligations as they come due in
 304 the normal course of business.

305 (17)~~(9)~~ "Licensed" means that a ~~the~~ provider has obtained
 306 a certificate of authority from the office ~~department~~.

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

311 (19)~~(10)~~ "Nursing care" means those services or acts
 312 rendered to a resident by an individual licensed or certified
 313 pursuant to chapter 464.

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

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

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326 (22) ~~(11)~~ "Personal services" has the same meaning as in s.
 327 429.02.

328 (23) ~~(12)~~ "Provider" means the owner or operator, whether a
 329 natural person, partnership or other unincorporated association,
 330 however organized, trust, or corporation, of an institution,
 331 building, residence, or other place, whether operated for profit
 332 or not, which owner or operator provides continuing care or
 333 continuing care at-home for a fixed or variable fee, or for any
 334 other remuneration of any type, whether fixed or variable, for
 335 the period of care, payable in a lump sum or lump sum and
 336 monthly maintenance charges or in installments. The term does
 337 not apply to an entity that has existed and continuously
 338 operated a facility located on at least 63 acres in this state
 339 providing residential lodging to members and their spouses for
 340 at least 66 years on or before July 1, 1989, and has the
 341 residential capacity of 500 persons, is directly or indirectly
 342 owned or operated by a nationally recognized fraternal
 343 organization, is not open to the public, and accepts only its
 344 members and their spouses as residents.

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

350 (25) "Regulatory action level event" means that any two of

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351 the following have occurred:

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

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

374 (c) The occupancy of the provider's facility is less than
375 80 percent averaged over the 12-month period immediately

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376 | preceding the annual report filed with the office pursuant to s.
 377 | 651.026.

378 | (26)-(14) "Resident" means a purchaser of, a nominee of, or
 379 | a subscriber to a continuing care or continuing care at-home
 380 | contract. Such contract does not give the resident a part
 381 | ownership of the facility in which the resident is to reside,
 382 | unless expressly provided in the contract.

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

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

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

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

398 | 651.013 Chapter exclusive; applicability of other laws.—

399 | (2) In addition to other applicable provisions cited in
 400 | this chapter, the office has the authority granted under ss.

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401 624.302, ~~and~~ 624.303, 624.307-624.312, 624.318 ~~624.308-624.312,~~
 402 624.319(1)-(3), 624.320, 624.321 ~~624.320-624.321,~~ 624.324, and
 403 624.34, and 624.422 of the Florida Insurance Code to regulate
 404 providers of continuing care and continuing care at-home.

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

407 651.019 New financing, additional financing, or
 408 refinancing.-

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

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

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

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

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

439 651.021 Certificate of authority required.—

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

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451 | this section.

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

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

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

475 | ~~(c) In determining whether an expansion should be~~

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476 ~~approved, the office shall use the criteria provided in ss.~~
477 ~~651.022(6) and 651.023(4).~~

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

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

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

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

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

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

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

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501 following information:

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

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

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

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

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526 accordance with Actuarial Standards of Practice No. 3 for
527 Continuing Care Retirement Communities, Revised Edition,
528 effective May 1, 2011.

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

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

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

546 (f) A complete audited financial report of the applicant,
547 prepared by an independent certified public accountant in
548 accordance with generally accepted accounting principles, as of
549 the date the applicant commenced business operations or for the
550 fiscal year that ended immediately preceding the date of

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551 application, whichever is later; and complete unaudited
552 quarterly financial statements attested to by the applicant
553 after the date of the last audit.

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

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

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

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

573 (4) Within 45 days after receipt of the information
574 required under subsection (2), the office shall examine the
575 information and notify the applicant in writing, specifically

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

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

599 (6) The office shall issue a certificate of authority upon
 600 determining that the applicant meets all of the requirements of

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601 law and has submitted all of the information required under this
602 section, that all escrow requirements have been satisfied, and
603 that the fees prescribed in s. 651.015(2) have been paid.

604 (7) The issuance of a certificate of authority entitles
605 the applicant to begin construction and collect reservation
606 deposits and entrance fees from prospective residents. The
607 reservation contract must state the cancellation policy and the
608 terms of the continuing care contract. All or any part of an
609 entrance fee or reservation deposit collected must be placed in
610 an escrow account or on deposit with the department pursuant to
611 s. 651.033.

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

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

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

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

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

633
634 Notwithstanding chapter 120, only the provider, the escrow
635 agent, and the office have a substantial interest in any office
636 decision regarding release of escrow funds in any proceedings
637 under chapter 120 or this chapter.

638 (9) The office may not approve any application that
639 includes in the plan of financing any encumbrance of the
640 operating reserves or renewal and replacement reserves required
641 by this chapter.

642 (10) The office may not issue a certificate of authority
643 for a facility that does not have a component that is to be
644 licensed pursuant to part II of chapter 400 or part I of chapter
645 429, or that does not offer personal services or nursing
646 services through written contractual agreement. A written
647 contractual agreement must be disclosed in the contract for
648 continuing care or continuing care at-home and is subject to s.
649 651.1151.

650 Section 7. Subsections (2), (3), (6), and (8) of section

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651 651.022, Florida Statutes, are amended, and subsection (5) of
 652 that section is republished, to read:

653 651.022 Provisional certificate of authority;
 654 application.—

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

658 (a) If the applicant or provider is a corporation, a copy
 659 of the articles of incorporation and bylaws; if the applicant or
 660 provider is a partnership or other unincorporated association, a
 661 copy of the partnership agreement, articles of association, or
 662 other membership agreement; and, if the applicant or provider is
 663 a trust, a copy of the trust agreement or instrument.

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

665 1. The proprietor, if the applicant or provider is an
 666 individual.

667 2. Every partner or member, if the applicant or provider
 668 is a partnership or other unincorporated association, however
 669 organized, having fewer than 50 partners or members, together
 670 with the business name and address of the partnership or other
 671 organization.

672 3. The principal partners or members, if the applicant or
 673 provider is a partnership or other unincorporated association,
 674 however organized, having 50 or more partners or members,
 675 together with the business name and business address of the

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676 | partnership or other organization. If such unincorporated
677 | organization has officers and a board of directors, the full
678 | name and business address of each officer and director may be
679 | set forth in lieu of the full name and business address of its
680 | principal members.

681 | 4. The corporation and each officer and director thereof,
682 | if the applicant or provider is a corporation.

683 | 5. Every trustee and officer, if the applicant or provider
684 | is a trust.

685 | 6. The manager, whether an individual, corporation,
686 | partnership, or association.

687 | 7. Any stockholder holding at least a 10 percent interest
688 | in the operations of the facility in which the care is to be
689 | offered.

690 | 8. Any person whose name is required to be provided in the
691 | application under this paragraph and who owns any interest in or
692 | receives any remuneration from, directly or indirectly, any
693 | professional service firm, association, trust, partnership, or
694 | corporation providing goods, leases, or services to the facility
695 | for which the application is made, with a real or anticipated
696 | value of \$10,000 or more, and the name and address of the
697 | professional service firm, association, trust, partnership, or
698 | corporation in which such interest is held. The applicant shall
699 | describe such goods, leases, or services and the probable cost
700 | to the facility or provider and shall describe why such goods,

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701 leases, or services should not be purchased from an independent
702 entity.

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

706 10. Any affiliated parent or subsidiary corporation or
707 partnership.

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

716 2. Evidence satisfactory to the office of the ability of
717 the applicant to comply with ~~the provisions of~~ this chapter and
718 with rules adopted by the commission pursuant to this chapter.

719 3. A statement of whether a person identified in the
720 application for a provisional certificate of authority or the
721 administrator or manager of the facility, if such person has
722 been designated, or any such person living in the same location:

723 a. Has been convicted of a felony or has pleaded nolo
724 contendere to a felony charge, or has been held liable or has
725 been enjoined in a civil action by final judgment, if the felony

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726 or civil action involved fraud, embezzlement, fraudulent
 727 conversion, or misappropriation of property.

728 b. Is subject to a currently effective injunctive or
 729 restrictive order or federal or state administrative order
 730 relating to business activity or health care as a result of an
 731 action brought by a public agency or department, including,
 732 without limitation, an action affecting a license under chapter
 733 400 or chapter 429.

734
 735 The statement must ~~shall~~ set forth the court or agency, the date
 736 of conviction or judgment, and the penalty imposed or damages
 737 assessed, or the date, nature, and issuer of the order. Before
 738 determining whether a provisional certificate of authority is to
 739 be issued, the office may make an inquiry to determine the
 740 accuracy of the information submitted pursuant to subparagraphs
 741 1., 2., and 3. ~~1. and 2.~~

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

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

750 (f) Such other reasonable data, financial statements, and

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751 | pertinent information as the commission or office may reasonably
 752 | require with respect to the provider or the facility, including
 753 | the most recent audited financial report ~~statements~~ of
 754 | comparable facilities currently or previously owned, managed, or
 755 | developed by the applicant or its principal, to assist in
 756 | determining the financial viability of the project and the
 757 | management capabilities of its managers and owners.

758 | (g) The forms of the residency contracts, reservation
 759 | contracts, escrow agreements, and wait list contracts, if
 760 | applicable, which are proposed to be used by the provider in the
 761 | furnishing of care. The office shall approve contracts and
 762 | escrow agreements that comply with ss. 651.023(1)(c), 651.033,
 763 | 651.055, and 651.057. Thereafter, no other form of contract or
 764 | agreement may be used by the provider until it has been
 765 | submitted to the office and approved.

766 |
 767 | If any material change occurs in the facts set forth in an
 768 | application filed with the office pursuant to this subsection,
 769 | an amendment setting forth such change must be filed with the
 770 | office within 10 business days after the applicant becomes aware
 771 | of such change, and a copy of the amendment must be sent by
 772 | registered mail to the principal office of the facility and to
 773 | the principal office of the controlling company.

774 | (3) In addition to the information required in subsection
 775 | (2), an applicant for a provisional certificate of authority

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776 shall submit a ~~market~~ feasibility study with appropriate
 777 financial, marketing, and actuarial assumptions for the first 5
 778 years of operations. The ~~market~~ feasibility study must ~~shall~~
 779 include at least the following information:

780 (a) A description of the proposed facility, including the
 781 location, size, anticipated completion date, and the proposed
 782 construction program.

783 (b) An identification and evaluation of the primary and,
 784 if appropriate, the secondary market areas of the facility and
 785 the projected unit sales per month.

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

790 (d) Projected expenses, including staffing requirements
 791 and salaries; cost of property, plant, and equipment, including
 792 depreciation expense; interest expense; marketing expense; and
 793 other operating expenses.

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

796 (f) Expectations of the financial condition of the
 797 project, including the projected cash flow, and a projected
 798 ~~balance sheet~~ and an estimate of the funds anticipated to be
 799 necessary to cover startup losses.

800 (g) The inflation factor, if any, assumed in the

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801 feasibility study for the proposed facility and how and where it
 802 is applied.

803 (h) Project costs and the total amount of debt financing
 804 required, marketing projections, resident fees and charges, the
 805 competition, resident contract provisions, and other factors
 806 that ~~which~~ affect the feasibility of the facility.

807 (i) Appropriate population projections, including
 808 morbidity and mortality assumptions.

809 (j) The name of the person who prepared the feasibility
 810 study and the experience of such person in preparing similar
 811 studies or otherwise consulting in the field of continuing care.
 812 The preparer of the feasibility study may be the provider or a
 813 contracted third party.

814 (k) Any other information that the applicant deems
 815 relevant and appropriate to enable the office to make a more
 816 informed determination.

817 (5) (a) Within 30 days after receipt of an application for
 818 a provisional certificate of authority, the office shall examine
 819 the application and shall notify the applicant in writing,
 820 specifically setting forth and specifically requesting any
 821 additional information the office is permitted by law to
 822 require. If the application submitted is determined by the
 823 office to be substantially incomplete so as to require
 824 substantial additional information, including biographical
 825 information, the office may return the application to the

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826 applicant with a written notice that the application as received
827 is substantially incomplete and, therefore, unacceptable for
828 filing without further action required by the office. Any filing
829 fee received shall be refunded to the applicant.

830 (b) Within 15 days after receipt of all of the requested
831 additional information, the office shall notify the applicant in
832 writing that all of the requested information has been received
833 and the application is deemed to be complete as of the date of
834 the notice. Failure to so notify the applicant in writing within
835 the 15-day period shall constitute acknowledgment by the office
836 that it has received all requested additional information, and
837 the application shall be deemed to be complete for purposes of
838 review upon the date of the filing of all of the requested
839 additional information.

840 (6) Within 45 days after the date an application is deemed
841 complete as set forth in paragraph (5) (b), the office shall
842 complete its review and issue a provisional certificate of
843 authority to the applicant based upon its review and a
844 determination that the application meets all requirements of
845 law, that the feasibility study was based on sufficient data and
846 reasonable assumptions, and that the applicant will be able to
847 provide continuing care or continuing care at-home as proposed
848 and meet all financial and contractual obligations related to
849 its operations, including the financial requirements of this
850 chapter. If the application is denied, the office shall notify

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851 the applicant in writing, citing the specific failures to meet
 852 the provisions of this chapter. Such denial entitles the
 853 applicant to a hearing pursuant to chapter 120.

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

858 Section 8. Subsection (1) and subsections (4) through (9)
 859 of section 651.023, Florida Statutes, are amended, and
 860 subsection (2) of that section is republished, to read:

861 651.023 Certificate of authority; application.-

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

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

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

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876 adopted by the Actuarial Standards Board.

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

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

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

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901 Academy of Actuaries.

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

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

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

923 (f) Documents evidencing Proof that the aggregate amount
924 of entrance fees received by or pledged to the applicant, plus
925 anticipated proceeds from any long-term financing commitment,

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926 | plus funds from all other sources in the actual possession of
 927 | the applicant, equal at least 100 percent of the aggregate cost
 928 | of constructing or purchasing, equipping, and furnishing the
 929 | facility plus 100 percent of the anticipated startup losses of
 930 | the facility.

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

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

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

947 |
 948 | If any material change occurs in the facts set forth in an
 949 | application filed with the office pursuant to this subsection,
 950 | an amendment setting forth such change must be filed with the

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951 office within 10 business days after the applicant becomes aware
952 of such change, and a copy of the amendment must be sent by
953 registered mail to the principal office of the facility and to
954 the principal office of the controlling company.

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

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

974 (a) ~~A Notwithstanding satisfaction of the 30-percent~~
975 ~~minimum reservation requirement of paragraph (1)(c), no~~

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976 certificate of authority may not ~~shall~~ be issued until
 977 documentation evidencing that the project has a minimum of 50
 978 percent of the units reserved for which the provider is charging
 979 an entrance fee, ~~and proof~~ is provided to the office. If a
 980 provider offering continuing care at-home is applying for a
 981 certificate of authority ~~or approval of an expansion pursuant to~~
 982 ~~s. 651.021(2)~~, the same minimum reservation requirements must be
 983 met for the continuing care and continuing care at-home
 984 contracts, independently of each other.

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

998 (5) Up to 25 percent of the moneys paid for all or any
 999 part of an initial entrance fee may be included or pledged for
 1000 the construction or purchase of the facility or as security for

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1001 long-term financing. As used in this section, the term "initial
 1002 entrance fee" means the total entrance fee charged by the
 1003 facility to the first occupant of a unit.

1004 ~~(a)~~ A minimum of 75 percent of the moneys paid for all or
 1005 any part of an initial entrance fee collected for continuing
 1006 care or continuing care at-home must ~~shall~~ be placed in an
 1007 escrow account or on deposit with the department as prescribed
 1008 in s. 651.033.

1009 ~~(b) For an expansion as provided in s. 651.021(2), a~~
 1010 ~~minimum of 75 percent of the moneys paid for all or any part of~~
 1011 ~~an initial entrance fee collected for continuing care and 50~~
 1012 ~~percent of the moneys paid for all or any part of an initial fee~~
 1013 ~~collected for continuing care at-home shall be placed in an~~
 1014 ~~escrow account or on deposit with the department as prescribed~~
 1015 ~~in s. 651.033.~~

1016 (6) The provider is entitled to secure release of the
 1017 moneys held in escrow within 7 days after receipt by the office
 1018 of an affidavit from the provider, along with appropriate copies
 1019 to verify, and notification to the escrow agent by certified
 1020 mail, that the following conditions have been satisfied:

1021 (a) A certificate of occupancy has been issued.

1022 (b) Payment in full has been received for at least 70
 1023 percent of the total units of a phase or of the total of the
 1024 combined phases constructed. If a provider offering continuing
 1025 care at-home is applying for a release of escrowed entrance

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1026 fees, the same minimum requirement must be met for the
1027 continuing care and continuing care at-home contracts,
1028 independently of each other.

1029 ~~(c) The consultant who prepared the feasibility study~~
1030 ~~required by this section or a substitute approved by the office~~
1031 ~~certifies within 12 months before the date of filing for office~~
1032 ~~approval that there has been no material adverse change in~~
1033 ~~status with regard to the feasibility study. If a material~~
1034 ~~adverse change exists at the time of submission, sufficient~~
1035 ~~information acceptable to the office and the feasibility~~
1036 ~~consultant must be submitted which remedies the adverse~~
1037 ~~condition.~~

1038 (c) ~~(d)~~ Documents evidencing Proof that commitments have
1039 been secured or a documented plan adopted by the applicant has
1040 been approved by the office for long-term financing.

1041 (d) ~~(e)~~ Documents evidencing Proof that the provider has
1042 sufficient funds to meet the requirements of s. 651.035, which
1043 may include funds deposited in the initial entrance fee account.

1044 (e) ~~(f)~~ Documents evidencing Proof as to the intended
1045 application of the proceeds upon release and documentation proof
1046 that the entrance fees when released will be applied as
1047 represented to the office.

1048 (f) If any material change occurred in the facts set forth
1049 in the application filed with the office pursuant to subsection
1050 (1), the applicant timely filed the amendment setting forth such

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1051 change with the office and sent copies of the amendment to the
 1052 principal office of the facility and to the principal office of
 1053 the controlling company as required under that subsection.

1054
 1055 Notwithstanding chapter 120, no person, other than the provider,
 1056 the escrow agent, and the office, may have a substantial
 1057 interest in any office decision regarding release of escrow
 1058 funds in any proceedings under chapter 120 or this chapter
 1059 regarding release of escrow funds.

1060 (7) In lieu of the provider fulfilling the requirements in
 1061 subsection (5) and paragraphs (6) (b) and (c) ~~(d)~~, the office may
 1062 authorize the release of escrowed funds to retire all
 1063 outstanding debts on the facility and equipment upon application
 1064 of the provider and upon the provider's showing that the
 1065 provider will grant to the residents a first mortgage on the
 1066 land, buildings, and equipment that constitute the facility, and
 1067 that the provider has satisfied paragraphs (6) (a) ~~(c)~~ and (d)
 1068 ~~(e)~~. Such mortgage shall secure the refund of the entrance fee
 1069 in the amount required by this chapter. The granting of such
 1070 mortgage is subject to the following:

1071 (a) The first mortgage is granted to an independent trust
 1072 that is beneficially held by the residents. The document
 1073 creating the trust must include a provision that agrees to an
 1074 annual audit and will furnish to the office all information the
 1075 office may reasonably require. The mortgage may secure payment

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1076 on bonds issued to the residents or trustee. Such bonds are
1077 redeemable after termination of the residency contract in the
1078 amount and manner required by this chapter for the refund of an
1079 entrance fee.

1080 (b) Before granting a first mortgage to the residents, all
1081 construction must be substantially completed and substantially
1082 all equipment must be purchased. No part of the entrance fees
1083 may be pledged as security for a construction loan or otherwise
1084 used for construction expenses before the completion of
1085 construction.

1086 (c) If the provider is leasing the land or buildings used
1087 by the facility, the leasehold interest must be for a term of at
1088 least 30 years.

1089 (8) ~~The timeframes provided under s. 651.022(5) and (6)~~
1090 ~~apply to applications submitted under s. 651.021(2).~~ The office
1091 may not issue a certificate of authority to a facility that does
1092 not have a component that is to be licensed pursuant to part II
1093 of chapter 400 or to part I of chapter 429 or that does not
1094 offer personal services or nursing services through written
1095 contractual agreement. A written contractual agreement must be
1096 disclosed in the contract for continuing care or continuing care
1097 at-home and is subject to ~~the provisions of~~ s. 651.1151,
1098 relating to administrative, vendor, and management contracts.

1099 (9) The office may not approve an application that
1100 includes in the plan of financing any encumbrance of the

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1101 | operating reserves or renewal and replacement reserves required
 1102 | by this chapter.

1103 | Section 9. Section 651.024, Florida Statutes, is amended
 1104 | to read:

1105 | 651.024 Acquisition.—

1106 | (1) A person who seeks to assume the role of general
 1107 | partner of a provider or to otherwise assume ownership or
 1108 | possession of, or control over, 10 percent or more of a
 1109 | provider, a controlling company of the provider, or a provider's
 1110 | assets, based on the balance sheet from the most recent
 1111 | financial audit report filed with the office, is ~~issued a~~
 1112 | certificate of authority to operate a continuing care facility
 1113 | or a provisional certificate of authority shall be subject to
 1114 | the provisions of s. 628.4615 and is not required to make
 1115 | filings pursuant to s. 651.022, s. 651.023, or s. 651.0245.

1116 | (2) A person who seeks to acquire and become the provider
 1117 | for a facility is subject to s. 651.0245 and is not required to
 1118 | make filings pursuant to ss. 628.4615, 651.022, and 651.023.

1119 | (3) In addition to the provider or the controlling
 1120 | company, the office has standing to petition a circuit court
 1121 | under s. 628.4615(9).

1122 | Section 10. Section 651.0245, Florida Statutes, is created
 1123 | to read:

1124 | 651.0245 Application for the simultaneous acquisition of a
 1125 | facility and issuance of a certificate of authority.—

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1126 (1) Except with the prior written approval of the office,
1127 a person may not, individually or in conjunction with any
1128 affiliated person of such person, directly or indirectly acquire
1129 a facility operating under a subsisting certificate of authority
1130 and engage in the business of providing continuing care.

1131 (2) An applicant seeking simultaneous acquisition of a
1132 facility and issuance of a certificate of authority must:

1133 (a) Comply with the notice requirements of s.
1134 628.4615(2) (a); and

1135 (b) File an application in the form required by the office
1136 and cooperate with the office's review of the application.

1137 (3) The commission shall adopt by rule application
1138 requirements equivalent to those described in ss. 628.4615(4)
1139 and (5), 651.022(2), and 651.023(1) (b). The office shall review
1140 the application and issue an approval or disapproval of the
1141 filing in accordance with ss. 628.4615(6) (a) and (c), (7)-(10),
1142 and (14); and 651.023(1) (b).

1143 (4) In addition to the provider or the controlling
1144 company, the office has standing to petition a circuit court
1145 under s. 628.4615(9).

1146 (5) A person may rebut a presumption of control by filing
1147 a disclaimer of control with the office on a form prescribed by
1148 the commission. The disclaimer must fully disclose all material
1149 relationships and bases for affiliation between the person and
1150 the provider or facility, as well as the basis for disclaiming

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1151 the affiliation. In lieu of such form, a person or acquiring
 1152 party may file with the office a copy of a Schedule 13G filed
 1153 with the Securities and Exchange Commission pursuant to Rule
 1154 13d-1(b) or (c), 17 C.F.R. s. 240.13d-1, under the Securities
 1155 Exchange Act of 1934, as amended. After a disclaimer has been
 1156 filed, the provider or facility is relieved of any duty to
 1157 register or report under this section which may arise out of the
 1158 provider's or facility's relationship with the person, unless
 1159 the office disallows the disclaimer.

1160 (6) The commission may adopt rules as necessary to
 1161 administer this section.

1162 Section 11. Section 651.0246, Florida Statutes, is created
 1163 to read:

1164 651.0246 Expansions.—

1165 (1) (a) A provider must obtain written approval from the
 1166 office before commencing construction or marketing for an
 1167 expansion of a certificated facility equivalent to the addition
 1168 of at least 20 percent of existing units or 20 percent or more
 1169 of the number of continuing care at-home contracts. If the
 1170 provider has exceeded the current statewide median for days cash
 1171 on hand, debt service coverage ratio, and total facility
 1172 occupancy for the most recent two consecutive annual reporting
 1173 periods, the provider is automatically granted approval to
 1174 expand the total number of existing units by up to 35 percent
 1175 upon submitting a letter to the office indicating the total

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1176 | number of planned units in the expansion, the proposed sources
 1177 | and uses of funds, and an attestation that the provider
 1178 | understands and pledges to comply with all minimum liquid
 1179 | reserve and escrow account requirements. As used in this
 1180 | section, the term "existing units" means the sum of the total
 1181 | number of independent living units and assisted living units
 1182 | identified in the most recent annual report filed with the
 1183 | office pursuant to s. 651.026. For purposes of this section, the
 1184 | statewide median for days cash on hand, debt service coverage
 1185 | ratio, and total facility occupancy is the median calculated in
 1186 | the most recent annual report submitted by the office to the
 1187 | Continuing Care Advisory Council pursuant to s. 651.121(8). This
 1188 | section does not apply to construction for which a certificate
 1189 | of need from the Agency for Health Care Administration is
 1190 | required.

1191 | (b) The application for the approval of an addition
 1192 | consisting of 20 percent or more of existing units or continuing
 1193 | care at-home contracts must be on forms adopted by the
 1194 | commission. The application must include the feasibility study
 1195 | required by this section and such other information as
 1196 | reasonably requested by the office. If the expansion is only for
 1197 | continuing care at-home contracts, an actuarial study prepared
 1198 | by an independent actuary in accordance with standards adopted
 1199 | by the American Academy of Actuaries which presents the
 1200 | financial impact of the expansion may be substituted for the

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1201 feasibility study.

1202 (c) In determining whether an expansion should be
 1203 approved, the office shall consider:

1204 1. Whether the application meets all requirements of law;

1205 2. Whether the feasibility study was based on sufficient
 1206 data and reasonable assumptions; and

1207 3. Whether the applicant will be able to provide
 1208 continuing care or continuing care at-home as proposed and meet
 1209 all financial obligations related to its operations, including
 1210 the financial requirements of this chapter.

1211
 1212 If the application is denied, the office must notify the
 1213 applicant in writing, citing the specific failures to meet the
 1214 provisions of this chapter. A denial entitles the applicant to a
 1215 hearing pursuant to chapter 120.

1216 (2) A provider applying for expansion of a certificated
 1217 facility must submit all of the following:

1218 (a) A feasibility study prepared by an independent
 1219 certified public accountant. The feasibility study must include
 1220 at least the following information:

1221 1. A description of the facility and proposed expansion,
 1222 including the location, the size, the anticipated completion
 1223 date, and the proposed construction program.

1224 2. An identification and evaluation of the primary and, if
 1225 applicable, secondary market areas of the facility and the

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1226 | projected unit sales per month.

1227 | 3. Projected revenues, including anticipated entrance

1228 | fees; monthly service fees; nursing care revenues, if

1229 | applicable; and all other sources of revenue.

1230 | 4. Projected expenses, including for staffing requirements

1231 | and salaries; the cost of property, plant, and equipment,

1232 | including depreciation expense; interest expense; marketing

1233 | expense; and other operating expenses.

1234 | 5. A projected balance sheet of the applicant.

1235 | 6. The expectations for the financial condition of the

1236 | project, including the projected cash flow and an estimate of

1237 | the funds anticipated to be necessary to cover startup losses.

1238 | 7. The inflation factor, if any, assumed in the study for

1239 | the proposed expansion and how and where it is applied.

1240 | 8. Project costs; the total amount of debt financing

1241 | required; marketing projections; resident rates, fees, and

1242 | charges; the competition; resident contract provisions; and

1243 | other factors that affect the feasibility of the facility.

1244 | 9. Appropriate population projections, including morbidity

1245 | and mortality assumptions.

1246 | 10. The name of the person who prepared the feasibility

1247 | study and his or her experience in preparing similar studies or

1248 | otherwise consulting in the field of continuing care.

1249 | 11. Financial forecasts or projections prepared in

1250 | accordance with standards adopted by the American Institute of

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1251 Certified Public Accountants or in accordance with standards for
 1252 feasibility studies for continuing care retirement communities
 1253 adopted by the Actuarial Standards Board.

1254 12. An independent evaluation and examination opinion for
 1255 the first 5 years of operations, or a comparable opinion
 1256 acceptable to the office, by the consultant who prepared the
 1257 study, of the underlying assumptions used as a basis for the
 1258 forecasts or projections in the study and that the assumptions
 1259 are reasonable and proper and the project as proposed is
 1260 feasible.

1261 13. Any other information that the provider deems relevant
 1262 and appropriate to provide to enable the office to make a more
 1263 informed determination.

1264 (b) Such other reasonable data, financial statements, and
 1265 pertinent information as the commission or office may require
 1266 with respect to the applicant or the facility to determine the
 1267 financial status of the facility and the management capabilities
 1268 of its managers and owners.

1269
 1270 If any material change occurs in the facts set forth in an
 1271 application filed with the office pursuant to this section, an
 1272 amendment setting forth such change must be filed with the
 1273 office within 10 business days after the applicant becomes aware
 1274 of such change, and a copy of the amendment must be sent by
 1275 registered mail to the principal office of the facility and to

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1276 the principal office of the controlling company.

1277 (3) A minimum of 75 percent of the moneys paid for all or

1278 any part of an initial entrance fee or reservation deposit

1279 collected for units in the expansion and 50 percent of the

1280 moneys paid for all or any part of an initial fee collected for

1281 continuing care at-home contracts in the expansion must be

1282 placed in an escrow account or on deposit with the department as

1283 prescribed in s. 651.033. Up to 25 percent of the moneys paid

1284 for all or any part of an initial entrance fee or reservation

1285 deposit may be included or pledged for the construction or

1286 purchase of the facility or as security for long-term financing.

1287 As used in this section, the term "initial entrance fee" means

1288 the total entrance fee charged by the facility to the first

1289 occupant of a unit.

1290 (4) The provider is entitled to secure release of the

1291 moneys held in escrow within 7 days after receipt by the office

1292 of an affidavit from the provider, along with appropriate copies

1293 to verify, and notification to the escrow agent by certified

1294 mail that the following conditions have been satisfied:

1295 (a) A certificate of occupancy has been issued.

1296 (b) Payment in full has been received for at least 50

1297 percent of the total units of a phase or of the total of the

1298 combined phases constructed. If a provider offering continuing

1299 care at-home is applying for a release of escrowed entrance

1300 fees, the same minimum requirement must be met for the

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1301 continuing care and continuing care at-home contracts
1302 independently of each other.

1303 (c) Documents evidencing that commitments have been
1304 secured or that a documented plan adopted by the applicant has
1305 been approved by the office for long-term financing.

1306 (d) Documents evidencing that the provider has sufficient
1307 funds to meet the requirements of s. 651.035, which may include
1308 funds deposited in the initial entrance fee account.

1309 (e) Documents evidencing the intended application of the
1310 proceeds upon release and documentation that the entrance fees,
1311 when released, will be applied as represented to the office.

1312
1313 Notwithstanding chapter 120, only the provider, the escrow
1314 agent, and the office have a substantial interest in any office
1315 decision regarding release of escrow funds in any proceedings
1316 under chapter 120 or this chapter.

1317 (5) (a) Within 30 days after receipt of an application for
1318 expansion, the office shall examine the application and shall
1319 notify the applicant in writing, specifically requesting any
1320 additional information that the office is authorized to require.
1321 Within 15 days after the office receives all the requested
1322 additional information, the office shall notify the applicant in
1323 writing that the requested information has been received and
1324 that the application is deemed complete as of the date of the
1325 notice. Failure to notify the applicant in writing within the

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1326 15-day period constitutes acknowledgment by the office that it
 1327 has received all requested additional information, and the
 1328 application is deemed complete for purposes of review on the
 1329 date the applicant files all of the required additional
 1330 information. If the application submitted is determined by the
 1331 office to be substantially incomplete so as to require
 1332 substantial additional information, including biographical
 1333 information, the office may return the application to the
 1334 applicant with a written notice stating that the application as
 1335 received is substantially incomplete and, therefore, is
 1336 unacceptable for filing without further action required by the
 1337 office. Any filing fee received must be refunded to the
 1338 applicant.

1339 (b) An application is deemed complete upon the office
 1340 receiving all requested information and the applicant correcting
 1341 any error or omission of which the applicant was timely notified
 1342 or when the time for such notification has expired. The office
 1343 shall notify the applicant in writing of the date on which the
 1344 application was deemed complete.

1345 (6) Within 45 days after the date on which an application
 1346 is deemed complete as provided in paragraph (5) (b), the office
 1347 shall complete its review and, based upon its review, approve an
 1348 expansion by the applicant and issue a determination that the
 1349 application meets all requirements of law, that the feasibility
 1350 study was based on sufficient data and reasonable assumptions,

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1351 and that the applicant will be able to provide continuing care
 1352 or continuing care at-home as proposed and meet all financial
 1353 and contractual obligations related to its operations, including
 1354 the financial requirements of this chapter. If the application
 1355 is denied, the office must notify the applicant in writing,
 1356 citing the specific failures to meet the requirements of this
 1357 chapter. The denial entitles the applicant to a hearing pursuant
 1358 to chapter 120.

1359 Section 12. Paragraphs (b) and (c) of subsection (2) and
 1360 subsection (3) of section 651.026, Florida Statutes, are
 1361 amended, subsection (10) is added to that section, and paragraph
 1362 (a) of subsection (2) of that section is republished, to read:

1363 651.026 Annual reports.—

1364 (2) The annual report shall be in such form as the
 1365 commission prescribes and shall contain at least the following:

1366 (a) Any change in status with respect to the information
 1367 required to be filed under s. 651.022(2).

1368 (b) A financial report ~~statements~~ audited by an
 1369 independent certified public accountant which must contain, for
 1370 two or more periods if the facility has been in existence that
 1371 long, all of the following:

1372 1. An accountant's opinion and, in accordance with
 1373 generally accepted accounting principles:

1374 a. A balance sheet;

1375 b. A statement of income and expenses;

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1376 c. A statement of equity or fund balances; and
 1377 d. A statement of changes in cash flows.
 1378 2. Notes to the financial report ~~statements~~ considered
 1379 customary or necessary for full disclosure or adequate
 1380 understanding of the financial report ~~statements~~, financial
 1381 condition, and operation.
 1382 (c) The following financial information:
 1383 1. A detailed listing of the assets maintained in the
 1384 liquid reserve as required under s. 651.035 and in accordance
 1385 with part II of chapter 625;
 1386 2. A schedule giving additional information relating to
 1387 property, plant, and equipment having an original cost of at
 1388 least \$25,000, so as to show in reasonable detail with respect
 1389 to each separate facility original costs, accumulated
 1390 depreciation, net book value, appraised value or insurable value
 1391 and date thereof, insurance coverage, encumbrances, and net
 1392 equity of appraised or insured value over encumbrances. Any
 1393 property not used in continuing care must be shown separately
 1394 from property used in continuing care;
 1395 3. The level of participation in Medicare or Medicaid
 1396 programs, or both;
 1397 4. A statement of all fees required of residents,
 1398 including, but not limited to, a statement of the entrance fee
 1399 charged, the monthly service charges, the proposed application
 1400 of the proceeds of the entrance fee by the provider, and the

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1401 plan by which the amount of the entrance fee is determined if
 1402 the entrance fee is not the same in all cases; ~~and~~

1403 5. Any change or increase in fees if the provider changes
 1404 the scope of, or the rates for, care or services, regardless of
 1405 whether the change involves the basic rate or only those
 1406 services available at additional costs to the resident; ~~;~~

1407 6. If the provider has more than one certificated
 1408 facility, or has operations that are not licensed under this
 1409 chapter, it shall submit a balance sheet, statement of income
 1410 and expenses, statement of equity or fund balances, and
 1411 statement of cash flows for each facility licensed under this
 1412 chapter as supplemental information to the audited financial
 1413 report ~~statements~~ required under paragraph (b); ~~and~~.

1414 7. The management's calculation of the provider's debt
 1415 service coverage ratio, occupancy, and days cash on hand for the
 1416 current reporting period.

1417 (3) The commission shall adopt by rule additional
 1418 ~~meaningful~~ measures of assessing the financial viability of a
 1419 provider. ~~The rule may include the following factors:~~

- 1420 ~~(a) Debt service coverage ratios.~~
- 1421 ~~(b) Current ratios.~~
- 1422 ~~(c) Adjusted current ratios.~~
- 1423 ~~(d) Cash flows.~~
- 1424 ~~(e) Occupancy rates.~~
- 1425 ~~(f) Other measures, ratios, or trends.~~

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1426 ~~(g) Other factors as may be appropriate.~~
 1427 (10) By August 1 of each year, the office shall publish on
 1428 its website an annual industry report for the preceding calendar
 1429 year which contains all of the following:
 1430 (a) The median days cash on hand for all providers.
 1431 (b) The median debt service coverage ratio for all
 1432 providers.
 1433 (c) The median occupancy rate for all providers by
 1434 setting, including independent living, assisted living, skilled
 1435 nursing, and the entire facility.
 1436 (d) Documentation of the office's compliance with the
 1437 requirements in s. 651.105(1) relating to examination
 1438 timeframes. The documentation must include the number of
 1439 examinations completed in the preceding calendar year, the
 1440 number of such examinations for which the report has been
 1441 issued, and the percentage of all examinations completed within
 1442 the statutorily required timeframes.
 1443 (e) The number of annual reports submitted to the office
 1444 pursuant to this section in the preceding calendar year and the
 1445 percentage of such reports that the office has reviewed in order
 1446 to determine whether a regulatory action level event has
 1447 occurred.
 1448 Section 13. Section 651.0261, Florida Statutes, is amended
 1449 to read:
 1450 651.0261 Quarterly and monthly statements.-

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1451 (1) Within 45 days after the end of each fiscal quarter,
 1452 each provider shall file a quarterly unaudited financial
 1453 statement of the provider or of the facility in the form
 1454 prescribed by commission rule and days cash on hand, occupancy,
 1455 debt service coverage ratio, and a detailed listing of the
 1456 assets maintained in the liquid reserve as required under s.
 1457 651.035. The last quarterly statement for a fiscal year is not
 1458 required if a provider does not have pending a regulatory action
 1459 level event, impairment, or a corrective action plan. If a
 1460 provider falls below two or more of the thresholds set forth in
 1461 s. 651.011(25) at the end of any fiscal quarter, the provider
 1462 shall submit to the office, at the same time as the quarterly
 1463 statement, an explanation of the circumstances and a description
 1464 of the actions it will take to meet the requirements.

1465 (2) If the office finds, ~~pursuant to rules of the~~
 1466 ~~commission,~~ that such information is needed to properly monitor
 1467 the financial condition of a provider or facility or is
 1468 otherwise needed to protect the public interest, the office may
 1469 require the provider to file:

1470 (a) Within 25 days after the end of each month, a monthly
 1471 unaudited financial statement of the provider or of the facility
 1472 in the form prescribed by the commission by rule and a detailed
 1473 listing of the assets maintained in the liquid reserve as
 1474 required under s. 651.035, ~~within 45 days after the end of each~~
 1475 ~~fiscal quarter, a quarterly unaudited financial statement of the~~

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

1482 (b) Such other data, financial statements, and pertinent
1483 information as the commission or office may reasonably require
1484 with respect to the provider or the facility, its directors, or
1485 its trustees; or with respect to any parent, subsidiary, or
1486 affiliate, if the provider or facility relies on a contractual
1487 or financial relationship with such parent, subsidiary, or
1488 affiliate in order to meet the financial requirements of this
1489 chapter, to determine the financial status of the provider or of
1490 the facility and the management capabilities of its managers and
1491 owners.

1492 (3) A filing under subsection (2) may be required if any
1493 of the following applies:

1494 (a) The provider is:

1495 1. Subject to administrative supervision proceedings;

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

1500 3. Subject to delinquency or receivership proceedings or

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1501 has filed for bankruptcy.

1502 (b) The provider or facility displays a declining
 1503 financial position.

1504 (c) A change of ownership of the provider or facility has
 1505 occurred within the previous 2 years.

1506 (d) The provider is found to be impaired.

1507 (4) The commission may by rule require all or part of the
 1508 statements or filings required under this section to be
 1509 submitted by electronic means in a computer-readable format
 1510 compatible with an electronic data format specified by the
 1511 commission.

1512 Section 14. Section 651.028, Florida Statutes, is amended
 1513 to read:

1514 651.028 Accredited facilities.—~~If~~ A provider or facility
 1515 is deemed accredited for purposes of ss. 400.235(5)(b)1 and
 1516 651.105(1) if it is accredited without stipulations or
 1517 conditions by a process found by the commission office to be
 1518 acceptable, and substantially equivalent to the provisions of
 1519 this chapter, and consistent the office may, pursuant to rule of
 1520 the commission, waive any requirements of this chapter with
 1521 respect to the provider if the office finds that such waivers
 1522 are not inconsistent with the security protections intended by
 1523 this chapter.

1524 Section 15. Subsections (1), (2), (3), and (5) of section
 1525 651.033, Florida Statutes, are amended, and subsection (6) is

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1526 added to that section, to read:

1527 651.033 Escrow accounts.—

1528 (1) When funds are required to be deposited in an escrow
 1529 account pursuant to s. 651.0215, s. 651.022, s. 651.023, s.
 1530 651.0246, s. 651.035, or s. 651.055:

1531 (a) The escrow account must ~~shall~~ be established in a
 1532 Florida bank, Florida savings and loan association, ~~or~~ Florida
 1533 trust company, or a national bank that is chartered and
 1534 supervised by the Office of the Comptroller of the Currency
 1535 within the United States Department of the Treasury and that has
 1536 a branch in this state, which is acceptable to the office, or
 1537 such funds must be deposited ~~on deposit~~ with the department; and
 1538 ~~the funds deposited therein shall~~ be kept and maintained in an
 1539 account separate and apart from the provider's business
 1540 accounts.

1541 (b) An escrow agreement shall be entered into between the
 1542 bank, savings and loan association, or trust company and the
 1543 provider of the facility; the agreement shall state that its
 1544 purpose is to protect the resident or the prospective resident;
 1545 and, upon presentation of evidence of compliance with applicable
 1546 portions of this chapter, or upon order of a court of competent
 1547 jurisdiction, the escrow agent shall release and pay over the
 1548 funds, or portions thereof, together with any interest accrued
 1549 thereon or earned from investment of the funds, to the provider
 1550 or resident as directed.

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1551 (c) Any agreement establishing an escrow account required
 1552 under ~~the provisions of this chapter~~ is ~~shall be~~ subject to
 1553 approval by the office. The agreement must ~~shall~~ be in writing
 1554 and ~~shall~~ contain, in addition to any other provisions required
 1555 by law, a provision whereby the escrow agent agrees to abide by
 1556 the duties imposed by paragraphs (b) and (e), (3)(a), (3)(b),
 1557 and (5)(a) and subsection (6) under this section.

1558 (d) All funds deposited in an escrow account, if invested,
 1559 shall be invested as set forth in part II of chapter 625;
 1560 however, such investment may not diminish the funds held in
 1561 escrow below the amount required by this chapter. Funds
 1562 deposited in an escrow account are not subject to charges by the
 1563 escrow agent except escrow agent fees associated with
 1564 administering the accounts, or subject to any liens, judgments,
 1565 garnishments, creditor's claims, or other encumbrances against
 1566 the provider or facility except as provided in s. 651.035(1).

1567 (e) At the request of either the provider or the office,
 1568 the escrow agent shall issue a statement indicating the status
 1569 of the escrow account.

1570 (2) Notwithstanding s. 651.035(7), ~~In addition, the escrow~~
 1571 ~~agreement shall provide that the escrow agent or another person~~
 1572 ~~designated to act in the escrow agent's place and the provider,~~
 1573 ~~except as otherwise provided in s. 651.035, shall notify the~~
 1574 ~~office in writing at least 10 days before the withdrawal of any~~
 1575 ~~portion of any funds required to be escrowed under the~~

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1576 ~~provisions of s. 651.035. However,~~ in the event of an emergency
 1577 and upon petition by the provider, the office may ~~waive the 10-~~
 1578 ~~day notification period and~~ allow a withdrawal of up to 10
 1579 percent of the required minimum liquid reserve. The office shall
 1580 have 3 working days to deny the petition for the emergency 10-
 1581 percent withdrawal. If the office fails to deny the petition
 1582 within 3 working days, the petition is ~~shall be~~ deemed to have
 1583 been granted by the office. For purposes ~~the purpose~~ of this
 1584 section, the term "working day" means each day that is not a
 1585 Saturday, Sunday, or legal holiday as defined by Florida law.
 1586 Also, for purposes ~~the purpose~~ of this section, the day the
 1587 petition is received by the office is ~~shall~~ not be counted as
 1588 one of the 3 days.

1589 (3) ~~In addition,~~ When entrance fees are required to be
 1590 deposited in an escrow account pursuant to s. 651.0215, s.
 1591 651.022, s. 651.023, s. 651.0246, or s. 651.055:

1592 (a) The provider shall deliver to the resident a written
 1593 receipt. The receipt must show the payor's name and address, the
 1594 date, the price of the care contract, and the amount of money
 1595 paid. A copy of each receipt, together with the funds, must
 1596 ~~shall~~ be deposited with the escrow agent or as provided in
 1597 paragraph (c). The escrow agent must ~~shall~~ release such funds to
 1598 the provider 7 days after the date of receipt of the funds by
 1599 the escrow agent if the provider, operating under a certificate
 1600 of authority issued by the office, has met the requirements of

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1601 s. 651.0215(8), s. 651.023(6), or s. 651.0246. However, if the
1602 resident rescinds the contract within the 7-day period, the
1603 escrow agent must ~~shall~~ release the escrowed fees to the
1604 resident.

1605 (b) At the request of an individual resident of a
1606 facility, the escrow agent shall issue a statement indicating
1607 the status of the resident's portion of the escrow account.

1608 (c) At the request of an individual resident of a
1609 facility, the provider may hold the check for the 7-day period
1610 and may ~~shall~~ not deposit it during this time period. If the
1611 resident rescinds the contract within the 7-day period, the
1612 check must ~~shall~~ be immediately returned to the resident. Upon
1613 the expiration of the 7 days, the provider shall deposit the
1614 check.

1615 (d) A provider may assess a nonrefundable fee, which is
1616 separate from the entrance fee, for processing a prospective
1617 resident's application for continuing care or continuing care
1618 at-home.

1619 (5) When funds are required to be deposited in an escrow
1620 account pursuant to s. 651.0215, s. 651.022, s. 651.023, s.
1621 651.0246, or s. 651.035, the following ~~shall~~ apply:

1622 (a) The escrow agreement must ~~shall~~ require that the
1623 escrow agent furnish the provider with a quarterly statement
1624 indicating the amount of any disbursements from or deposits to
1625 the escrow account and the condition of the account during the

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1626 | period covered by the statement. The agreement must ~~shall~~
1627 | require that the statement be furnished to the provider by the
1628 | escrow agent on or before the 10th day of the month following
1629 | the end of the quarter for which the statement is due. If the
1630 | escrow agent does not provide the quarterly statement to the
1631 | provider on or before the 10th day of the month following the
1632 | month for which the statement is due, the office may, in its
1633 | discretion, levy against the escrow agent a fine not to exceed
1634 | \$25 a day for each day of noncompliance with the provisions of
1635 | this subsection.

1636 | (b) If the escrow agent does not provide the quarterly
1637 | statement to the provider on or before the 10th day of the month
1638 | following the quarter for which the statement is due, the
1639 | provider shall, on or before the 15th day of the month following
1640 | the quarter for which the statement is due, send a written
1641 | request for the statement to the escrow agent by certified mail
1642 | return receipt requested.

1643 | (c) On or before the 20th day of the month following the
1644 | quarter for which the statement is due, the provider shall file
1645 | with the office a copy of the escrow agent's statement or, if
1646 | the provider has not received the escrow agent's statement, a
1647 | copy of the written request to the escrow agent for the
1648 | statement.

1649 | (d) The office may, in its discretion, in addition to any
1650 | other penalty that may be provided for under this chapter, levy

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1651 a fine against the provider not to exceed \$25 a day for each day
 1652 the provider fails to comply with the provisions of this
 1653 subsection.

1654 (e) Funds held on deposit with the department are exempt
 1655 from the reporting requirements of this subsection.

1656 (6) Except as described in paragraph (3)(a), the escrow
 1657 agent may not release or otherwise allow the transfer of funds
 1658 without the written approval of the office, unless the
 1659 withdrawal is from funds in excess of the amounts required by
 1660 ss. 651.0215, 651.022, 651.023, 651.0246, 651.035, and 651.055.

1661 Section 16. Section 651.034, Florida Statutes, is created
 1662 to read:

1663 651.034 Financial and operating requirements for
 1664 providers.-

1665 (1)(a) If a regulatory action level event occurs, the
 1666 office must:

1667 1. Require the provider to prepare and submit a corrective
 1668 action plan or, if applicable, a revised corrective action plan;

1669 2. Perform an examination pursuant to s. 651.105 or an
 1670 analysis, as the office considers necessary, of the assets,
 1671 liabilities, and operations of the provider, including a review
 1672 of the corrective action plan or the revised corrective action
 1673 plan; and

1674 3. After the examination or analysis, issue a corrective
 1675 order, if necessary, specifying any corrective actions that the

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1676 office determines are required.

1677 (b) In determining corrective actions, the office shall
1678 consider any factor relevant to the provider based upon the
1679 office's examination or analysis of the assets, liabilities, and
1680 operations of the provider. The provider must submit the
1681 corrective action plan or the revised corrective action plan
1682 within 30 days after the occurrence of the regulatory action
1683 level event. The office shall review and approve or disapprove
1684 the corrective action plan within 45 business days.

1685 (c) The office may use members of the Continuing Care
1686 Advisory Council, individually or as a group, or may retain
1687 actuaries, investment experts, and other consultants to review a
1688 provider's corrective action plan or revised corrective action
1689 plan, examine or analyze the assets, liabilities, and operations
1690 of a provider, and formulate the corrective order with respect
1691 to the provider. The costs and expenses relating to consultants
1692 must be borne by the affected provider.

1693 (2) Except when the office's remedial rights are suspended
1694 pursuant to s. 651.114(11)(a), the office must take action
1695 necessary to place an impaired provider under regulatory
1696 control, including any remedy available under part I of chapter
1697 631. An impairment is sufficient grounds for the department to
1698 be appointed as receiver as provided in chapter 631, except when
1699 the office's remedial rights are suspended pursuant to s.
1700 651.114(11)(a). If the office's remedial rights are suspended

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1701 pursuant to s. 651.114(11)(a), the impaired provider must make
1702 available to the office copies of any corrective action plan
1703 approved by the third-party lender or trustee to cure the
1704 impairment and any related required report. For purposes of s.
1705 631.051, impairment of a provider is defined according to the
1706 term "impaired" under s. 651.011. The office may forego taking
1707 action for up to 180 days after the impairment if the office
1708 finds there is a reasonable expectation that the impairment may
1709 be eliminated within the 180-day period.

1710 (3) There is no liability on the part of, and a cause of
1711 action may not arise against, the commission, department, or
1712 office, or their employees or agents, for any action they take
1713 in the performance of their powers and duties under this
1714 section.

1715 (4) The office shall transmit any notice that may result
1716 in regulatory action by registered mail, certified mail, or any
1717 other method of transmission which includes documentation of
1718 receipt by the provider. Notice is effective when the provider
1719 receives it.

1720 (5) This section is supplemental to the other laws of this
1721 state and does not preclude or limit any power or duty of the
1722 department or office under those laws or under the rules adopted
1723 pursuant to those laws.

1724 (6) The office may exempt a provider from subsection (1)
1725 or subsection (2) until stabilized occupancy is reached or until

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1726 the time projected to achieve stabilized occupancy as reported
 1727 in the last feasibility study required by the office as part of
 1728 an application filing under s. 651.0215, s. 651.023, s. 651.024,
 1729 or s. 651.0246 has elapsed, but for no longer than 5 years after
 1730 the date of issuance of the certificate of occupancy.

1731 (7) The commission may adopt rules to administer this
 1732 section, including, but not limited to, rules regarding
 1733 corrective action plans, revised corrective action plans,
 1734 corrective orders, and procedures to be followed in the event of
 1735 a regulatory action level event or an impairment.

1736 Section 17. Paragraphs (a), (b), and (c) of subsection (1)
 1737 of section 651.035, Florida Statutes, are amended, and
 1738 subsections (7) through (11) are added to that section, to read:
 1739 651.035 Minimum liquid reserve requirements.—

1740 (1) A provider shall maintain in escrow a minimum liquid
 1741 reserve consisting of the following reserves, as applicable:

1742 (a) Each provider shall maintain in escrow as a debt
 1743 service reserve the aggregate amount of all principal and
 1744 interest payments due during the fiscal year on any mortgage
 1745 loan or other long-term financing of the facility, including
 1746 property taxes as recorded in the audited financial report
 1747 ~~statements~~ required under s. 651.026. The amount must include
 1748 any leasehold payments and all costs related to such payments.
 1749 If principal payments are not due during the fiscal year, the
 1750 provider must ~~shall~~ maintain in escrow as a minimum liquid

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1751 reserve an amount equal to interest payments due during the next
1752 12 months on any mortgage loan or other long-term financing of
1753 the facility, including property taxes. If a provider does not
1754 have a mortgage loan or other financing on the facility, the
1755 provider must deposit monthly in escrow as a minimum liquid
1756 reserve an amount equal to one-twelfth of the annual property
1757 tax liability as indicated in the most recent tax notice
1758 provided pursuant to s. 197.322(3), and must annually pay
1759 property taxes out of such escrow.

1760 (b) A provider that has outstanding indebtedness that
1761 requires a debt service reserve to be held in escrow pursuant to
1762 a trust indenture or mortgage lien on the facility and for which
1763 the debt service reserve may only be used to pay principal and
1764 interest payments on the debt that the debtor is obligated to
1765 pay, and which may include property taxes and insurance, may
1766 include such debt service reserve in computing the minimum
1767 liquid reserve needed to satisfy this subsection if the provider
1768 furnishes to the office a copy of the agreement under which such
1769 debt service is held, together with a statement of the amount
1770 being held in escrow for the debt service reserve, certified by
1771 the lender or trustee and the provider to be correct. The
1772 trustee shall provide the office with any information concerning
1773 the debt service reserve account upon request of the provider or
1774 the office. Any such separate debt service reserves are not
1775 subject to the transfer provisions set forth in subsection (8).

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1776 (c) Each provider shall maintain in escrow an operating
 1777 reserve equal to 30 percent of the total operating expenses
 1778 projected in the feasibility study required by s. 651.023 for
 1779 the first 12 months of operation. Thereafter, each provider
 1780 shall maintain in escrow an operating reserve equal to 15
 1781 percent of the total operating expenses in the annual report
 1782 filed pursuant to s. 651.026. If a provider has been in
 1783 operation for more than 12 months, the total annual operating
 1784 expenses must ~~shall~~ be determined by averaging the total annual
 1785 operating expenses reported to the office by the number of
 1786 annual reports filed with the office within the preceding 3-year
 1787 period subject to adjustment if there is a change in the number
 1788 of facilities owned. For purposes of this subsection, total
 1789 annual operating expenses include all expenses of the facility
 1790 except+ depreciation and amortization; interest and property
 1791 taxes included in paragraph (a); extraordinary expenses that are
 1792 adequately explained and documented in accordance with generally
 1793 accepted accounting principles; liability insurance premiums in
 1794 excess of those paid in calendar year 1999; and changes in the
 1795 obligation to provide future services to current residents. For
 1796 providers initially licensed during or after calendar year 1999,
 1797 liability insurance must ~~shall~~ be included in the total
 1798 operating expenses in an amount not to exceed the premium paid
 1799 during the first 12 months of facility operation. ~~Beginning~~
 1800 ~~January 1, 1993,~~ The operating reserves required under this

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1801 subsection must ~~shall~~ be in an unencumbered account held in
 1802 escrow for the benefit of the residents. Such funds may not be
 1803 encumbered or subject to any liens or charges by the escrow
 1804 agent or judgments, garnishments, or creditors' claims against
 1805 the provider or facility. However, if a facility had a lien,
 1806 mortgage, trust indenture, or similar debt instrument in place
 1807 before January 1, 1993, which encumbered all or any part of the
 1808 reserves required by this subsection and such funds were used to
 1809 meet the requirements of this subsection, then such arrangement
 1810 may be continued, unless a refinancing or acquisition has
 1811 occurred, and the provider is ~~shall be~~ in compliance with this
 1812 subsection.

1813 (7) (a) A provider may withdraw funds held in escrow
 1814 without the approval of the office if the amount held in escrow
 1815 exceeds the requirements of this section and if the withdrawal
 1816 will not affect compliance with this section.

1817 (b)1. For all other proposed withdrawals, in order to
 1818 receive the consent of the office, the provider must file
 1819 documentation showing why the withdrawal is necessary for the
 1820 continued operation of the facility and such additional
 1821 information as the office reasonably requires.

1822 2. The office shall notify the provider when the filing is
 1823 deemed complete. If the provider has complied with all prior
 1824 requests for information, the filing is deemed complete after 30
 1825 days without communication from the office.

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1826 3. Within 30 days after the date a file is deemed
1827 complete, the office shall provide the provider with written
1828 notice of its approval or disapproval of the request. The office
1829 may disapprove any request to withdraw such funds if it
1830 determines that the withdrawal is not in the best interest of
1831 the residents.

1832 (8) The office may order the immediate transfer of up to
1833 100 percent of the funds held in the minimum liquid reserve to
1834 the custody of the department pursuant to part III of chapter
1835 625 if the office finds that the provider is impaired or
1836 insolvent. The office may order such a transfer regardless of
1837 whether the office has suspended or revoked, or intends to
1838 suspend or revoke, the certificate of authority of the provider.

1839 (9) Each facility shall file with the office annually,
1840 together with the annual report required by s. 651.026, a
1841 calculation of its minimum liquid reserve determined in
1842 accordance with this section on a form prescribed by the
1843 commission.

1844 (10) Any increase in the minimum liquid reserve must be
1845 funded not later than 61 days after the minimum liquid reserve
1846 calculation is due to be filed as provided in s. 651.026.

1847 (11) If the minimum liquid reserve is less than the
1848 required minimum amount at the end of any fiscal quarter due to
1849 a change in the market value of the invested funds, the provider
1850 must fund the shortfall within 10 business days.

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1851 Section 18. Effective July 1, 2019, section 651.043,
 1852 Florida Statutes, is created to read:
 1853 651.043 Approval of change in management.-
 1854 (1) A contract with a management company entered into
 1855 after July 1, 2019, must be in writing and include a provision
 1856 that the contract will be canceled upon issuance of an order by
 1857 the office pursuant to this section and without the application
 1858 of a cancellation fee or penalty. If a provider contracts with a
 1859 management company, a separate written contract is not required
 1860 for the individual manager employed by the management company or
 1861 contractor hired by the management company to oversee a
 1862 facility. If a management company executes a contract with an
 1863 individual manager or contractor, the contract is not required
 1864 to be submitted to the office unless requested by the office.
 1865 (2) A provider shall notify the office, in writing or
 1866 electronically, of any change in management within 10 business
 1867 days. For each new management company or manager not employed by
 1868 a management company, the provider shall submit to the office
 1869 the information required by s. 651.022(2) and a copy of the
 1870 written management contract, if applicable.
 1871 (3) For a provider that is found to be impaired or that
 1872 has a regulatory action level event pending, the office may
 1873 disapprove new management and order the provider to remove the
 1874 new management after reviewing the information required under
 1875 subsection (2).

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1876 (4) For a provider other than that specified in subsection
 1877 (3), the office may disapprove new management and order the
 1878 provider to remove the new management after receiving the
 1879 required information under subsection (2), if the office:
 1880 (a) Finds that the new management is incompetent or
 1881 untrustworthy;
 1882 (b) Finds that the new management is so lacking in
 1883 managerial experience as to make the proposed operation
 1884 hazardous to the residents or potential residents;
 1885 (c) Finds that the new management is so lacking in
 1886 experience, ability, and standing as to jeopardize the
 1887 reasonable promise of successful operation; or
 1888 (d) Has good reason to believe that the new management is
 1889 affiliated directly or indirectly through ownership, control, or
 1890 business relations with any person or persons whose business
 1891 operations are or have been marked by manipulation of assets or
 1892 accounts or by bad faith, to the detriment of residents,
 1893 stockholders, investors, creditors, or the public.
 1894
 1895 The office shall complete its review as required under
 1896 subsections (3) and (4) and, if applicable, issue notice of
 1897 disapproval of the new management within 30 business days after
 1898 the filing is deemed complete. A filing is deemed complete upon
 1899 the office's receipt of all requested information and the
 1900 provider's correction of any error or omission for which the

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1901 provider was timely notified. If the office does not issue
1902 notice of disapproval of the new management within 30 business
1903 days after the filing is deemed complete, the new management is
1904 deemed approved.

1905 (5) Management disapproved by the office must be removed
1906 within 30 days after receipt by the provider of notice of such
1907 disapproval.

1908 (6) The office may revoke, suspend, or take other
1909 administrative action against the certificate of authority of
1910 the provider if the provider:

1911 (a) Fails to timely remove management disapproved by the
1912 office;

1913 (b) Fails to timely notify the office of a change in
1914 management;

1915 (c) Appoints new management without a written contract
1916 when a written contract is required under this section; or

1917 (d) Repeatedly appoints management that was previously
1918 disapproved by the office or that is not approvable under
1919 subsection (4).

1920 (7) The provider shall remove any management immediately
1921 upon discovery of either of the following conditions, if the
1922 conditions were not disclosed in the notice to the office
1923 required under subsection (2):

1924 (a) That a manager has been found guilty of, or has pled
1925 guilty or no contest to, a felony charge, or has been held

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1926 liable or has been enjoined in a civil action by final judgment,
 1927 if the felony or civil action involved fraud, embezzlement,
 1928 fraudulent conversion, or misappropriation of property.

1929 (b) That a manager is now, or was in the past, affiliated,
 1930 directly or indirectly, through ownership interest of 10 percent
 1931 or more in, or control of, any business, corporation, or other
 1932 entity that has been found guilty of or has pled guilty or no
 1933 contest to a felony charge, or has been held liable or has been
 1934 enjoined in a civil action by final judgment, if the felony or
 1935 civil action involved fraud, embezzlement, fraudulent
 1936 conversion, or misappropriation of property.

1937
 1938 The failure to remove such management is grounds for revocation
 1939 or suspension of the provider's certificate of authority.

1940 Section 19. Section 651.051, Florida Statutes, is amended
 1941 to read:

1942 651.051 Maintenance of assets and records in state.—All
 1943 records and assets of a provider must be maintained or readily
 1944 accessible in this state or, if the provider's corporate office
 1945 is located in another state, such records must be electronically
 1946 stored in a manner that will ensure that the records are readily
 1947 accessible to the office. No records or assets may be removed
 1948 from this state by a provider unless the office consents to such
 1949 removal in writing before such removal. Such consent must ~~shall~~
 1950 be based upon the provider's submitting satisfactory evidence

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1951 that the removal will facilitate and make more economical the
 1952 operations of the provider and will not diminish the service or
 1953 protection thereafter to be given the provider's residents in
 1954 this state. Before ~~Prior to~~ such removal, the provider shall
 1955 give notice to the president or chair of the facility's
 1956 residents' council. If such removal is part of a cash management
 1957 system which has been approved by the office, disclosure of the
 1958 system must ~~shall~~ meet the notification requirements. The
 1959 electronic storage of records on a web-based, secured storage
 1960 platform by contract with a third party is acceptable if the
 1961 records are readily accessible to the office.

1962 Section 20. Subsection (3) of section 651.055, Florida
 1963 Statutes, is amended to read:

1964 651.055 Continuing care contracts; right to rescind.—

1965 (3) The contract must include or be accompanied by a
 1966 statement, printed in boldfaced type, which reads: "This
 1967 facility and all other continuing care facilities (also known as
 1968 life plan communities) in the State of Florida are regulated by
 1969 the Office of Insurance Regulation pursuant to chapter 651,
 1970 Florida Statutes. A copy of the law is on file in this facility.
 1971 The law gives you or your legal representative the right to
 1972 inspect our most recent financial statement and inspection
 1973 report before signing the contract. The financial structure of a
 1974 continuing care provider can be complex, and the decision to
 1975 enter into a contract for continuing care is a long-term

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1976 | commitment between a resident and the continuing care provider.
 1977 | You may wish to consult an attorney or a financial advisor
 1978 | before entering into such a contract."

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

1981 | 651.057 Continuing care at-home contracts.—

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

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

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

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

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

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

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

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2001 in an unsound financial condition;

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

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

2004 for the feasibility study; and

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

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

2007 Statutes, is amended to read:

2008 651.071 Contracts as preferred claims on liquidation or

2009 receivership.—

2010 (1) In the event of receivership or liquidation

2011 proceedings against a provider, all continuing care and

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

2013 ~~shall be~~ deemed preferred claims against all assets owned by the

2014 provider; however, such claims are subordinate to any secured

2015 claim. For purposes of s. 631.271, such contracts are deemed

2016 Class 2 claims.

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

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

2019 section is republished, to read:

2020 651.091 Availability, distribution, and posting of reports

2021 and records; requirement of full disclosure.—

2022 (2) Every continuing care facility shall:

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

2024 place inside the facility.

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

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

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

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

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

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2051 services must also be posted.

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

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

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

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

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

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2076 approval by the office.

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

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

2086 (3) Before entering into a contract to furnish continuing
 2087 care or continuing care at-home, the provider undertaking to
 2088 furnish the care, or the agent of the provider, shall make full
 2089 disclosure, obtain written acknowledgment of receipt, and
 2090 provide copies of the disclosure documents to the prospective
 2091 resident or his or her legal representative, of the following
 2092 information:

2093 (a) The contract to furnish continuing care or continuing
 2094 care at-home.

2095 (b) The summary listed in paragraph (2) (b) .

2096 (c) All ownership interests and lease agreements,
 2097 including information specified in s. 651.022(2) (b) 8.

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

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2101 plans for expansion or phased development, to the extent that
 2102 the availability of such plans does not put at risk real estate,
 2103 financing, acquisition, negotiations, or other implementation of
 2104 operational plans and thus jeopardize the success of
 2105 negotiations, operations, and development.

2106 (e) Copies of the rules and regulations of the facility
 2107 and an explanation of the responsibilities of the resident.

2108 (f) The policy of the facility with respect to admission
 2109 to and discharge from the various levels of health care offered
 2110 by the facility.

2111 ~~(g) The amount and location of any reserve funds required~~
 2112 ~~by this chapter, and the name of the person or entity having a~~
 2113 ~~claim to such funds in the event of a bankruptcy, foreclosure,~~
 2114 ~~or rehabilitation proceeding.~~

2115 (g) ~~(h)~~ A copy of s. 651.071.

2116 (h) ~~(i)~~ A copy of the resident's rights as described in s.
 2117 651.083.

2118 (i) Notice of the issuance of a final examination report
 2119 or the initiation of any legal or administrative proceeding by
 2120 the office or the department, including where the report or
 2121 filing may be inspected in the facility, and that, upon request,
 2122 an electronic copy or specific website address will be provided
 2123 from which the document can be downloaded at no cost.

2124 (j) Notice that if the resident does not exercise the
 2125 right to rescind a continuing care contract within 7 days after

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2126 executing the contract, the resident's funds held in escrow
 2127 pursuant to s. 651.055(2) will be released to the provider.

2128 (k) A statement that distribution of the provider's assets
 2129 or income may occur or a statement that such distributions will
 2130 not occur.

2131 (l) Notice of any holding company system or obligated
 2132 group of which the provider is a member.

2133 (4) A true and complete copy of the full disclosure
 2134 document to be used must be filed with the office before use. A
 2135 resident or prospective resident or his or her legal
 2136 representative may inspect the full reports referred to in
 2137 paragraph (2) (b); the charter or other agreement or instrument
 2138 required to be filed with the office pursuant to s. 651.022(2),
 2139 together with all amendments thereto; and the bylaws of the
 2140 corporation or association, if any. Upon request, copies of the
 2141 reports and information shall be provided to the individual
 2142 requesting them if the individual agrees to pay a reasonable
 2143 charge to cover copying costs.

2144 Section 24. Subsection (4) of section 651.095, Florida
 2145 Statutes, is amended to read:

2146 651.095 Advertisements; requirements; penalties.—

2147 (4) It is unlawful for any person, other than a provider
 2148 licensed pursuant to this chapter, to advertise or market to the
 2149 general public any product similar to continuing care through
 2150 the use of such terms as "life care," "life plan," "life plan

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2151 at-home," "continuing care," or "guaranteed care for life," or
2152 similar terms, words, or phrases.

2153 Section 25. Section 651.105, Florida Statutes, is amended
2154 to read:

2155 651.105 Examination ~~and inspections.~~

2156 (1) The office may at any time, and shall at least once
2157 every 3 years, examine the business of any applicant for a
2158 certificate of authority and any provider engaged in the
2159 execution of care contracts or engaged in the performance of
2160 obligations under such contracts, in the same manner as is
2161 provided for the examination of insurance companies pursuant to
2162 ss. 624.316 and 624.318 ~~s. 624.316~~. For a provider as deemed
2163 accredited under ~~defined~~ in s. 651.028, such examinations must
2164 ~~shall~~ take place at least once every 5 years. Such examinations
2165 must ~~shall~~ be made by a representative or examiner designated by
2166 the office whose compensation will be fixed by the office
2167 pursuant to s. 624.320. Routine examinations may be made by
2168 having the necessary documents submitted to the office; and, for
2169 this purpose, financial documents and records conforming to
2170 commonly accepted accounting principles and practices, as
2171 required under s. 651.026, are deemed adequate. The final
2172 written report of each examination must be filed with the office
2173 and, when so filed, constitutes a public record. Any provider
2174 being examined shall, upon request, give reasonable and timely
2175 access to all of its records. The representative or examiner

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2176 designated by the office may at any time examine the records and
 2177 affairs and inspect the physical property of any provider,
 2178 whether in connection with a formal examination or not.

2179 (2) Any duly authorized officer, employee, or agent of the
 2180 office may, upon presentation of proper identification, have
 2181 access to, and examine ~~inspect~~, any records, with or without
 2182 advance notice, to secure compliance with, or to prevent a
 2183 violation of, any provision of this chapter.

2184 (3) Reports of the results of such financial examinations
 2185 must be kept on file by the office. Any investigatory records,
 2186 reports, or documents held by the office are confidential and
 2187 exempt from the provisions of s. 119.07(1), until the
 2188 investigation is completed or ceases to be active. For the
 2189 purpose of this section, an investigation is active while it is
 2190 being conducted by the office with a reasonable, good faith
 2191 belief that it could lead to the filing of administrative,
 2192 civil, or criminal proceedings. An investigation does not cease
 2193 to be active if the office is proceeding with reasonable
 2194 dispatch and has a good faith belief that action could be
 2195 initiated by the office or other administrative or law
 2196 enforcement agency.

2197 (4) The office shall notify the provider and the executive
 2198 officer of the governing body of the provider in writing of all
 2199 deficiencies in its compliance with the provisions of this
 2200 chapter and the rules adopted pursuant to this chapter and shall

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2201 set a reasonable length of time for compliance by the provider.
 2202 In addition, the office shall require corrective action or
 2203 request a corrective action plan from the provider which plan
 2204 demonstrates a good faith attempt to remedy the deficiencies by
 2205 a specified date. If the provider fails to comply within the
 2206 established length of time, the office may initiate action
 2207 against the provider in accordance with the provisions of this
 2208 chapter.

2209 (5) A provider shall respond to written correspondence
 2210 from the office and provide data, financial statements, and
 2211 pertinent information as requested by the office. The office has
 2212 standing to petition a circuit court for mandatory injunctive
 2213 relief to compel access to and require the provider to produce
 2214 the documents, data, records, and other information requested by
 2215 the office. The office may petition the circuit court in the
 2216 county in which the facility is situated or the Circuit Court of
 2217 Leon County to enforce this section ~~At the time of the routine~~
 2218 ~~examination, the office shall determine if all disclosures~~
 2219 ~~required under this chapter have been made to the president or~~
 2220 ~~chair of the residents' council and the executive officer of the~~
 2221 ~~governing body of the provider.~~

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

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2226 the report.

2227 (7) Unless a provider is impaired or subject to a
 2228 regulatory action level event, any parent, subsidiary, or
 2229 affiliate is not subject to examination by the office as part of
 2230 a routine examination. However, if a provider or facility relies
 2231 on a contractual or financial relationship with a parent, a
 2232 subsidiary, or an affiliate in order to meet the financial
 2233 requirements of this chapter, the office may examine any parent,
 2234 subsidiary, or affiliate that has a contractual or financial
 2235 relationship with the provider or facility to the extent
 2236 necessary to ascertain the financial condition of the provider.

2237 Section 26. Section 651.106, Florida Statutes, is amended
 2238 to read:

2239 651.106 Grounds for discretionary refusal, suspension, or
 2240 revocation of certificate of authority.—The office may deny an
 2241 application or ~~suspend~~ or revoke the provisional certificate
 2242 of authority or the certificate of authority of any applicant or
 2243 provider if it finds that any one or more of the following
 2244 grounds applicable to the applicant or provider exist:

2245 (1) Failure by the provider to continue to meet the
 2246 requirements for the authority originally granted.

2247 (2) Failure by the provider to meet one or more of the
 2248 qualifications for the authority specified by this chapter.

2249 (3) Material misstatement, misrepresentation, or fraud in
 2250 obtaining the authority, or in attempting to obtain the same.

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- 2251 (4) Demonstrated lack of fitness or trustworthiness.
- 2252 (5) Fraudulent or dishonest practices of management in the
2253 conduct of business.
- 2254 (6) Misappropriation, conversion, or withholding of
2255 moneys.
- 2256 (7) Failure to comply with, or violation of, any proper
2257 order or rule of the office or commission or violation of any
2258 provision of this chapter.
- 2259 (8) The insolvent or impaired condition of the provider or
2260 the provider's being in such condition or using such methods and
2261 practices in the conduct of its business as to render its
2262 further transactions in this state hazardous or injurious to the
2263 public.
- 2264 (9) Refusal by the provider to be examined or to produce
2265 its accounts, records, and files for examination, or refusal by
2266 any of its officers to give information with respect to its
2267 affairs or to perform any other legal obligation under this
2268 chapter when required by the office.
- 2269 (10) Failure by the provider to comply with the
2270 requirements of s. 651.026 or s. 651.033.
- 2271 (11) Failure by the provider to maintain escrow accounts
2272 or funds as required by this chapter.
- 2273 (12) Failure by the provider to meet the requirements of
2274 this chapter for disclosure of information to residents
2275 concerning the facility, its ownership, its management, its

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2276 development, or its financial condition or failure to honor its
 2277 continuing care or continuing care at-home contracts.

2278 (13) Any cause for which issuance of the license could
 2279 have been refused had it then existed and been known to the
 2280 office.

2281 (14) Having been found guilty of, or having pleaded guilty
 2282 or nolo contendere to, a felony in this state or any other
 2283 state, without regard to whether a judgment or conviction has
 2284 been entered by the court having jurisdiction of such cases.

2285 (15) In the conduct of business under the license,
 2286 engaging in unfair methods of competition or in unfair or
 2287 deceptive acts or practices prohibited under part IX of chapter
 2288 626.

2289 (16) A pattern of bankrupt enterprises.

2290 (17) The ownership, control, or management of the
 2291 organization includes any person:

2292 (a) Who is not reputable and of responsible character;

2293 (b) Who is so lacking in management expertise as to make
 2294 the operation of the provider hazardous to potential and
 2295 existing residents;

2296 (c) Who is so lacking in management experience, ability,
 2297 and standing as to jeopardize the reasonable promise of
 2298 successful operation;

2299 (d) Who is affiliated, directly or indirectly, through
 2300 ownership or control, with any person or persons whose business

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2301 operations are or have been marked by business practices or
 2302 conduct that is detrimental to the public, contract holders,
 2303 investors, or creditors, or by manipulation of assets, finances,
 2304 or accounts or by bad faith; or

2305 (e) Whose business operations are or have been marked by
 2306 business practices or conduct that is detrimental to the public,
 2307 contract holders, investors, or creditors, or by manipulation of
 2308 assets, finances, or accounts or by bad faith.

2309 (18) The provider has not filed a notice of change in
 2310 management, fails to remove a disapproved manager, or persists
 2311 in appointing disapproved managers.

2312
 2313 Revocation of a certificate of authority under this section does
 2314 not relieve a provider from the provider's obligation to
 2315 residents under the terms and conditions of any continuing care
 2316 or continuing care at-home contract between the provider and
 2317 residents or the provisions of this chapter. The provider shall
 2318 continue to file its annual statement and pay license fees to
 2319 the office as required under this chapter as if the certificate
 2320 of authority had continued in full force, but the provider shall
 2321 not issue any new contracts. The office may seek an action in
 2322 the Circuit Court of Leon County to enforce the office's order
 2323 and the provisions of this section.

2324 Section 27. Section 651.1065, Florida Statutes, is created
 2325 to read:

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2326 651.1065 Soliciting or accepting new continuing care
 2327 contracts by impaired or insolvent facilities or providers.—

2328 (1) Regardless of whether delinquency proceedings as to a
 2329 continuing care facility have been or are to be initiated, a
 2330 proprietor, a general partner, a member, an officer, a director,
 2331 a trustee, or a manager of a continuing care facility may not
 2332 actively solicit, approve the solicitation or acceptance of, or
 2333 accept new continuing care contracts in this state after the
 2334 proprietor, general partner, member, officer, director, trustee,
 2335 or manager knew, or reasonably should have known, that the
 2336 continuing care facility was impaired or insolvent except with
 2337 the written permission of the office. If the facility has
 2338 declared bankruptcy, the bankruptcy court or trustee appointed
 2339 by the court has jurisdiction over such matters. The office must
 2340 approve or disapprove the continued marketing of new contracts
 2341 within 15 days after receiving a request from a provider.

2342 (2) A proprietor, a general partner, a member, an officer,
 2343 a director, a trustee, or a manager who violates this section
 2344 commits a felony of the third degree, punishable as provided in
 2345 s. 775.082, s. 775.083, or s. 775.084.

2346 Section 28. Subsections (1) and (3) of section 651.111,
 2347 Florida Statutes, are amended to read:

2348 651.111 Requests for inspections.—

2349 (1) Any interested party may request an inspection of the
 2350 records and related financial affairs of a provider providing

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2351 care in accordance with ~~the provisions of~~ this chapter by
 2352 transmitting to the office notice of an alleged violation of
 2353 applicable requirements prescribed by statute or by rule,
 2354 specifying to a reasonable extent the details of the alleged
 2355 violation, which notice must ~~shall~~ be signed by the complainant.
 2356 As used in this section, the term "inspection" means an inquiry
 2357 into a provider's compliance with this chapter.

2358 (3) Upon receipt of a complaint, the office shall make a
 2359 preliminary review to determine if the complaint alleges a
 2360 violation of this chapter; and, unless the office determines
 2361 that the complaint does not allege a violation of this chapter
 2362 or is without any reasonable basis, the office shall make an
 2363 inspection. The office shall provide the complainant with a
 2364 written acknowledgment of the complaint within 15 days after
 2365 receipt by the office. The complainant shall be advised, within
 2366 30 days after the receipt of the complaint by the office, of the
 2367 office's determination that the complaint does not allege a
 2368 violation of this chapter, that the complaint is without any
 2369 reasonable basis, or that the office will make an inspection.
 2370 The notice must include an estimated timeframe for completing
 2371 the inspection and a contact number. If the inspection is not
 2372 completed within the estimated timeframe, the office must
 2373 provide the complainant with a revised timeframe. Within 15 days
 2374 after completing an inspection, the office shall provide the
 2375 complainant and the provider a written statement specifying any

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2376 | violations of this chapter and any actions taken or that no such
 2377 | violation was found ~~proposed course of action of the office.~~

2378 | Section 29. Section 651.114, Florida Statutes, is amended
 2379 | to read:

2380 | 651.114 Delinquency proceedings; remedial rights.—

2381 | (1) Upon determination by the office that a provider is
 2382 | not in compliance with this chapter, the office may notify the
 2383 | chair of the Continuing Care Advisory Council, who may assist
 2384 | the office in formulating a corrective action plan.

2385 | (2) Within 30 days after a request by either the advisory
 2386 | council or the office, a provider shall make a plan for
 2387 | obtaining compliance or solvency available to the advisory
 2388 | council and the office, ~~within 30 days after being requested to~~
 2389 | ~~do so by the council, a plan for obtaining compliance or~~
 2390 | ~~solvency.~~

2391 | (3) Within 30 days after receipt of a plan for obtaining
 2392 | compliance or solvency, the office or, at the request of the
 2393 | office, notification, the advisory council shall:

2394 | (a) Consider and evaluate the plan submitted by the
 2395 | provider.

2396 | (b) Discuss the problem and solutions with the provider.

2397 | (c) Conduct such other business as is necessary.

2398 | (d) Report its findings and recommendations to the office,
 2399 | which may require additional modification of the plan.

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2401 This subsection may not be construed to delay or prevent the
 2402 office from taking any regulatory measures it deems necessary
 2403 regarding the provider that submitted the plan.

2404 (4) If the financial condition of a continuing care
 2405 provider is impaired or is such that if not modified or
 2406 corrected, its continued operation would result in insolvency,
 2407 the office may direct the provider to formulate and file with
 2408 the office a corrective action plan. If the provider fails to
 2409 submit a plan within 30 days after the office's directive or
 2410 submits a plan that is insufficient to correct the condition,
 2411 the office may specify a plan and direct the provider to
 2412 implement the plan. Before specifying a plan, the office may
 2413 seek a recommended plan from the advisory council.

2414 (5)-(4) After receiving approval of a plan by the office,
 2415 the provider shall submit a progress report monthly to the
 2416 advisory council or the office, or both, in a manner prescribed
 2417 by the office. After 3 months, or at any earlier time deemed
 2418 necessary, the council shall evaluate the progress by the
 2419 provider and shall advise the office of its findings.

2420 (6)-(5) If ~~Should~~ the office finds ~~find~~ that sufficient
 2421 grounds exist for rehabilitation, liquidation, conservation,
 2422 reorganization, seizure, or summary proceedings of an insurer as
 2423 set forth in ss. 631.051, 631.061, and 631.071, the department
 2424 ~~office~~ may petition for an appropriate court order or may pursue
 2425 such other relief as is afforded in part I of chapter 631.

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2426 Before invoking its powers under part I of chapter 631, the
 2427 department ~~office~~ shall notify the chair of the advisory
 2428 council.

2429 (7) For purposes of s. 631.051, impairment of a provider
 2430 has the same meaning as the term "impaired" in s. 651.011.

2431 (8) ~~(6)~~ In the event an order of conservation,
 2432 rehabilitation, liquidation, or ~~conservation, reorganization,~~
 2433 ~~seizure, or summary proceeding~~ has been entered against a
 2434 provider, the department and office are vested with all of the
 2435 powers and duties they have under ~~the provisions of~~ part I of
 2436 chapter 631 in regard to delinquency proceedings of insurance
 2437 companies. A provider shall give written notice of the
 2438 proceeding to its residents within 3 business days after the
 2439 initiation of a delinquency proceeding under chapter 631 and
 2440 shall include a notice of the delinquency proceeding in any
 2441 written materials provided to prospective residents

2442 ~~(7) If the financial condition of the continuing care~~
 2443 ~~facility or provider is such that, if not modified or corrected,~~
 2444 ~~its continued operation would result in insolvency, the office~~
 2445 ~~may direct the provider to formulate and file with the office a~~
 2446 ~~corrective action plan. If the provider fails to submit a plan~~
 2447 ~~within 30 days after the office's directive or submits a plan~~
 2448 ~~that is insufficient to correct the condition, the office may~~
 2449 ~~specify a plan and direct the provider to implement the plan.~~

2450 (9) A provider subject to an order to show cause entered

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2451 pursuant to chapter 631 must file its written response to the
 2452 order, together with any defenses it may have to the
 2453 department's allegations, according to the time periods
 2454 specified in s. 631.031(3).

2455 (10) A hearing held pursuant to chapter 631 to determine
 2456 whether cause exists for the department to be appointed receiver
 2457 must be held in accordance with the time period specified in s.
 2458 631.031(4).

2459 (11) (a) ~~(8) (a)~~ The rights of the office described in this
 2460 section are subordinate to the rights of a trustee or lender
 2461 pursuant to the terms of a resolution, ordinance, loan
 2462 agreement, indenture of trust, mortgage, lease, security
 2463 agreement, or other instrument creating or securing bonds or
 2464 notes issued to finance a facility, and the office, subject to
 2465 ~~the provisions of~~ paragraph (c), may ~~shall~~ not exercise its
 2466 remedial rights provided under this section and ss. 651.018,
 2467 651.106, 651.108, and 651.116 with respect to a facility that is
 2468 subject to a lien, mortgage, lease, or other encumbrance or
 2469 trust indenture securing bonds or notes issued in connection
 2470 with the financing of the facility, if the trustee or lender, by
 2471 inclusion or by amendment to the loan documents or by a separate
 2472 contract with the office, agrees that the rights of residents
 2473 under a continuing care or continuing care at-home contract will
 2474 be honored and will not be disturbed by a foreclosure or
 2475 conveyance in lieu thereof as long as the resident:

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2476 | 1. Is current in the payment of all monetary obligations
2477 | required by the contract;

2478 | 2. Is in compliance and continues to comply with all
2479 | provisions of the contract; and

2480 | 3. Has asserted no claim inconsistent with the rights of
2481 | the trustee or lender.

2482 | (b) This subsection does not require a trustee or lender
2483 | to:

2484 | 1. Continue to engage in the marketing or resale of new
2485 | continuing care or continuing care at-home contracts;

2486 | 2. Pay any rebate of entrance fees as may be required by a
2487 | resident's continuing care or continuing care at-home contract
2488 | as of the date of acquisition of the facility by the trustee or
2489 | lender and until expiration of the period described in paragraph
2490 | (d);

2491 | 3. Be responsible for any act or omission of any owner or
2492 | operator of the facility arising before the acquisition of the
2493 | facility by the trustee or lender; or

2494 | 4. Provide services to the residents to the extent that
2495 | the trustee or lender would be required to advance or expend
2496 | funds that have not been designated or set aside for such
2497 | purposes.

2498 | (c) If ~~Should~~ the office determines ~~determine~~, at any time
2499 | during the suspension of its remedial rights as provided in
2500 | paragraph (a), that:

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2501 1. The trustee or lender is not in compliance with
 2502 paragraph (a); ~~or that~~

2503 2. A lender or trustee has assigned or has agreed to
 2504 assign all or a portion of a delinquent or defaulted loan to a
 2505 third party without the office's written consent; ~~or~~

2506 3. The provider engaged in the misappropriation,
 2507 conversion, or illegal commitment or withdrawal of minimum
 2508 liquid reserve or escrowed funds required under this chapter;

2509 4. The provider refused to be examined by the office
 2510 pursuant to s. 651.105(1); or

2511 5. The provider refused to produce any relevant accounts,
 2512 records, and files requested as part of an examination,
 2513

2514 the office shall notify the trustee or lender in writing of its
 2515 determination, setting forth the reasons giving rise to the
 2516 determination and specifying those remedial rights afforded to
 2517 the office which the office shall then reinstate.

2518 (d) Upon acquisition of a facility by a trustee or lender
 2519 and evidence satisfactory to the office that the requirements of
 2520 paragraph (a) have been met, the office shall issue a 90-day
 2521 temporary certificate of authority granting the trustee or
 2522 lender the authority to engage in the business of providing
 2523 continuing care or continuing care at-home and to issue
 2524 continuing care or continuing care at-home contracts subject to
 2525 the office's right to immediately suspend or revoke the

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2526 temporary certificate of authority if the office determines that
 2527 any of the grounds described in s. 651.106 apply to the trustee
 2528 or lender or that the terms of the contract used as the basis
 2529 for the issuance of the temporary certificate of authority by
 2530 the office have not been or are not being met by the trustee or
 2531 lender since the date of acquisition.

2532 Section 30. Section 651.1141, Florida Statutes, is created
 2533 to read:

2534 651.1141 Immediate final orders.—

2535 (1) The Legislature finds that the following actions
 2536 constitute an imminent and immediate threat to the public
 2537 health, safety, and welfare of the residents of this state:

2538 (a) The installation of a general partner of a provider or
 2539 assumption of ownership or possession or control of 10 percent
 2540 or more of a provider's assets in violation of s. 651.024 or s.
 2541 651.0245;

2542 (b) The removal or commitment of 10 percent or more of the
 2543 required minimum liquid reserve funds in violation of s.
 2544 651.035; or

2545 (c) The assumption of control over a facility's operations
 2546 in violation of s. 651.043.

2547 (2) If it finds that a person or entity is engaging or has
 2548 engaged in one or more of the above activities, the office may,
 2549 pursuant to s. 120.569, issue an immediate final order:

2550 (a) Directing that such person or entity cease and desist

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2551 that activity; or

2552 (b) Suspending the certificate of authority of the
 2553 facility.

2554 Section 31. Subsection (1) of section 651.121, Florida
 2555 Statutes, is amended to read:

2556 651.121 Continuing Care Advisory Council.—

2557 (1) The Continuing Care Advisory Council to the office is
 2558 created consisting of 10 members ~~who are residents of this state~~
 2559 appointed by the Governor and geographically representative of
 2560 this state. Three members shall be representatives

2561 ~~administrators~~ of facilities that hold valid certificates of
 2562 authority under this chapter and ~~shall~~ have been actively
 2563 engaged in the offering of continuing care contracts in this
 2564 state for 5 years before appointment. The remaining members
 2565 include:

2566 (a) A representative of the business community whose
 2567 expertise is in the area of management.

2568 (b) A representative of the financial community who is not
 2569 a facility owner or administrator.

2570 (c) A certified public accountant.

2571 ~~(d) An attorney.~~

2572 (d)(e) Four ~~Three~~ residents who hold continuing care or
 2573 continuing care at-home contracts with a facility certified in
 2574 this state.

2575 Section 32. Subsections (1) and (4) of section 651.125,

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2576 Florida Statutes, are amended to read:

2577 651.125 Criminal penalties; injunctive relief.—

2578 (1) Any person who maintains, enters into, or, as manager
 2579 or officer or in any other administrative capacity, assists in
 2580 entering into, maintaining, or performing any continuing care or
 2581 continuing care at-home contract subject to this chapter without
 2582 ~~doing so in pursuance of~~ a valid provisional certificate of
 2583 authority or certificate of authority ~~or renewal thereof~~, as
 2584 contemplated by or provided in this chapter, or who otherwise
 2585 violates any provision of this chapter or rule adopted in
 2586 pursuance of this chapter, commits a felony of the third degree,
 2587 punishable as provided in s. 775.082 or s. 775.083. Each
 2588 violation of this chapter constitutes a separate offense.

2589 (4) Any action brought by the office against a provider
 2590 shall not abate by reason of a sale or other transfer of
 2591 ownership of the facility used to provide care, which provider
 2592 is a party to the action, except with the express written
 2593 consent of the ~~director of the~~ office.

2594 Section 33. Except as otherwise expressly provided in this
 2595 act and except for this section, which shall take effect July 1,
 2596 2019, this act shall take effect January 1, 2020.