CHAPTER 97-229

Committee Substitute for House Bill No. 1243

An act relating to continuing care contracts; amending s. 651.011, F.S.; revising definitions; amending s. 651.013, F.S.; specifying application of additional laws to providers of continuing care; amending s. 651.015, F.S.; revising certain filing fee provisions; amending s. 651.022, F.S.; deleting certain escrow agreement requirements; limiting the Department of Insurance's authority to approve certain applications; amending s. 651.023, F.S.; clarifying provisions for applications for certificates of authority; revising criteria for granting certain mortgages; limiting department authority to approve certain applications; deleting certain provisions for renewal of certificates of authority; amending s. 651.0235, F.S.; providing for continuing validity of certificates of authority; amending s. 651.026, F.S.; requiring a filing fee for annual reports; providing requirements for financial reports and information; amending s. 651.033, F.S.; revising investment criteria for escrow accounts; revising criteria for managing and administering escrow accounts; amending s. 651.035, F.S.; clarifying minimum liquid reserve requirements; decreasing certain escrow operating reserve requirements; requiring providers to maintain a renewal and replacement reserve in escrow; providing criteria; providing requirements for use of such reserves; amending s. 651.051, F.S.; requiring certain notice before removal of certain assets and records from the state; amending s. 651.055, F.S.; requiring submittal to and approval by the department of all continuing care contracts and addenda; revising continuing care agreement provisions to apply to continuing care contracts; amending s. 651.061, F.S.; providing criteria and requirements for certain refunds to residents upon termination of contracts; amending s. 651.065, F.S.; applying certain waiver provisions to continuing care contracts; amending s. 651.071, F.S.; applying preferred claims provisions to continuing care contracts in receivership; amending s. 651.091, F.S.; requiring providers to make available for review certain master plans and plans for expansion or development; requiring providers to furnish residents a copy of resident's rights; requiring filing of certain information with the department; amending s. 651.095, F.S.; requiring department approval of certain provider advertising; limiting certain provider advertising; amending s. 651.105, F.S.; applying examination and inspection provisions to continuing care contracts; amending s. 651.106, F.S.; providing additional grounds for refusal, suspension, or revocation of certificates of authority; providing continuing requirements for providers after revocation of a certificate; amending s. 651.107, F.S.; clarifying status of certificates of authority not reinstated; creating s. 651.1081, F.S.; specifying remedies in cases of unlawful sales by providers; amending s. 651.111, F.S.; broadening the department's inspection authority; amending s. 651.114, F.S.; applying delinquency proceedings and remedial rights provisions to continuing care contracts; clarifying certain notice requirements relating to release of certain

escrow funds; amending s. 651.1151, F.S.; requiring accessibility by residents or resident organizations to management services contracts; amending s. 651.118, F.S.; clarifying a receivership provision; amending s. 651.121, F.S.; requiring the Continuing Care Advisory Council to assist the department in certain actions; repealing s. 651.041, F.S., relating to use of reserves for investment purposes; providing an effective date.

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

Section 1. Subsection (2) of section 651.011, Florida Statutes, 1996 Supplement, is amended, and subsection (12) is added to said section, to read:

651.011 Definitions.—For the purposes of this chapter, the term:

(2) "Continuing care" or "care" means furnishing pursuant to a contract ~~an agreement~~ shelter~~, food,~~ and either nursing care or personal services as defined in s. 400.402(16), whether such nursing care or personal services are provided in the facility or in another setting designated by the contract ~~agreement~~ for continuing care, to an individual not related by consanguinity or affinity to the provider furnishing such care, upon payment of an entrance fee. Other personal services provided shall be designated in the continuing care contract ~~agreement~~. Contracts ~~Agreements~~ to provide continuing care include agreements to provide care for any duration, including contracts ~~agreements~~ that are terminable by either party.

(12) "Advertising" means the dissemination of any written, visual, or electronic information by a provider, or any person affiliated with or controlled by a provider, to potential residents or their representatives for the purpose of inducing such persons to subscribe to or enter into a contract to reside in a continuing care community covered by this act.

Section 2. Section 651.013, Florida Statutes, is amended to read:

651.013 Chapter exclusive; applicability of other laws.—

(1) Except as herein provided, providers of continuing care ~~facilities~~ shall be governed by the provisions of this chapter and shall be exempt from all other provisions of the Florida Insurance Code.

(2) In addition to other applicable provisions cited in this chapter, the department has the authority granted under ss. 624.302-624.305, ss. 624.308-624.312, s. 624.319(1)-(3), ss. 624.320-624.321, s. 624.324, and s. 624.34 of the Florida Insurance Code to regulate providers of continuing care.

Section 3. Subsection (2) of section 651.015, Florida Statutes, is amended to read:

651.015 Administration; forms; fees; rules; fines.—The administration of this chapter is vested in the department, which shall:

(2) Collect in advance, and the applicant shall pay in advance, the following fees:

(a) At the time of filing an application for a certificate of authority, an application fee in the amount of $75 for each facility.

(b) At the time of filing the annual report required by s. 651.026 ~~renewal of a provisional certificate of authority or a certificate of authority~~, a ~~renewal~~ fee in the amount of $100 ~~$75~~ for each year or part thereof for each facility ~~where continuing care is provided~~.

(c) A late fee ~~in an amount equal to 50 percent of the renewal fee in effect on the last preceding regular renewal date. In addition to any other penalty that may be provided for under this chapter, the department may levy a fine~~ not to exceed $50 a day for each day of noncompliance.

(d) A fee to cover the actual cost of a credit report and fingerprint processing. ~~An investigation fee, to be paid upon original application, in the amount of $100 for each facility where continuing care is provided. Upon application subsequent to the denial of an earlier application or subsequent to the revocation, suspension, or surrender of a certificate of authority, the department shall collect in advance, and the applicant shall pay in advance, a second investigation fee in the amount of $100.~~

(e) At the time of filing an application for a ~~For the issuance of the~~ provisional certificate of authority, a fee in the amount of $50.

Section 4. Paragraph (i) of subsection (3) and subsection (7) of section 651.022, Florida Statutes, are amended, and subsection (8) is added to said section, to read:

651.022 Provisional certificate of authority; application.—

(3) In addition to the information required in subsection (2), an applicant for a provisional certificate of authority shall submit a market feasibility study. The market feasibility study shall include at least the following information:

(i) The application for a provisional certificate of authority shall be accompanied by the forms of the continuing care residency and reservation contracts and escrow agreements proposed to be used by the provider in the furnishing of care. If the department finds that the continuing care contracts and escrow agreements comply with ss. 651.023(1)(c), 651.033, and 651.055, it shall approve them. Thereafter, no other form of contract or agreement may be used by the provider until it has been submitted to the department and approved.

(7) The issuance of a provisional certificate of authority entitles the applicant to collect entrance fees and reservation deposits from prospective residents. All or any part of an entrance fee or deposit ~~fees and deposits~~ collected shall be placed in an escrow account or on deposit with the department, pursuant to s. 651.033, until a certificate of authority is issued by the department. ~~An escrow agreement shall be entered into between the bank, savings and loan association, or trust company and the applicant. The agreement shall state that its purpose is to protect the resident or the prospective resident, and shall be subject to approval by the department. All funds~~

~~deposited in an escrow account shall not be subject to any liens or charges by the escrow agent or to any judgments, garnishments, or creditor's claims against the applicant or facility, except as provided in s. 651.035(1). After the certificate of authority is issued, the initial entrance fees shall be escrowed as provided in s. 651.023.~~

(8) The department shall not approve any application which includes in the plan of financing any encumbrance of the operating reserves required by this chapter.

Section 5. Section 651.023, Florida Statutes, is amended to read:

651.023 Certificate of authority; application~~; renewal~~.—

(1) After issuance of a provisional certificate of authority, the department shall issue to the holder of such provisional certificate of authority a certificate of authority; provided, however, that no certificate of authority shall be issued until the holder of such provisional certificate of authority provides the department with the following information:

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

(b) A feasibility study prepared by an independent consultant which contains all of the information required by s. 651.022(3) and contains financial forecasts or projections prepared in accordance with standards promulgated by the American Institute of Certified Public Accountants or financial forecasts or projections prepared in accordance with standards for feasibility studies or continuing care retirement communities promulgated by the Actuarial Standards Board. The study must also contain an independent evaluation and examination opinion, or a comparable opinion acceptable to the department, by the consultant who prepared the study, of the underlying assumptions used as a basis for the forecasts or projections in the study and that the assumptions are reasonable and proper and that the project as proposed is feasible. The study shall take into account project costs, actual marketing results to date and marketing projections, resident fees and charges, competition, resident contract provisions, and any other factors which affect the feasibility of operating the facility.

(c) Subject to the requirements of subsection (2), a provider may submit an application for a certificate of authority and any required exhibits upon submission of proof that the project has a minimum of 30 percent of the units reserved for which the provider is charging an entrance fee; however, this provision shall not apply to an application for a certificate of authority for the acquisition of a facility for which a certificate of authority was issued prior to October 1, 1983, to a provider who subsequently becomes a debtor in a case under the United States Bankruptcy Code, 11 U.S.C. ss. 101 et seq., or to a provider for which the department has been appointed receiver pursuant to the provisions of part II of chapter 631. ~~In order for a unit to be considered reserved under this section, the provider must collect a minimum deposit of 10 percent of the then current entrance fee for that unit, and must assess a forfeiture penalty of 2 percent of the entrance fee due to~~

~~termination of the reservation after 30 days for any reason other than the death or serious illness of the prospective resident, the failure of the provider to meet its obligations under the reservation agreement, or other circumstances beyond the control of the prospective resident that equitably entitle the prospective resident to a refund of his deposit. The reservation agreement shall state the cancellation policy and the terms of the continuing care agreement to be entered into. The department may require the holder of such certificate to disclose to the prospective resident on forms prescribed by the department such additional financial information as the department may deem necessary. The provisions of this paragraph shall not be construed to alter the provisions of s. 651.055.~~

(d) Proof that commitments have been secured for both construction financing and long-term financing or a documented plan acceptable to the department has been adopted by the applicant for long-term financing.

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

(f) Proof that the aggregate amount of entrance fees received by or pledged to the applicant, plus anticipated proceeds from any long-term financing commitment, plus funds from all other sources in the actual possession of the applicant, equal not less than 100 percent of the aggregate cost of constructing or purchasing, equipping, and furnishing the facility plus 100 percent of the anticipated startup losses of the facility.

(g) Complete audited financial statements of the applicant, prepared by an independent certified public accountant in accordance with generally accepted accounting principles, as of the date the applicant commenced business operations or for the fiscal year that ended immediately preceding the date of application, whichever is later, and complete unaudited quarterly financial statements attested to by the applicant subsequent to the date of the last audit.

(h) Proof that the applicant has complied ~~will be able to comply~~ with the escrow requirements of subsection (3) or subsection (5) and will be able to comply with s. 651.035.

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

(j) Within 30 days of the receipt of the information required under paragraphs (a)-(h), the department shall examine such information and shall notify the provider in writing, specifically requesting any additional information the department is permitted by law to require. Within 15 days after receipt of all of the requested additional information, the department shall notify the provider in writing that all of the requested information has been received and the application is deemed to be complete as of the date of the notice. Failure to so notify the applicant in writing within the 15-day period

shall constitute acknowledgment by the department that it has received all requested additional information, and the application shall be deemed to be complete for purposes of review upon the date of the filing of all of the required additional information.

(k) Within 45 days after an application is deemed complete as set forth in paragraph (j), and upon completion of the remaining requirements of this section, the department shall complete its review and shall issue, or deny, to the holder of a provisional certificate of authority a certificate of authority. If a certificate of authority is denied, the department shall notify the holder of the provisional certificate of authority in writing, citing the specific failures to satisfy the provisions of this chapter. If denied, the holder of the provisional certificate of authority shall be entitled to an administrative hearing pursuant to chapter 120.

(2)(a) The department shall issue a certificate of authority upon its determination that the applicant meets all requirements of law and has submitted all of the information required by this section, that all escrow requirements have been satisfied, and that the fees prescribed in s. 651.015(2) have been paid. Notwithstanding satisfaction of the 30-percent minimum reservation requirement of paragraph (1)(c), no certificate of authority shall be issued until the project has a minimum of 50 percent of the units reserved for which the provider is charging an entrance fee, and proof thereof is provided to the department.

(b) In order for a unit to be considered reserved under this section, the provider must collect a minimum deposit of 10 percent of the then current entrance fee for that unit, and must assess a forfeiture penalty of 2 percent of the entrance fee due to termination of the reservation contract after 30 days for any reason other than the death or serious illness of the resident, the failure of the provider to meet its obligations under the reservation contract, or other circumstances beyond the control of the resident that equitably entitle the resident to a refund of the resident's deposit. The reservation contract shall state the cancellation policy and the terms of the continuing care contract to be entered into.

(3) No more than 25 percent of the moneys paid for all or any part of an initial entrance fee may be included or pledged for the construction or purchase of the facility, or included or pledged as security for long-term financing. The term "initial entrance fee" means the total entrance fee charged by the facility to the first occupant of a unit. A minimum of 75 percent of the moneys paid for all or any part of an initial entrance fee collected shall be placed in an escrow account or on deposit with the department as prescribed in s. 651.033.

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

(a) A certificate of occupancy has been issued.

(b) Payment in full has been received for no less than 70 percent of the total units of a phase or of the total of the combined phases constructed.

(c) The consultant who prepared the feasibility study required by this section or a substitute approved by the department certifies that there has been no material adverse change in status with regard to the feasibility study, with such statement dated not more than 12 months from the date of filing for department approval. If a material adverse change should exist at the time of submission, then sufficient information acceptable to the department and the feasibility consultant shall be submitted which remedies the adverse condition.

(d) Proof that commitments have been secured or a documented plan adopted by the applicant has been approved by the department for long-term financing.

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

(f) Proof as to the intended application of the proceeds upon release and proof that the entrance fees when released will be applied as represented to the department.

Notwithstanding any provision of chapter 120, no person, other than the provider, the escrow agent, and the department, shall have a substantial interest in any departmental decision regarding release of escrow funds in any proceedings under chapter 120 or this chapter regarding release of escrow funds.

(5) In lieu of the provider fulfilling the requirements in subsection (3) and paragraphs (4)(b) and (d), ~~the provider may have sufficient funds in the escrow account to meet all outstanding debts on the facility and equipment.~~ the department may authorize the release of escrowed ~~such~~ funds to retire all outstanding debts on the facility and equipment upon application of the provider and upon the provider's showing that the provider will grant to the residents a first mortgage on the land, buildings, and equipment that constitute the facility, and that the provider satisfies the requirements of paragraphs (4)(a), (c), and (e). Such mortgage shall secure the refund of the entrance fee in the amount required by this chapter. The granting of such mortgage shall be subject to the following:

(a) The first mortgage shall ~~may~~ be granted to an independent ~~a~~ trust which is beneficially held by the residents. The document creating the trust shall contain a provision that it agrees to an annual audit and will furnish to the department all information the department may reasonably require. The mortgage may secure payment on bonds issued to the residents or trustee. Such bonds shall be redeemable after termination of the residency contract ~~agreement~~ in the amount and manner required by this chapter for the refund of an entrance fee.

(b) Before granting a first mortgage to the residents, all construction shall be substantially completed and substantially all equipment shall be

purchased. No part of the entrance fees may be pledged as security for a construction loan or otherwise used for construction expenses before the completion of construction.

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

(6) The timeframes provided under s. 651.022(5) and (6) apply to applications submitted under s. 651.021(2). The department may not issue a certificate of authority under this chapter to any facility which does not have a component which is to be licensed pursuant to ~~chapter 395 or~~ part II or part III of chapter 400 or which will not offer personal services or nursing services through written contractual agreement. Any written contractual agreement must be disclosed in the continuing care contract and is subject to the provisions of s. 651.1151, relating to administrative, vendor, and management contracts.

(7) The department shall not approve an application which includes in the plan of financing any encumbrance of the operating reserves required by this chapter.

Section 6. Section 651.0235, Florida Statutes, is amended to read:

651.0235 Validity ~~Annual renewal~~ of provisional certificates of authority and certificates of authority.—

(1) The provisional certificate of authority and certificate of authority shall be valid for as long as ~~renewable annually on or before September 30 upon payment of the renewal fee prescribed in s. 651.015(2) and upon a determination by~~ the department determines that the provider continues to meet the requirements of this chapter.

(2) If the provider fails to meet the requirements of this chapter for a provisional certificate of authority or a certificate of authority, the department may notify ~~issue a renewal certificate if it notifies~~ the provider of any deficiencies and require ~~requires~~ the provider to correct such deficiencies within a period to be determined by the department. If such deficiencies are not corrected within 20 days after the notice to the provider, or within less time at the discretion of the department, the department shall notify the advisory council, which may assist the facility in formulating a remedial plan to be submitted to the department no later than 60 days from the date of notification. The time period granted to correct deficiencies may be extended upon submission of a plan for corrective action approved by the department. If such deficiencies have not been cleared by the expiration of such time period, as extended, the department shall petition for a delinquency proceeding or pursue such other relief as is provided for under this chapter ~~s. 651.114~~, as the circumstances may require.

(3) The Department of Insurance shall notify the Agency for Health Care Administration ~~Department of Health and Rehabilitative Services~~ of any facility for which a provisional certificate of authority or certificate of authority is no longer valid ~~has not been renewed~~.

Section 7. Subsections (7) and (8) are added to section 651.026, Florida Statutes, to read:

651.026 Annual reports.—

(7) A filing fee in the amount of $100 shall accompany each annual report required by this section.

(8) All financial reports and any supplemental financial information submitted to the department shall be prepared in conformity with generally accepted accounting principles.

Section 8. Section 651.033, Florida Statutes, is amended to read:

651.033 Escrow accounts.—

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

(a) The escrow account shall be established in a Florida bank, Florida savings and loan association, or Florida trust company acceptable to the department or on deposit with the department; and the funds deposited therein shall be kept and maintained in an account separate and apart from the provider's business accounts.

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

(c) Any agreement establishing an escrow account required under the provisions of this chapter shall be subject to approval by the department. The agreement shall be in writing and shall contain, in addition to any other provisions required by law, a provision whereby the escrow agent agrees to abide by the duties imposed under this section.

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

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

(2) In addition, ~~when funds are required to be deposited in an escrow account pursuant to s. 651.035:~~

~~(a) Funds may also be held in escrow in an investment company which:~~

~~1. Is registered and subject to the Investment Company Act of 1940, 15 U.S.C. s. 80a, as amended;~~

~~2. Is an open-end, diversified investment company as defined in 15 U.S.C. 80a-5(a)(1), as amended, and 15 U.S.C. 80a-5(b)(1), as amended, respectively;~~

~~3. Is approved by the department;~~

~~4. Maintains its investments on the same basis as an insurer is required to maintain its investments under part II of chapter 625; and~~

~~5. Meets the diversification requirements of chapter 625 on the same basis as the requirements apply to life insurers.~~

~~Department approval of an investment company shall be contingent upon the investment company demonstrating to the satisfaction of the department that it complies with provisions of this subsection and that investment risk will not diminish the funds held in escrow below the minimum required amounts.~~

~~(b)~~ the escrow agreement shall provide that the escrow agent or another person designated to act in his place and the provider, except as otherwise provided in s. 651.035, shall notify the department in writing at least 10 days before the withdrawal of any portion of any funds required to be escrowed under the provisions of s. 651.035. However, in the event of an emergency and upon petition by the provider, the department may waive the 10-day notification period and allow a withdrawal of up to 10 percent of the required minimum liquid reserve. The department shall have 3 working days to deny the petition for the emergency 10-percent withdrawal. If the department fails to deny the petition within 3 working days, the petition shall be deemed to have been granted by the department. For the purpose of this section, "working day" means each day that is not a Saturday, Sunday, or legal holiday as defined by Florida law. Also for the purpose of this section, the day the petition is received by the department shall not be counted as one of the 3 days. ~~However, funds may be withdrawn without departmental approval upon prior notification to the department and provided the amount withdrawn does not exceed the amount required for the facility to bring current the past due portion of an indebtedness created by a lien on the facility pursuant to a trust indenture or mortgage.~~

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

(a) ~~The escrow agreement between the bank, savings and loan association, or trust company and the provider shall state that its purpose is to protect the resident or the prospective resident; and, upon presentation of evidence of compliance with applicable portions of this chapter, or upon order of a court of competent jurisdiction, the escrow agent shall release and pay over the funds, or portions thereof, together with any interest accrued~~

~~thereon or earned from investment of the funds, to the provider or resident as directed.~~

~~(b) When funds are received from a resident or prospective resident,~~ The provider shall deliver to the resident a written receipt. The receipt shall show the payor's name and address, the date, the price of the care contract ~~agreement~~, and the amount of money paid. A copy of each receipt together with the funds shall be deposited with the escrow agent or as provided in paragraph (c). The escrow agent shall release such funds to the provider upon the expiration of 7 days after the date of receipt of the funds by the escrow agent if the provider, operating under a certificate of authority issued by the department, has met the requirements of s. 651.023(4). However, if the resident rescinds the contract within the 7-day period, the escrow agent shall release the escrowed fees to the resident.

(b)~~(c) Checks, drafts, and money orders for deposit from prospective residents shall be made payable only to the escrow agent.~~ At the request of an individual resident ~~or a prospective resident~~ of a facility, the escrow agent shall issue a statement indicating the status of the resident's portion of the escrow account.

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

~~(d) When the provider, operating under a certificate of authority from the department, deposits an entrance fee in the escrow account pursuant to s. 651.055(2), the escrow agent, upon receiving evidence that the required 7-day period has expired from receipt of such funds, shall release to the provider such fees. In the event that the resident rescinds the agreement with the provider during the 7-day period, the escrow agent shall release to the resident the escrowed fees. If such funds have not been authorized for release to the provider under the provisions of s. 651.023(4), the funds shall be subject to the escrow requirements for initial entrance fees as provided in s. 651.023.~~

(4) Any fees of $1,500 or less which are assessed with respect to prospective residents to have their names placed on a facility's waiting list shall not be subject to the escrow provisions of this section.

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

(a) The escrow agreement shall require that the escrow agent furnish the provider with a quarterly statement indicating the amount of any disbursements from or deposits to the escrow account and the condition of the account during the period covered by the statement. The agreement shall require that the statement be furnished to the provider by the escrow agent on or before the 10th day of the month following the end of the quarter for which the statement is due. If the escrow agent does not provide the quarterly statement to the provider on or before the 10th day of the month

following the month for which the statement is due, the department may, in its discretion, levy against the escrow agent a fine not to exceed $25 a day for each day of noncompliance with the provisions of this subsection.

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

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

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

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

~~(6) The failure to maintain escrowed funds as provided in this chapter shall subject the provider to the provisions established by s. 651.106 or s. 651.114.~~

Section 9. Paragraph (a) of subsection (1), subsections (2) and (4), and paragraph (d) of subsection (7) of section 651.035, Florida Statutes, are amended, and subsection (8) is added to said section, to read:

651.035 Minimum liquid reserve requirements.—

(1)(a) A provider shall maintain in escrow and as a minimum liquid reserve an amount equal to the aggregate amount of all principal and interest payments due during the fiscal year on any mortgage loan or other long-term financing of the facility, including taxes and insurance <u>as recorded in the audited financial statements required under s. 651.026</u>. The amount shall include any leasehold payments and all costs related to same. If principal payments are not due during the fiscal year, the provider shall maintain in escrow as a minimum liquid reserve an amount equal to interest payments due during the next <u>12</u> ~~18~~ months on any mortgage loan or other long-term financing of the facility, including taxes and insurance.

(2)<u>(a)</u> Each provider shall maintain in escrow an operating reserve in an amount equal to 30 percent of the total operating expenses projected in the feasibility study required by s. 651.023~~(1)(b)~~ for the first 12 months of operation. Thereafter, each provider shall maintain in escrow an operating reserve in an amount equal to <u>15</u> ~~30~~ percent of the total operating expenses in the annual report filed pursuant to s. 651.026. Where a provider has been in operation for more than 12 months, the total annual operating expenses

shall be determined by averaging the total annual operating expenses reported to the department by the number of annual reports filed with the department within the immediate preceding 3-year period subject to adjustment in the event there is a change in the number of facilities owned. For purposes of this subsection, total annual operating expenses shall include all expenses of the facility except: depreciation and amortization; interest, insurance and taxes included in subsection (1); extraordinary expenses which are adequately explained and documented in accordance with generally accepted accounting principles; and changes in the obligation to provide future services to current residents. Beginning January 1, 1993, the operating reserves required under this subsection shall be in an unencumbered account held in escrow for the benefit of the residents. Such funds may not be encumbered or subject to any liens or charges by the escrow agent or judgments, garnishments, or creditors' claims against the provider or facility. However, if a facility had a lien, mortgage, trust indenture, or similar debt instrument in place prior to January 1, 1993, which encumbered all or any part of the reserves required by this subsection and such funds were used to meet the requirements of this subsection, then such arrangement may be continued, unless a refinancing or acquisition has occurred, and the provider shall be in compliance with this subsection.

(b) Each provider shall maintain in escrow a renewal and replacement reserve in an amount equal to 15 percent of the total accumulated depreciation based on the audited financial statement required to be filed pursuant to s. 651.026, not to exceed 15 percent of the facility's average operating expenses for the past 3 fiscal years based on the audited financial statements for each of such years. For a provider who is an operator of a facility but is not the owner and depreciation is not included as part of the provider's financial statement, the renewal and replacement reserve required by this paragraph shall equal 15 percent of the total operating expenses of the provider, as described in this section. Each provider licensed prior to October 1, 1983, shall be required to fully fund the renewal and replacement reserve by October 1, 2003, by multiplying the difference between the former escrow requirement and the present escrow requirement by the number of years the facility has been in operation after October 1, 1983.

(4)(a) In facilities where not all residents ~~tenants~~ are under continuing care contracts ~~agreements~~, the reserve requirements of subsection (2) shall be computed only with respect to the proportional share of operating expenses that is applicable to residents as defined in s. 651.011. For purposes of this calculation, the proportional share shall be based upon the ratio of residents under continuing care contracts ~~agreements~~ to those residents who do not hold such contracts ~~agreements~~.

(b) In facilities which have voluntarily and permanently discontinued marketing continuing care contracts ~~agreements~~, the department may allow a reduced debt service reserve as required in subsection (1) based upon the ratio of residents under continuing care contracts ~~agreements~~ to those residents who do not hold such contracts ~~agreements~~ if the department finds that such reduction is not inconsistent with the security protections intended by this chapter. In making this determination, the department may consider such factors as the financial condition of the facility, the provisions

of the outstanding continuing care contracts ~~agreements~~, the ratio of residents under continuing care agreements to those residents who do not hold a continuing care contract ~~agreement~~, current occupancy rates, previous sales and marketing efforts, life expectancy of the remaining contract holders, and the written policies of the board of directors of the provider or a similar board.

(7)

(d) Notwithstanding any other provision of this section, a provider utilizing a letter of credit pursuant to this subsection shall, at all times, have and maintain in escrow an operating cash reserve equal to 2 months' operating expenses as determined pursuant to s. 651.026~~(2)(e)~~.

(8)(a) Each fiscal year, a provider may withdraw up to 33 percent of the total renewal and replacement reserve available. The reserve available is equal to the market value of the invested reserves at the end of the provider's prior fiscal year. The withdrawal is to be used for capital items or major repairs and before any funds are eligible for withdrawal, the provider must obtain written permission from the department by submitting the following information:

1. The amount of the withdrawal and the intended use of the proceeds.

2. A board resolution and sworn affidavit signed by two officers or general partners of the provider which indicates approval of the withdrawal and use of the funds.

3. Proof that the provider has met all funding requirements for the operating, debt service, and renewal and replacement reserves computed for the previous fiscal year.

4. Anticipated payment schedule for refunding the renewal and replacement reserve fund.

(b) Within 30 days after the withdrawal of funds from the renewal and replacement reserve fund, the provider must begin refunding the reserve account in equal monthly payments which allow for a complete funding of such withdrawal within 36 months. If the payment schedule required under subparagraph (a)4. has changed, the provider must update the department with the new payment schedule. If the provider fails to make a required monthly payment or the payment is late, the provider must notify the department within 5 days after the due date of the payment. No additional withdrawals from the renewal and replacement reserve will be allowed until all scheduled payments are current.

Section 10. Section 651.051, Florida Statutes, is amended to read:

651.051 Maintenance of assets and records in state.—No records or assets may be removed from this state by a provider unless the department consents to such removal in writing before such removal. Such consent shall be based upon the provider's submitting satisfactory evidence that the removal will facilitate and make more economical the operations of the provider and will not diminish the service or protection thereafter to be given

the provider's residents in this state. Prior to such removal, the provider shall give notice to the president or chair of the facility's residents' council. If such removal is part of a cash management system which has been approved by the department, disclosure of the system shall meet the notification requirements.

Section 11. Section 651.055, Florida Statutes, is amended to read:

651.055 Contracts ~~Agreements~~; right to rescind.—

(1) Each continuing care contract and each addendum to such contract shall be submitted to and approved by the department prior to its use in this state. Thereafter, no other form of contract shall be used by the provider unless it has been submitted to and approved by the department. ~~In addition to other provisions considered proper to effectuate any continuing care agreement,~~ Each contract ~~agreement~~ shall:

(a) Provide for the continuing care of only one resident, or for two persons occupying space designed for double occupancy, under appropriate regulations established by the provider and shall list all properties transferred and their market value at the time of transfer, including donations, subscriptions, fees, and any other amounts paid or payable by, or on behalf of, the resident or residents.

(b) Specify all services which are to be provided by the provider to each resident, including, in detail, all items which each resident will receive, whether the items will be provided for a designated time period or for life, and whether the services will be available on the premises or at another specified location. The provider shall indicate which services or items are included in the contract ~~agreement~~ for continuing care and which services or items are made available at or by the facility at extra charge. Such items shall include, but are not limited to, food, shelter, personal services or nursing care, drugs, burial, and incidentals.

(c) Describe the terms and conditions under which a contract ~~an agreement~~ for continuing care may be canceled by the provider or by a resident and the conditions, if any, under which all or any portion of the entrance fee will be refunded in the event of cancellation of the contract ~~agreement~~ by the provider or by the resident, including the effect of any change in the health or financial condition of a person between the date of entering a contract ~~an agreement~~ for continuing care and the date of initial occupancy of a living unit by that person.

(d) Describe the health and financial conditions required for a person to be accepted as a resident and to continue as a resident, once accepted, including the effect of any change in the health or financial condition of a person between the date of entering into a continuing care contract ~~agreement~~ and the date of taking occupancy in a unit.

(e) Describe the circumstances under which the resident will be permitted to remain in the facility in the event of financial difficulties of the resident. The stated policy may not be less than the terms stated in s. 651.061.

(f) State the fees that will be charged if the resident marries while at the designated facility, the terms concerning the entry of a spouse to the facility, and the consequences if the spouse does not meet the requirements for entry.

(g) Provide that the contract ~~agreement~~ may be canceled upon the giving of written notice of cancellation of at least 30 days by the provider, the resident, or the person who provided the transfer of property or funds for the care of such resident; however, if a contract ~~an agreement~~ is canceled because there has been a good faith determination that a resident is a danger to himself or others, only such notice as is reasonable under the circumstances shall be required.

1. The contract ~~agreement~~ shall further provide in clear and understandable language, in print no smaller than the largest type used in the body of the contract ~~agreement~~, the terms governing the refund of any portion of the entrance fee~~, which terms shall include a provision that all refunds be made within 120 days after notification~~.

2. For a resident whose contract ~~agreement~~ with the facility provides that the resident does not receive a transferable membership or ownership right in the facility, and who has occupied his unit, the refund shall be calculated on a pro rata basis with the facility retaining no more than 2 percent per month of occupancy by the resident and no more than a 4-percent fee for processing. Such refund shall be paid no later than 120 days after the giving of notice of intention to cancel.

3. ~~Alternatively,~~ If the contract provides for the facility to retain no more than 1 percent per month of occupancy by the resident, it may provide that such refund will be paid from the proceeds of the next entrance fees received by the provider for units for which there are no prior claims by any resident until paid in full or, if the provider has discontinued marketing continuing care contracts, within 200 days after the date of notice.

4. Unless the provisions of subsection (5) apply, for any prospective resident, regardless of whether or not such a resident receives a transferable membership or ownership right in the facility, who cancels the contract ~~agreement~~ prior to occupancy of the unit, the refund shall be the entire amount paid toward the entrance fee, less a processing fee not to exceed 4 percent of the entire entrance fee, but in no event shall such processing fee exceed the amount paid by the prospective resident. Such refund shall be paid no later than 60 days after the giving of notice of intention to cancel. For a resident who has occupied his unit and who has received a transferable membership or ownership right in the facility, the foregoing refund provisions shall not apply but shall be deemed satisfied by the acquisition or receipt of a transferable membership or an ownership right in the facility. The provider shall not charge any fee for the transfer of membership or sale of an ownership right.

(h) State the terms under which a contract ~~an agreement~~ is canceled by the death of the resident. These terms may contain a provision that, upon the death of a resident, the entrance fee of such resident shall be considered earned and shall become the property of the provider. When the unit is

shared, the conditions with respect to the effect of the death or removal of one of the residents shall be included in the contract ~~agreement~~.

(i) Describe the policies which may lead to changes in monthly recurring and nonrecurring charges or fees for goods and services received. The contract ~~agreement~~ shall provide for advance notice to the resident, of not less than 60 days, before any change in fees or charges or the scope of care or services may be effective, except for changes required by state or federal assistance programs.

(j) Provide that charges for care paid in one lump sum shall not be increased or changed during the duration of the agreed upon care, except for changes required by state or federal assistance programs.

(k) Specify whether or not the facility is, or is affiliated with, a religious, nonprofit, or proprietary organization or management entity; the extent to which the affiliate organization will be responsible for the financial and contractual obligations of the provider; and the provisions of the federal Internal Revenue Code, if any, under which the provider or affiliate is exempt from the payment of federal income tax.

~~(l) Describe the policy of the provider regarding reserve funding.~~

(2) A resident has the right to rescind a continuing care contract and receive a full refund of any funds paid ~~agreement~~, without penalty or forfeiture, within 7 days after executing the contract ~~agreement~~. ~~During the 7-day period, the resident's funds shall be retained in a separate escrow account under terms approved by the department.~~ A resident shall not be required to move into the facility designated in the contract ~~agreement~~ before the expiration of the 7-day period.

(3) The contract ~~agreement~~ shall include or shall be accompanied by a statement, printed in boldfaced type, which reads: "This facility and all other continuing care facilities in the State of Florida are regulated by chapter 651, Florida Statutes. A copy of the law is on file in this facility. The law gives you or your legal representative the right to inspect our most recent financial statement and inspection report before signing the contract ~~agreement~~."

(4) Before the transfer of any money or other property to a provider by or on behalf of a prospective resident, the provider shall present a typewritten or printed copy of the contract ~~agreement~~ to the prospective resident and all other parties to the contract ~~agreement~~. The provider shall secure a signed, dated statement from each party to the contract certifying that a copy of the contract ~~agreement~~ with the specified attachment as required pursuant to this chapter was received.

(5) If a resident dies before occupying the facility or, through illness, injury, or incapacity, is precluded from becoming a resident under the terms of the continuing care contract ~~agreement~~, the contract ~~agreement~~ is automatically canceled, and the resident or his legal representative shall receive a full refund of all moneys paid to the facility, except those costs specifically

incurred by the facility at the request of the resident and set forth in writing in a separate addendum, signed by both parties, to the contract ~~agreement~~.

(6) In order to comply with this section, a provider may furnish information not contained in his continuing care contract ~~agreement~~ through an addendum.

(7) Those contracts ~~agreements~~ entered into subsequent to July 1, 1977, and before the issuance of a certificate of authority to the provider are valid and binding upon both parties in accordance with their terms.

(8) The provisions of this section shall control over any conflicting provisions contained in part II or part III of chapter 400.

Section 12. Subsection (1) of section 651.061, Florida Statutes, is amended to read:

651.061 Dismissal or discharge of resident; refund.—

(1) No contract ~~agreement~~ for care shall permit dismissal or discharge of the resident from the facility providing care before the expiration of the contract ~~agreement~~, without just cause for such a removal. For any contract entered into on or after October 1, 1997, and terminated by a provider ~~If a facility terminates a resident~~ for just cause, the provider ~~facility~~ shall pay to the resident any refund due upon the resident's vacating the facility, less a reasonable amount to cover the anticipated cost of utilities, telephone, or other obligations, if applicable and as documented by the provider. Any funds retained and not used for such purposes will be refunded to the resident within 45 days of vacating the unit. For contracts written prior to October 1, 1997, any refund due shall be made in accordance with the terms of the contract ~~in the same manner as if the resident had provided notice pursuant to s. 651.055(1)(g)~~. The term "just cause" includes, but is not limited to, a good faith determination that a resident is a danger to himself or others while remaining in the facility. The term "just cause" does not include termination of contract holders for the purpose of decertifying a facility from this chapter.

Section 13. Section 651.065, Florida Statutes, is amended to read:

651.065 Waiver of statutory protection.—No act, agreement, or statement of any resident, or of an individual purchasing care for a resident, under any contract ~~agreement~~ to furnish care to the resident shall constitute a valid waiver of any provision of this chapter intended for the benefit or protection of the resident or the individual purchasing care for the resident.

Section 14. Section 651.071, Florida Statutes, is amended to read:

651.071 Contracts ~~Agreements~~ as preferred claims on liquidation or receivership.—

(1) In the event of receivership or liquidation proceedings against a ~~of the~~ provider, all continuing care contracts ~~agreements~~ executed by a provider shall be deemed preferred claims against all assets owned by the provider;

however, such claims shall be subordinate to those priority claims set forth in s. 631.271 and any secured claim as defined in s. 631.011.

(2) Any other claims not set forth in subsection (1) shall be considered as general creditors' claims.

(3) Nothing in this section shall be construed to impair the priority, with respect to the lien property, of mortgages, security agreements, or lease agreements or installment sales agreements on property not otherwise encumbered entered into by a provider with an issuer of bonds or notes, which has financed a facility, and which bonds are secured by a resolution, ordinance, or indenture of trust, if such mortgages or agreements were duly recorded at least 4 months prior to the institution of receivership or liquidation proceedings.

Section 15. Section 651.091, Florida Statutes, is amended to read:

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

(1) Each continuing care facility shall maintain as public information, available upon request, records of all cost and inspection reports pertaining to that facility that have been filed with or issued by any governmental agency. A copy of each such report shall be retained in such records for not less than 5 years from the date the report is filed or issued. Each facility shall also maintain as public information, available upon request, all annual statements that have been filed with the department.

(2) Every continuing care facility shall:

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

(b) Post in a prominent position in the facility so as to be accessible to all residents and to the general public a concise summary of the last examination report issued by the department, with references to the page numbers of the full report noting any deficiencies found by the department, and the actions taken by the provider to rectify such deficiencies, indicating in such summary where the full report may be inspected in the facility.

(c) Post in a prominent position in the facility so as to be accessible to all residents and to the general public a summary of the latest annual statement, indicating in the summary where the full annual statement may be inspected in the facility. A listing of any proposed changes in policies, programs, and services shall also be posted.

(d) Distribute a copy of the full annual statement to the president or chairman of the residents' council within 30 days after the filing of the annual report with the department, and designate a staff person to provide explanation thereof.

(e) Notify the residents' council of any plans filed with the department to obtain new financing, additional financing, or refinancing for the facility and of any applications to the department for any expansion of the facility.

(3) Before entering into a contract ~~an agreement~~ to furnish continuing care, the provider undertaking to furnish the care, or the agent of the provider, shall make full disclosure, and provide copies of the disclosure documents to the prospective resident or his legal representative, of the following information ~~relative to the undertaking~~:

(a) The contract ~~agreement~~ to furnish continuing care.

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

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

(d) In keeping with the intent of this subsection relating to disclosure, the provider shall make available for review, master plans approved by the provider's governing board and any plans for expansion or phased development, to the extent that the availability of such plans will not put at risk real estate, financing, acquisition, negotiations, or other implementation of operational plans and thus jeopardize the success of negotiations, operations, and development. ~~Any plans adopted by the governing body of the provider for expansion or phased development during the next 3 years, or, if a master plan for development has been adopted by the governing body, the longer period of time appropriate to such master plan.~~

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

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

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

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

A true and complete copy of the full disclosure document to be used shall be filed with the department prior to its use. A resident or ~~The~~ prospective resident or his or her legal representative shall be permitted to inspect the full reports referred to in paragraph (2)(b); the charter or other agreement or instrument required to be filed with the department pursuant to s. 651.022(2), together with all amendments thereto; and the bylaws of the corporation or association, if any. Upon request, copies of the reports and information shall be provided to the individual requesting them if the individual agrees to pay a reasonable charge to cover copying costs.

Section 16. Section 651.095, Florida Statutes, is amended to read:

651.095 Advertisements; requirements; penalties.—

(1) Upon application for a provisional certificate of authority, the department shall require the applicant to submit for approval all ~~each financial statement, pamphlet, circular, form letter, advertisement, or other sales~~

~~literature or~~ advertising ~~communication addressed or intended for distribution to prospective residents~~. Approval of the application constitutes approval of the advertising ~~such documents~~, unless the department has otherwise notified the applicant ~~has consented otherwise in writing~~. The department shall disapprove any document which is a violation of any provision of part X of chapter 626 ~~untrue, deceptive, or misleading or which contains misrepresentations or omissions of material facts~~.

(2) After an application has been approved, a provider is not required to submit new advertising ~~an advertisement~~ to the department for approval; however, a provider may not use, and may not have published, and a person may not use or may not have published ~~publish~~, any advertisement which is a violation of any provision of part X of chapter 626 or which has previously been disapproved by the department ~~untrue, deceptive, or misleading, or which contains misrepresentations or omissions of material fact~~.

~~(3) For purposes of this section, advertising includes, but is not limited to, any report, circular, public announcement, certificate, financial statement, or other printed matter or advertising material which is designed or used to solicit or induce any persons to enter into any continuing care agreement. Any advertisement which lists or refers to the name of any person as being interested in, or connected with, the provider that is to perform the continuing care contract, shall clearly state the extent of any financial responsibility assumed by that person.~~

(3)~~(4)~~ This chapter does not impose liability, civil or criminal, upon a person or publisher who is regularly engaged in the business of publishing a bona fide newspaper or operating a radio or television station and who, acting solely in his official capacity, publishes an advertisement in good faith and without knowledge that the advertisement or publication constitutes a violation of this chapter.

(4)~~(5)~~ It is unlawful ~~Any person who engages in the business of providing continuing care is subject to the provisions of part X of chapter 626, entitled "Unfair Insurance Trade Practices." It shall also be considered an unfair insurance trade practice~~ for any person, other than a provider licensed pursuant to this chapter, to advertise or market to the general public any product similar to continuing care through the use of such terms as "life care," "continuing care," or "guaranteed care for life," or similar terms, words, or phrases.

(5)~~(6)~~ The provisions of this section shall control over any conflicting provisions contained in part II or part III of chapter 400.

Section 17. Subsection (1) of section 651.105, Florida Statutes, 1996 Supplement, is amended to read:

651.105 Examination and inspections.—

(1) The department may at any time, and shall at least once every 3 years, examine the business of any applicant for a certificate of authority and any provider engaged in the execution of care contracts ~~agreements~~ or engaged in the performance of obligations under such contracts ~~agreements~~,

in the same manner as is provided for examination of insurance companies pursuant to s. 624.316. Such examinations shall be made by a representative or examiner designated by the department, whose compensation will be fixed by the department pursuant to s. 624.320. Routine examinations may be made by having the necessary documents submitted to the department; and, for this purpose, financial documents and records conforming to commonly accepted accounting principles and practices, as required under s. 651.026, will be deemed adequate. The final written report of each such examination shall be filed in the office of the department and, when so filed, will constitute a public record. Any provider being examined shall, upon request, give reasonable and timely access to all of its records. The representative or examiner designated by the department may at any time examine the records and affairs and inspect the physical property of any provider, whether in connection with a formal examination or not.

Section 18. Section 651.106, Florida Statutes, is amended to read:

651.106 Grounds for discretionary refusal, suspension, or revocation of certificate of authority.—The department, in its discretion, may deny, suspend, or revoke the provisional certificate of authority or the certificate of authority of any applicant or provider if it finds that any one or more of the following grounds applicable to the applicant or provider exist:

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

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

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

(4) Demonstrated lack of fitness or trustworthiness.

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

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

(7) Failure to comply with, or violation of, any proper order or rule of the department or violation of any provision of this chapter.

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

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

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

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

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

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

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

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

(16) A pattern of bankrupt enterprises.

Revocation of a certificate of authority under this section does not relieve a provider from the provider's obligation to residents under the terms and conditions of any continuing care contract between the provider and residents or the provisions of this chapter. The provider shall continue to file its annual statement and pay license fees to the department as required under this chapter as if the certificate of authority had continued in full force, but the provider shall not issue any new continuing care contracts. The department may seek an action in the circuit court of Leon County to enforce the department's order and the provisions of this section.

Section 19. Subsection (3) of section 651.107, Florida Statutes, is amended to read:

651.107 Duration of suspension; obligations during suspension period; reinstatement.—

(3) Upon expiration of the suspension period, if within such period the certificate of authority has not otherwise terminated, the provider's certificate of authority shall automatically be reinstated unless the department finds that the causes for the suspension have not been removed or that the provider is otherwise not in compliance with the requirements of this chapter. If not so automatically reinstated, the certificate of authority shall be deemed to be revoked ~~have expired~~ as of the end of the suspension period or upon failure of the provider to continue the certificate during the suspension period, whichever event first occurs.

Section 20. Section 651.1081, Florida Statutes, is created to read:

651.1081 Remedies available in cases of unlawful sale.—

(1) Upon a determination by the department that a provider is or has been violating the provisions of this chapter, the department may order the

provider to cease sales and make a rescission offer to the resident in accordance with the provisions of this section.

(2) Upon such order by the department, every unlawful sale made in violation of this chapter may be rescinded at the election of the resident without penalty.

(3) No resident shall have the benefit of this section who, within 30 days of receipt, has refused or failed to accept an offer made in writing by the provider to rescind the contract in question and to refund the full amount paid by the resident with interest on the full amount paid for the contract at the legal rate, pursuant to s. 55.03, for the period from the date of payment by the resident to the date of repayment, less the amount of the cost of care provided, if applicable, and the amount of any costs specifically incurred by the provider at the request of the resident and set forth in writing in a separate addendum, signed by both parties to the contract.

Section 21. Subsection (3) of section 651.111, Florida Statutes, is amended to read:

651.111 Requests for inspections.—

(3) Upon receipt of a complaint, the department shall make a preliminary review; and, unless the department determines that the complaint is ~~willfully intended to harass a provider or is~~ without any reasonable basis, the department shall make an ~~onsite~~ inspection~~, or instruct the advisory council to act, within 10 business days after receiving the complaint~~. ~~In either event,~~ The complainant shall be advised, within 30 days after ~~of~~ the receipt of the complaint by the department, of the proposed course of action of the department.

Section 22. Section 651.114, Florida Statutes, is amended to read:

651.114 Delinquency proceedings; remedial rights.—

(1) Upon determination by the department that a provider is not in compliance with this chapter, the department may notify the chairman of the advisory council, who may assist the department in formulating a corrective action plan ~~to require the provider to come into compliance~~.

~~(2) Upon notification by an escrow agent or another person designated to act in his place, or by the provider, that a portion of any funds required to be escrowed under the provisions of this chapter have been or are proposed to be released, and before invoking its powers under part I of chapter 631, the department shall notify the chairman of the advisory council of the release of the funds required to be escrowed under the provisions of this chapter.~~

(2)~~(3)~~ A ~~The~~ provider shall make available to the advisory council, no later than 30 ~~14~~ days after being requested to do so by the advisory council, ~~all documents requested by the council, including, but not limited to:~~

~~(a) An explanation of the use of, or proposed use of, the escrowed funds.~~

~~(b)~~ a plan for obtaining compliance or ~~restoring the funds and for future~~ solvency.

(3)~~(4)~~ The council shall, ~~convene~~ no later than 30 days after notification ~~to~~:

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

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

(c) Conduct such other business as is necessary.

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

(4)~~(5)~~(a) Upon approval of a plan by the department, the provider shall submit monthly a progress report to the council or the department, or both, in a manner prescribed by the department.

(b) After a period of 3 months, or at any earlier time deemed necessary, the council shall evaluate the progress by the provider ~~of the facility~~ and shall advise the department of its findings.

(5)~~(6)~~ Should the department find that sufficient grounds exist ~~as to a provider~~ for rehabilitation, liquidation, conservation, reorganization, seizure, or summary proceedings of an insurer as set forth in ss. 631.051, 631.061, and 631.071, the department may petition for an appropriate court order or may pursue such other relief as is afforded in part I of chapter 631. Before invoking its powers under part I of chapter 631, the department shall notify the chairman of the advisory council.

(6)~~(7)~~ In the event an order of rehabilitation, liquidation, conservation, reorganization, seizure, or summary proceeding has been entered against a provider, the department is vested with all of the powers and duties it has under the provisions of part I of chapter 631 in regard to delinquency proceedings of insurance companies.

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

(8)~~(9)~~(a) The rights of the department described in this section shall be subordinate to the rights of a trustee or lender pursuant to the terms of a resolution, ordinance, loan agreement, indenture of trust, mortgage, lease, security agreement, or other instrument creating or securing bonds or notes issued to finance a facility, and the department, subject to the provisions of paragraph (c), shall not exercise its remedial rights provided under ss. 651.018, 651.106, 651.108, 651.114, and 651.116 with respect to a facility

that is subject to a lien, mortgage, lease, or other encumbrance or trust indenture securing bonds or notes issued in connection with the financing of the facility, if the trustee or lender, by inclusion or by amendment to the loan documents or by a separate contract ~~agreement~~ with the department, agrees that the rights of residents under a continuing care contract ~~agreement~~ will be honored and will not be disturbed by a foreclosure or conveyance in lieu thereof ~~of the facility~~ as long as the resident:

1. Is current in the payment of all monetary obligations required by the continuing care contract ~~agreement~~;

2. Is in compliance and continues to comply with all provisions of the resident's continuing care contract ~~agreement~~; and

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

(b) Nothing in this subsection requires a trustee or lender to:

1. Continue to engage in the marketing or resale of new continuing care contracts ~~agreements~~;

2. Pay any rebate of entrance fees as may be required by a resident's continuing care contract ~~agreement~~ as of the date of acquisition of the facility by the trustee or lender and until expiration of the period described in paragraph (d);

3. Be responsible for any act or omission of any owner or operator of the facility arising prior to the acquisition of the facility by the trustee or lender; or

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

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

(d) Upon acquisition of a facility by a trustee or lender and evidence satisfactory to the department that the requirements of paragraph (a) have been met, the department shall issue a 90-day temporary certificate of authority granting the trustee or lender the authority to engage in the business of providing continuing care and to issue continuing care contracts ~~agreements~~ subject to the department's right to immediately suspend or revoke the temporary certificate of authority if the department determines that any of the grounds described in s. 651.106 apply to the trustee or lender

or that the terms of the agreement used as the basis for the issuance of the temporary certificate of authority by the department have not been or are not being met by the trustee or lender since the date of acquisition.

Section 23. Subsections (1) and (3) of section 651.1151, Florida Statutes, are amended to read:

651.1151 Administrative, vendor, and management contracts.—

(1) The department may require a provider to submit any contract for administrative, vendor, or management services if the department has information and belief that a provider has entered into a contract with an affiliate, an entity controlled by the provider, or an entity controlled by an affiliate of the provider, which has not been disclosed to the department or which contract requires the provider to pay a fee that is unreasonably high in relation to the service provided.

(3) Any contract with an affiliate, an entity controlled by the provider, or an entity controlled by an affiliate of the provider for administrative, vendor, or management services entered into or renewed after October 1, 1991, shall contain a provision that the contract shall be canceled upon issuance of an order by the department pursuant to this section. A copy of the current management services contract, pursuant to this section, if any, must be on file in the marketing office or other accessible area to residents and the appropriate resident organizations.

Section 24. Subsection (10) of section 651.118, Florida Statutes, 1996 Supplement, is amended to read:

651.118 Agency for Health Care Administration; certificates of need; sheltered beds; community beds.—

(10) Whenever the department ~~Agency for Health Care Administration~~ has been appointed receiver of a provider pursuant to the provisions of part I of chapter 631, the receiver may petition, upon approval of the court having jurisdiction as being in the best interest of the residents, the Agency for Health Care Administration for the conversion of sheltered nursing home beds of the facility to community nursing home beds. The agency shall, upon petition of the receiver and through an expedited review, issue a certificate of need converting the sheltered nursing home beds to community nursing home beds. The court having jurisdiction of the delinquency proceeding shall enforce the provisions of this section.

Section 25. Paragraph (f) of subsection (5) of section 651.121, Florida Statutes, is amended to read:

651.121 Advisory council.—

(5) The council shall:

(f) Upon the request of the department, assist, with any corrective action, ~~in the~~ rehabilitation or cessation of business plan of ~~the continuing care operations of~~ a provider.

Section 26. Section 651.041, Florida Statutes, is hereby repealed.

Section 27. This act shall take effect October 1, 1997.

Became a law without the Governor's approval May 30, 1997.

Filed in Office Secretary of State May 29, 1997.