

## CHAPTER 2019-160

### Committee Substitute for Committee Substitute for Committee Substitute for House Bill No. 1033

An act relating to continuing care contracts; amending s. 651.011, F.S.; adding and revising definitions; amending s. 651.012, F.S.; conforming a cross-reference; deleting an obsolete date; amending s. 651.013, F.S.; adding certain Florida Insurance Code provisions to the Office of Insurance Regulation's authority to regulate providers of continuing care and continuing care at-home; amending s. 651.019, F.S.; revising requirements for providers and facilities relating to financing and refinancing transactions; amending s. 651.021, F.S.; conforming provisions to changes made by the act; creating s. 651.0215, F.S.; specifying conditions, requirements, procedures, and prohibitions relating to consolidated applications for provisional certificates of authority and for certificates of authority and to the office's review of such applications; specifying conditions under which a provider is entitled to secure the release of certain escrowed funds; providing construction; amending s. 651.022, F.S.; revising and specifying requirements, procedures, and prohibitions relating to applications for provisional certificates of authority and to the office's review of such applications; amending s. 651.023, F.S.; revising and specifying requirements, procedures, and prohibitions relating to applications for certificates of authority and to the office's review of such applications; conforming provisions to changes made by the act; amending s. 651.024, F.S.; revising requirements for certain persons relating to provider acquisitions; providing standing to the office to petition a circuit court in certain proceedings; creating s. 651.0245, F.S.; specifying procedures, requirements, and a prohibition relating to an application for the simultaneous acquisition of a facility and issuance of a certificate of authority and to the office's review of such application; specifying rulemaking requirements and authority of the Financial Services Commission; providing standing to the office to petition a circuit court in certain proceedings; specifying procedures for rebutting a presumption of control; creating s. 651.0246, F.S.; specifying requirements, conditions, procedures, and prohibitions relating to provider applications to commence construction or marketing for expansions of certificated facilities and to the office's review of such applications; defining the term "existing units"; specifying escrow requirements for certain moneys; specifying conditions under which providers are entitled to secure release of such moneys; providing applicability and construction; amending s. 651.026, F.S.; revising requirements for annual reports filed by providers with the office; revising the commission's rulemaking authority; requiring the office to annually publish a specified industry report; amending s. 651.0261, F.S.; requiring providers to file quarterly unaudited financial statements; providing an exception for filing a certain quarterly statement; revising information that the office may require providers to file and the circumstances under which such information

must be filed; revising the commission's rulemaking authority; amending s. 651.028, F.S.; specifying applicability of certain accreditations of providers or facilities; deleting the authority of the office to waive requirements for accredited facilities; providing that the commission, rather than the office, must make certain findings; amending s. 651.033, F.S.; revising applicability of escrow requirements; revising requirements for escrow accounts and agreements; revising the office's authority to allow a withdrawal of a specified percentage of the required minimum liquid reserve; revising applicability of requirements relating to the deposit of certain funds in escrow accounts; prohibiting an escrow agent, except under certain circumstances, from releasing or allowing the transfer of funds; creating s. 651.034, F.S.; specifying requirements for the office if a regulatory action level event occurs; specifying requirements for corrective action plans; authorizing the office to use members of the Continuing Care Advisory Council and to retain consultants for certain purposes; requiring affected providers to bear costs and expenses relating to such consultants; specifying requirements for, and authorized actions of, the office and the Department of Financial Services if an impairment occurs; providing construction; authorizing the office to exempt a provider from certain requirements for a certain timeframe; authorizing the commission to adopt rules; amending s. 651.035, F.S.; revising minimum liquid reserve requirements for providers; specifying requirements, limitations, and procedures for a provider's withdrawal of funds held in escrow and the office's review of certain requests for withdrawal; authorizing the office to order certain transfers under certain circumstances; requiring facilities to annually file with the office a minimum liquid reserve calculation; requiring increases in the minimum liquid reserve to be funded within a certain timeframe; requiring providers to fund shortfalls in minimum liquid reserves under certain circumstances within a certain timeframe; creating s. 651.043, F.S.; specifying requirements for certain management company contracts; specifying requirements, procedures, and authorized actions relating to changes in provider management and to the office's review of such changes; requiring that disapproved management be removed within a certain timeframe; authorizing the office to take certain disciplinary actions under certain circumstances; requiring providers to immediately remove management under certain circumstances; amending s. 651.051, F.S.; revising requirements for the maintenance of provider records and assets; amending s. 651.055, F.S.; revising a required statement in continuing care contracts; amending s. 651.057, F.S.; conforming provisions to changes made by the act; amending s. 651.071, F.S.; specifying the priority of continuing care contracts and continuing care at-home contracts in receivership or liquidation proceedings against a provider; amending s. 651.091, F.S.; revising requirements for continuing care facilities relating to posting or providing notices; amending s. 651.095, F.S.; adding terms to a list of prohibited terms in certain advertisements; amending s. 651.105, F.S.; adding a certain Florida Insurance Code provision to the office's authority to examine certain providers and applicants; authorizing the office to examine records for specified purposes; requiring providers to respond to

the office's written correspondence and to provide certain information; providing standing to the office to petition certain circuit courts for certain relief; revising, and specifying limitations on, the office's examination authority; amending s. 651.106, F.S.; authorizing the office to deny applications on specified grounds; adding and revising grounds for suspension or revocation of provisional certificates of authority and certificates of authority; creating s. 651.1065, F.S.; prohibiting certain actions by certain persons of an impaired or insolvent continuing care facility; providing that bankruptcy courts or trustees have jurisdiction over certain matters; requiring the office to approve or disapprove the continued marketing of new contracts within a certain timeframe; providing a criminal penalty; amending s. 651.111, F.S.; defining the term "inspection"; revising procedures and requirements relating to requests for inspections to the office; amending s. 651.114, F.S.; revising and specifying requirements, procedures, and authorized actions relating to providers' corrective action plans; providing construction; revising and specifying requirements and procedures relating to delinquency proceedings against a provider; revising circumstances under which the office must provide a certain notice to trustees or lenders; creating s. 651.1141, F.S.; providing legislative findings; authorizing the office to issue certain immediate final orders under certain circumstances; amending s. 651.121, F.S.; revising the composition of the Continuing Care Advisory Council; amending s. 651.125, F.S.; revising a prohibition to include certain actions performed without a valid provisional certificate of authority; providing effective dates.

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

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

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

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

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

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

(4)(1) “Advertising” means the dissemination of 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 for continuing care or continuing care at-home.

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

(6)(3) “Continuing Care Advisory Council” or “advisory council” means the council established in s. 651.121.

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

(8) “Controlling company” means any corporation, trust, or association that directly or indirectly owns 25 percent or more of:

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

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

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

(10) “Days cash on hand” means the quotient obtained by dividing the value of paragraph (a) by the value of paragraph (b).

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

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

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

(11) “Debt service coverage ratio” means the quotient obtained by dividing the value of paragraph (a) by the value of paragraph (b).

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

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

(12) “Department” means the Department of Financial Services.

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

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

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

(15) “Impaired” or “impairment” means that either of the following has occurred:

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

(b) Beginning January 1, 2021:

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

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

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

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

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

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

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

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

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

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

(23)(12) "Provider" means the owner or operator, whether a natural person, partnership or other unincorporated association, however organized, trust, or corporation, of an institution, building, residence, or other place, whether operated for profit or not, which owner or operator provides continuing care or continuing care at-home for a fixed or variable fee, or for any other remuneration of any type, whether fixed or variable, for the

period of care, payable in a lump sum or lump sum and monthly maintenance charges or in installments. The term does not apply to an entity that has existed and continuously operated a facility located on at least 63 acres in this state providing residential lodging to members and their spouses for at least 66 years on or before July 1, 1989, and has the residential capacity of 500 persons, is directly or indirectly owned or operated by a nationally recognized fraternal organization, is not open to the public, and accepts only its members and their spouses as residents.

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

~~(25)~~ “Regulatory action level event” means that any two of the following have occurred:

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

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

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

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

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

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

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

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

651.013 Chapter exclusive; applicability of other laws.—

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

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

651.019 New financing, additional financing, or refinancing.—

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

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

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



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

651.021 Certificate of authority required.—

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

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

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

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

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

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

651.0215 Consolidated application for a provisional certificate of authority and a certificate of authority; required restrictions on use of entrance fees.—

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

(a) All reservation deposits and entrance fees must be placed in escrow in accordance with s. 651.033. The applicant may not use or pledge any part of

an initial entrance fee for the construction or purchase of the facility or as security for long-term financing.

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

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

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

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

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

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

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

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

(d) Documents evidencing 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.

(e) Documents evidencing that the aggregate amount of entrance fees received by or pledged to the applicant, plus anticipated proceeds from any long-term financing commitment and funds from all other sources in the actual possession of the applicant, equal at least 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.

(f) A complete audited financial report 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 after the date of the last audit.

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

(h) Such other reasonable data, financial statements, and pertinent information as the commission or office 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.

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

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

(4) Within 45 days after receipt of the information required under subsection (2), the office shall examine the information and notify the applicant in writing, specifically requesting any additional information that the office is authorized to require. An application is deemed complete when the office receives all requested information and the applicant corrects any error or omission of which the applicant was timely notified or when the time for such notification has expired. Within 15 days after receipt of all of the requested additional information, the office shall notify the applicant in writing that all of the requested information has been received and that the application is deemed complete as of the date of the notice. Failure to notify the applicant in writing within the 15-day period constitutes acknowledgment by the office that it has received all requested additional information, and the application is deemed complete for purposes of review on the date the applicant files all of the required additional information.

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

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

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

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

(a) A certificate of occupancy has been issued.

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

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

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

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

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

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

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

651.022 Provisional certificate of authority; application.—

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

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

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

1. The proprietor, if the applicant or provider is an individual.
2. Every partner or member, if the applicant or provider is a partnership or other unincorporated association, however organized, having fewer than 50 partners or members, together with the business name and address of the partnership or other organization.
3. The principal partners or members, if the applicant or provider is a partnership or other unincorporated association, however organized, having 50 or more partners or members, together with the business name and business address of the partnership or other organization. If such unincorporated organization has officers and a board of directors, the full name and business address of each officer and director may be set forth in lieu of the full name and business address of its principal members.
4. The corporation and each officer and director thereof, if the applicant or provider is a corporation.
5. Every trustee and officer, if the applicant or provider is a trust.
6. The manager, whether an individual, corporation, partnership, or association.
7. Any stockholder holding at least a 10 percent interest in the operations of the facility in which the care is to be offered.

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

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

10. Any affiliated parent or subsidiary corporation or partnership.

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

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

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

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

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

The statement ~~must shall~~ set forth the court or agency, the date of conviction or judgment, and the penalty imposed or damages assessed, or the date, nature, and issuer of the order. Before determining whether a provisional certificate of authority is to be issued, the office may make an inquiry to

determine the accuracy of the information submitted pursuant to subparagraphs 1., 2., and 3. ~~1. and 2.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

651.023 Certificate of authority; application.—

(1) After issuance of a provisional certificate of authority, the office shall issue to the holder of such provisional certificate a certificate of authority if the holder of the provisional certificate provides the office 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 the provisional certificate.

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

~~1. The study must also contain an independent evaluation and examination opinion, or a comparable opinion acceptable to the office, 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 the project as proposed is feasible.~~

1.2. The study must 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.

~~2.3.~~ If the study is prepared by an independent certified public accountant, it must contain an examination opinion or a compilation report

acceptable to the office containing a financial forecast or projections for the first 5 3 years of operations which take into account an actuary's mortality and morbidity assumptions as the study relates to turnover, rates, fees, and charges and financial projections having a compilation opinion for the next 3 years. If the study is prepared by an independent consulting actuary, it must contain mortality and morbidity assumptions as the study relates to turnover, rates, fees, and charges data and an actuary's signed opinion that the project as proposed is feasible and that the study has been prepared in accordance with standards adopted by the American Academy of Actuaries.

(c) Subject to subsection (4), a provider may submit an application for a certificate of authority and any required exhibits upon submission of documents evidencing proof that the project has a minimum of 30 percent of the units reserved for which the provider is charging an entrance fee. ~~This does not apply to an application for a certificate of authority for the acquisition of a facility for which a certificate of authority was issued before 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 part II of chapter 631.~~

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

(e) Documents evidencing 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) Documents evidencing 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 at least 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) A complete audited financial report 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 after the date of the last audit.

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

(i) Such other reasonable data, financial statements, and pertinent information as the commission or office 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.

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

(2) Within 30 days after receipt of the information required under subsection (1), the office shall examine such information and notify the provider in writing, specifically requesting any additional information the office is permitted by law to require. Within 15 days after receipt of all of the requested additional information, the office 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 notify the applicant in writing within the 15-day period constitutes acknowledgment by the office that it has received all requested additional information, and the application shall be deemed complete for purposes of review on the date of filing all of the required additional information.

(4) The office shall issue a certificate of authority upon determining 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.

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

(b) In order for a unit to be considered reserved under this section, the provider must collect a minimum deposit of the lesser of \$40,000 or 10 percent of the then-current entrance fee for that unit, and may 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 must state the cancellation policy and the terms of the continuing care or continuing care at-home contract to be entered into.

(5) Up to 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 as security for long-term financing. As used in this section, the term “initial entrance fee” means the total entrance fee charged by the facility to the first occupant of a unit.

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

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

(6) The provider is entitled to secure release of the moneys held in escrow within 7 days after receipt by the office 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 at least 70 percent of the total units of a phase or of the total of the combined phases constructed. If a provider offering continuing care at-home is applying for a release of escrowed entrance fees, the same minimum requirement must be met for the continuing care and continuing care at-home contracts, independently of each other.

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

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

~~(d)(e)~~ Documents evidencing 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.

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

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

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

(7) In lieu of the provider fulfilling the requirements in subsection (5) and paragraphs (6)(b) and (c) ~~(d)~~, the office may authorize the release of escrowed 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 has satisfied paragraphs (6)(a), ~~(e)~~, and (d) ~~(e)~~. Such mortgage shall secure the refund of the entrance fee in the amount required by this chapter. The granting of such mortgage is subject to the following:

(a) The first mortgage is granted to an independent trust that is beneficially held by the residents. The document creating the trust must include a provision that agrees to an annual audit and will furnish to the office all information the office may reasonably require. The mortgage may secure payment on bonds issued to the residents or trustee. Such bonds are redeemable after termination of the residency contract 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 must be substantially completed and substantially all equipment must 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 must be for a term of at least 30 years.

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

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

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

651.024 Acquisition.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

651.0246 Expansions.—

(1)(a) A provider must obtain written approval from the office before commencing construction or marketing for an expansion of a certificated facility equivalent to the addition of at least 20 percent of existing units or 20 percent or more of the number of continuing care at-home contracts. If the provider has exceeded the current statewide median for days cash on hand, debt service coverage ratio, and total facility occupancy for the most recent two consecutive annual reporting periods, the provider is automatically granted approval to expand the total number of existing units by up to 35 percent upon submitting a letter to the office indicating the total number of planned units in the expansion, the proposed sources and uses of funds, and an attestation that the provider understands and pledges to comply with all minimum liquid reserve and escrow account requirements. As used in this section, the term "existing units" means the sum of the total number of independent living units and assisted living units identified in the most recent annual report filed with the office pursuant to s. 651.026. For purposes of this section, the statewide median for days cash on hand, debt service coverage ratio, and total facility occupancy is the median calculated in the most recent annual report submitted by the office to the Continuing Care Advisory Council pursuant to s. 651.121(8). This section does not apply to construction for which a certificate of need from the Agency for Health Care Administration is required.

(b) The application for the approval of an addition consisting of 20 percent or more of existing units or continuing care at-home contracts must be on forms adopted by the commission. The application must include the feasibility study required by this section and such other information as reasonably requested by the office. If the expansion is only for continuing care at-home contracts, an actuarial study prepared by an independent actuary in accordance with standards adopted by the American Academy of

Actuaries which presents the financial impact of the expansion may be substituted for the feasibility study.

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

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

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

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

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

1. A description of the facility and proposed expansion, including the location, the size, the anticipated completion date, and the proposed construction program.
2. An identification and evaluation of the primary and, if applicable, secondary market areas of the facility and the projected unit sales per month.
3. Projected revenues, including anticipated entrance fees; monthly service fees; nursing care revenues, if applicable; and all other sources of revenue.
4. Projected expenses, including for staffing requirements and salaries; the cost of property, plant, and equipment, including depreciation expense; interest expense; marketing expense; and other operating expenses.
5. A projected balance sheet of the applicant.
6. The expectations for the financial condition of the project, including the projected cash flow and an estimate of the funds anticipated to be necessary to cover startup losses.
7. The inflation factor, if any, assumed in the study for the proposed expansion and how and where it is applied.



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

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

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

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

12. An independent evaluation and examination opinion for the first 5 years of operations, or a comparable opinion acceptable to the office, 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 the project as proposed is feasible.

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

(b) Such other reasonable data, financial statements, and pertinent information as the commission or office 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.

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

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

(4) The provider is entitled to secure release of the moneys held in escrow within 7 days after receipt by the office 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 at least 50 percent of the total units of a phase or of the total of the combined phases constructed. If a provider offering continuing care at-home is applying for a release of escrowed entrance fees, the same minimum requirement must be met for the continuing care and continuing care at-home contracts independently of each other.

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

(d) Documents evidencing 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.

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

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

(5)(a) Within 30 days after receipt of an application for expansion, the office shall examine the application and shall notify the applicant in writing, specifically requesting any additional information that the office is authorized to require. Within 15 days after the office receives all the requested additional information, the office shall notify the applicant in writing that the requested information has been received and that the application is deemed complete as of the date of the notice. Failure to notify the applicant in writing within the 15-day period constitutes acknowledgment by the office that it has received all requested additional information, and the application is deemed complete for purposes of review on the date the applicant files all of the required additional information. If the application submitted is determined by the office to be substantially incomplete so as to require substantial additional information, including biographical information, the office may return the application to the applicant with a written notice stating that the application as received is substantially incomplete and, therefore, is unacceptable for filing without further action required by the office. Any filing fee received must be refunded to the applicant.

(b) An application is deemed complete upon the office receiving all requested information and the applicant correcting any error or omission of which the applicant was timely notified or when the time for such

notification has expired. The office shall notify the applicant in writing of the date on which the application was deemed complete.

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

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

651.026 Annual reports.—

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

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

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

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

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

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

(c) The following financial information:

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

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

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

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

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

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

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

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

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

~~(b) Current ratios.~~

~~(c) Adjusted current ratios.~~

~~(d) Cash flows.~~

~~(e) Occupancy rates.~~

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

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

(10) By August 1 of each year, the office shall publish on its website an annual industry report for the preceding calendar year which contains all of the following:

- (a) The median days cash on hand for all providers.
- (b) The median debt service coverage ratio for all providers.
- (c) The median occupancy rate for all providers by setting, including independent living, assisted living, skilled nursing, and the entire facility.
- (d) Documentation of the office's compliance with the requirements in s. 651.105(1) relating to examination timeframes. The documentation must include the number of examinations completed in the preceding calendar year, the number of such examinations for which the report has been issued, and the percentage of all examinations completed within the statutorily required timeframes.
- (e) The number of annual reports submitted to the office pursuant to this section in the preceding calendar year and the percentage of such reports that the office has reviewed in order to determine whether a regulatory action level event has occurred.

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

651.0261 Quarterly and monthly statements.—

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

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

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

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

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

(a) The provider is:

1. Subject to administrative supervision proceedings;
2. Subject to a corrective action plan resulting from a regulatory action level event and for up to 2 years after the factors that caused the regulatory action level event have been corrected; or
3. Subject to delinquency or receivership proceedings or has filed for bankruptcy.

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

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

(d) The provider is found to be impaired.

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

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

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

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

651.033 Escrow accounts.—

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

(a) The escrow account must ~~shall~~ be established in a Florida bank, Florida savings and loan association, ~~or~~ Florida trust company, or a national bank that is chartered and supervised by the Office of the Comptroller of the Currency within the United States Department of the Treasury and that has a branch in this state, which is acceptable to the office, or such funds must be deposited 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 is~~ shall be subject to approval by the office. The agreement must ~~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 by paragraphs (b) and (e), (3)(a), (3)(b), and (5)(a) and subsection (6) 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 may not diminish the funds held in escrow below the amount required by this chapter. Funds deposited in an escrow account are not subject to charges by the escrow agent except escrow agent fees associated with administering the accounts, or subject to any liens, judgments, garnishments, 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 office, the escrow agent shall issue a statement indicating the status of the escrow account.

(2) Notwithstanding s. 651.035(7), ~~In addition, the escrow agreement shall provide that the escrow agent or another person designated to act in the escrow agent's place and the provider, except as otherwise provided in s. 651.035, shall notify the office 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 office may waive the 10-day notification period and allow a withdrawal of up to 10 percent of the required minimum liquid reserve. The office shall have 3 working days to deny the petition for the~~

emergency 10-percent withdrawal. If the office fails to deny the petition within 3 working days, the petition ~~is shall~~ be deemed to have been granted by the office. For ~~purposes the purpose~~ of this section, ~~the term~~ “working day” means each day that is not a Saturday, Sunday, or legal holiday as defined by Florida law. Also, for ~~purposes the purpose~~ of this section, the day the petition is received by the office ~~is shall~~ not be counted as one of the 3 days.

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

(a) The provider shall deliver to the resident a written receipt. The receipt must show the payor’s name and address, the date, the price of the care contract, and the amount of money paid. A copy of each receipt, together with the funds, ~~must shall~~ be deposited with the escrow agent or as provided in paragraph (c). The escrow agent ~~must shall~~ release such funds to the provider 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 office, has met the requirements of ~~s. 651.0215(8), s. 651.023(6), or s. 651.0246.~~ However, if the resident rescinds the contract within the 7-day period, the escrow agent ~~must shall~~ release the escrowed fees to the resident.

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

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

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

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

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

651.034 Financial and operating requirements for providers.—

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

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

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

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

(b) In determining corrective actions, the office shall consider any factor relevant to the provider based upon the office's examination or analysis of the assets, liabilities, and operations of the provider. The provider must submit the corrective action plan or the revised corrective action plan within

30 days after the occurrence of the regulatory action level event. The office shall review and approve or disapprove the corrective action plan within 45 business days.

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

(2) Except when the office's remedial rights are suspended pursuant to s. 651.114(11)(a), the office must take action necessary to place an impaired provider under regulatory control, including any remedy available under part I of chapter 631. An impairment is sufficient grounds for the department to be appointed as receiver as provided in chapter 631, except when the office's remedial rights are suspended pursuant to s. 651.114(11)(a). If the office's remedial rights are suspended pursuant to s. 651.114(11)(a), the impaired provider must make available to the office copies of any corrective action plan approved by the third-party lender or trustee to cure the impairment and any related required report. For purposes of s. 631.051, impairment of a provider is defined according to the term "impaired" under s. 651.011. The office may forego taking action for up to 180 days after the impairment if the office finds there is a reasonable expectation that the impairment may be eliminated within the 180-day period.

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

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

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

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

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

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

651.035 Minimum liquid reserve requirements.—

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

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

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

(c) Each provider shall maintain in escrow an operating reserve equal to 30 percent of the total operating expenses projected in the feasibility study required by s. 651.023 for the first 12 months of operation. Thereafter, each provider shall maintain in escrow an operating reserve equal to 15 percent of the total operating expenses in the annual report filed pursuant to s.

651.026. If a provider has been in operation for more than 12 months, the total annual operating expenses must shall be determined by averaging the total annual operating expenses reported to the office by the number of annual reports filed with the office within the preceding 3-year period subject to adjustment if there is a change in the number of facilities owned. For purposes of this subsection, total annual operating expenses include all expenses of the facility except: depreciation and amortization; interest and property taxes included in paragraph (a); extraordinary expenses that are adequately explained and documented in accordance with generally accepted accounting principles; liability insurance premiums in excess of those paid in calendar year 1999; and changes in the obligation to provide future services to current residents. For providers initially licensed during or after calendar year 1999, liability insurance must shall be included in the total operating expenses in an amount not to exceed the premium paid during the first 12 months of facility operation. ~~Beginning January 1, 1993,~~ The operating reserves required under this subsection must 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 before 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 is shall be in compliance with this subsection.

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

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

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

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

(8) The office may order the immediate transfer of up to 100 percent of the funds held in the minimum liquid reserve to the custody of the department pursuant to part III of chapter 625 if the office finds that the provider is impaired or insolvent. The office may order such a transfer

regardless of whether the office has suspended or revoked, or intends to suspend or revoke, the certificate of authority of the provider.

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

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

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

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

651.043 Approval of change in management.—

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

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

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

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

(a) Finds that the new management is (in)competent or untrustworthy;

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

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

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

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

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

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

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

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

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

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

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

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

(b) That a manager is now, or was in the past, affiliated, directly or indirectly, through ownership interest of 10 percent or more in, or control of, any business, corporation, or other entity that has been found guilty of or has

pled guilty or no contest to a felony charge, or has been held liable or has been enjoined in a civil action by final judgment, if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property.

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

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

651.051 Maintenance of assets and records in state.—All records and assets of a provider must be maintained or readily accessible in this state or, if the provider's corporate office is located in another state, such records must be electronically stored in a manner that will ensure that the records are readily accessible to the office. No records or assets may be removed from this state by a provider unless the office consents to such removal in writing before such removal. Such consent must ~~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. ~~Before~~ ~~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 office, disclosure of the system must ~~shall~~ meet the notification requirements. The electronic storage of records on a web-based, secured storage platform by contract with a third party is acceptable if the records are readily accessible to the office.

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

651.055 Continuing care contracts; right to rescind.—

(3) The contract must include or be accompanied by a statement, printed in boldfaced type, which reads: "This facility and all other continuing care facilities (also known as life plan communities) in the State of Florida are regulated by the Office of Insurance Regulation pursuant to 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. The financial structure of a continuing care provider can be complex, and the decision to enter into a contract for continuing care is a long-term commitment between a resident and the continuing care provider. You may wish to consult an attorney or a financial advisor before entering into such a contract."

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

651.057 Continuing care at-home contracts.—

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

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

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

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

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

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

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

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

(d) Comply with the requirements of this chapter.

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

651.071 Contracts as preferred claims on liquidation or receivership.—

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

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

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

(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 which is accessible to all residents and the general public a concise summary of the last examination



report issued by the office, with references to the page numbers of the full report noting any deficiencies found by the office, 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, accessible to all residents and the general public, a notice containing the contact information for the office and the Division of Consumer Services of the department and stating that the division or office may be contacted for the submission of inquiries and complaints with respect to potential violations of this chapter committed by a provider. Such contact information must include the division's website and the toll-free consumer helpline and the office's website and telephone number.

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

~~(e)(e)~~ Post in a prominent position in the facility which is accessible to all residents and 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 must also be posted.

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

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

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

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

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

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

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

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

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

(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 does 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.

(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.~~

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

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

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

(j) Notice that if the resident does not exercise the right to rescind a continuing care contract within 7 days after executing the contract, the resident's funds held in escrow pursuant to s. 651.055(2) will be released to the provider.

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

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

(4) A true and complete copy of the full disclosure document to be used must be filed with the office before use. A resident or prospective resident or his or her legal representative may inspect the full reports referred to in paragraph (2)(b); the charter or other agreement or instrument required to be filed with the office 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 24. Subsection (4) of section 651.095, Florida Statutes, is amended to read:

651.095 Advertisements; requirements; penalties.—

(4) It is unlawful 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,” “life plan,” “life plan at home,” “continuing care,” or “guaranteed care for life,” or similar terms, words, or phrases.

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

651.105 Examination and inspections.—

(1) The office 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 or engaged in the performance of obligations under such contracts, in the same manner as is provided for the examination of insurance companies pursuant to ss. 624.316 and 624.318 ~~s. 624.316~~. For a provider as deemed accredited under defined in s. 651.028, such examinations must ~~shall~~ take place at least once every 5 years. Such examinations must ~~shall~~ be made by a representative or examiner designated by the office whose compensation will be fixed by the office pursuant to s. 624.320. Routine examinations may be made by having the necessary documents submitted to the office; and, for this purpose, financial documents and records conforming to commonly accepted accounting principles and practices, as required under s. 651.026, are deemed adequate. The final written report of each examination must be filed with the office and, when so filed, constitutes 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 office 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.

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

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

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

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

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

(7) Unless a provider is impaired or subject to a regulatory action level event, any parent, subsidiary, or affiliate is not subject to examination by the

office as part of a routine examination. However, if a provider or facility relies on a contractual or financial relationship with a parent, a subsidiary, or an affiliate in order to meet the financial requirements of this chapter, the office may examine any parent, subsidiary, or affiliate that has a contractual or financial relationship with the provider or facility to the extent necessary to ascertain the financial condition of the provider.

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

651.106 Grounds for discretionary refusal, suspension, or revocation of certificate of authority.—The office may deny an application or, 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 office or commission or violation of any provision of this chapter.

(8) The insolvent or impaired 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 office.

(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 or continuing care at-home contracts.

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

(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 IX of chapter 626.

(16) A pattern of bankrupt enterprises.

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

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

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

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

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

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

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

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 or continuing care at-home 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 office as required under this chapter as if the certificate of authority had continued in full force, but the provider shall not issue any new contracts.

The office may seek an action in the Circuit Court of Leon County to enforce the office's order and the provisions of this section.

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

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

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

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

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

651.111 Requests for inspections.—

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

(3) Upon receipt of a complaint, the office shall make a preliminary review to determine if the complaint alleges a violation of this chapter; and, unless the office determines that the complaint does not allege a violation of this chapter or is without any reasonable basis, the office shall make an inspection. The office shall provide the complainant with a written acknowledgment of the complaint within 15 days after receipt by the office. The complainant shall be advised, within 30 days after the receipt of the complaint by the office, of the office's determination that the complaint does not allege a violation of this chapter, that the complaint is without any reasonable basis, or that the office will make an inspection. The notice must include an estimated timeframe for completing the inspection and a contact

number. If the inspection is not completed within the estimated timeframe, the office must provide the complainant with a revised timeframe. Within 15 days after completing an inspection, the office shall provide the complainant and the provider a written statement specifying any violations of this chapter and any actions taken or that no such violation was found proposed course of action of the office.

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

651.114 Delinquency proceedings; remedial rights.—

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

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

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

- (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 office, which may require additional modification of the plan.

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

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

(5)(4) After receiving approval of a plan by the office, the provider shall submit a progress report monthly to the advisory council or the office, or both, in a manner prescribed by the office. After 3 months, or at any earlier



time deemed necessary, the council shall evaluate the progress by the provider and shall advise the office of its findings.

~~(6)~~<sup>(5)</sup> ~~If Should~~ the office ~~finds find~~ that sufficient grounds exist 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 ~~office~~ 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 ~~office~~ shall notify the chair of the advisory council.

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

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

~~(7) 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 office may direct the provider to formulate and file with the office a corrective action plan. If the provider fails to submit a plan within 30 days after the office's directive or submits a plan that is insufficient to correct the condition, the office may specify a plan and direct the provider to implement the plan.~~

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

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

~~(11)(a)(8)(a)~~ The rights of the office described in this section are 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 office, subject to the provisions of paragraph (c), may ~~shall~~ not exercise its remedial rights provided under this section and ss. 651.018, 651.106, 651.108, 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 with the office, agrees that the rights of residents under a continuing care or continuing care at-home contract will be honored and will not be disturbed by a foreclosure or conveyance in lieu thereof as long as the resident:

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

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

- 1. Continue to engage in the marketing or resale of new continuing care or continuing care at-home contracts;
- 2. Pay any rebate of entrance fees as may be required by a resident’s continuing care or continuing care at-home contract 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 before 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) ~~If Should~~ the office ~~determines~~ determine, at any time during the suspension of its remedial rights as provided in paragraph (a), that:

- 1. The trustee or lender is not in compliance with paragraph (a);~~or that~~
- 2. 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 office’s written consent;
- 3. The provider engaged in the misappropriation, conversion, or illegal commitment or withdrawal of minimum liquid reserve or escrowed funds required under this chapter;
- 4. The provider refused to be examined by the office pursuant to s. 651.105(1); or
- 5. The provider refused to produce any relevant accounts, records, and files requested as part of an examination.

the office 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 office which the office shall then reinstate.

(d) Upon acquisition of a facility by a trustee or lender and evidence satisfactory to the office that the requirements of paragraph (a) have been met, the office 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 or continuing care at-home and to issue continuing care or continuing care at-home contracts subject to the office’s right to immediately suspend or revoke the temporary certificate of authority if the office determines that any of the grounds described in s. 651.106 apply to the trustee or lender or that the terms of the contract used as the basis for the issuance of the temporary certificate of authority by the office have not been or are not being met by the trustee or lender since the date of acquisition.

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

651.1141 Immediate final orders.—

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

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

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

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

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

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

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

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

651.121 Continuing Care Advisory Council.—

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

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

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

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

(c) A certified public accountant.

~~(d) An attorney.~~

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

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

651.125 Criminal penalties; injunctive relief.—

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

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

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

Approved by the Governor June 27, 2019.

Filed in Office Secretary of State June 27, 2019.