

CHAPTER 690-193 CONTINUING CARE CONTRACTS

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690-193.001 Purpose and Scope.

The purpose of this rule chapter is to implement the provisions of Chapter 651, F.S., to govern the issuance of a Certificate of

Authority and the regulation and operation of Continuing Care Facilities as provided therein.

Specific Authority 651.015 FS. Law Implemented 651 FS. History—New 6-25-90, Formerly 4-45.010, 4-193.001.

690-193.002 Definitions.

- (1) All terms defined in Chapter 651, F.S., which are used in these rules shall have the same meaning as in Chapter 651, F.S.
- (2) "Administrator or executive director" means a natural person who has the general day-to-day administrative charge of a facility.
- (3) "Affiliate" means any person that exercises control over or is controlled by the provider, directly or indirectly through:
 - (a) Equity ownership of voting securities;
 - (b) Common managerial control;
 - (c) Collusive participation by the management of the provider and affiliate in the management of the provider or the affiliate;

or

(d) A party as defined by Section 624.310, F.S.

(4) "Audited financial statements" means a statement prepared by an independent Certified Public Accountant, which includes:

(a) An audit opinion from the independent Certified Public Accountant concerning the financial statements;

(b) Balance sheet;

(c) Statement of operations;

(d) Statement of changes in cash flow; and

(e) Notes to the financial statement prepared on the basis of generally accepted accounting principles on an accrual basis covering the latest annual reporting period.

(5) "Comparable unit" means a unit similar in floor plan, size or design to a unit vacated, but does not necessarily mean the same unit.

(6) "Construction of a model residence unit" means and is limited to the actual construction of a structure containing not more than one unit of each floor plan to be offered to prospective residents of the proposed facility.

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(7) "Control", including the terms "controlling", "controlled by", and "under common control with", means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person, whether through ownership of voting securities, by contract, or otherwise.

(8) "Escrow account" means money physically located and deposited in a bank, savings and loan association, or trust company located within the State of Florida in an account governed by an escrow agreement which meets the requirements of Section 651.033, F.S., and in the custody of a third party for delivery only upon the fulfillment of the conditions specified by Chapter 651, F.S., and the escrow agreement.

(9) "Food" as used in Section 651.011(2), F.S., means meals available or accessible to residents as a covered benefit or on a fee-for-service basis.

(10) "Furnishing" as used in Section 651.011(2), F.S., means to make available, arrange, or provide through one or more intermediaries shelter, food, or health care as a covered benefit or on a fee-for-service basis.

(11) "Independent consultant" means:

(a) A person who is not related by blood or marriage, employed, affiliated, or controlled by a provider; and

(b) An independent actuary or independent Certified Public Accountant who in the regular practice of his profession is engaged by a provider to perform a specific function in accordance with professional standards and conduct required by that profession.

(12) "Long-term financing or debt" means any debt with a duration of more than twelve (12) months.

(13) "Manager" or "management company" means a person who, pursuant to a written contract with a provider, agrees to administer the day-to-day business operations of a facility for a provider, subject to the policies, directives, and oversight of the provider.

(14) "Material adverse deviation or change" means any change or extraordinary occurrence which creates or causes, or could create or cause, a provider or a facility to become insolvent or no longer financially viable.

(15) "Nominee of" means:

(a) A person other than the resident who has been designated in writing by the resident to receive any notices given or required

to be given to a resident, and who may participate on behalf of the resident in any meetings between the resident and the provider or

its agent or employee concerning the resident, the facility, or the rights of the resident, or in any complaint proceeding or legal action on behalf of the resident; and

(b) A person who is not a provider or any agent, employee, or affiliate of the provider.

(16) "Nursing care" as defined by Section 651.011(2), F.S., means access to those services or acts that might be rendered to a resident by individuals as defined by Chapter 464, F.S.

(17) "Occupancy" means a date certain on which a resident is notified by a provider in writing that a unit is ready for the resident to move into, or the date on which the resident actually takes possession of the unit, whichever occurs first.

(18) "Opening date or commencement of operations" means the day a certificate of occupancy is issued.

(19) "Payment-in-full" means that 100 percent of the entrance fee charged by a provider to a resident for a residency agreement has been paid by the resident to the provider.

(20) "Phase" means a planned incremental stage of construction in the development of a facility.

(21) "Preparation of the construction site" means, and is limited to, the clearing and grading of land of a proposed facility site, except when additional work is required to comply with any city, county, state, or federal laws, rules or ordinances in connection with the clearing and grading of a proposed facility site. Site preparation does not include the pouring of foundations or the stubbing in of plumbing.

(22) "Reservation agreement" means an agreement executed by a prospective resident or a nominee of a prospective resident for the purpose of reserving a specific unit in a facility.

(23) "Resident" as used in Section 651.011(9), F.S., does not mean a provider or any agent, employee, or affiliate of the provider.

(24) "Residency agreement" means an agreement executed by a resident or a nominee of a resident which gives the resident the right to occupy a unit and receive continuing care.

(25) "Shelter" as used in Section 651.011(2), F.S., 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.

(26) "Total operating expenses" means all expenses incurred in the operations of a facility, net of depreciation and amortization.

(27) "Unincorporated association" as used in Section 651.022, F.S., means a Florida limited or general partnership.

(28) "Unit" means the shelter in which a resident may reside.

(29) "Waiting list deposit" means any payment made by a prospective resident to a provider in return for a preferential right to subscribe to a continuing care agreement.

Specific Authority 651.015(3) FS. Law Implemented 651.011, 651.021, 651.022, 651.022(2)(b)10., (7), 651.023, 651.026, 651.033, 651.035, 651.055, 651.091, 651.106, 651.1151, 651.118, 651.125 FS. History–New 7-16-92, Formerly 4-193.002.

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690-193.003 Applications.

(1) An application shall be submitted to the Office on forms prescribed in Rule 690-193.065, F.A.C., and must include all of the following:

- (a) Proper filing fee;
- (b) Original manual signatures;
- (c) Complete responses to the information requested;
- (d) Background information as required in the application for each person, together with any required fees;
- (e) Feasibility study;
- (f) Financial statements;
- (g) Continuing care agreement; and
- (h) Escrow agreements.

(2) Any application that does not meet the requirements in subsection (1) above is unacceptable for filing pursuant to Section 651.022(5), F.S., and will be returned to the applicant without further processing.

Specific Authority 651.015(3) FS. Law Implemented 651.022 FS. History–New 7-16-92, Formerly 4-193.003

690-193.005 Required Financial Reports.

(1) Each provider, unless otherwise specified by the Office, shall file in addition to the annual report, a quarterly report on Form OIR-974 within 45 days of the end of the preceding quarter, and other information and data showing its financial condition as of the last day of the preceding quarter.

(2)(a) Additional financial reports and information may be required if the Office deems such reports necessary to monitor and evaluate the financial condition of a provider who is subject to:

- 1. Administrative supervision proceedings;
- 2. A corrective action plan;
- 3. A declining financial position;
- 4. Refinancing;
- 5. An acquisition; or
- 6. Delinquency, receivership, or bankruptcy proceedings.

(b) Additional financial reports and information when required shall be due within 25 days from the end of the period requested by the Office.

(3) Fines for the late filing of any required report are set forth in Rule Chapter 690-207, F.A.C.

(4) Prescribed forms are set forth in Rule 690-193.06, F.A.C.

Specific Authority 651.015(3) FS. Law Implemented 651.026, 651.0261 FS. History–New 7-16-92, Formerly 4-193.005

690-193.006 Financial Viability.

(1) In order to determine the financial viability of a Florida facility or a provider, the Office shall utilize one or more of the factors set forth in this rule to evaluate the financial condition of the

facility or provider by comparing the financial information submitted by the provider with prior reports.

(2) The information derived from the factors set forth in this rule shall be used for the purpose set forth in subsection (1) through an evaluation of financial trends of a facility or provider. Due to the diversity in ownership structure, operation, debt structure, and economic models, the information obtained shall not be used as a basis of comparison to other facilities or providers.

(3) The Office shall analyze the trends of a facility and shall consider the effects that any unusual occurrence may have on the outcome of the calculations specified in subsection (6) prior to making a determination regarding the financial condition of a facility or provider.

(4) The Office may seek the assistance of members of the Continuing Care Advisory Council or other experts in reviewing and evaluating the information obtained from any facility or provider.

(5) In the event that additional information is necessary to further evaluate the condition of that facility or provider, the Office shall request additional information to further evaluate the condition of that facility or provider, and shall consider such factors as:

- (a) The governing body and its financial policy statements;
- (b) Management or management company;
- (c) The organization's financial plans;
- (d) Financial feasibility studies;
- (e) Compliance with local, state and federal laws, rules, or ordinances;
- (f) Marketing plans;
- (g) Continuing care contract benefits and services;
- (h) Pricing;
- (i) Commitment of financial support from other organizations; and,
- (j) Other financial information;

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(6) The calculations which shall be utilized by the Office to determine the financial viability as provided in subsection (1) are defined below, and are based on Generally Accepted Accounting Principles (GAAP) using the accrual method (unless otherwise defined) except that ratios related to revenue are adjusted and calculated on a basis excluding amortized entrance fees as revenue and including actual entrance fees received during the period under review. The calculations are divided into four categories:

Profitability, Leverage, Liquidity, and Occupancy Ratios. In calculating the ratios, the Office shall use data pertaining to either the facility or provider, as appropriate, based upon the debt and operating structure of the provider.

(a) PROFITABILITY RATIO:

OPERATING RATIO – The Operating Ratio is a measure of the percentage of expenses incurred based on generated revenue and is defined as cash operating revenues divided by cash operating expenses.

Operating Ratio = $\frac{\text{Cash Operating Revenues}}{\text{Cash Operating Expenses}}$

(b) LIQUIDITY RATIOS:

1. ADJUSTED CURRENT RATIO – The Adjusted Current Ratio is a measure of liquidity and is defined as the number of

dollars held in current assets plus cash and investments that are available for operations without violating loan agreements, contracts, Chapter 651, F.S., or any rule promulgated pursuant thereto, per dollar of current liabilities. (Current means occurring within one year.)

Adjusted Current Ratio = Current Assets / Current Liabilities

2. DAYS CASH ON HAND – The Days Cash On Hand Ratio reflects the number of days that a facility maintains adequate cash and/or readily marketable securities to cover average cash expenditures.

Cash Expenses per Day = Cash Operating Expenses / # of Days in Period

Days Cash on Hand = (Unrestricted Cash + Unrestricted Investments) / Cash Expenses Per Day

(c) LEVERAGE RATIO:

DEBT SERVICE COVERAGE RATIO – The Debt Service Coverage Ratio is a measure of a facility's ability to pay its debt service payments through operations and is calculated on a cash flow basis. It is defined as the number of times net revenue is available for total debt service.

Debt Service Coverage Ratio = (Cash Operating Revenues – Cash Operating Expenses) / Total Debt Service

(d) OCCUPANCY RATIOS:

1. Occupancy of Independent = Occupied ILU's

Living Units (ILU's) Total ILU's

2. Occupancy of Assisted = Occupied ALU's

Living Units (ALU's) Total ALU's

3. Occupancy of Skilled = Occupied SNF

Nursing Beds (SNF) Total SNF

4. Occupancy of Rental = Occupied Rentals

Units (Rentals) Total Rentals

OCCUPANCY is defined as the total number of occupied units in a facility divided by the total number of units in that facility.

Occupancy shall be tracked by each level of care.

Notwithstanding the foregoing, the Office shall utilize such other information, criteria, ratios or other factors as necessary in assessing or determining the financial viability of a facility or provider whose financial viability is in question.

(e) DEFINITIONS:

As used in this rule, the following terms shall have the following meanings:

1. CASH OPERATING EXPENSES means total expenses less interest, depreciation and amortization expense.

2. CASH OPERATING REVENUE means all revenue excluding amortized entrance fees and including actual entrance fees received during the period under review.

Operating Ratio = Cash Operating Revenues

Cash Operating Expenses
 Adjusted Current Ratio = $\frac{\text{Current Assets}}{\text{Current Liabilities}}$
 Cash Expenses per Day = $\frac{\text{Cash Operating Expenses}}{\text{\# of Days in Period}}$
 Days Cash on Hand = $\frac{\text{Unrestricted Cash} + \text{Unrestricted Investments}}{\text{Cash Expenses Per Day}}$
 Debt Service Coverage Ratio = $\frac{\text{Cash Operating Revenues} - \text{Cash Operating Expenses}}{\text{Total Debt Service}}$
 1. Occupancy of Independent = $\frac{\text{Occupied ILU's}}{\text{Living Units (ILU's) Total ILU's}}$
 2. Occupancy of Assisted = $\frac{\text{Occupied ALU's}}{\text{Living Units (ALU's) Total ALU's}}$
 3. Occupancy of Skilled = $\frac{\text{Occupied SNF}}{\text{Nursing Beds (SNF) Total SNF}}$
 4. Occupancy of Rental = $\frac{\text{Occupied Rentals}}{\text{Units (Rentals) Total Rentals}}$
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3. TOTAL DEBT SERVICE is defined as the total principal and interest expense that is due or paid on the facility within the audited period.

4. TOTAL UNITS means the sum of independent living units (ILU's), assisted living units (ALU's) and skilled nursing beds (SNF's) in a facility.

(7) DEFINITIONS: As used in this rule, the following terms shall have the following meanings:

(a) CASH OPERATING EXPENSES means total expenses less interest, depreciation and amortization expense.

(b) CASH OPERATING REVENUE means all revenue excluding amortized entrance fees and including actual entrance fees received during the period under review.

(c) TOTAL DEBT SERVICE is defined as the total principal and interest expense that is due or paid on the facility within the audited period.

(d) TOTAL UNITS means the sum of independent living units (ILU's), assisted living units (ALU's) and skilled nursing beds (SNF's) in a facility.

Specific Authority 651.015(3) FS. Law Implemented 651.026 FS. History—New 1-5-93, Amended 5-10-94, Formerly 4-193.006.

690-193.007 Manager or Management Company.

Each manager or management company must demonstrate that it meets the requirements of Section 651.022, F.S., and that the management agreement conforms with the cancellation requirements of Section 651.1151, F.S.

Specific Authority 651.015(3) FS. Law Implemented 651.022, 651.023, 651.026, 651.1151 FS. History—New 7-16-92, Formerly 4-193.007.

690-193.010 Place.

(1) The term "place" as used in Section 651.011(5), F.S., means where continuing care is furnished, in one or more physical plants on a primary or contiguous site or an immediately accessible site.

(2) As used in the preceding paragraph, the term "primary or contiguous site" means the real property contemplated by the feasibility study required by Chapter 651, F.S., and the term "immediately accessible site" means a parcel of real property separated by not more than a reasonable distance, measured along public thoroughfares, from the facility.
Specific Authority 651.015(3) FS. Law Implemented 651.011(5) FS. History—New 7-16-92, Formerly 4-193.010

690-193.012 Phases.

(1)(a) A provider intending to develop a facility in phases shall submit a feasibility study as required by Chapter 651, F.S., which contains all information required by law for each phase of the proposed project, as well as the project as it will exist upon completion of all construction.

(b) Any material adverse changes or deviations subsequent to approval by the Office must be immediately reported in writing to the Office and necessary adjustments or corrections made.

(2) The Office shall not deem feasible any project proposed to be built in phases if the initial phase does not include the ability to deliver all contract benefits promised to the residents.

(3) The escrow requirements of Section 651.023(4), F.S., shall apply to each phase in the development of a facility, evidenced by a separate escrow agreement for each phase which meets the requirements of Section 651.033, F.S.

Specific Authority 651.015(3) FS. Law Implemented 651.023, 651.091 FS. History—New 7-16-92, Formerly 4-193.012

690-193.015 Expansion of a Facility.

(1) An expansion of 20 percent or more of an existing facility, which is not a phase presented in the feasibility study required by Chapter 651, F.S., shall not be approved by the Office until the facility has demonstrated the following:

(a) The facility:

1. Is in compliance with Chapter 651, F.S., and these rules;

2. Is not in an insolvent condition or engaged in any hazardous or injurious transactions, methods, or practices; and

3. The expansion as proposed will not cause one of these conditions to exist;

(b) The expansion as proposed is deemed feasible by an independent consultant; and

(c) A minimum of 50 percent of the units to be constructed in the expansion phase have been reserved.

(2) All or part of any entrance fee received in connection with any expansion must be placed in an escrow account and is not eligible for release except in accordance with the provisions of Chapter 651, F.S., and these rules.

Specific Authority 651.015(3) FS. Law Implemented 651.021 FS. History—New 7-16-92, Formerly 4-193.015.

690-193.018 Waiting List Deposits.

Any fee in excess of \$1,500 paid by a prospective resident to secure a priority right to subscribe to a continuing care agreement shall be escrowed in an escrow account governed by an escrow agreement as prescribed by Section 651.033, F.S., and shall not be released except as provided by Chapter 651, F.S.

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Specific Authority 651.015(3) FS. Law Implemented 651.033(4) FS. History—New 7-16-92, Formerly 4-193.018

690-193.020 Continuing Care Contracts.

All continuing care contracts shall be written in plain language customarily used and understood by people in the conduct of their personal affairs.

Specific Authority 651.015(3) FS. Law Implemented 651.011, 651.055 FS. History–New 7-16-92, Formerly 4-193.020

690-193.023 Escrow Agreements and Amendments.

(1) Each escrow agreement or amendment required by Chapter 651, F.S., shall be filed and approved by the Department prior to its use in this state.

(2) Each escrow agreement or amendment must be signed by:

(a) The provider;

(b) The escrow agent, which must be a Florida financial institution or trust acceptable to the Department; and

(3) Each escrow agreement, in addition to all other requirements of law, must contain:

(a) The escrow account number;

(b) The physical location of each escrow account governed by the escrow agreement;

(c) A statement citing the specific provision of Chapter 651, F.S., for which the escrow agreement is drawn and for which the escrow account is established; and

(d) A statement that the provider and the escrow agent will notify the Department in writing at least ten (10) days prior to any change in any of the terms and conditions of the escrow agreement, escrow account numbers, or location of the escrow accounts.

Specific Authority 651.015(3) FS. Law Implemented 651.022, 651.023, 651.033 FS. History–New 7-16-92, Formerly 4-193.023

690-193.028 Feasibility Studies.

(1) Each feasibility study or supplement thereto shall contain:

(a) A signed opinion by the person who prepared the study; and

(b) A statement of all assumptions made that cannot be evaluated.

(2) A feasibility study required by Section 651.023, F.S., if prepared by an Independent Certified Public Accountant shall:

(a) Be prepared in accordance with standards promulgated by the American Institute of Certified Public Accountants in its

Guide for Prospective Financial Statements; and

(b) Contain a financial forecast with:

1. An examination opinion for the first three years of operations; and

2. Financial projections with a compilation opinion for the next five years thereafter.

(3) A feasibility study required by Section 651.023, F.S., if prepared by an Independent Consulting Actuary, shall:

(a) Be prepared in accordance with standards promulgated by the American Academy of Actuaries using Actuarial Standards

of Practice Relating to Continuing Care Retirement Communities; and

(b) Contain:

1. An actuary's signed opinion that the project as proposed is feasible and that the feasibility study has been prepared in

accordance with standards promulgated by the American Academy of Actuaries; and

2. Mortality and morbidity data.

(4) A facility shall not be deemed feasible by the Office if the feasibility study or any supplemental feasibility study required demonstrates during the forecast and projection period that one or more of the following conditions exist:

- (a) The facility is not deemed feasible by the consultant;
- (b) The assumptions used in the feasibility study are not deemed by the consultant to be reasonable or proper;
- (c) The provider or facility is not demonstrated to be financially viable or is insolvent;
- (d) The feasibility study does not contain all of the data and information required by law; or
- (e) The feasibility study does not contain or express an opinion on the contents of the study.

Specific Authority 651.015(3) FS. Law Implemented 651.021, 651.022, 651.023 FS. History—New 7-16-92, Formerly 4-193.028

690-193.030 Updated Feasibility Study.

(1)(a) A provider who has not begun operation or who has been in operation for less than five (5) years beginning January 1, 1989, must submit an amended or updated feasibility study when an extraordinary or unusual change occurs.

(b) Failure to amend or update the feasibility study could impair the feasibility study so that it becomes virtually worthless as a guideline for the continuing financial feasibility of the facility and therefore constitutes grounds for suspension or revocation pursuant to Section 651.106(1), F.S.

(c) The amended or updated feasibility study must:

- 1. Be submitted to the Office within sixty (60) days of the change or occurrence; and
- 2. Contain an assessment by an independent consultant on whether there is an adverse impact on the facility.

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(d) The Office may extend the time the updated feasibility study is due.

(2) The provider has a duty to supply the Office with any new information and any additional information requested by the

Office with respect to the feasibility study.

Specific Authority 651.015(3) FS. Law Implemented 651.021, 651.022, 651.023 FS. History—New 7-16-92, Formerly 4-193.030.

651.106

690-193.033 Hazardous or Injurious Transactions, Methods, or Practices.

Hazardous or injurious transactions, methods, or practices, may include but are not limited to, the following:

(1) Repeated violations of Part IX of Chapter 626, F.S., entitled "Unfair Insurance Trade Practices";

(2) Payment or distribution of funds, other than salaries and wages earned in the normal course of business, to a provider or any affiliate when:

(a) A provider is insolvent or no longer financially viable; or

(b) Payment results or could result in a facility or provider becoming insolvent or no longer financially viable;

(3) Employing or contracting with persons to perform supervisory or policy roles or perform consulting work, who are unable to provide proper oversight or services due to limited, unsuccessful, or no experience in owning, operating, or managing a continuing care facility or in providing continuing care or consulting in the field of continuing care;

(4) Accepting full or partial payment of an entrance fee for a continuing care agreement when a facility is insolvent or in imminent danger of becoming insolvent or no longer financially viable, unless 100 percent of such funds are escrowed pursuant to

an agreement with the Office;

- (5) Failure to keep current and fulfill the marketing or financial projections forecast or projected in a feasibility study or any supplemental feasibility study submitted to the Office;
- (6) Failure to file required reports;
- (7) Failure of a licensed provider to fulfill its obligations to residents;
- (8) Failure of the board of directors or similar body of a licensed provider to properly supervise or provide oversight of the activities of an administrator or management company;
- (9) Failure by the board of directors or similar body to properly set policy and ensure that those policies are fulfilled; or (10) Failure to disclose related party transactions which may be detrimental to the residents.

Specific Authority 651.015(3) FS. Law Implemented 651.106 FS. History—New 7-16-92, Formerly 4-193.033

690-193.035 Certificate of Occupancy.

(1) Where a certificate of occupancy is required by Chapter 651, F.S., a temporary certificate of occupancy may be acceptable if it does not conditionally preclude the residents from occupying a structure.

(2) A provider shall not require a resident to occupy a unit before the provider obtains a certificate of occupancy as required by law.

Specific Authority 651.015(3) FS. Law Implemented 651.023 FS. History—New 7-16-92, Formerly 4-193.035

690-193.038 Form and Content of Advertisements.

(1)(a) Advertising must be truthful and not misleading in fact or implication.

(b) Words or phrases shall be clear and understandable without reliance upon technical terminology.

(2) Testimonials or Endorsements by Third Parties.

(a) If the person making a testimonial, endorsement, or appraisal has a financial interest in the continuing care retirement community or in a related entity as a stockholder, director, officer, employee, compensated party, board member or otherwise, that fact shall be disclosed in the advertisement.

(b)1. An advertisement shall not state or imply that a continuing care retirement community or a contract has been approved, sponsored, or endorsed by an individual, group of individuals, society, association or other organization or governmental agency, unless:

a. The continuing care retirement community has been so approved or endorsed; and

b. Any proprietary relationship between an organization and the continuing care retirement community is disclosed.

2. Any entity which makes an endorsement, claim of sponsorship, or testimonial and which is formed, owned or controlled by the continuing care retirement community or persons who own or control the continuing care retirement community, shall disclose the ownership or controlling interest within the advertisement.

(3) Use of Statistics.

(a)1. Any advertisement concerning statistical information relating to any continuing care retirement community or contract must accurately reflect all relevant facts.

2. An advertisement shall not imply that statistics are derived from the contract advertised unless that is the fact.

3. If the statistics are applicable to other contracts the advertisement shall specifically so state.

(b) An advertisement shall not represent or imply that refunds or coverages by the continuing care retirement community are more liberal or generous or will be more favorable than the actual terms of the contract.

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(c) The source of any statistics used in an advertisement shall be identified in the advertisement.

(4) Disparaging Comparisons and Statements.

(a) Advertising shall not directly or indirectly make false comparisons of contracts or benefits of other continuing care retirement communities or insurers;

(b) An advertisement shall not directly or indirectly create the impression that any division or agency of the State of Florida or of the United States Government has endorsed:

1. The continuing care retirement community;

2. The financial condition or status of the facility;

3. The merits, desirability, or advisability of the facility's contract forms; or

4. The facility's coverage plans.

(5) Prohibited acts. No advertisement shall use any combination of words, symbols, or physical materials which:

(a) In their content, phraseology, shape, color, or other characteristics are similar to materials used by agencies of the federal government or of this state; or

(b) Would tend to confuse or mislead prospective subscribers into believing that the solicitation is in some manner connected with an agency of the municipal, state, or federal government.

(6) Statements About a Continuing Care Retirement Community.

(a) An advertisement shall not contain statements which are untrue or misleading with respect to the assets, corporate structure, financial standing, age, or relative position of the continuing care retirement community.

(b)1. An advertisement shall not refer to a sponsor, holding company, or subsidiary of a continuing care retirement community unless it fully discloses that it is a separate entity and is not responsible for the financial condition or contractual obligations of the continuing care retirement community.

2. If the sponsor, holding company or subsidiary of the continuing care retirement community is a qualified, approved guaranteeing organization for the continuing care retirement community, this fact may be stated.

(7) Exceptions, Reductions and Limitations. When an advertisement states a dollar amount, a period of time for any benefit, or the conditions for which the benefit is covered, the advertisement shall also state the existence of exceptions, reductions, and limitations affecting the basic provisions of the contract, without which reference, the advertisement might tend to mislead or deceive.

(8) Deceptive Words, Phrases or Illustrations Prohibited.

(a) Words, phrases, or illustrations shall not be used in a manner which misleads or tends to deceive or mislead.

(b) No advertising shall give false information concerning any contract benefits, or contain untrue, deceptive, or misleading words, phrases, statements, references, or illustrations.

Specific Authority 651.015(3) FS. Law Implemented 651.095 FS. History—New 7-16-92, Formerly 4-193.038

690-193.040 Advertisement Enforcement Procedures.

(1) Each provider shall maintain for at least three (3) years at its home or principal office in this state a complete file containing every printed, published, or prepared advertisement it has used in this state, with a notation attached to each indicating the manner and extent of distribution and the form number of any contract advertised.

(2) This file shall be subject to inspection by the Office.

Specific Authority 651.015(3) FS. Law Implemented 651.095, 651.105 FS. History—New 7-16-92, Formerly 4-193.040

690-193.043 Standards for Marketing.

(1) All sales people or representatives of the provider who are engaged in soliciting prospective residents are bound by these rules, Section 651.095 and Part IX, Chapter 626, F.S.

(2) A provider holding a provisional certificate of authority or a certificate of authority is responsible for the acts of its representatives in soliciting prospective residents.

Specific Authority 651.015(3) FS. Law Implemented 651.095, 651.105, 651.106, 651.125 FS. History—New 7-16-92, Formerly 4-193.043.

690-193.045 Administrative Supervision Proceedings.

(1) A continuing care facility is subject to administrative supervision proceedings under Part VI of Chapter 624, F.S. Pursuant to this part, a continuing care facility is a type of specialty insurer within the meaning of Section 624.80(1)(b), F.S.

(2) The confidentiality provisions of Part VI of Chapter 624, F.S., shall prevail over the provisions of Chapter 651, F.S., with respect to any facility subject to administrative supervision proceedings.

Specific Authority 651.015(3) FS. Law Implemented 651.018 FS. History—New 7-16-92, Formerly 4-193.045.

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690-193.048 Letters of Credit.

A financial institution providing a letter of credit pursuant to Section 651.035(7), F.S., will be deemed to satisfy the long-term debt rating category of Section 651.035(7)(b), F.S., if the issuing financial institution is a wholly-owned subsidiary of a holding company which meets the long-term debt rating requirements of this subsection.

Specific Authority 651.015(3) FS. Law Implemented 651.035 FS. History—New 7-16-92, Formerly 4-193.048

690-193.050 Calculation of the Minimum Liquid Reserve Requirement.

(1) The minimum liquid reserve (MLR) must be funded not later than sixty one (61) days after the MLR calculation is due to be filed, except as provided in subsection (5) of this rule. Thus, the MLR must be fully funded not later than the first day of the provider's year, whether fiscal or calendar, or the first day of operations, whichever applies.

(2)(a) If the date for filing the MLR calculation has passed, the MLR may not be recalculated until the next due date for filing.

(b) Additional long-term financing or other extraordinary occurrences may cause the Office to require a recalculation of the MLR, which could result in an increase or decrease in the MLR, notwithstanding the date of filing the MLR calculation.

(3) Pursuant to Section 651.041, F.S., an escrow account maintained under Chapter 651, F.S., must be funded and meet the diversification requirements as prescribed in Part II, Chapter 625, F.S.

(4) For purposes of the MLR requirement, long-term financing includes, but is not limited to, lease payments, mortgage payments, the long-term portion of any construction loan, and any long-term debt between affiliates or controlling parties of the provider that relate to the real property or fixtures of a facility.

(5) Where a provider has elected to fund the MLR upon release of entrance fees as provided by Section 651.023(4)(e), F.S., the funds shall be deposited directly from the entrance fee account into the MLR account.

(6) A provider shall have and maintain reserves for real estate taxes and hazard insurance as provided in Section 651.035, F.S., even where there is no long-term debt or financing on the facility.

Specific Authority 651.015(3) FS. Law Implemented 651.035 FS. History—New 7-16-92, Formerly 4-193.050

690-193.053 Waiver of Minimum Liquid Reserves.

(1) A provider may obtain a waiver for all or any part of the escrow requirement for mortgage principal and interest contained in Section 651.035(1), F.S., if the Office finds that such a waiver is not inconsistent with the security protections intended by Chapter 651, F.S. To obtain a waiver, the provider must:

(a) Submit an application in a form prescribed by the Office;

(b) Demonstrate in the application that sufficient funds are in an escrow account to meet all outstanding debts on the facility and equipment, and upon release will be used, and are used, to satisfy such debts; and,

(c) Demonstrate that the residents will be granted a first mortgage or that a first mortgage will be granted to a trust which is beneficially held by the residents in perpetuity, free and clear of any encumbrances for the land, buildings, and equipment that constitute the facility.

(2) Any application for waiver granted by the Office pursuant to this rule shall be in writing and shall be reviewable and renewable each year at the time the required annual MLR calculation is filed.

(3) Any previous waiver granted by the Office terminates as of the date the facility is required to file its next MLR calculation and is subject to review and renewal in accordance with this rule. If the application for renewal of this waiver is denied, the provider shall have six (6) months from the date of loss of the waiver to fully fund the required reserve accounts.

Specific Authority 651.015(3) FS. Law Implemented 651.023, 651.035 FS. History—New 7-16-92, Formerly 4-193.053

690-193.055 Accreditation.

(1) The Office may, upon written request by the provider, waive the quarterly reporting requirement and the tri-annual examination of a provider for a facility if:

(a) The facility is accredited by the National Continuing Care Accreditation Commission and submits to the Office current evidence that the facility is in good standing.

(b) The provider agrees to furnish the Office, within five business days, a copy of any communication from the National Continuing Care Accreditation Commission which may directly or indirectly threaten the facility's accreditation, or the accreditation of any facility owned or operated by the provider, wherever located.

(2) Any request for waiver granted by the Office is valid only for the reporting period for which the request is made and may not be approved for subsequent reporting periods if any of the following are applicable:

- (a) Any action by the National Continuing Care Accreditation Commission which results or could result in loss of accreditation.
- (b) Any action by any federal or state agency or regulatory body which could result in revocation, denial or suspension of a license or certificate.
- (c) Any action by any federal or state agency or regulatory body which results or could result in a provider or facility's being out of compliance with the provisions of Chapter 651, F.S., or any similar laws or rules of any other state.

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- (d) Initiation of any criminal or civil action, including bankruptcy or receivership proceedings by any federal or state agency or regulatory body having jurisdiction over the provider or over any business operations of the provider.
 - (e) Failure by a provider to notify the Office of any of the above within five business days.
 - (f) Any circumstances that may exist which would be grounds for the Office to conduct an investigation of the provider.
- (3) Nothing in this rule shall be construed to restrict or modify the Office's authority to conduct investigations or examinations, request information or otherwise enforce the provisions of Chapter 651, F.S.

Specific Authority 651.015(3) FS. Law Implemented 651.028 FS. History—New 7-16-92, Formerly 4-193.055.

690-193.058 Continuous Updates.

Regardless of the information filed with the annual license renewal application, each provider shall immediately notify the Office and file pertinent documents within five business days regarding:

- (1) Any litigation alleging a felonious act by a provider or any person affiliated with or controlled by a provider;
- (2) Any proceeding for denial, suspension, or revocation of any license or permit needed to operate a facility;
- (3) Any other information that might adversely affect the ability of a provider, facility, or its management to operate under the assumptions made in the most recent license application;
- (4) Any change in the management company of a facility; or
- (5) Any change in the name or fictitious name of a provider or facility.

Specific Authority 651.015(3) FS. Law Implemented 651.023, 651.0235, 651.026 FS. History—New 7-16-92, Formerly 4-193.058

690-193.060 Background Information.

(1) In order for the Office to determine that each person required to be named in an application submitted to the Office is reputable and of responsible character and has not been convicted of or pled nolo contendere to a felony or been held liable or enjoined in a civil action involving fraud, embezzlement, fraudulent conversion, or misappropriation of property, pursuant to Section 651.022(2)(c), F.S., each person who is required to be named in an application submitted to the Department must submit:

- (a) A biographical statement on Form OIR-422;
- (b) A fingerprint card furnished by the Office, together with the required fees; and
- (c) A financial and character report by an independent reporting company approved by the Office.

(2) The Office may waive the requirements of subsection (1) above if:

(a) The person has, within the last two years, submitted all the required background information in subsection (1) above;

(b) The information was found to be acceptable to the Office; and

(c) The person certifies that there have been no material adverse changes to any of the information submitted since the date of submission and acceptance by the Office.

(3) The Office may waive the requirement for a financial and character report required in paragraph (1)(c) above if:

(a)1. The person is applying with an entity that has held a Certificate of Authority pursuant to Chapter 651, F.S., for at least five (5) consecutive years; and

2. There are currently and have not been any unresolved complaints or civil, criminal, or administrative actions taken or pending against the certificate holder or the person applying; or

(b) Where an acquisition occurs pursuant to Section 628.4615, F.S., and the acquiring party meets the conditions set forth in paragraph (a) above.

(4) For purposes of this rule, "application" does not include application for expansion or release of funds.

Specific Authority 651.015(3) FS. Law Implemented 651.022(2)(c), 651.023, 651.0235, 651.026 FS. History—New 7-16-92, Formerly 4-193.060

690-193.062 Mediation of Resident/Provider Disputes.

(1) Scope of Rule. This rule implements Section 651.123, F.S., and applies to a dispute between a resident and a provider except a dispute over increases in monthly maintenance fees.

(2) Definitions. The following definitions shall apply for purposes of this rule:

(a) "Administrator" means the entity designated by contract with the Office to administer mediation conferences under this rule. If an entity has not been designated, the Office will be the administrator.

(b) "Approved," as used in this rule with regard to approval of a mediator, means to designate based upon successfully meeting the criteria set forth in Section 44.106, F.S., and the Florida Rules of Certified and Court Appointed Mediators, or Section 627.745(3)(b), F.S. Only approved mediators may mediate disputes under this rule.

(c) "Complainant" refers to the party requesting mediation.

(d) "Office" means the Office of Insurance Regulation.

(e) "Frivolous" means involving no justiciable question and is readily recognizable as devoid of merit.

(f) "Provider" means the owner or operator who undertakes to provide continuing care to a resident.

(g) "Resident" means a purchaser of or a subscriber to a continuing care agreement or their nominee.

(h) "Respondent" refers to the party not first requesting mediation.

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(i) "Service office" means a designated office of the Bureau of Outreach and Education, Division of Insurance Consumer Services, Department of Financial Services.

(3) Computation of Time. In computing any period of time described by this rule, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. All time periods specified in this rule refer to the number of calendar days, not business days, unless otherwise specified in this rule.

(4) Service Offices. For disposition of mediation conferences the State of Florida shall be divided among the following

designated service offices:

(a) Daytona Beach Service Office shall be composed of the following counties: Flagler, Marion, Putnam, and Volusia.

(b) Fort Lauderdale Service Office shall be composed of Broward county.

(c) Fort Myers Service Office shall be composed of the following counties: Charlotte, Collier, De Soto, Glades, Hendry, Highlands, and Lee.

(d) Jacksonville Service Office shall be composed of the following counties: Alachua, Baker, Bradford, Clay, Columbia, Dixie, Duval, Gilchrist, Hamilton, Lafayette, Levy, Nassau, St. Johns, Suwannee, and Union.

(e) Miami Service Office shall be composed of Dade and Monroe counties.

(f) Orlando Service Office shall be composed of the following counties: Brevard, Citrus, Lake, Orange, Osceola, Seminole, and Sumter.

(g) Pensacola Service Office shall be composed of the following counties: Bay, Calhoun, Escambia, Gulf, Holmes, Jackson, Okaloosa, Santa Rosa, Walton, and Washington.

(h) St. Petersburg Service Office shall be composed of the following counties: Manatee, Pinellas, and Sarasota.

(i) Tallahassee Bureau of Consumer Assistance Service Office shall be composed of the following counties: Gadsden, Franklin, Jefferson, Leon, Liberty, Madison, Taylor, and Wakulla.

(j) Tampa Service Office shall be composed of the following counties: Hardee, Hernando, Hillsborough, Pasco, and Polk.

(k) West Palm Beach Service Office shall be composed of the following counties: Indian River, Martin, Okeechobee, Palm Beach, and St. Lucie.

(5) Request for Mediation. Upon the Office's receipt of a complaint that is within the scope of this rule, the Office shall furnish the provider (or the resident if the provider is the complainant) with the details of the complaint. The resident and the provider shall have 21 days from receipt of that notification within which to resolve the matter. For good cause shown, the Office is authorized to extend this period for up to an additional 14 days. Good cause in this instance includes unavailability of the resident for health reasons, inability to contact the resident, or other impediments to the resident's ability to resolve the matter which the resident could not control and which cannot reasonably be remedied during the initial 21 day period. If the matter is not resolved within that period of time, the provider shall immediately notify the Office, in writing, that the matter is unresolved. A copy of that notification shall be furnished to the resident and the resident shall be advised of his right to mediate the dispute if he elects to do so. The cost of mediation shall normally be paid by the provider, except for second and subsequent mediations which shall be allocated as set forth in paragraph (9)(b). However, if the provider believes the complaint is frivolous, the provider may include in its notification that the matter remains unresolved, a written explanation as to why the provider believes the complaint is frivolous. That explanation shall be supplied to the resident and the resident shall be advised that, if he elects to mediate the complaint and the mediator determines that his complaint is frivolous, the costs of the mediation shall be charged to him and not to the provider.

(6) Mediators.

(a) Mediator Approval. The Bureau of Agent & Agency Licensing, Department of Financial Services, shall approve as

mediators those persons who meet the qualifications set forth in Section 44.106, F.S., and the Florida Rules of Certified and Court Appointed Mediators (5/28/92), which are incorporated herein by reference, and from those mediators qualified to mediate under Section 627.745(3)(b), F.S. Persons wishing to be approved as mediators shall submit their qualifications to the Bureau of Agent

and Agency Licensing, Department of Financial Services, 200 East Gaines Street, Tallahassee, FL 32399-0319, on **Form DI4-591**,

"Application for Appointment as a Mediator", which is adopted and incorporated by reference in subsection 690-211.002(30), F.A.C.

(b) List of Approved Mediators. The Bureau of Agent & Agency Licensing, Department of Financial Services, shall maintain a list of all approved mediators, which list shall include the mediator's name, address, telephone number, social security number, a listing of counties in which each mediator is willing to mediate, and date of entry to the list.

(c) Grouping of Assignments. Requests for mediation will, if feasible, be grouped together and assigned to a single mediator. A mediator will be assigned a maximum of four mediation conferences under a single assignment.

(d) Procedure and Conduct. All mediation conferences shall be conducted in accordance with this rule, the Florida Rules for Certified and Court-Appointed Mediators as set forth in rules 10.020-10.290, Florida Rules of Civil Procedure, as incorporated above, and other consistent rules of conduct as promulgated by the Supreme Court of Florida. Mediators shall have the same responsibilities to the Department as they have to the courts under the Florida Rules for Certified and Court-Appointed Mediators.

The Florida Rules for Certified and Court-Appointed Mediators shall be read in a manner consistent with this rule and any conflict between this rule and the Florida Rules for Certified and Court-Appointed Mediators shall be resolved in favor of this rule. The mediator may meet with the parties separately, encourage meaningful communications and negotiations, and otherwise assist the parties to arrive at a settlement. For purposes of this mediation program, mediators shall have the immunity from suit provided to mediators in Section 44.107, F.S. All communications with the mediator shall be confidential. All statements made and documents produced at a settlement conference constitute settlement negotiations in anticipation of litigation. The mediation proceedings are confidential and inadmissible in any subsequent adversarial proceeding.

(e) Complaints; Discipline. At any time a party may move to disqualify a mediator for good cause. Good cause consists of conflict of interest between a party and the mediator, that the mediator is unable to handle the conference competently, or other reasons which would reasonably be expected to impair the conference. Complaints concerning a mediator shall be written and submitted to the Bureau of Consumer Assistance, Department of Financial Services, 200 East Gaines Street, Tallahassee, Florida 32399-0322.

The Department shall review the following grounds for discipline:

1. Alleged instances of dishonest, incompetent, fraudulent, or unethical behavior on the part of a mediator;
2. Instances in which the mediator allegedly failed to promptly and completely respond to requests from the Department and instances in which the actions or failure to act on the part of the mediator violate this rule including the standards set forth in this sub-section or are counter to the intent and purpose of this mediation program or this rule;

3. Administrative action by any other agency or body against the mediator, regardless of whether the agency or body's regulation relates to mediation;

4. The mediator has been found guilty of or pled guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or of any state thereof or under the law of any other country, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

If the Department determines that any of the above grounds exist, the Department shall institute proceedings in accordance with Chapter 120, F.S., to rescind the approval of the mediator to handle any mediation or arbitration program sponsored by the Department.

(7) Mediation Conference.

(a) Location. The mediation conference shall be held at a location reasonably specified by the administrator or mediator in a letter to the parties prior to the conference. The location of the conference will be based upon convenience to the parties or a party, or the underlying circumstances of the particular mediation. The Department will make available conference rooms at its various service offices throughout the state for possible use. Before scheduling a mediation conference the administrator or mediator may contact the service office administrator to determine the availability of service office facilities to accommodate the mediation conference. If no facilities are available at the service office for the particular mediation conference then the service office administrator will designate an alternative location, if available, for the mediation conference. If the parties determine that the assigned conference location is inconvenient or impractical, the parties and the administrator or mediator may agree to conduct the mediation conference at an alternative location. The administrator or mediator will notify the parties and the Department of the exact time, date, and location of the conference.

(b) Timing and Continuances. The mediation conference shall be held as scheduled by the administrator or the mediator. Upon application by any party to the administrator or mediator for a continuance, the administrator or mediator shall, for good cause shown or if neither party objects, grant a continuance and shall notify all parties of the date and place of the rescheduled conference. Good cause includes severe illness, injury, or other emergency which could not be controlled by the party and cannot reasonably be remedied by the party prior to the conference by providing a replacement representative or otherwise. Also, good cause includes the necessity of obtaining additional information, securing the attendance of a necessary professional, or the avoidance of significant financial hardship. If the resident demonstrates to the administrator or mediator, the need for an expedited mediation conference due to an undue hardship, the conference shall be conducted at the earliest date convenient to all of the parties and the administrator or mediator. Undue hardship will be demonstrated when holding the conference on a non-expedited basis would interfere with or contradict the treatment of a severe illness or injury, substantially impair a party's ability to assert their position at the conference, result in significant financial hardship, or other reasonably justified grounds.

(c) Attendance. The complainant and respondent shall attend the mediation conference and be fully authorized to make an agreement to completely resolve the claim. All corporate parties who are complainants or respondents shall attend the conference in the person of a corporate representative who has full knowledge of the facts of the dispute and is fully authorized to make an agreement to completely resolve the dispute.

(d) Good Faith Negotiation. The participants are to negotiate in good faith to attempt to resolve the dispute, however there is no requirement that the dispute must be resolved in mediation.

(8) Disbursement of Costs.

(a) Before the date set for the conference the provider or the resident as described in paragraph (9)(b) shall pay to the administrator the costs of mediation which shall not exceed \$250, \$50 of

which shall be deposited in the Chief Financial Officer's Regulatory Trust Fund to defer Department costs. The mediator's fee shall be affected as follows:

1. Completed Mediation Conference. If the mediation conference is held, the mediator shall receive the mediator's full fee.
2. Cancellation More Than 3 Days Before Conference. If a mediation conference is cancelled by a party for reason of settlement or for any other reason more than 3 business days before the scheduled conference date, the parties shall notify the administrator and the mediator upon cancellation. In this case the parties shall not be responsible for the mediator's fee, and the provider shall pay the mediator's and the administrator's fee for any rescheduled conference to resolve the dispute.
3. Cancellation Within 3 Days of Conference. If the parties cancel the mediation within 3 days of the scheduled mediation conference, the provider shall pay \$50 to compensate the mediator.
4. Cancellation Due To Absence. Failure of a party to arrive at the mediation conference within 30 minutes of the conference's starting time shall be considered an absence. In the event of an absence, the provider shall pay \$50 to compensate the mediator.

Payment shall be as follows:

- a. If the resident fails to appear at the conference, the resident shall pay the provider's actual cash outlays incurred in attending the conference and the conference shall be rescheduled upon the resident's payment of the mediator's and the administrator's fee for the rescheduled conference.
- b. If the provider fails to appear at the conference, the provider shall pay the resident's actual cash outlays incurred in attending the conference and shall pay the mediator's and the administrator's fee for the rescheduled conference. If a provider fails to appear at conferences with such frequency as to evidence a general business practice of failure to appear, the provider shall be subject to penalty, including revocation, suspension, or fine. Such suspension of a provider's certificate of authority shall be for a period of 1 year. An administrative fine shall be in the amount of \$1,000 per violation in cases of non-willful violation, and \$10,000 per violation in cases of a knowing and willful violation. The department will mitigate these penalties based upon the following factors:

Solvency of the facility, best interests of or potential harm to the residents, and willfulness of the violation.

(b) Any disputes regarding the amount of disbursement of funds shall be resolved by the Department.

(c) Except as provided in subparagraph (8)(a)4., any expenses associated with the mediation conference, such as travel, telephone, postage, meals, lodging, facilities, and other related expenses, shall be borne by the party, mediator or other person incurring the expense.

(d) The Department reserves the right to reduce fees based on consumer surveys and cost analysis.

(9) Post-Mediation.

(a) At the conclusion of the mediation conference, the mediator will file with the administrator a mediator's status report indicating whether or not the parties reached a settlement. In the event a settlement is financial, the resident shall have 3 business days from the time he receives any final settlement check or draft to rescind the settlement provided that the resident has not negotiated any check or draft disbursed to him or her for the disputed matters as a result of the conference. If a settlement agreement is reached and not rescinded within 3 business days as set forth above, it shall act as a final determination of the specific issues that were presented at the conference. If the provider included in its notice that the matter remained unresolved due to a

charge that the complaint was frivolous and an explanation supporting that charge, the mediator shall include in his status report a determination as to whether or not that is the case. If so, the costs of the mediation shall be paid by the complainant. If not, the costs of the mediation shall be paid by the provider unless it is a second or subsequent mediation, in which case the costs shall be allocated as set forth in paragraph (9)(b).

(b) If a resident elects more than one mediation hereunder in any 12 month period, the cost of the second and all subsequent mediations in that 12 month period shall be borne by the resident. If a resident elects more than three mediations hereunder in any time period, the cost of the fourth and all subsequent mediations shall be borne equally by the resident and the provider. When this reallocation of the costs of mediation applies to a second or subsequent complaint from a resident, the provider may waive said reallocation of costs and choose to pay the costs of mediation itself. If the provider chooses not to waive that reallocation of costs, the provider shall include in its notification to the administrator that the matter remains unresolved, a list of the resident's previous mediations hereunder, and a statement that the cost of this mediation and subsequent mediations if applicable, is to be paid, in whole or in part as the case may be, by the resident. A copy thereof shall be furnished to the complaining resident prior to or along with the notice to the resident of his right to elect mediation. Failure to timely provide said copy to the complaining resident shall be deemed a waiver by the provider of said reallocation of costs and a decision to pay the costs of mediation itself.

(10) Arbitration. Any portion of a dispute which qualifies for mediation under this rule and is not settled through mediation may be submitted by a party to binding arbitration under Rule 690-193.063, F.A.C., if all parties agree in advance to be bound by the arbitrated result.

Specific Authority 624.308(1), 651.015(3) FS. Law Implemented 624.307(1), 651.106, 651.107, 651.108, 651.123 FS. History—New 7-7-94, Formerly 4-193.062

690-193.063 Arbitration of Resident/Provider Disputes.

(1) Scope of Rule. Any portion of a dispute which is not resolved in mediation under Rule 690-193.062, F.A.C., may be submitted by a party to binding arbitration under this rule if all parties agree in advance to be bound by the arbitrated result.

(2) Definitions. The following definitions as found in this rule and as found in documents incorporated by reference in this rule shall apply for purposes of this rule:

(a) "AAA" or "Administrator" refers to the entity designated by contract with the Department to administer arbitration hearings under this rule. If an entity has not been designated, the Department will be the administrator.

(b) "Department" means the Department of Financial Services.

(3) Arbitrator Qualifications. Arbitrators shall be members of The Florida Bar, unless the parties agree otherwise. All arbitrators shall have attended 4 hours of training in a program approved by the Supreme Court of Florida. Only arbitrators so qualified may determine disputes under this rule. For purposes of this rule, arbitrators shall have the immunity from suit provided to arbitrators in Section 44.107, F.S.

(4) Initiating Arbitration Process. If any portion of a dispute mediated at a conference held under Rule 690-193.062, F.A.C., remains unresolved at the conclusion of the mediation proceeding, the administrator shall inform the parties of their right to arbitrate the unresolved portion of the dispute under this rule.

(5) Arbitration Hearings. Arbitrations under this rule shall be held in accordance with the Arbitration Rules of the American Arbitration Association, as found in the pamphlet entitled

“Health Care Claim Settlement Procedures,” published by the American Arbitration Association, rev. 2/92, which is hereby incorporated by reference. Copies of that rule may be obtained by contacting the Department at the Bureau of Insurance Consumer Assistance, Attn.: Mediation Program, 200 East Gaines Street, Tallahassee, Florida 32399-0322, telephone (850) 922-3132, ext. 5833, facsimile (850) 488-2349. Rule 690-193.063, F.A.C., shall govern in any conflict between this rule and any provision which is incorporated by reference.

Specific Authority 624.308(1), 651.015(3) FS. Law Implemented 624.307(1), 651.106, 651.108, 651.123 FS. History—New 7-28-94, Formerly 4-193.063

690-193.065 Forms Incorporated by Reference.

(1) The following forms are incorporated into this rule chapter by reference to implement the provisions of Chapter 651, F.S.

(2) These forms shall become effective on the date this rule becomes effective. Copies of the forms may be obtained from the Office of Insurance Regulation, Bureau of Specialty Insurers, Larson Building, 200 East Gaines Street, Tallahassee, FL 32399-0331.

Specific Authority 624.308(1), 651.013, 651.015(1), (3) FS. Law Implemented 624.307(1), 651.021, 651.022, 651.023, 651.024, 651.026, 651.033, 651.035 FS. History—New 6-25-90, Formerly 4-45.035, Amended 7-16-92, 11-29-98, 12-24-03, Formerly 4-193.065.

Title Form Number

- (a) Application for Provisional Certificate of Authority OIR-471 (03/92)
- (b) Application for Certificate of Authority OIR-474 (03/92)
- (c) Application for Renewal OIR-474 (03/92)
- (d) Verification Form for Release of Funds OIR-475 (03/92)
- (e) Authority to Release Information OIR-450 (08/91)
- (f) Biographical Statement and Affidavit OIR-422 (11/90)
- (g) Abbreviated Biographical Statement OIR-449 (01/91)
- (h) Statement of Acquisition OIR-448 (05/89)
- (i) Application for Expansion of Certificated Facility OIR-476 (03/92)
- (j) Fingerprint Instructions OIR-938 (04/91)
- (k) Fingerprint Fee Invoice OIR-903 (09/91)
- (l) Equivoque Instructions OIR-934 (10/91)
- (m) Minimum Liquid Reserve Calculation OIR-A3-477 (Rev. 07/03)
- (n) Waiver of Minimum Liquid Reserve OIR-1068 (03/92)
- (o) Sales and Financial Report OIR-974 (03/92)
- (p) Annual Report OIR-470 (Rev. 02/98)
- (q) Request for Withdrawal From the Renewal and Replacement Reserve (RRR) OIR-1284 (02/98)