

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 381 Session of 2009

INTRODUCED BY VANCE, EARLL, BAKER, O'PAKE, ORIE, RAFFERTY,  
WASHINGTON AND WONDERLING, FEBRUARY 20, 2009

REFERRED TO BANKING AND INSURANCE, FEBRUARY 20, 2009

AN ACT

1 Amending the act of June 18, 1984 (P.L.391, No.82), entitled "An  
2 act regulating continuing-care facilities; imposing duties  
3 upon the Insurance Commissioner; requiring certificate of  
4 authority; revocation of certificates; regulating disclosure  
5 statements; advertisement; regulating financial reserves;  
6 requiring escrows; regulating residents' agreements;  
7 establishing an advisory council; granting right of  
8 organization; regulating liquidation and rehabilitation;  
9 imposing civil liability; providing for the right to  
10 investigate and subpoena, liens, cross-collateralization,  
11 cease and desist orders and audits; imposing fees and  
12 regulations; and making criminal penalties," further  
13 providing for investigations and subpoenas and for audits.

14 The General Assembly of the Commonwealth of Pennsylvania  
15 hereby enacts as follows:

16 Section 1. Sections 18 and 19 of the act of June 18, 1984  
17 (P.L.391, No.82), known as the Continuing-Care Provider  
18 Registration and Disclosure Act, are amended to read:

19 Section 18. Investigations and subpoenas.

20 (a) The department may make such public or private  
21 investigations or examinations within or outside of this  
22 Commonwealth as the commissioner deems necessary to determine  
23 whether any person has violated or is about to violate any

1 provision of this act or any rule or order hereunder, or to aid  
2 in the enforcement of this act or in the prescribing of rules  
3 and forms hereunder and may publish information concerning any  
4 violation of this act or any rule or order hereunder.

5 (b) For the purpose of any investigation, examination or  
6 proceeding under this act, the commissioner or any officer  
7 designated by the commissioner may administer oaths and  
8 affirmations, subpoena witnesses, compel their attendance, take  
9 evidence and require the production of any books, papers,  
10 correspondence, memoranda, agreements or other documents or  
11 records which the commissioner deems relevant or material to the  
12 inquiry, all of which may be enforced in any court of this  
13 Commonwealth which has appropriate jurisdiction.

14 Section 19. [Audits] Authority, scope and scheduling of  
15 examinations.

16 [The commissioner or his designee shall visit each facility  
17 offering continuing care in this Commonwealth to examine its  
18 books and records at least once every four years.]

19 (a) Every provider subject to examination in accordance with  
20 this act must keep all books, records, accounts, papers,  
21 documents and any or all computer or other recordings relating  
22 to its property, assets, business and affairs in such manner and  
23 for such time periods as the department, in its discretion, may  
24 require in order that its authorized representatives may readily  
25 verify the financial condition of the company or person and  
26 ascertain whether the company or person has complied with the  
27 laws of this Commonwealth. A multifacility provider may be  
28 required to provide the financial statements of the component  
29 parts at the request of the commissioner or his designee. [The]  
30 Unless specifically directed otherwise by regulations

1 promulgated by the department, the financial statements need not  
2 be certified audited reports.

3 (b) The department or any of its examiners may conduct an  
4 examination of the books and records of each provider offering  
5 continuing care in this Commonwealth as often as the  
6 commissioner, in the commissioner's sole discretion, deems  
7 appropriate, but shall conduct an examination at least once in  
8 the first five-year period and once in the second five-year  
9 period following a provider's receipt of a certificate of  
10 authority under this act.

11 (c) In scheduling and determining the nature, scope and  
12 frequency of examinations under subsection (b), the commissioner  
13 shall consider matters including all of the following:

14 (1) The results of financial statement analyses.

15 (2) Changes in management or ownership.

16 (3) Reports of independent certified public accountants.

17 (4) The volume or nature of complaints by residents.

18 (5) The length of time a provider or a facility has been  
19 furnishing continuing care.

20 (6) Changes to disclosure statements or resident  
21 agreements.

22 (7) The expansion of existing facilities or addition of  
23 new facilities.

24 (8) Other information or criteria, which in the sole  
25 discretion of the commissioner, is relevant to the provider's  
26 financial condition or compliance with regulatory  
27 requirements.

28 (d) For purposes of completing an examination of a provider,  
29 the department may examine or investigate any person or the  
30 business of any person insofar as the examination or

1 investigation is, in the sole discretion of the commissioner,  
2 necessary or material to the examination of the provider.

3 (e) Examinations under this section shall be conducted  
4 pursuant to the procedures set forth under sections 904, 905,  
5 906, 907 and 908 of the act of May 17, 1921 (P.L.789, No.285),  
6 known as The Insurance Department Act of 1921, and 31 Pa. Code  
7 Ch. 12 (relating to cost of insurance department examinations).

8 Section 2. This act shall apply to examinations instituted  
9 on or after the effective date of this act.

10 Section 3. This act shall take effect in 60 days.