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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# SENATE BILL

## No. 455

Session of  
1983

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INTRODUCED BY HOLL, O'PAKE, HOWARD, GREENLEAF AND LEWIS,  
MARCH 14, 1983

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AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,  
MAY 15, 1984

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### AN ACT

1 Regulating continuing care facilities; imposing duties upon the  
2 Insurance Commissioner; requiring certificate of authority;  
3 revocation of certificates; regulating disclosure statements;  
4 advertisement; regulating financial reserves; requiring  
5 escrows; regulating residents' agreements; establishing an  
6 advisory council; granting right of organization; regulating  
7 liquidation and rehabilitation; imposing civil liability;  
8 providing for the right to investigate and subpoena, liens,  
9 cross-collateralization, cease and desist orders and audits;  
10 imposing fees and regulations; and making criminal penalties.

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17 standards.

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20 The General Assembly of the Commonwealth of Pennsylvania

21 hereby enacts as follows:

22 Section 1. Short title.

23 This act shall be known and may be cited as the Continuing

24 Care Provider Registration and Disclosure Act.

25 Section 2. Purpose.

26 The General Assembly recognizes that continuing care

27 communities have become an important and necessary alternative

28 for the long term residential, social and health maintenance

29 needs for many of the Commonwealth's elderly citizens.

30 The General Assembly finds and declares that tragic

1 consequences can result to citizens of the Commonwealth when a  
2 provider of services under a continuing care agreement becomes  
3 insolvent or unable to provide responsible care. The General  
4 Assembly recognizes the need for full disclosure with respect to  
5 the terms of agreements between prospective residents and the  
6 provider and the operations of such providers. Accordingly, the  
7 General Assembly has determined that these providers should be  
8 regulated in accordance with the provisions of this act. The  
9 provisions of this act apply equally to for-profit and not-for-  
10 profit provider organizations. The provisions of this act shall  
11 be the minimum requirements to be imposed upon any person,  
12 association or organization offering or providing continuing  
13 care as set forth in this act.

14 Section 3. Definitions.

15 The following words and phrases when used in this act shall  
16 have the meanings given to them in this section unless the  
17 context clearly indicates otherwise:

18 "Commissioner." The Insurance Commissioner.

19 "Continuing care." The furnishing to an individual, other  
20 than an individual related by consanguinity or affinity to the  
21 person furnishing such care, of board and lodging together with  
22 nursing services, medical services or other health related  
23 services, regardless of whether or not the lodging and services  
24 are provided at the same location and pursuant to an agreement  
25 effective for the life of the individual or for a period in  
26 excess of one year including mutually terminable contracts and  
27 in consideration of the payment of an entrance fee with or  
28 without other periodic charges.

29 "DEPARTMENT." THE INSURANCE DEPARTMENT.

30 "Entrance fee." An initial or deferred transfer to a

<—

1 provider of a sum of money or other property made or promised to  
2 be made as full or partial consideration for acceptance of a  
3 specified individual as a resident in a facility. A fee which is  
4 less than the sum of the regular periodic charges for one year  
5 of residency will not be considered to be an entrance fee for  
6 the purposes of this act.

7 "Facility." The place or places in which a person undertakes  
8 to provide continuing care to an individual.

9 "Living unit." A room, apartment, cottage or other area  
10 within a facility set aside for the exclusive use or control of  
11 one or more identified individuals.

12 "Manager." A person who operates a facility for the  
13 provider.

14 "Omission of a material fact." The failure to state a  
15 material fact required to be stated in any disclosure statement  
16 or registration in order to make the statements made therein not  
17 misleading in light of the circumstances under which they were  
18 made.

19 "Provider." A person undertaking to provide continuing care  
20 in a facility.

21 "Resident." An individual entitled to receive continuing  
22 care in a facility.

23 "Solicit." All actions of a provider or manager in seeking  
24 to have individuals residing in this Commonwealth pay an  
25 application fee and enter into a continuing care agreement by  
26 any means such as, but not limited to, personal, telephone or  
27 mail communication or any other communication directed to and  
28 received by any individual in this Commonwealth and any  
29 advertisements in any media distributed or communicated by any  
30 means to individuals in this Commonwealth.

1 Section 4. Certificate of authority.

2 (a) No providers shall engage in the business of providing  
3 continuing care in this Commonwealth without a certificate of  
4 authority therefor obtained from the ~~department~~ COMMISSIONER as <—  
5 provided in this act.

6 (b) The application for a certificate of authority shall be  
7 filed with the department by the provider on forms prescribed by  
8 the department and shall include+ <—

9 ~~(1) All~~ ALL information required by the department <—  
10 pursuant to regulations adopted by it under this act+ <—

11 ~~(2) The~~ INCLUDING, BUT NOT LIMITED TO, THE disclosure <—  
12 statement meeting the requirements of this act.

13 (c) Upon receipt of the application for a certificate of  
14 authority in proper form, the department shall, within ten  
15 business days, issue a notice of filing to the provider-  
16 applicant. Within 60 days of the notice of filing, the  
17 department shall enter an order issuing the certificate of  
18 authority or rejecting the application.

19 (d) If the ~~department~~ COMMISSIONER determines that any of <—  
20 the requirements of this act have not been met, the commissioner  
21 shall notify the applicant that the application must be  
22 corrected within 30 days in such particulars as designated by  
23 the commissioner. If the requirements are not met within the  
24 time allowed, the commissioner may enter an order rejecting the  
25 application which shall include the finding of fact upon which  
26 the order is based and which shall not become effective until 20  
27 days after the end of the foregoing 30-day period. During the  
28 20-day period, the applicant may petition for reconsideration  
29 and shall be entitled to a hearing.

30 (e) With respect to a provider who has offered continuing

1 care agreements to existing or prospective residents in a  
2 facility established prior to the effective date of this act,  
3 which facility has one or more residents living there pursuant  
4 to such agreements entered into prior to the effective date of  
5 this act, and if such a provider is unable to comply with  
6 section 9 within the time provided, the commissioner may, after  
7 the filing of a petition by the provider, issue a temporary  
8 certificate of authority to the provider which may then enter  
9 into continuing care agreements in compliance with all other  
10 applicable provisions of this act until the permanent  
11 certificate of authority has been issued. This temporary  
12 certificate may only be issued to those existing providers who  
13 will be able to comply with the provisions of section 9 within a  
14 period of time agreed to by the commissioner. This period of  
15 time shall not exceed two years.

16 (f) If a provider is not in compliance on, or before, the  
17 expiration date of the temporary certificate, they may petition  
18 the commissioner for an extension. Providers who may be able to  
19 comply with section 9, as determined by the commissioner, may be  
20 granted an extension of up to three years.

21 (g) If an existing provider is granted a permanent  
22 certificate of authority, any resident who entered into an  
23 agreement before the certificate of authority was granted shall  
24 be provided with all amendments to the application for  
25 registration and the initial disclosure statement.

26 (h) If an existing provider is denied a permanent  
27 certificate of authority, any resident who entered into a  
28 continuing care agreement before the certificate of authority  
29 shall be entitled to all the appropriate remedies as provided in  
30 this act.

1       ~~(i) The provider shall file with the commissioner, annually~~ <—  
2       ~~within four months following the end of the provider's fiscal~~  
3       ~~year, an annual disclosure statement which shall contain the~~  
4       ~~information required by this act for the initial disclosure~~  
5       ~~statement. The annual disclosure statement shall also be~~  
6       ~~accompanied by a narrative describing any material differences~~  
7       ~~between:~~

8               ~~(1) The pro forma income statements filed pursuant to~~  
9               ~~this act either as part of the application for registration~~  
10              ~~or as part of the most recent annual disclosure statement.~~

11              ~~(2) The actual results of operations during the fiscal~~  
12              ~~year.~~

13       ~~The annual disclosure statement shall also contain a revised pro~~  
14       ~~forma income statement for the next fiscal year. The~~  
15       ~~commissioner may request additional income statements when it is~~  
16       ~~shown that such are necessary.~~

17       ~~(j) From the date an annual disclosure statement is filed~~  
18       ~~until the date the next succeeding annual disclosure statement~~  
19       ~~is filed with the commissioner and prior to the provider's~~  
20       ~~acceptance of part or all of any application fee or part of the~~  
21       ~~entrance fee or the execution of the continuing care agreement~~  
22       ~~by the resident, whichever first occurs, the provider shall~~  
23       ~~deliver and obtain a receipt for the delivery of the then~~  
24       ~~current annual disclosure statement to the individual or~~  
25       ~~individuals who are the prospective residents and with whom the~~  
26       ~~continuing care agreement is to be entered into.~~

27       ~~(k) In addition to filing the annual disclosure statement,~~  
28       ~~the provider may amend its currently filed disclosure statement~~  
29       ~~at any other time if, in the opinion of the provider, an~~  
30       ~~amendment is necessary to prevent the disclosure statement and~~

~~1 annual disclosure statement from containing any material~~  
~~2 misstatement of fact or omission to state a material fact~~  
~~3 required to be stated therein. Any such amendment or amended~~  
~~4 disclosure statement must be filed with the commissioner before~~  
~~5 it is delivered to any resident or prospective resident and is~~  
~~6 subject to all the requirements, including those as to content~~  
~~7 and delivery, of this act.~~

8     ~~(1)~~ (I) If a facility is accredited by a process approved by <—  
9 the commissioner as substantially equivalent to the requirements  
10 of this section, then the facility shall be deemed to have met  
11 the requirements of this section and the commissioner shall  
12 issue a certificate of authority to the facility.

13 Section 5. Revocation of certificate of authority.

14     (a) The certificate of authority of a provider shall remain  
15 in effect until revoked after notice and hearing, upon written  
16 findings of fact by the commissioner, that the provider has:

17         (1) willfully violated any provision of this act or of  
18 any rule, regulation or order adopted hereunder;

19         (2) failed to file an annual disclosure statement or  
20 resident agreement as required by this act;

21         (3) failed to deliver to prospective residents the  
22 disclosure statements required by this act;

23         (4) delivered to prospective residents a disclosure  
24 statement which makes an untrue statement or omits a material  
25 fact and the provider, at the time of the delivery of the  
26 disclosure statement, had actual knowledge of the  
27 misstatement or omission; or

28         (5) failed to comply with the terms of a cease and  
29 desist order.

30     (b) Findings of fact in support of revocation, if set forth



1 in statutory language, shall be accompanied by a concise and  
2 explicit statement of the underlying facts supporting the  
3 findings.

4 (c) If the commissioner finds good cause to believe that the  
5 provider has been guilty of a violation for which revocation  
6 could be ordered, ~~it~~ THE COMMISSIONER may first issue a cease <—  
7 and desist order. If the cease and desist order is not or cannot  
8 be effective in remedying the violation, the commissioner may,  
9 after notice and hearing, order that the certificate of  
10 authority be revoked and surrendered. Such a cease and desist  
11 order may be appealed to the Commonwealth Court.

12 Section 6. Sale or transfer of ownership.

13 Any provider desiring to sell or transfer ownership of a  
14 continuing care facility shall notify the department 30 days in  
15 advance of the completion of such sale or transfer. The  
16 commissioner may revoke, after notice and hearing, upon written  
17 findings of fact, the certificate of authority of any provider  
18 based upon a substantial change in control or ownership of such  
19 provider, which change is found not to be in the best interests  
20 of the residents of the facility or facilities owned or  
21 controlled by the provider such that the facility or facilities  
22 is in the imminent danger of becoming insolvent, or that the  
23 care of present or prospective residents is threatened thereby.

24 Section 7. Disclosure statement.

25 (A) At the time of or prior to the execution of a contract <—  
26 to provide continuing care, or at the time of or prior to the  
27 transfer of any money or other property to a provider by or on  
28 behalf of a prospective resident, whichever shall first occur,  
29 the provider shall deliver a disclosure statement to the person  
30 with whom the contract is to be entered into, which shall

1 contain all of the following information unless such information  
2 is in the contract, a copy of which must be attached to the  
3 statement:

4 (1) The name and business address of the provider and a  
5 statement of whether the provider is a partnership,  
6 corporation or other type of legal entity.

7 (2) The names and business addresses of the officers,  
8 directors, trustees, managing or general partners, and any  
9 person having a 10% or greater equity or beneficial interest  
10 in or of the provider, and a description of such person's  
11 interest in or occupation with the provider.

12 (3) With respect to:

13 (i) The provider.

14 (ii) Any person named in response to paragraph (2).

15 (iii) The proposed manager, if the facility will be  
16 managed on a day-to-day basis by a person other than an  
17 individual directly employed by the provider:

18 (A) A description of the business experience of  
19 such person, if any, in the operation or management  
20 of similar facilities.

21 (B) The name and address of any professional  
22 service, firm, association, trust, partnership or  
23 corporation in which such person has, or which has in  
24 such person, a 10% or greater interest and which it  
25 is presently intended will or may provide goods,  
26 leases or services to the facility of a value of \$500  
27 or more, within any year, including:

28 (I) A description of the goods, leases or  
29 services and the probable or anticipated cost  
30 thereof to the facility or provider.

1 (II) The process by which the contract was  
2 awarded.

3 (III) Any additional offers that were  
4 received.

5 The commissioner may request additional  
6 information, detailing why a contract was  
7 awarded, as may be necessary.

8 (C) A description of any matter in which such a  
9 person:

10 (I) has been convicted of a felony or  
11 pleaded nolo contendere to a felony charge, or  
12 been held liable or enjoined in a civil action by  
13 final judgment if the felony or civil action  
14 involved fraud, embezzlement, fraudulent  
15 conversion or misappropriation of property; or

16 (II) is subject to a currently effective  
17 injunctive or restrictive order of a court of  
18 record, or within the past five years had any  
19 State or Federal license or permit suspended or  
20 revoked as a result of an action brought by a  
21 governmental agency or department, arising out of  
22 or relating to business activity or health care,  
23 including without limitation actions affecting a  
24 license to operate a foster care facility,  
25 nursing home, retirement home, home for the aged  
26 or facility registered under this act or a  
27 similar act in another state.

28 (4) A statement as to:

29 (i) Whether the provider is or ever has been  
30 affiliated with a religious, charitable or other

1           nonprofit organization.

2           (ii) The nature of the affiliation, if any.

3           (iii) The extent to which the affiliate organization  
4           will be responsible for the financial and contract  
5           obligations of the provider.

6           (iv) The provision of the Federal Internal Revenue  
7           Code, if any, under which the provider or affiliate is  
8           exempt from the payment of income tax.

9           (5) The location and description of the physical  
10          property or properties of the facility, existing or proposed,  
11          and to the extent proposed, the estimated completion date or  
12          dates, whether or not construction has begun and the  
13          contingencies subject to which construction may be deferred.

14          (6) The services provided or proposed to be provided  
15          under contracts for continuing care at the facility,  
16          including the extent to which medical care is furnished. The  
17          disclosure statement shall clearly state which services are  
18          included in basic contracts for continuing care and which  
19          services are made available at or by the facility at extra  
20          charge.

21          (7) A description of all fees required of residents,  
22          including the entrance fee and periodic charges, if any. The  
23          description shall include the manner by which the provider  
24          may adjust periodic charges or other recurring fees and the  
25          limitations on such adjustments, if any. If the facility is  
26          already in operation, or if the provider or manager operates  
27          one or more similar facilities within this Commonwealth,  
28          there shall be included tables showing the frequency and  
29          average dollar amount of each increase in periodic rates at  
30          each such facility for the previous five years or such

1 shorter period as the facility may have been operated by the  
2 provider or manager.

3 (8) The provisions that have been made or will be made,  
4 if any, to provide reserve funding or security to enable the  
5 provider to fully perform its obligations under contracts to  
6 provide continuing care at the facility, including the  
7 establishment of escrow accounts, trusts or reserve funds,  
8 together with the manner in which such funds will be invested  
9 and the names and experience of persons who will make the  
10 investment decisions.

11 (9) Certified financial statements of the provider,  
12 including:

13 (i) A balance sheet as of the end of the two most  
14 recent fiscal years.

15 (ii) Income statements of the provider for the two  
16 most recent fiscal years or such shorter period of time  
17 as the provider shall have been in existence.

18 (10) If operation of the facility has not yet commenced,  
19 a statement of the anticipated source and application of the  
20 funds used or to be used in the purchase or construction of  
21 the facility, including:

22 (i) An estimate of the cost of purchasing or  
23 constructing and equipping the facility including such  
24 related costs as financing expense, legal expense, land  
25 costs, occupancy development costs, and all other similar  
26 costs which the provider expects to incur or become  
27 obligated for prior to the commencement of operations.

28 (ii) A description of any mortgage loan or other  
29 long-term financing intended to be used for the financing  
30 of the facility, including the anticipated terms and

costs of such financing.

(iii) An estimate of the total entrance fees to be received from or on behalf of residents at or prior to commencement of operation of the facility.

(iv) An estimate of the funds, if any, which are anticipated to be necessary to fund start-up losses and provide reserve funds to assure full performance of the obligations of the provider under contracts for the provision of continuing care.

(v) A projection of estimated income from fees and charges other than entrance fees, showing individual rates presently anticipated to be charged and including a description of the assumptions used for calculating the estimated occupancy rate of the facility and the effect on the income of the facility of government subsidies for health care services, if any, to be provided pursuant to the contracts for continuing care.

(vi) A projection of estimated operating expenses of the facility, including a description of the assumptions used in calculating the expenses and separate allowances, if any, for the replacement of equipment and furnishings and anticipated major structural repairs or additions.

(vii) Identification of any assets pledged as collateral for any purpose.

(viii) An estimate of annual payments of principal and interest required by any mortgage loan or other long-term financing.

(11) Such other material information concerning the facility or the provider as may be required by the department or as the provider wishes to include.

1           (12) The cover page of the disclosure statement shall  
2       state, in a prominent location and type face, the date of the  
3       disclosure statement and that the issuance of a certificate  
4       of authority does not constitute approval, recommendation or  
5       endorsement of the facility by the department, nor is it  
6       evidence of, nor does it attest to, the accuracy or  
7       completeness of the information set out in the disclosure  
8       statement.

9           (13) A copy of the standard form or forms of contract  
10      for continuing care used by the provider shall be attached as  
11      an exhibit to each disclosure statement.

12      (B) THE PROVIDER SHALL FILE WITH THE COMMISSIONER, ANNUALLY <—  
13      WITHIN FOUR MONTHS FOLLOWING THE END OF THE PROVIDER'S FISCAL  
14      YEAR, AN ANNUAL DISCLOSURE STATEMENT WHICH SHALL CONTAIN THE  
15      INFORMATION REQUIRED BY THIS ACT FOR THE INITIAL DISCLOSURE  
16      STATEMENT. THE ANNUAL DISCLOSURE STATEMENT SHALL ALSO BE  
17      ACCOMPANIED BY A NARRATIVE DESCRIBING ANY MATERIAL DIFFERENCES  
18      BETWEEN:

19           (1) THE PRO FORMA INCOME STATEMENTS FILED PURSUANT TO  
20      THIS ACT EITHER AS PART OF THE APPLICATION FOR REGISTRATION  
21      OR AS PART OF THE MOST RECENT ANNUAL DISCLOSURE STATEMENT.

22           (2) THE ACTUAL RESULTS OF OPERATIONS DURING THE FISCAL  
23      YEAR.

24      THE ANNUAL DISCLOSURE STATEMENT SHALL ALSO CONTAIN A REVISED PRO  
25      FORMA INCOME STATEMENT FOR THE NEXT FISCAL YEAR. THE  
26      COMMISSIONER MAY REQUEST ADDITIONAL INCOME STATEMENTS WHEN IT IS  
27      SHOWN THAT SUCH ARE NECESSARY.

28      (C) FROM THE DATE AN ANNUAL DISCLOSURE STATEMENT IS FILED  
29      UNTIL THE DATE THE NEXT SUCCEEDING ANNUAL DISCLOSURE STATEMENT  
30      IS FILED WITH THE COMMISSIONER AND PRIOR TO THE PROVIDER'S

1 ACCEPTANCE OF PART OR ALL OF ANY APPLICATION FEE OR PART OF THE  
2 ENTRANCE FEE OR THE EXECUTION OF THE CONTINUING CARE AGREEMENT  
3 BY THE RESIDENT, WHICHEVER FIRST OCCURS, THE PROVIDER SHALL  
4 DELIVER THE CURRENT ANNUAL DISCLOSURE STATEMENT TO THE  
5 INDIVIDUAL OR INDIVIDUALS WHO ARE ~~THE~~ CURRENT OR PROSPECTIVE <—  
6 RESIDENTS AND WITH WHOM THE CONTINUING CARE AGREEMENT IS ~~TO~~ OR <—  
7 MAY BE ENTERED INTO.

8 (D) IN ADDITION TO FILING THE ANNUAL DISCLOSURE STATEMENT,  
9 THE PROVIDER MAY AMEND ITS CURRENTLY FILED DISCLOSURE STATEMENT  
10 AT ANY OTHER TIME IF, IN THE OPINION OF THE PROVIDER, AN  
11 AMENDMENT IS NECESSARY TO PREVENT THE DISCLOSURE STATEMENT AND  
12 ANNUAL DISCLOSURE STATEMENT FROM CONTAINING ANY MATERIAL  
13 MISSTATEMENT OF FACT OR OMISSION TO STATE A MATERIAL FACT  
14 REQUIRED TO BE STATED THEREIN. ANY SUCH AMENDMENT OR AMENDED  
15 DISCLOSURE STATEMENT MUST BE FILED WITH THE COMMISSIONER BEFORE  
16 IT IS DELIVERED TO ANY RESIDENT OR PROSPECTIVE RESIDENT AND IS  
17 SUBJECT TO ALL THE REQUIREMENTS, INCLUDING THOSE AS TO CONTENT  
18 AND DELIVERY, OF THIS ACT.

19 Section 8. False information.

20 (a) No provider shall make, publish, disseminate, circulate  
21 or place before the public, or cause, directly or indirectly, to  
22 be made, published, disseminated, circulated or placed before  
23 the public in a newspaper or other publication, or in the form  
24 of a notice, circular, pamphlet, letter or poster, or over any  
25 radio or television station, or in any other way, an  
26 advertisement, announcement or statement of any sort containing  
27 any assertion, representation or statement which is untrue,  
28 deceptive or misleading.

29 (b) No provider shall file with the ~~commissioner~~ DEPARTMENT <—  
30 or make, publish, disseminate, circulate or deliver to any



1 person or place before the public, or cause, directly or  
2 indirectly, to be made, published, disseminated, circulated or  
3 delivered to any person, or placed before the public, any  
4 financial statement which does not accurately state its true  
5 financial condition.

6 Section 9. Reserves.

7 Each provider shall establish and maintain liquid reserves in  
8 an amount equal to or exceeding the greater of:

9 (1) the total of all principal and interest payments due  
10 during the next 12 months on account of any mortgage loan or  
11 other long term financing of the facility; or

12 (2) ten percent of the projected annual operating  
13 expenses of the facility exclusive of depreciation.

14 The provider must notify the commissioner in writing at least  
15 ten days prior to reducing the funds available to satisfy this  
16 requirement and may expend no more than one-twelfth of the  
17 required balance each calendar month. In facilities where some  
18 residents are not under continuing care agreements, the reserve  
19 shall be computed only on the proportional share of financing or  
20 operating expenses that is applicable to residents under  
21 continuing care agreements at the end of the provider's most  
22 recent fiscal year. Funds in escrow accounts may be used to  
23 satisfy this reserve requirement if such funds are available to  
24 make payments when operating funds are insufficient for such  
25 purposes.

26 Section 10. Reserve fund escrow.

27 The commissioner may require the provider to establish and to  
28 maintain on a current basis, in escrow with a bank, trust  
29 company or other escrow agent approved by the department, a  
30 portion of all entrance fees received by the provider in an

1 aggregate amount not to exceed the total of all principal and  
2 interest payments due during the next 12 months on account of  
3 any first mortgage loan or other long-term financing of the  
4 facility. The funds in such an escrow account may be invested  
5 with the earnings thereon payable to the provider. If the  
6 provider so requests in writing, the escrow agent shall release  
7 up to one-twelfth of the original principal balance of the  
8 escrow account. A release of funds shall not be made more than  
9 once during any calendar month, and then only after the escrow  
10 agent has given written notice to the commissioner at least ten  
11 days prior to the release. The amount of this escrow fund shall  
12 be included in satisfying the reserves required under this act.  
13 This section shall only be applicable when the commissioner has  
14 cause to believe that additional protection may be necessary to  
15 secure the obligations assumed under all resident agreements.  
16 Section 11. Lien on behalf of residents.

17 Prior to the issuance of a certificate of authority under  
18 this act, or at such other time as the commissioner may  
19 determine it in the best interests of residents of a facility,  
20 the commissioner may file a lien on the real and personal  
21 property of the provider or facility to secure the obligations  
22 of the provider pursuant to existing and future contracts for  
23 continuing care. A lien filed under this section shall be  
24 effective for a period of ten years following such filing and  
25 may be extended by the commissioner upon a finding that such  
26 extension is advisable for the protection of residents of the  
27 facility. The lien may be foreclosed upon the liquidation of the  
28 facility or the insolvency or bankruptcy of the provider and in  
29 such event the proceeds thereof shall be used in full or partial  
30 satisfaction of obligations of the provider pursuant to

1 contracts for continuing care then in effect. The lien provided  
2 for in this section shall be subordinate to the lien of any  
3 first mortgage on the real property of the facility and may be  
4 subordinated with the written consent of the ~~department~~ <—  
5 COMMISSIONER to the claims of other persons if the commissioner <—  
6 shall determine such subordination to be advisable for the  
7 efficient operation of the facility.

8 Section 12. Entrance fee escrow.

9 The commissioner shall require, as a condition of issuing a  
10 certificate of authority, that the provider establish an  
11 interest-bearing escrow account with a bank, trust company or  
12 other escrow agent approved by the commissioner. ~~and that any~~ <—  
13 ~~entrance fees, which do not include payments that are less than~~  
14 ANY ENTRANCE FEES OR PAYMENTS THAT ARE IN EXCESS OF 5% of the <—  
15 then existing entrance fee for the unit, ~~are~~ received by the <—  
16 provider prior to the date the resident is permitted to occupy  
17 the living unit in the ~~home~~, FACILITIES, SHALL be placed in the <—  
18 escrow account subject to release as follows:

19 (1) If the entrance fee gives the resident the right to  
20 occupy a living unit which has been previously occupied, the  
21 entrance fee and any income earned thereon shall be released  
22 to the provider at such time as the living unit becomes  
23 available for occupancy by the new resident.

24 (2) If the entrance fee applies to a living unit which  
25 has not been previously occupied, the entrance fee shall be  
26 released to the provider at such time as the commissioner is  
27 satisfied that:

28 (i) Aggregate entrance fees received or receivable  
29 by the provider pursuant to executed continuing care  
30 agreements equal not less than 50% of the sum of the

1 entrance fees due at full occupancy of the portion of the  
2 facility under construction. For this paragraph, entrance  
3 fees receivable pursuant to an agreement will be counted  
4 only if the facility has received a deposit of 35% or  
5 more of the entrance fee due from the individual, or  
6 individuals, signing the contract.

7 (ii) The entrance fees received or receivable  
8 pursuant to the preceding paragraph plus anticipated  
9 proceeds of any first mortgage loan or other long-term  
10 financing commitment plus funds from other sources in the  
11 actual possession of the provider are equal to not less  
12 than 50% of the aggregate cost of constructing or  
13 purchasing, equipping and furnishing the facility plus  
14 not less than 50% of the funds estimated in the statement  
15 of anticipated source and application of funds submitted  
16 by the provider as part of its application to be  
17 necessary to fund start-up losses of the facility.

18 (iii) A commitment has been received by the provider  
19 for any permanent mortgage loan or other long-term  
20 financing described in the statement of anticipated  
21 source and application of funds submitted as part of the  
22 application for certificate of authority and any  
23 conditions of the commitment prior to disbursement of  
24 funds thereunder, other than completion of the  
25 construction or closing of the purchase of the facility,  
26 have been substantially satisfied.

27 (3) If the funds in an escrow account to which  
28 paragraphs (1) and (2) apply and any interest earned thereon  
29 are not released within 36 months, or such greater time as  
30 may have been specified by the provider with the consent of

1 the commissioner, then such funds shall be returned by the  
2 escrow agent to the persons who made the payment to the  
3 provider.

4 (4) Nothing in this section shall require the escrow of  
5 any nonrefundable application fee charged to prospective  
6 residents.

7 (5) In lieu of any escrow which is required by the  
8 commissioner under this section, a provider shall be entitled  
9 to post a letter of credit from a financial institution,  
10 negotiable securities or a bond by a surety authorized to do  
11 business in this Commonwealth and approved by the  
12 commissioner as to form and in an amount not to exceed the  
13 amount required by paragraph (2)(i). The bond, letter of  
14 credit or negotiable securities shall be executed in favor of  
15 the commissioner on behalf of individuals who may be found  
16 entitled to a refund of entrance fees from the provider.

17 (6) An entrance fee held in escrow may be returned by  
18 the escrow agent at any time to the person or persons who  
19 paid the fee to the provider upon receipt by the escrow agent  
20 of notice from the provider that such person is entitled to a  
21 refund of the entrance fee.

## 22 Section 13. Cross-collateralization limited.

23 Only the unencumbered assets of a continuing care facility  
24 may be pledged by the provider as collateral for the purpose of  
25 securing loans for other continuing care facilities, whether  
26 proposed or existing.

## 27 Section 14. Resident's agreement.

28 (a) In addition to such other provisions as may be  
29 considered proper to effectuate the purpose of any continuing  
30 care agreement, each agreement executed on and after the date of

1 the adoption of the rules under this act shall BE WRITTEN IN <—  
2 NONTECHNICAL LANGUAGE EASILY UNDERSTOOD BY A LAYPERSON AND  
3 SHALL:

4 (1) Provide for the continuing care of only one  
5 resident, or for two or more persons occupying space designed  
6 for multiple occupancy, under appropriate ~~regulations~~ <—  
7 PROCEDURES established by the provider and shall show the <—  
8 value of all property transferred, including donations,  
9 subscriptions, fees and any other amounts paid or payable by,  
10 or on behalf of, the resident or residents.

11 (2) Specify all services which are to be provided by the  
12 provider to each resident including, in detail, all items  
13 which each resident will receive and whether the items will  
14 be provided for a designated time period or for life and the  
15 ~~estimated monthly~~ AVERAGE ANNUAL cost to the provider of <—  
16 providing the care. Such items may include, but not be  
17 limited to, food, shelter, nursing care, drugs, burial and  
18 incidentals.

19 (3) Describe the health and financial conditions upon  
20 which the provider may have the resident relinquish his space  
21 in the designated facility.

22 (4) Describe the health and financial conditions  
23 required for a person to continue as a resident.

24 (5) Describe the circumstances under which the resident  
25 will be permitted to remain in the facility in the event of  
26 financial difficulties of the resident.

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

1 entry.

2 (7) Provide that the agreement may be canceled upon the  
3 giving of notice of cancellation of at least 30 days by the  
4 provider OR the resident. ~~or the person who provided the~~ <—

5 ~~transfer of property or funds for the care of such resident.~~

6 If an agreement is canceled because there has been a good  
7 faith determination in writing, signed by the medical  
8 director and the administrator of the facility, that a  
9 resident is a danger to himself or others, only such notice  
10 as is reasonable under the circumstances shall be required.

11 (8) Provide in clear and understandable language, in  
12 print no smaller than the largest type used in the body of  
13 said agreement, the terms governing the refund of any portion  
14 of the entrance fee.

15 (9) State the terms under which an agreement is canceled  
16 by the death of the resident. The agreement may contain a  
17 provision to the effect that, upon the death of the resident,  
18 the moneys paid for the continuing care of such resident  
19 shall be considered earned and become the property of the  
20 provider.

21 (10) Provide for advance notice to the resident, of not  
22 less than 30 days, before any change in fees or charges or  
23 the scope of care or services may be effective, except for  
24 changes required by State or Federal assistance programs.

25 (11) Provide that charges for care paid in one lump sum  
26 shall not be increased or changed during the duration of the  
27 agreed upon care, except for changes required by State or  
28 Federal assistance programs.

29 (b) A resident shall have the right to rescind a continuing  
30 care agreement, without penalty or forfeiture, within seven days

1 after making an initial deposit or executing the agreement. A  
2 resident shall not be required to move into the facility  
3 designated in the agreement before the expiration of the seven-  
4 day period.

5 (c) If a resident dies before ~~occupying the facility~~ <—  
6 OCCUPANCY DATE, or through illness, injury or incapacity ~~would~~ <—  
7 ~~be~~ IS precluded from becoming a resident under the terms of the <—  
8 continuing care agreement, the agreement is automatically  
9 rescinded and the resident or his legal representative shall  
10 receive a full refund of all moneys paid to the facility, except  
11 those costs specifically incurred by the facility at the request  
12 of the resident and set forth in writing in a separate addendum,  
13 signed by both parties to the agreement.

14 (d) No agreement for care shall permit dismissal or  
15 discharge of the resident from the facility providing care prior  
16 to the expiration of the agreement, without just cause for such  
17 a removal. "Just cause" shall include, but not be limited to, a  
18 good faith determination in writing, signed by the medical  
19 director and the administrator of the facility, that a resident  
20 is a danger to himself or others while remaining in the  
21 facility. If a facility dismisses a resident for just cause, the  
22 facility shall pay to the resident any refund due in the same  
23 manner as if the resident's agreement was terminated pursuant to  
24 this act.

25 (e) No act, agreement or statement of any resident, or of an  
26 individual purchasing care for a resident under any agreement to  
27 furnish care to the resident, shall constitute a valid waiver of  
28 any provision of this act intended for the benefit or protection  
29 of the resident or the individual purchasing care for the  
30 resident.



(f) Those agreements entered into prior to the effective date of this act or prior to the issuance of a certificate of authority to the provider shall be valid and binding upon both parties in accordance with their terms.

~~(g) The form of the continuing care agreement and any change therein, used by each provider, shall be filed with the department at least 60 days prior to use.~~

~~Section 15. Advisory council.~~

~~(a) An advisory council to the commissioner is created to consist of seven members appointed by the Governor, each of whom shall be a resident of this Commonwealth and shall consist of:~~

~~(1) Two holders of a certificate of authority under this act.~~

~~(2) A representative of the business community whose expertise is in the area of management.~~

~~(3) A certified public accountant.~~

~~(4) A representative of the field of insurance who has actuarial experience.~~

~~(5) Two current residents of continuing care facilities.~~

~~(b) The term of office for each member shall be three years or until his successor has been appointed and qualifies, except that of the members first appointed, two shall be appointed for terms of one year each, two for terms of two years each and three for terms of three years each.~~

~~(c) The council members shall serve without pay but shall be reimbursed for reasonable expenses by the department.~~

~~(d) The council shall:~~

~~(1) Meet within 30 days after the members' appointment and elect a chairman from their number and elect or appoint a secretary, each of whom shall hold office for one year and~~

1 ~~thereafter until his successor is elected and qualified.~~

2 ~~(2) Hold an annual meeting each year and hold other~~  
3 ~~meetings at such times and places as the department or the~~  
4 ~~chairman of the council may direct.~~

5 ~~(3) Keep a record of its proceedings. The books and~~  
6 ~~records of the council shall be prima facie evidence of all~~  
7 ~~matters reported therein and shall be open to inspection by~~  
8 ~~the department at all times.~~

9 ~~(4) Act in an advisory capacity to the commissioner.~~

10 ~~(5) Assist the commissioner in the preparation,~~  
11 ~~publication and distribution of a consumer guide to~~  
12 ~~continuing care.~~

13 ~~(6) Recommend to the commissioner needed changes in~~  
14 ~~rules.~~

15 ~~(7) Upon the request of the commissioner, assist in the~~  
16 ~~rehabilitation of continuing care operations.~~

17 Section ~~16~~ 15. Right to organization. <—

18 (a) Residents living in a facility holding a valid  
19 certificate of authority under this act shall have the right of  
20 self-organization.

21 (b) The board of directors, a designated representative or  
22 other such governing body of a continuing care facility shall  
23 hold quarterly meetings with the residents ~~or representatives~~ <—  
24 ~~elected by the residents~~ of the continuing care facility for the  
25 purpose of free discussion of subjects which may include income,  
26 expenditures and financial matters as they apply to the facility  
27 and proposed changes in policies, programs and services.

28 Residents shall be entitled to at least seven days' notice of  
29 each quarterly meeting.

30 Section ~~17~~ 16. Rehabilitation or liquidation. <—

1 (a) If, at any time, the commissioner shall determine, after  
2 notice and an opportunity for the provider to be heard, that:

3 (1) a portion of a reserve fund escrow required under  
4 this act has been or is proposed to be released;

5 (2) a provider has been or will be unable, in such a  
6 manner as may endanger the ability of the provider to fully  
7 perform its obligations pursuant to contracts for continuing  
8 care, to meet the pro forma income or cash flow projections  
9 previously filed by the provider;

10 (3) a provider has failed to maintain the reserves  
11 required under this act; or

12 (4) a provider is bankrupt or insolvent, or in imminent  
13 danger of becoming bankrupt or insolvent, ~~in which case;~~ <—  
14 the commissioner may apply to the appropriate court of this  
15 Commonwealth or to the Federal bankruptcy court which may have  
16 previously taken jurisdiction over the provider or facility for  
17 an order directing the commissioner or authorizing the  
18 commissioner to appoint a trustee to rehabilitate or to  
19 liquidate a facility.

20 (b) An order to rehabilitate a facility shall direct the  
21 commissioner or trustee to take possession of the property of  
22 the provider and to conduct the business thereof, including the  
23 employment of such managers or agents as the commissioner or  
24 trustee may deem necessary and to take such steps as the court  
25 may direct toward removal of the causes and conditions which  
26 have made rehabilitation necessary.

27 (c) If, at any time, the court finds, upon petition of the  
28 ~~department~~ COMMISSIONER, trustee or provider, or on its own <—  
29 motion, that the objectives of an order to rehabilitate a  
30 provider have been accomplished and that the facility can be

1 returned to the provider's management without further jeopardy  
2 to the residents of the facility, creditors, owners of the  
3 facility and the public, the court may, upon a full report and  
4 accounting of the conduct of the facility's affairs during the  
5 rehabilitation and of the facility's current financial  
6 condition, terminate the rehabilitation and, by order, return  
7 the facility and its assets and affairs to the provider's  
8 management.

9 (d) If, at any time, the commissioner determines that  
10 further efforts to rehabilitate the provider would be useless,  
11 ~~it~~ THE COMMISSIONER may apply to the court for an order of  
12 liquidation. <—

13 (e) An order to liquidate a facility:

14 (1) May be issued upon application of the commissioner  
15 whether or not there has been issued a prior order to  
16 rehabilitate the facility.

17 (2) Shall act as a revocation of the certificate of  
18 authority of the facility under this act.

19 (3) Shall include an order directing the commissioner or  
20 a trustee to marshal and liquidate all of the provider's  
21 assets located within this Commonwealth.

22 (f) In applying for an order to rehabilitate or liquidate a  
23 facility, the commissioner shall give due consideration in the  
24 application to the manner in which the welfare of persons who  
25 have previously contracted with the provider for continuing care  
26 may be best served. In furtherance of this objective, the  
27 proceeds of any lien obtained by the ~~director~~ COMMISSIONER  
28 pursuant to this act may be: <—

29 (1) used in full or partial payment of entrance fees;

30 (2) used on behalf of residents of a facility being

1 liquidated; or

2 (3) paid to other facilities operated by providers who  
3 have registered such facilities under this act.

4 (g) An order for rehabilitation under this section shall be  
5 refused or vacated if the provider posts a bond, by a recognized  
6 surety authorized to do business in this Commonwealth and  
7 executed in favor of the commissioner on behalf of persons who  
8 may be found entitled to a refund of entrance fees from the  
9 provider or other damages in the event the provider is unable to  
10 fulfill its contracts to provide continuing care at the  
11 facility, in an amount determined by the court to be equal to  
12 the reserve funding which would otherwise need to be available  
13 to fulfill such obligations.

14 Section ~~18~~ 17. Civil liability.

←

15 (a) Any person who, as a provider, or on behalf of a  
16 provider:

17 (1) enters into a contract for continuing care at a  
18 facility which does not have a certificate of authority under  
19 this act;

20 (2) enters into a contract for continuing care at a  
21 facility without having first delivered a disclosure  
22 statement meeting the requirements of this act to the person  
23 contracting for such continuing care; or

24 (3) enters into a contract for continuing care at a  
25 facility with a person who has relied on a disclosure  
26 statement which omits a material fact required to be stated  
27 therein or necessary in order to make the statements made  
28 therein, in light of the circumstances under which they are  
29 made, not misleading;

30 shall be liable to the person contracting for such continuing

1 care for damages and repayment of all fees paid to the provider,  
2 facility or person violating this act, less the reasonable value  
3 of care and lodging provided to the resident by or on whose  
4 behalf the contract for continuing care was entered into prior  
5 to discovery of the violation, misstatement or omission or the  
6 time the violation, misstatement or omission should reasonably  
7 have been discovered, together with interest thereon at the  
8 legal rate for judgments and court costs and reasonable attorney  
9 fees.

10 (b) Liability under this section shall exist regardless of  
11 whether or not the provider or person liable had actual  
12 knowledge of the misstatement or omission.

13 (c) A person may not file or maintain an action under this  
14 section if the person, before filing the action, received an  
15 offer, approved by the commissioner, to refund all amounts paid  
16 the provider, facility or person violating this act together  
17 with interest from the date of payment, less the reasonable  
18 value of care and lodging provided prior to receipt of the offer  
19 and the person failed to accept the offer within 30 days of its  
20 receipt. At the time a provider makes a written offer of  
21 rescission, the provider shall file a copy with the  
22 commissioner. The rescission offer shall recite the provisions  
23 of this section.

24 (d) An action shall not be maintained to enforce a liability  
25 created under this act unless brought before the expiration of  
26 six years after the execution of the contract for continuing  
27 care which gave rise to the violation.

28 (e) Except as expressly provided in this act, civil  
29 liability in favor of a private party shall not arise against a  
30 person by implication from or as a result of the violation of

1 this act or a rule or order promulgated or issued under this  
2 act. This act shall not limit a liability which may exist by  
3 virtue of any other statute or under common law if this act were  
4 not in effect.

5 Section ~~19~~ 18. Investigations and subpoenas. <—

6 (a) The ~~commissioner~~ DEPARTMENT may make such public or <—  
7 private investigations within or outside of this Commonwealth as  
8 the commissioner deems necessary to determine whether any person  
9 has violated or is about to violate any provision of this act or  
10 any rule or order hereunder, or to aid in the enforcement of  
11 this act or in the prescribing of rules and forms hereunder and  
12 may publish information concerning any violation of this act or  
13 any rule or order hereunder.

14 (b) For the purpose of any investigation or proceeding under  
15 this act, the commissioner or any officer designated by ~~it~~ THE <—  
16 COMMISSIONER may administer oaths and affirmations, subpoena  
17 witnesses, compel their attendance, take evidence and require  
18 the production of any books, papers, correspondence, memoranda,  
19 agreements or other documents or records which the commissioner  
20 deems relevant or material to the inquiry, all of which may be  
21 enforced in any court of this Commonwealth which has appropriate  
22 jurisdiction.

23 Section ~~20~~ 19. Audits. <—

24 The commissioner or his designee shall visit each facility  
25 offering continuing care in this Commonwealth to examine its  
26 books and records at least once every four years. A multi-  
27 facility provider may be required to provide the financial  
28 statements of the component parts at the request of the  
29 commissioner or his designee. The financial statements need not  
30 be certified audited reports.

1 SECTION 20. CONSUMERS GUIDE TO CONTINUING CARE FACILITIES. <—

2 THE COMMISSIONER SHALL PUBLISH AND DISTRIBUTE A CONSUMERS  
3 GUIDE TO CONTINUING CARE FACILITIES AND AN ANNUAL DIRECTORY OF  
4 CONTINUING CARE FACILITIES.

5 Section 21. Cease and desist orders; injunctions.

6 Whenever it appears to the commissioner that any person has  
7 engaged in, or is about to engage in, any act or practice  
8 constituting a violation of any provision of this act or any  
9 rule or order hereunder, the commissioner may:

10 (1) Issue an order directed at any such person requiring  
11 such person to cease and desist from engaging in such act or  
12 practice.

13 (2) Bring an action in any court which has appropriate  
14 jurisdiction to enjoin the acts or practices and to enforce  
15 compliance with this act or any rule or order hereunder. Upon  
16 a proper showing, a permanent or temporary injunction,  
17 restraining order, or writ of mandamus shall be granted and a  
18 receiver or conservator may be appointed for the defendant or  
19 the defendant's assets. The commissioner shall not be  
20 required to post a bond.

21 Section 22. Criminal penalties.

22 (a) Any person who willfully and knowingly violates any  
23 provision of this act, or any rule or order under this act,  
24 shall, upon conviction, be sentenced to pay a fine of not more  
25 than \$10,000 or to imprisonment for not more than ~~ten~~ TWO years, <—  
26 or to both, for each violation.

27 (b) The commissioner may refer such evidence as is available  
28 concerning violations of this act or of any rule or order  
29 hereunder to the Attorney General or the proper county attorney  
30 who may, with or without such a reference, institute the



1 appropriate criminal proceedings under this act.

2 (c) Nothing in this act limits the power of the State to  
3 punish any person for any conduct which constitutes a crime  
4 under any other statute.

5 Section 23. Fees.

6 (a) Within six months after the effective date of this act,  
7 the commissioner shall issue regulations setting forth those  
8 transactions which shall require the payment of fees by a  
9 provider and the fees which shall be charged.

10 (b) The commissioner may be reimbursed for any expenses it  
11 reasonably incurs itself, or by its agents, in pursuing its  
12 investigative and rehabilitation activities under this act.

13 Section 24. Reasonable time to comply with rules and  
14 standards.

15 Any provider who is offering continuing care may be given a  
16 reasonable time, not to exceed one year from the date of  
17 publication of any applicable rules or standards adopted  
18 pursuant to this act, within which to comply with the rules and  
19 standards and to obtain a certificate of authority.

20 Section 25. Regulations.

21 The commissioner shall have the authority to adopt, amend or  
22 repeal such rules and regulations as are reasonably necessary  
23 for the enforcement of the provisions of this act. Any initial  
24 rules and regulations necessary to the implementation of this  
25 act shall be promulgated or published within six months of the  
26 effective date of this act.

27 Section 26. Effective date.

28 This act shall take effect six months after passage.