

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 455

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

SENATOR HOLL, BANKING AND INSURANCE, AS AMENDED, MARCH 22, 1983

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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15 standards.
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18 The General Assembly of the Commonwealth of Pennsylvania
19 hereby enacts as follows:

20 Section 1. Short title.

21 This act shall be known and may be cited as the Continuing
22 Care Provider Registration and Disclosure Act.

23 Section 2. Purpose.

24 The General Assembly recognizes that continuing care
25 communities have become an important and necessary alternative
26 for the long term residential, social and health maintenance
27 needs for many of the Commonwealth's elderly citizens.

28 The General Assembly finds and declares that tragic
29 consequences can result to citizens of the Commonwealth when a
30 provider of services under a continuing care agreement becomes

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

12 Section 3. Definitions.

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

16 "Commissioner." The Insurance Commissioner.

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

27 "Entrance fee." An initial or deferred transfer to a
28 provider of a sum of money or other property made or promised to
29 be made as full or partial consideration for acceptance of a
30 specified individual as a resident in a facility. A fee which is

1 less than the sum of the regular periodic charges for one year
2 of residency will not be considered to be an entrance fee for
3 the ~~disclosure requirements~~ PURPOSES of this act. <—

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

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

9 "Manager." A person who operates a facility for the
10 provider.

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

16 "Provider." A person undertaking to provide continuing care
17 in a facility.

18 "Resident." An individual entitled to receive continuing
19 care in a facility.

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

28 Section 4. Certificate of authority.

29 (a) No providers shall engage in the business of providing
30 continuing care in this Commonwealth without a certificate of

1 authority therefor obtained from the department as provided in
2 this act.

3 (b) The application for a certificate of authority shall be
4 filed with the department by the provider on forms prescribed by
5 the department and shall include:

6 (1) All information required by the department pursuant
7 to regulations adopted by it under this act.

8 (2) The disclosure statement meeting the requirements of
9 this act.

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

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

27 (e) With respect to a provider who has offered continuing
28 care agreements to existing or prospective residents in a
29 facility established prior to the effective date of this act,
30 which facility has one or more residents living there pursuant

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

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

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

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

28 (i) The provider shall file with the commissioner, annually
29 within four months following the end of the provider's fiscal
30 year, an annual disclosure statement which shall contain the

1 information required by this act for the initial disclosure
2 statement. The annual disclosure statement shall also be
3 accompanied by a narrative describing any material differences
4 between:

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

8 (2) The actual results of operations during the fiscal
9 year.

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

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

24 (k) In addition to filing the annual disclosure statement,
25 the provider may amend its currently filed disclosure statement
26 at any other time if, in the opinion of the provider, an
27 amendment is necessary to prevent the disclosure statement and
28 annual disclosure statement from containing any material
29 misstatement of fact or omission to state a material fact
30 required to be stated therein. Any such amendment or amended

1 disclosure statement must be filed with the commissioner before
2 it is delivered to any resident or prospective resident and is
3 subject to all the requirements, including those as to content
4 and delivery, of this act.

5 (1) If a facility is accredited by a process approved by the
6 commissioner as substantially equivalent to the requirements of
7 this section, then the facility shall be deemed to have met the
8 requirements of this section and the commissioner shall issue a
9 certificate of authority to the facility.

10 Section 5. Revocation of certificate of authority.

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

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

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

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

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

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

27 (b) Findings of fact in support of revocation, if set forth
28 in statutory language, shall be accompanied by a concise and
29 explicit statement of the underlying facts supporting the
30 findings.

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

9 Section 6. Sale or transfer of ownership.

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

21 Section 7. Disclosure statement.

22 At the time of or prior to the execution of a contract to
23 provide continuing care, or at the time of or prior to the
24 transfer of any money or other property to a provider by or on
25 behalf of a prospective resident, whichever shall first occur,
26 the provider shall deliver a disclosure statement to the person
27 with whom the contract is to be entered into, which shall
28 contain all of the following information unless such information
29 is in the contract, a copy of which must be attached to the
30 statement:

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

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

9 (3) With respect to:

10 (i) The provider.

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

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

15 (A) A description of the business experience of
16 such person, if any, in the operation or management
17 of similar facilities.

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

25 (I) A description of the goods, leases or
26 services and the probable or anticipated cost
27 thereof to the facility or provider.

28 (II) The process by which the contract was
29 awarded.

30 (III) Any additional offers that were

1 received.

2 The commissioner may request additional
3 information, detailing why a contract was
4 awarded, as may be necessary.

5 (C) A description of any matter in which such a
6 person:

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

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

25 (4) A statement as to:

26 (i) Whether the provider is or ever has been
27 affiliated with a religious, charitable or other
28 nonprofit organization.

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

30 (iii) The extent to which the affiliate organization

1 will be responsible for the financial and contract
2 obligations of the provider.

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

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

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

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

30 (8) The provisions that have been made or will be made,

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

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

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

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

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

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

25 (ii) A description of any mortgage loan or other
26 long-term financing intended to be used for the financing
27 of the facility, including the anticipated terms and
28 costs of such financing.

29 (iii) An estimate of the total entrance fees to be
30 received from or on behalf of residents at or prior to

1 commencement of operation of the facility.

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

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

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

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

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

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

28 (12) The cover page of the disclosure statement shall
29 state, in a prominent location and type face, the date of the
30 disclosure statement and that the issuance of a certificate

of authority does not constitute approval, recommendation or endorsement of the facility by the department, nor is it evidence of, nor does it attest to, the accuracy or completeness of the information set out in the disclosure statement.

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

Section 8. False information.

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

(b) No provider shall file with the commissioner or make, publish, disseminate, circulate or deliver to any person or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated or delivered to any person, or placed before the public, any financial statement which does not accurately state its true financial condition.

Section 9. Reserves.

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

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

1 ~~(2) ten percent of the projected annual operating~~ <—
2 ~~expenses of the facility exclusive of depreciation. The~~
3 ~~provider must notify the commissioner in writing at least ten~~
4 ~~days prior to reducing the funds available to satisfy this~~
5 ~~requirement and may expend no more than one twelfth of the~~
6 ~~required balance each calendar month. In facilities where~~
7 ~~some residents are not under continuing care agreements, the~~
8 ~~reserve shall be computed only on the proportional share of~~
9 ~~financing or operating expenses that is applicable to~~
10 ~~residents under continuing care agreements at the end of the~~
11 ~~provider's most recent fiscal year. Funds in escrow accounts~~
12 ~~may be used to satisfy this reserve requirement if such funds~~
13 ~~are available to make payments when operating funds are~~
14 ~~insufficient for such purposes.~~

15 (2) TEN PERCENT OF THE PROJECTED ANNUAL OPERATING <—
16 EXPENSES OF THE FACILITY EXCLUSIVE OF DEPRECIATION.
17 THE PROVIDER MUST NOTIFY THE COMMISSIONER IN WRITING AT LEAST
18 TEN DAYS PRIOR TO REDUCING THE FUNDS AVAILABLE TO SATISFY THIS
19 REQUIREMENT AND MAY EXPEND NO MORE THAN ONE-TWELFTH OF THE
20 REQUIRED BALANCE EACH CALENDAR MONTH. IN FACILITIES WHERE SOME
21 RESIDENTS ARE NOT UNDER CONTINUING CARE AGREEMENTS, THE RESERVE
22 SHALL BE COMPUTED ONLY ON THE PROPORTIONAL SHARE OF FINANCING OR
23 OPERATING EXPENSES THAT IS APPLICABLE TO RESIDENTS UNDER
24 CONTINUING CARE AGREEMENTS AT THE END OF THE PROVIDER'S MOST
25 RECENT FISCAL YEAR. FUNDS IN ESCROW ACCOUNTS MAY BE USED TO
26 SATISFY THIS RESERVE REQUIREMENT IF SUCH FUNDS ARE AVAILABLE TO
27 MAKE PAYMENTS WHEN OPERATING FUNDS ARE INSUFFICIENT FOR SUCH
28 PURPOSES.

29 Section 10. Reserve fund escrow.

30 The commissioner may require the provider to establish and to

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

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

1 facility or the insolvency or bankruptcy of the provider and in
2 such event the proceeds thereof shall be used in full or partial
3 satisfaction of obligations of the provider pursuant to
4 contracts for continuing care then in effect. The lien provided
5 for in this section shall be subordinate to the lien of any
6 first mortgage on the real property of the facility and may be
7 subordinated with the written consent of the department to the
8 claims of other persons if the commissioner shall determine such
9 subordination to be advisable for the efficient operation of the
10 facility.

11 Section 12. Entrance fee escrow.

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

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

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

30 (i) Aggregate entrance fees received or receivable

1 by the provider pursuant to executed continuing care
2 agreements equal not less than 50% of the sum of the
3 ~~entry~~ ENTRANCE fees due at full occupancy of the portion <—
4 of the facility under construction. For this paragraph,
5 ~~entry~~ ENTRANCE fees receivable pursuant to an agreement <—
6 will be counted only if the facility has received a
7 deposit of 35% or more of the ~~entry~~ ENTRANCE fee due from <—
8 the individual, or individuals, signing the contract.

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

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

29 (3) If the funds in an escrow account to which
30 paragraphs (1) and (2) apply and any interest earned thereon

1 are not released within 36 months, or such greater time as
2 may have been specified by the provider with the consent of
3 the commissioner, then such funds shall be returned by the
4 escrow agent to the persons who made the payment to the
5 provider.

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

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

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

24 Section 13. Cross-collateralization limited.

25 Only the ~~equity~~ UNENCUMBERED ASSETS of a continuing care
26 facility may be pledged by the provider as collateral for the
27 purpose of securing loans for other continuing care facilities,
28 whether proposed or existing.

29 Section 14. Resident's agreement.

30 (a) In addition to such other provisions as may be

1 considered proper to effectuate the purpose of any continuing
2 care agreement, each agreement executed on and after the date of
3 the adoption of the rules under this act shall:

4 (1) Provide for the continuing care of only one
5 resident, or for two OR MORE persons occupying space designed <—
6 for ~~double~~ MULTIPLE occupancy, under appropriate regulations <—
7 established by the provider and shall show the value of all
8 property transferred, including donations, subscriptions,
9 fees and any other amounts paid or payable by, or on behalf
10 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 cost to the provider of providing the care.
16 Such items may include, but not be limited to, food, shelter,
17 nursing care, drugs, burial and incidentals.

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

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

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

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

1 (7) Provide that the agreement may be cancelled upon the
2 giving of notice of cancellation of at least 30 days by the
3 provider, the resident or the person who provided the
4 transfer of property or funds for the care of such resident.
5 If an agreement is cancelled because there has been a good
6 faith determination in writing, signed by the medical
7 director and the administrator of the facility, that a
8 resident is a danger to himself or others, only such notice
9 as is reasonable under the circumstances shall be required.

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

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

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

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

28 (b) A resident shall have the right to rescind a continuing
29 care agreement, without penalty or forfeiture, within seven days
30 after making an initial deposit or executing the agreement. A

1 resident shall not be required to move into the facility
2 designated in the agreement before the expiration of the seven-
3 day period.

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

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

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

30 (f) Those agreements entered into prior to the effective

1 date of this act or prior to the issuance of a certificate of
2 authority to the provider shall be valid and binding upon both
3 parties in accordance with their terms.

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

7 Section 15. Advisory council.

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

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

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

15 (3) A certified public accountant.

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

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

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

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

26 (d) The council shall:

27 (1) Meet within 30 days after the members' appointment
28 and elect a chairman from their number and elect or appoint a
29 secretary, each of whom shall hold office for one year and
30 thereafter until his successor is elected and qualified.

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

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

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

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

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

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

16 Section 16. Right to organization.

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

20 (b) The board of directors, a designated representative or
21 other such governing body of a continuing care facility shall
22 hold quarterly meetings with the residents or representatives
23 elected by the residents of the continuing care facility for the
24 purpose of free discussion of subjects which may include income,
25 expenditures and financial matters as they apply to the facility
26 and proposed changes in policies, programs and services.
27 Residents shall be entitled to at least seven days' notice of
28 each quarterly meeting.

29 Section 17. Rehabilitation or liquidation.

30 (a) If, at any time, the commissioner shall determine, after

1 notice and an opportunity for the provider to be heard, that:

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

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

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

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

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

26 (c) If, at any time, the court finds, upon petition of the
27 department, trustee or provider, or on its own motion, that the
28 objectives of an order to rehabilitate a provider have been
29 accomplished and that the facility can be returned to the
30 provider's management without further jeopardy to the residents

1 of the facility, creditors, owners of the facility and the
2 public, the court may, upon a full report and accounting of the
3 conduct of the facility's affairs during the rehabilitation and
4 of the facility's current financial condition, terminate the
5 rehabilitation and, by order, return the facility and its assets
6 and affairs to the provider's management.

7 (d) If, at any time, the commissioner determines that
8 further efforts to rehabilitate the provider would be useless,
9 it may apply to the court for an order of liquidation.

10 (e) An order to liquidate a facility:

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

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

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

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

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

27 (2) used on behalf of residents of a facility being
28 liquidated; or

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

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

11 Section 18. Civil liability.

12 (a) Any person who, as a provider, or on behalf of a
13 provider:

14 (1) enters into a contract for continuing care at a
15 facility which does not have a certificate of authority under
16 this act;

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

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

27 shall be liable to the person contracting for such continuing
28 care for damages and repayment of all fees paid to the provider,
29 facility or person violating this act, less the reasonable value
30 of care and lodging provided to the resident by or on whose

1 behalf the contract for continuing care was entered into prior
2 to discovery of the violation, misstatement or omission or the
3 time the violation, misstatement or omission should reasonably
4 have been discovered, together with interest thereon at the
5 legal rate for judgments and court costs and reasonable attorney
6 fees.

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

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

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

25 (e) Except as expressly provided in this act, civil
26 liability in favor of a private party shall not arise against a
27 person by implication from or as a result of the violation of
28 this act or a rule or order promulgated or issued under this
29 act. This act shall not limit a liability which may exist by
30 virtue of any other statute or under common law if this act were

1 not in effect.

2 Section 19. Investigations and subpoenas.

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

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

19 Section 20. Audits.

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

27 Section 21. Cease and desist orders; injunctions.

28 Whenever it appears to the commissioner that any person has
29 engaged in, or is about to engage in, any act or practice
30 constituting a violation of any provision of this act or any

1 rule or order hereunder, the commissioner may:

2 (1) Issue an order directed at any such person requiring
3 such person to cease and desist from engaging in such act or
4 practice.

5 (2) Bring an action in any court which has appropriate
6 jurisdiction to enjoin the acts or practices and to enforce
7 compliance with this act or any rule or order hereunder. Upon
8 a proper showing, a permanent or temporary injunction,
9 restraining order, or writ of mandamus shall be granted and a
10 receiver or conservator may be appointed for the defendant or
11 the defendant's assets. The commissioner shall not be
12 required to post a bond.

13 Section 22. Criminal penalties.

14 (a) Any person who willfully and knowingly violates any
15 provision of this act, or any rule or order under this act,
16 shall, upon conviction, be sentenced to pay a fine of not more
17 than \$10,000 or to imprisonment for not more than ten years, or
18 to both, for each violation.

19 (b) The commissioner may refer such evidence as is available
20 concerning violations of this act or of any rule or order
21 hereunder to the Attorney General or the proper county attorney
22 who may, with or without such a reference, institute the
23 appropriate criminal proceedings under this act.

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

27 Section 23. Fees.

28 (a) Within six months after the effective date of this act,
29 the commissioner shall issue regulations setting forth those
30 transactions which shall require the payment of fees by a

1 provider and the fees which shall be charged.

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

5 Section 24. Reasonable time to comply with rules and
6 standards.

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

12 Section 25. Regulations.

13 The commissioner shall have the authority to adopt, amend or
14 repeal such rules and regulations as are reasonably necessary
15 for the enforcement of the provisions of this act. Any initial
16 rules and regulations necessary to the implementation of this
17 act shall be promulgated or published within six months of the
18 effective date of this act.

19 Section 26. Effective date.

20 This act shall take effect six months after passage.