

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL
No. 455 Session of
1983

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

AS REPORTED FROM COMMITTEE ON HEALTH AND WELFARE, HOUSE OF
REPRESENTATIVES, AS AMENDED, FEBRUARY 15, 1984

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.

TABLE OF CONTENTS

11
12 Section 1. Short title.
13 Section 2. Purpose.
14 Section 3. Definitions.
15 Section 4. Certificate of authority.
16 Section 5. Revocation of certificate of authority.
17 Section 6. Sale or transfer of ownership.
18 Section 7. Disclosure statement.
19 Section 8. False information.
20 Section 9. Reserves.

1 Section 10. Reserve fund escrow.

2 Section 11. Lien on behalf of residents.

3 Section 12. Entrance fee escrow.

4 Section 13. Cross-collateralization limited.

5 Section 14. Resident's agreement.

6 ~~Section 15. Advisory council.~~ <—

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

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

9 Section ~~18~~ 17 Civil liability. <—

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

11 Section ~~20~~ 19. Audits. <—

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

13 Section 21. Cease and desist orders, injunctions.

14 Section 22. Criminal penalties.

15 Section 23. Fees.

16 Section 24. Reasonable time to comply with rules and

17 standards.

18 Section 25. Regulations.

19 Section 26. Effective date.

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 PROSPECTIVE RESIDENTS AND
6 WITH WHOM THE CONTINUING CARE AGREEMENT IS TO BE ENTERED INTO.

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

18 Section 8. False information.

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

28 (b) No provider shall file with the ~~commissioner~~ DEPARTMENT
29 or make, publish, disseminate, circulate or deliver to any
30 person or place before the public, or cause, directly or

<—

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

5 Section 9. Reserves.

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

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

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

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

25 Section 10. Reserve fund escrow.

26 The commissioner may require the provider to establish and to
27 maintain on a current basis, in escrow with a bank, trust
28 company or other escrow agent approved by the department, a
29 portion of all entrance fees received by the provider in an
30 aggregate amount not to exceed the total of all principal and

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

15 Section 11. Lien on behalf of residents.

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

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

7 Section 12. Entrance fee escrow.

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

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

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

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

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

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

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

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

1 escrow agent to the persons who made the payment to the
2 provider.

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

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

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

21 Section 13. Cross-collateralization limited.

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

26 Section 14. Resident's agreement.

27 (a) In addition to such other provisions as may be
28 considered proper to effectuate the purpose of any continuing
29 care agreement, each agreement executed on and after the date of
30 the adoption of the rules under this act shall BE WRITTEN IN

<—

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

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

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

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

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

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

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

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

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

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

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

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

(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~~ COMMISSIONER, trustee or provider, or on its own <—
28 motion, that the objectives of an order to rehabilitate a
29 provider have been accomplished and that the facility can be
30 returned to the provider's management without further jeopardy

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

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

12 (e) An order to liquidate a facility:

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

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

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

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

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

29 (2) used on behalf of residents of a facility being
30 liquidated; or

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

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

Section ~~18~~ 17. Civil liability.

←

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

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

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

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

shall be liable to the person contracting for such continuing care for damages and repayment of all fees paid to the provider,

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

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

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

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

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

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

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

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

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

22 Section ~~20~~ 19. Audits. <—

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

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

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

4 Section 21. Cease and desist orders; injunctions.

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

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

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

20 Section 22. Criminal penalties.

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

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

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

4 Section 23. Fees.

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

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

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

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

19 Section 25. Regulations.

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

26 Section 26. Effective date.

27 This act shall take effect six months after passage. &ed570