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THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1376 Session of 2009

INTRODUCED BY PASHINSKI, BELFANTI, D. COSTA, DeLUCA, FABRIZIO, FREEMAN, GINGRICH, GOODMAN, HORNAMAN, JOSEPHS, KORTZ, MILNE, MURT, REICHLEY, SIPTROTH, J. TAYLOR AND YOUNGBLOOD, APRIL 28, 2009

REFERRED TO COMMITTEE ON INSURANCE, APRIL 28, 2009

AN ACT

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

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

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

Section 18. Investigations and subpoenas.

(a) The department may make such public or private investigations <u>or examinations</u> within or outside of this Commonwealth as the commissioner deems necessary to determine

whether any person has violated or is about to violate any provision of this act or any rule or order hereunder, or to aid in the enforcement of this act or in the prescribing of rules and forms hereunder and may publish information concerning any violation of this act or any rule or order hereunder.

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

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

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

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

Unless specifically directed otherwise by regulations promulgated by the department, the financial statements need not be certified audited reports.

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

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

(1) The results of financial statement analyses.

(2) Changes in management or ownership.

(3) Reports of independent certified public accountants.

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

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

(6) Changes to disclosure statements or resident agreements.

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

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

(d) For purposes of completing an examination of a provider, the department may examine or investigate any person or the

business of any person insofar as the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the provider.

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

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

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