

**HOUSE SUBSTITUTE FOR
SENATE BILL NO. 886**

A bill to regulate the offer and sale of life interests and long-term leases in retirement communities that provide certain services and are independent living units, nursing homes, homes for the aged, adult foster care facilities, home care service agencies, hospices, or places that provide care for certain periods; to prohibit fraudulent practices in relation to the offer and sale of those life interests and long-term leases; to provide for the powers and duties of certain state governmental agencies; to provide for penalties and remedies; to prescribe penalties and civil sanctions; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "continuing care community disclosure act".

1 Sec. 3. As used in this act:

2 (a) "Administrator" means a person that performs
3 administrative or operational functions within or in connection
4 with the continuing care community.

5 (b) "Advertisement or marketing communication" means any
6 disclosure statement, prospectus, pamphlet, circular, form letter,
7 written or electronic advertisement, social media or other sales
8 literature or advertising communication, including a written,
9 printed, or pictorial communication, or a communication by means of
10 a recorded telephone message or message spoken on the radio,
11 television, or similar communications media, intended for
12 distribution or transmission to prospective members in connection
13 with an offer or sale of a continuing care agreement.

14 (c) "Amortized component of an entrance fee" means the portion
15 of an entrance fee that is amortizable to reflect the cost of
16 continuing care, multiplied by 1.5% for each month from the time of
17 occupancy to the termination of membership by death or other cause.

18 (d) "Applicant" means a continuing care community applying for
19 initial registration under section 19, applying for renewal
20 registration under section 25, or applying to amend a registration
21 under section 33.

22 (e) "Change in fees" means a change in either the amount or
23 type of fees for continuing care, including entrance fees and
24 monthly service fees, except for any change in fees mandated by a
25 state or federal referral assistance program.

26 (f) "Complete", with reference to an application, means
27 complete on its face and submitted with any registration fee and

1 any other information, record, approval, or similar item required
2 by law or rule.

3 (g) "Continuing care" means some or all of the following
4 services:

5 (i) A living unit.

6 (ii) Meals.

7 (iii) Personal care services.

8 (iv) Skilled nursing.

9 (v) Rehabilitative services.

10 (vi) Medical care.

11 (vii) Social activities.

12 (viii) Supervision.

13 (ix) Program of all-inclusive care for the elderly.

14 (x) Continuing care at home.

15 (h) "Continuing care agreement" means a written agreement,
16 including a long-term lease or an agreement conferring a life
17 interest, between a member and a continuing care community for
18 continuing care upon payment of an entrance fee.

19 (i) "Continuing care at home" means, upon payment of an
20 entrance fee, providing or arranging for the provision of all of
21 the following at the member's home:

22 (i) Continuing care.

23 (ii) Access to comprehensive services, including, but not
24 limited to, care coordination, home assessments, and assistance
25 with activities of daily living.

26 (iii) Services with a higher level of care when required by the
27 health condition of the member, as determined by the continuing

1 care community in consultation with the member or the member's
2 representative.

3 (j) "Continuing care community" or "community" means a
4 retirement community in which a person undertakes to provide or
5 arrange for continuing care and which is 1 or more of the
6 following:

7 (i) An adult foster care facility.

8 (ii) A home for the aged.

9 (iii) An independent living unit.

10 (iv) A nursing home.

11 (v) A home health care services agency.

12 (vi) Hospice.

13 (vii) A place that undertakes to provide care to a member for
14 more than 1 year.

15 (k) "Continuing care administration fund" means the fund
16 creation in section 31(3).

17 Sec. 5. As used in this act:

18 (a) "Department" means the department of licensing and
19 regulatory affairs.

20 (b) "Disclosure statement" means a disclosure statement as
21 required under section 19(1)(c) or that may be required by the
22 department under section 25, as applicable.

23 (c) "Entrance fee" means money paid in a lump sum or
24 installments or property transferred pursuant to a continuing care
25 agreement before initiation of continuing care for 1 or more
26 individuals and that confers the right to the continuing care.

27 (d) "Executive officer" means an individual holding executive

1 power in an organization and generally responsible for the day-to-
2 day operations of the organization, such as a chief executive
3 officer, chief financial officer, or chief operating officer.

4 (e) "Initiation of continuing care" means the commencement of
5 a member's right to possess a living unit in a continuing care
6 community or the commencement of the actual provision of continuing
7 care, whichever occurs first.

8 (f) "Life interest" means the right, upon payment of an
9 entrance fee, to receive continuing care for life.

10 (g) "Living unit" means a physical space within a continuing
11 care community set aside for the exclusive use or control of 1 or
12 more specific members.

13 (h) "Long-term lease" means an agreement between a member and
14 a continuing care community whereby the member has the right to
15 occupy a space for more than 1 year but not for the life of the
16 member.

17 Sec. 7. As used in this act:

18 (a) "Member" means an individual who enters into a continuing
19 care agreement with a continuing care community.

20 (b) "Monthly service fee" means a monthly charge to a member
21 for continuing care and not as rent, or a daily prorated portion
22 thereof.

23 (c) "Nonrefundable portion of the entrance fee" means the
24 amortized component of an entrance fee and any other component of
25 an entrance fee that is not refundable upon termination of the
26 member under the terms and conditions of a continuing care
27 agreement.

1 (d) "Offer of a continuing care agreement" includes an attempt
2 to offer to sell, or a solicitation of an offer to enter into, a
3 continuing care agreement.

4 (e) "Order" means a consent, authorization, approval,
5 prohibition, or requirement applicable to a specific case issued by
6 the department.

7 Sec. 9. As used in this act:

8 (a) "Person" means an individual, partnership, corporation,
9 association, governmental entity, or other legal entity.

10 (b) "Publish" means to publicly issue or circulate by
11 newspaper, mail, radio, television, or electronic means or
12 otherwise to disseminate to the public.

13 (c) "Refundable portion of an entrance fee" means the
14 component of an entrance fee that is refundable to the member or
15 his or her estate under the terms and conditions of the continuing
16 care agreement, but excludes the amortized component of an entrance
17 fee.

18 (d) "Registrant" means a continuing care community registered
19 under this act.

20 (e) "Reportable change", subject to subdivision (f), means any
21 of the following:

22 (i) Any change in the tax status of the continuing care
23 community.

24 (ii) Termination of the continuing care community's
25 sponsorship, or a portion thereof, by a religious, nonprofit, or
26 proprietary organization or group, or the establishment of any new
27 sponsorship for the community.

1 (iii) Denial, suspension, or revocation of any license,
2 certification, or registration held by the continuing care
3 community and required by state or federal law.

4 (iv) The entry of any cease and desist order, other order
5 similar in nature, or a temporary or permanent injunction by a
6 court of competent jurisdiction that restricts the continuing care
7 community from offering continuing care agreements to prospective
8 members or restricts the community from operating in any material
9 respect in compliance with the most recent registration.

10 (v) Any substantive amendments or changes in the disclosure
11 statement, continuing care agreement, or the rules and regulations
12 of the continuing care community.

13 (vi) Any significant alteration in the care, amenities, or
14 services indicated in the disclosure statement or continuing care
15 agreement.

16 (vii) Any change in monthly service fees.

17 (viii) A variation of 10% or more between the actual amount of
18 any of the following items and the amount forecast in the
19 continuing care community's pro forma financial plan most recently
20 filed under this act:

21 (A) Total assets.

22 (B) Total liabilities.

23 (C) Equity.

24 (D) Fund balance or deficit.

25 (E) Long-term debt.

26 (F) Total revenue.

27 (G) Total expenses.

1 (H) Cash flow.

2 (ix) A violation of any debt covenant applicable to the
3 continuing care community.

4 (f) "Reportable change" does not include a change in the value
5 of an interest rate swap not related to the termination of the
6 interest rate swap.

7 Sec. 11. As used in this act:

8 (a) "Sale of a continuing care agreement" means the execution
9 of a continuing care agreement.

10 (b) "Sell a continuing care agreement" means to secure the
11 sale of a continuing care agreement.

12 Sec. 13. (1) A continuing care community shall be organized
13 and operated as either a for-profit or nonprofit entity. The
14 entity's purposes shall be limited to ownership, organization, and
15 operation of the continuing care community.

16 (2) Each continuing care community shall elect or appoint at
17 least 1 member, along with an alternate, to serve in an advisory
18 capacity to its governing body. The member shall be notified in
19 advance of and invited to attend all meetings of the governing
20 body. The member shall not have a vote unless the governing body
21 grants such voting rights. The continuing care community is
22 responsible for expenses incurred by the member representative in
23 fulfilling his or her duties under this section.

24 Sec. 15. (1) Subject to subsections (3) and (4), a person
25 shall not offer to enter into or enter into a continuing care
26 agreement unless the person is registered or exempt from
27 registration under this act.

1 (2) Subject to subsections (3) and (4), this act applies to
2 all written or oral arrangements between a continuing care
3 community and a member or prospective member in connection with the
4 offer or the sale of a continuing care agreement.

5 (3) An offer or sale of a continuing care agreement is subject
6 to this act if any of the following apply:

7 (a) Subject to subsection (4), the offer is made or accepted
8 in this state.

9 (b) The continuing care community is or will be operated in
10 this state.

11 (c) The offer originates from this state and is received at
12 the place to which the offer is directed.

13 (d) The offer is directed by the offeror to this state and is
14 received in this state.

15 (4) An offer of a continuing care agreement shall not be
16 considered to be made in this state solely because of 1 or more of
17 the following circumstances:

18 (a) Circulation in this state, by or on behalf of a publisher,
19 of a bona fide newspaper, electronic media, or other publication of
20 general, regular, and paid circulation that has had more than 2/3
21 of its circulation outside this state during the past 12 months.

22 (b) Reception in this state of a radio or television program
23 originating outside this state.

24 Sec. 17. (1) A continuing care community that is licensed in
25 whole or part under article 17 of the public health code, 1978 PA
26 368, 333.20101 to 333.22260, or the adult foster care facility
27 licensing act, 1979 PA 218, MCL 400.701 to 400.737, is exempt from

1 any rules promulgated under article 17 of the public health code,
2 1978 PA 368, 333.20101 to 333.22260, or the adult foster care
3 facility licensing act, 1979 PA 218, MCL 400.701 to 400.737, that
4 would interfere with a resident's access to a common area, subject
5 to the resident's need for care and supervision.

6 (2) A continuing care community may request a variance from
7 the application of a rule promulgated under article 17 of the
8 public health code, 1978 PA 368, MCL 333.20101 to 333.22260, or
9 promulgated under the adult foster care facility licensing act,
10 1979 PA 218, MCL 400.701 to 400.737, and applicable to a home for
11 the aged or adult foster care facility, respectively, that is part
12 of the continuing care community. The department of human services
13 shall grant the variance upon a finding of both of the following:

14 (a) That the rule unnecessarily segregates members of the
15 continuing care community who reside in the home for the aged or
16 adult foster care facility from other members of the continuing
17 care community.

18 (b) That the variance will not result in a risk to human
19 health or safety.

20 (3) An area where room and board together with personal care,
21 protection and supervision, or supervised personal care are
22 provided to a member is not a home for the aged as defined in
23 section 20106 of the public health code, 1978 PA 368, MCL
24 333.20106, or an adult foster care facility as defined in section 3
25 of the adult foster care facility licensing act, 1979 PA 218, MCL
26 400.703, if the services are only provided on a temporary basis
27 under any of the following circumstances:

1 (a) While the member is recovering from an illness or
2 accident.

3 (b) Until a living unit in an appropriate licensed area of the
4 continuing care community becomes available.

5 (4) The relationship between a continuing care community and a
6 member or prospective member is not subject to laws regulating the
7 relationship between a landlord and a current or prospective
8 tenant.

9 Sec. 19. (1) A person seeking initial registration under this
10 act shall submit the following information to the department:

11 (a) An initial registration application on a form prescribed
12 by the department, signed and verified by an individual authorized
13 to act on behalf of the continuing care community.

14 (b) The organizing documents of the applicant, and all
15 amendments thereto, authorizing the applicant to conduct business
16 in this state and a copy of the most recent annual report, if
17 required under state law.

18 (c) A disclosure statement that complies with section 37.

19 (d) A copy of each form of continuing care agreement for the
20 continuing care community, which shall comply with section 39, and
21 all exhibits or addenda to each form of continuing care agreement.

22 (e) A copy of any rules, policies, and procedures of the
23 applicant required for compliance with this act.

24 (f) A statement, on a form prescribed by the department, of
25 whether any of the following apply to any executive officer,
26 administrator, or director identified in the application for
27 registration:

1 (i) Has been convicted of a felony or been held liable or
2 enjoined in a civil action by final judgment if the felony or civil
3 action involved fraud, embezzlement, fraudulent conversion, or
4 misappropriation of property.

5 (ii) Is subject to an injunctive or restrictive order or
6 federal or state administrative order relating to business activity
7 or health care as a result of an action brought by a public agency
8 or department, including, without limitation, actions affecting a
9 license to operate a continuing care community, foster care
10 facility, nursing home, retirement home, or home for the aged.
11 The statement shall, if applicable, specify the court or agency,
12 any penalty imposed or damages assessed, and the date of conviction
13 or judgment or the date, nature, and issuer of the order.

14 (g) An executed irrevocable consent to service of process
15 subject to section 61.

16 (h) Financial statements that comply with section 41.

17 (i) Unless waived by the department, a statement of the use of
18 proceeds of entrance fees to be collected by the continuing care
19 community.

20 (j) A pro forma financial plan that complies with section 43.

21 (k) A feasibility study, unless waived in the reasonable
22 discretion of the department. The feasibility study shall be made
23 available for review upon the request of a member or prospective
24 member. The department may require the feasibility study to include
25 1 or more of the following:

26 (i) A statement of the purpose of the continuing care community
27 and the need for the proposed services.

1 (ii) Documentation of the financial resources to be made
2 available for the continuing care community.

3 (iii) A plan demonstrating the financial feasibility of the
4 proposed continuing care community, including future funding
5 sources.

6 (iv) An actuarial forecast that has been reviewed by a
7 qualified actuary.

8 (v) A study demonstrating the proposed market for the
9 continuing care community.

10 (vi) A detailed statement of the continuing care services to be
11 offered.

12 (l) For a continuing care community seeking to offer continuing
13 care at home, both of the following:

14 (i) A detailed business plan on how the needs and requirements
15 of the members receiving continuing care at home will be met.

16 (ii) Agreements showing how and under what circumstances future
17 specialized care, including assisted living, dementia care, and
18 skilled nursing, will be provided when appropriate.

19 (m) Other material information as may reasonably be required
20 by the department.

21 (n) Other material information as the applicant wishes to
22 include.

23 (o) The initial registration application fee specified in
24 section 31.

25 (2) If information required pursuant to subsection (1)(m) is
26 not furnished by the applicant, or the department considers
27 information submitted pursuant to subsection (1)(m) to be

1 unreliable or substantially incomplete, the department may
2 investigate any matters concerning the missing or unreliable
3 information. The applicant shall pay the actual cost of the
4 investigation as determined in the reasonable discretion of the
5 department. The payment shall be deposited in the continuing care
6 administration fund.

7 (3) An applicant may request and the department may order that
8 2 or more retirement communities be registered as a single
9 continuing care community.

10 (4) The department may consider the opinions, appraisals, and
11 reports of engineers, appraisers, or other experts presented by an
12 applicant or an interested party on a question of fact concerning
13 or affecting the continuing care agreements proposed to be offered
14 and sold.

15 (5) An applicant may electronically transmit an application
16 and fee for initial registration or renewal of registration to the
17 department after the department posts notice on its website that it
18 is prepared to receive those electronic filings.

19 Sec. 21. (1) Effective 60 days after the department receives a
20 registration application, the application shall be considered to be
21 complete unless the department proceeds as provided in subsection
22 (2).

23 (2) If, before the expiration of the 60-day period under
24 subsection (1), the department notifies the applicant that the
25 application is not complete, specifying the information necessary
26 to make the application complete or stating that the fee required
27 to accompany the application has not been paid and specifying the

1 amount due, the running of the 60-day period under subsection (1)
2 is tolled until the applicant submits to the department the
3 specified information or fee amount due.

4 (3) Not more than 180 days after the expiration of the 60-day
5 period under subsections (1) and (2), the department shall enter an
6 order registering the continuing care community or denying the
7 registration and submit a copy of the order to the applicant. An
8 order approving a registration shall specify the expiration date of
9 the registration. If the department denies registration, the order
10 shall specifically describe the deficiencies in the registration
11 application or instances of noncompliance by the applicant with the
12 requirements of this act.

13 (4) If an order approving or denying registration is not
14 timely entered under subsection (3), the registration is
15 immediately effective unless the applicant has consented in writing
16 to a waiver or delay of automatic effectiveness.

17 Sec. 23. (1) The fact that an application for registration has
18 been filed or approved does not constitute any of the following:

19 (a) Approval of or a finding regarding the accuracy of any
20 information in or accompanying the registration application.

21 (b) A recommendation, approval, or other finding by the
22 department concerning the merits or qualifications of a person,
23 life interest, long-term lease, transaction, or continuing care
24 community.

25 (2) A person shall not make or cause to be made to a
26 prospective member a representation inconsistent with this section.

27 Sec. 25. (1) Except as otherwise provided in this act, the

1 department shall renew the registration of a registrant that does
2 all of the following:

3 (a) On or before the expiration date printed on the
4 registration, submits to the department an application for renewal
5 of registration on a form provided by the department and
6 accompanied by such information described in section 19 as may be
7 required by the department.

8 (b) Pays the fee required under section 31.

9 (2) A reasonable time before a registrant's registration
10 expires, the department shall send a renewal application form to
11 the registrant's last postal mailing address or electronic address
12 on file with the department. The failure of the department to
13 comply with this subsection does not relieve the registrant of the
14 responsibility to timely file an application for renewal of
15 registration.

16 Sec. 27. (1) Subject to subsections (2) and (3), an
17 application for renewal of registration shall be processed in the
18 same manner as an initial registration application under section
19 21.

20 (2) If, within 60 days after receiving notice from the
21 department under section 21(2), an applicant fails to submit to the
22 department the specified information or fee amount due, the
23 department may deny the registration renewal application.

24 (3) If an applicant files an application for renewal of
25 registration as provided in section 25(1), the current registration
26 continues in effect until a new registration renewal order is
27 issued or denied or the department revokes the registration.

1 (4) If a registrant fails to file an application for renewal
2 of registration as provided in section 25(1), both of the following
3 apply:

4 (a) The registration lapses effective the day after the
5 expiration date specified in the order under section 21.

6 (b) The continuing care community shall not enter or offer to
7 enter a continuing care agreement after the expiration date unless
8 the community is reregistered pursuant to sections 19 and 21.

9 Sec. 29. (1) The department may extend the term of an existing
10 registration for a continuing care community for not more than 3
11 fiscal years if the department determines that all of the following
12 requirements are met:

13 (a) The continuing care community was registered under this
14 act during the immediately preceding 5 fiscal years.

15 (b) The continuing care community meets all of the following
16 financial requirements:

17 (i) Has not committed a material default in the payment of
18 principal or interest on its indebtedness during the immediately
19 preceding 3 years.

20 (ii) Has had income or revenues in excess of its expenses in
21 each of the immediately preceding 3 years.

22 (iii) Has a ratio of current assets to current liabilities of
23 not less than 1:1.

24 (iv) Has reserves or funds designated for the payment of its
25 indebtedness in an amount equal to or greater than 1 year's debt
26 service.

27 (c) The continuing care community or any person with joint and

1 several liability is not the subject of any action under sections
2 55 to 63.

3 (2) Notwithstanding the grant of an extension of its
4 registration, a continuing care community shall annually submit to
5 the department the registration renewal fees specified in section
6 31 and annual and semiannual financial statements under section 41.
7 A registered continuing care community shall do all of the
8 following:

9 (a) Submit the fees specified in section 31.

10 (b) Submit financial statements for that fiscal year that
11 comply with section 41.

12 Sec. 31. (1) The fee for filing an application for initial
13 registration of the offer or sale of continuing care agreements or
14 continuing care at home agreements is \$250.00. If an application
15 for registration is withdrawn before the effective date of
16 registration or a stop order is issued before that date, the
17 department shall retain the following:

18 (a) A fee of \$25.00 if the initial review has not been
19 commenced.

20 (b) The full application fee if the review has commenced.

21 (2) The fee for filing an application for registration renewal
22 is \$100.00.

23 (3) The continuing care administration fund is created within
24 the state treasury. Fees collected by the department under this act
25 shall be deposited into the fund. The state treasurer may receive
26 money or other assets from any source for deposit into the fund.
27 The state treasurer shall direct the investment of the fund. The

1 state treasurer shall credit to the fund interest and earnings from
2 fund investments. Money in the fund at the close of the fiscal year
3 shall remain in the fund and shall not lapse to the general fund.

4 The department shall be the administrator of the fund for auditing
5 purposes.

6 (4) The department shall expend money from the continuing care
7 administration fund, upon appropriation, only for the purposes of
8 administration and enforcement of this act.

9 Sec. 33. (1) A registrant shall notify the department promptly
10 in writing within 45 days of any reportable change with respect to
11 the continuing care community measured semiannually.

12 (2) A registrant shall submit to the department an application
13 to amend a registration to address reportable changes. The
14 disclosure statement and each form of continuing care agreement for
15 the continuing care community, including all exhibits or addenda,
16 shall be in a format that identifies revisions to the last
17 documents approved by the department. If required by the
18 department, the application to amend a registration shall include a
19 pro forma financial plan that complies with section 43. The
20 department may require the production of other financial
21 information reasonably necessary for the purposes of this act. The
22 amended registration shall be signed and verified by the
23 administrator.

24 (3) Effective 30 days after the department receives an
25 application to amend a registration, the application shall be
26 considered to be complete unless the department proceeds as
27 provided in subsection (4).

1 (4) If, before the expiration of the 30-day period under
2 subsection (3), the department notifies the applicant that the
3 application is not complete, specifying the information necessary
4 to make the application complete, the running of the 30-day period
5 under subsection (3) is tolled until the applicant submits to the
6 department the specified information or fee amount due.

7 (5) Not more than 30 days after the expiration of the 30-day
8 period under subsections (3) and (4), the department shall enter an
9 order approving or denying the amendment and submit a copy of the
10 order to the applicant. If the department denies the amendment, the
11 order shall specifically describe the deficiencies in the
12 application or instances of noncompliance by the applicant with the
13 requirements of this act.

14 (6) If an order approving or denying an amendment is not
15 timely entered under subsection (5), the amendment is immediately
16 effective unless the applicant has consented in writing to a waiver
17 or delay of automatic effectiveness.

18 (7) An amendment to an application filed after the effective
19 date of the registration and approved by the department under
20 subsection (5) takes effect on the date determined by the
21 department, having due regard for the public interest and the
22 protection of prospective members.

23 Sec. 35. (1) A continuing care community shall deliver to a
24 prospective member all continuing care agreements pertinent to the
25 continuing care sought by the prospective member and the disclosure
26 statement most recently approved by the department. The delivery
27 shall be by a method considered acceptable by the continuing care

1 community and the prospective member and shall occur by the earlier
2 of the following:

3 (a) The continuing care community's acceptance of a
4 nonrefundable application fee from the prospective member, unless
5 all of the following apply:

6 (i) The nonrefundable application fee does not exceed \$500.00.

7 (ii) The availability of a disclosure statement is disclosed in
8 writing to the prospective member.

9 (iii) A disclosure statement is made available to the
10 prospective member upon request.

11 (b) The prospective member's payment of at least 10% of the
12 total entrance fee to reserve a living unit.

13 (2) Upon execution of the continuing care agreement and
14 payment of the full entrance fee amount, the continuing care
15 community shall provide the member with a physical copy of both of
16 the following:

17 (a) The executed continuing care agreement.

18 (b) A physical copy of the disclosure statement, unless a
19 physical copy has already been provided under subsection (1).

20 (3) A continuing care community shall make the feasibility
21 study required under section 19 available for review by a member or
22 prospective member upon request.

23 Sec. 37. (1) Subject to subsection (3), a disclosure statement
24 shall include at a minimum the following information, unless waived
25 by the department in the reasonable exercise of discretion:

26 (a) The name and address of the continuing care community and
27 its affiliated parent or subsidiary business entity or partnership.

1 (b) The organization of the legal entity of the continuing
2 care community as prescribed by the department.

3 (c) Whether the continuing care community or an affiliate,
4 parent, or subsidiary is a religious, nonprofit, or proprietary
5 organization. If the continuing care community uses a name
6 designating or inferring a religious affiliation, a statement
7 explaining the relationship with the religious organization or
8 group or a statement that there is no relationship shall be
9 included.

10 (d) Information concerning the identity and experience of
11 persons affiliated with the continuing care community as the
12 department shall prescribe.

13 (e) Whether the continuing care community participates in
14 medicare or medicaid programs, or both.

15 (f) If the department has waived the submission of audited
16 financial statements pursuant to section 41, a statement that an
17 individual who purchases membership in a continuing care community
18 during that period is entitled to damages or rescission under the
19 same terms as provided in section 77 if, upon the availability of
20 audited financial statements or any other valid basis, the
21 department finds in the reasonable exercise of its discretion that
22 material adverse financial conditions existed as of the date of the
23 financial statements which were not disclosed.

24 (g) A statement that registration does not constitute approval
25 of or a finding regarding the accuracy of any information in or
26 accompanying the registration application.

27 (h) The entrance fee, any monthly services fees, and any other

1 fees or charges that may be assessed to a member or prospective
2 member by the continuing care community.

3 (i) All of the following statements as to the effect of the
4 death of a member on the continuing care agreement:

5 (i) If, before receiving continuing care from the continuing
6 care community, a member dies before occupying the continuing care
7 community, or through illness, injury, or incapacity is precluded
8 from being a member under the terms of the continuing care
9 agreement, the continuing care agreement is automatically canceled
10 and the member or a legal representative of the member shall
11 receive a full refund of all money paid to the continuing care
12 community. However, costs incurred by the continuing care community
13 at the request of the member and set forth in writing in a separate
14 addendum are not required to be refunded.

15 (ii) If a member dies within the 7-day rescission period under
16 subdivision (j), the continuing care agreement automatically
17 terminates, and the continuing care community shall within 30 days
18 refund any entrance fee or portion of an entrance fee paid.

19 (iii) If a member dies after the 7-day rescission period under
20 subdivision (j), the continuing care agreement terminates as
21 follows:

22 (A) As of the date that all possessions of the deceased member
23 are removed from the living unit if the deceased member was the
24 sole occupant. The entrance fee shall be refunded within 30 days
25 after the fulfillment of the conditions for a refund set forth in
26 the continuing care agreement.

27 (B) Immediately if the deceased member occupied a living unit

1 with another member. Any refundable portion of the deceased
2 member's entrance fee shall be refunded within 60 days after the
3 death of that member, but the continuing care agreement shall
4 remain in effect for the living member.

5 (C) Immediately if the continuing care agreement is for
6 continuing care at home. The refund shall be paid within 60 days
7 after death of the member.

8 (j) A statement that a member may rescind without penalty a
9 continuing care agreement within 7 days after executing the
10 agreement and that the entrance fee or the portion of the entrance
11 fee paid by the member shall be held by the continuing care
12 community for the benefit of the member in a separate escrow
13 account during that 7-day rescission period. A member shall not be
14 required to initiate continuing care before the expiration of the
15 7-day rescission period.

16 (k) A statement that following the 7-day rescission period
17 under subdivision (j), termination of a continuing care agreement
18 by the member, other than by the member's death, will result in a
19 refund of the entrance fee within 30 days after the fulfillment of
20 the conditions for a refund set forth in the continuing care
21 agreement. If the continuing care agreement is for continuing care
22 at home, the refund shall be paid within 60 days after termination.

23 (l) A statement that monthly service fees and other fees
24 assessed to a member are subject to increase by the continuing care
25 community based on the reasonable cost of operations including the
26 provision of care and services, and that the continuing care
27 community shall give advance notice of not less than 60 days to the

1 member before a new fee or change in a fee becomes effective.

2 (m) A statement that members may be charged assessments and a
3 statement of the method used to allocate any assessment.

4 (n) A statement that the continuing care agreement is subject
5 and subordinate to any mortgages on the property or any other
6 creditors with a preferred status.

7 (o) Whether entrance fees are subject to an escrow under
8 section 45(2) or an alternative financial arrangement under section
9 47, including a description of any applicable arrangement.

10 (p) The proposed application of the proceeds of the entrance
11 fee by the continuing care community.

12 (q) The location and description of any premises that are used
13 or proposed to be used for the provision of continuing care.

14 (r) A description of the continuing care services provided and
15 the extent to which medical care is furnished.

16 (s) A description of the health and financial conditions
17 required for a member to qualify for or to remain in the continuing
18 care community, including temporary or permanent transfer of the
19 member from his or her original living unit to a different type of
20 living unit or different level of care or services, and whether a
21 temporary or permanent transfer may result in termination of the
22 continuing care agreement.

23 (t) A statement that the refundable portion of the entrance
24 fee is equal to the total entrance fee paid less all of the
25 following:

26 (i) The nonrefundable portion of the entrance fee.

27 (ii) A sales cost in conjunction with the continuing care

1 agreement, not to exceed 8% of the entrance fee.

2 (iii) Any balance owed to the continuing care community for
3 monthly service fees or other charges under the continuing care
4 agreement.

5 (iv) A refurbishing fee that is the greater of 4% of the
6 entrance fee or the actual costs of refurbishing the living unit if
7 actual costs are known at the time of the refund and if an itemized
8 list of actual costs is provided to the member.

9 (u) A detailed description of how the entrance fee refund is
10 affected if a member moves from his or her original living unit to
11 a different living unit.

12 (v) Whether the continuing care agreement terminates and
13 whether a refund of the entrance fee is due if a member permanently
14 or temporarily transfers to a different level of care within the
15 continuing care community.

16 (w) The conditions upon which a member may reoccupy the
17 member's living unit after termination of the continuing care
18 agreement.

19 (x) The fees that will be charged if a member of the
20 continuing care community marries, the terms and conditions as to
21 membership in the continuing care community by the new spouse of a
22 member or in the event of the divorce of a member, and the
23 consequences if the new spouse does not meet the requirements for
24 membership.

25 (y) The circumstances under which a person will be permitted
26 to remain a member of the continuing care community in the event of
27 possible financial difficulties of the member.

1 (z) Whether, if financial assistance is provided to the member
2 through a charitable fund, a spend down of the entrance fee
3 otherwise required for continued membership, or a reduction of
4 monthly service fees or other fees assessed under the continuing
5 care agreement or under some other arrangement, the financial
6 assistance will be subject to either of the following:

7 (i) Be offset from the entrance fee refund due to the member or
8 the member's estate upon termination of the continuing care
9 agreement and upon removal of all possessions of the member or
10 deceased member from the unit.

11 (ii) Vest in the continuing care community in the form of a
12 claim for repayment of such financial assistance against the member
13 or the member's estate.

14 (aa) An annual financial statement under section 41 as an
15 attachment to and integral part of the disclosure statement.

16 (bb) Other material information as required by the department.

17 (cc) Other material information that the applicant wishes to
18 include.

19 (dd) The following items in the beginning of the disclosure
20 statement, in all capital letters, and in substantially the
21 following language:

22 (i) "You may cancel the purchase and receive a full refund less
23 damages to the living unit within 7 days after either making a
24 deposit and receiving a copy of the disclosure statement or
25 executing the continuing care agreement. You are not required to
26 move into the continuing care community before the expiration of
27 this 7-day period.".

1 (ii) "The purchase of a life interest or long-term lease is an
2 investment that may involve a major financial commitment, and you
3 should seek advice from an attorney or other financial advisor who
4 is independent of the continuing care community."

5 (iii) "This disclosure statement is required by law to contain
6 all material facts regarding the offering it makes. No person is
7 authorized to make any promises in connection with this offering
8 other than those contained in this disclosure statement."

9 (iv) "The department of licensing and regulatory affairs has
10 not passed upon the accuracy of this disclosure statement or
11 approved or disapproved of the offering described herein. Any
12 representation to the contrary is unlawful and should be reported
13 to the department."

14 (v) "If you enter into a life interest or long-term lease
15 during the period when financial statements submitted by the
16 continuing care community to the department of licensing and
17 regulatory affairs are unaudited, you are entitled to damages or
18 rescission if the department finds in the reasonable exercise of
19 its discretion that material adverse conditions existed at the date
20 of the financial statements and were not disclosed."

21 (vi) "More complete information is on file with the department
22 of licensing and regulatory affairs and is available free of charge
23 at the offices of the continuing care community."

24 (2) Subject to subsection (3), a disclosure statement shall be
25 set forth in not less than 12-point type. The department may
26 prescribe the format of a disclosure statement and may require an
27 applicant to set forth any of the following in its disclosure

1 statement in a specified position and type size:

2 (a) Potential adverse information.

3 (b) That registration does not constitute approval,
4 recommendation, or endorsement by the department.

5 (3) The department shall accept, in place of the disclosure
6 statement that meets the requirements set forth in subsections (1)
7 and (2), a disclosure statement form required by a federal
8 government agency or a government agency of another state that the
9 department has determined by rule or order to meet the requirements
10 of this section.

11 Sec. 39. A continuing care agreement shall meet all of the
12 following requirements:

13 (a) Specify in reasonable detail the rights, privileges,
14 liabilities, and obligations of each party to the continuing care
15 agreement with respect to the statements included in the disclosure
16 statement under section 37(1)(h) to (cc).

17 (b) Specify whether a continuing care agreement may be
18 terminated due to a material breach by either party and if so, what
19 constitutes a material breach.

20 (c) Specify that the continuing care community may provide
21 access to an adequate alternative facility that will provide care
22 for the member, in place of or in mitigation of any damages.

23 (d) Specify that the continuing care community will not
24 terminate a member without 30 days' written notice unless the
25 continuing care community provides access to an adequate
26 alternative facility.

27 (e) Each continuing care agreement shall be set forth in not

1 less than 12-point type. The department may prescribe the format of
2 a continuing care agreement or require a continuing care community
3 to set forth in a continuing care agreement potential adverse
4 information in designated positions and in a type size specified by
5 the department.

6 (f) Specify that a continuing care agreement does not confer a
7 property interest, an individual or partial ownership of a
8 continuing care community, or voting rights in the operation of a
9 continuing care community.

10 Sec. 41. (1) Financial statements under section 19, 25, or 29
11 shall meet all of the following requirements:

12 (a) Be submitted with a statement of any adverse material
13 changes in the financial condition of the entity from the date of
14 the financial statement.

15 (b) Subject to subdivision (c), be of form and content
16 required by the department.

17 (c) Not be consolidated financial statements except under
18 circumstances prescribed by the department. Requirements imposed by
19 the department under subdivision (b) or this subdivision shall be
20 consistent with generally accepted accounting principles or other
21 nationally recognized accounting standards applicable to the
22 entity.

23 (d) Be submitted within 120 days after the end of the entity's
24 fiscal year.

25 (e) Be audited and prepared by a certified public accountant
26 in accordance with generally accepted auditing standards, subject
27 to all of the following:

1 (i) The department may waive all or part of this requirement if
2 it is not necessary for the protection of the public. The
3 department may impose conditions and restrictions on the waiver
4 that it considers appropriate.

5 (ii) Unaudited financial statements may be submitted if the
6 entity has not been in existence for 1 complete fiscal year.

7 (iii) If the audited financial statements are more than 120 days
8 old, they shall be submitted with current unaudited financial
9 statements.

10 (iv) Unaudited financial statements authorized under
11 subparagraph (i), (ii), or (iii) shall be accompanied by the following
12 written disclosure, or a substantially equivalent statement,
13 immediately adjacent thereto, in all capital letters and at least
14 14-point type:

15 "These financial statements are prepared without audit. A
16 certified public accountant has not examined the financial
17 statements and accordingly has expressed no opinion on them.".

18 (2) Audited financial statements filed with the department
19 shall include a consent of the certified public accounting firm,
20 signed and dated at or near the effective date of the audit,
21 approving the use of its name and its opinion in the continuing
22 care community's disclosure statements and registration
23 application. In the case of a substantial delay in effectiveness or
24 an adverse material change in the filing, the department may
25 require an updated consent.

26 (3) If the independent certified public accountant engaged as
27 the principal accountant to audit the continuing care community's

1 financial statements was not the principal accountant for the
2 continuing care community's most recently filed audited financial
3 statements, or a legal successor thereto, then all of the following
4 apply:

5 (a) The continuing care community shall furnish the department
6 with a statement of the date when the current independent
7 accounting firm was engaged and whether, in the 18 months preceding
8 the engagement, there were any disagreements with the former
9 principal accounting firm in a matter of accounting principles or
10 practices, financial statement disclosure, or accounting procedure
11 which, if not resolved to the satisfaction of the former accounting
12 firm, would have required a reference, in the accounting firm's
13 opinion, to the subject matter of the disagreement.

14 (b) The continuing care community shall request the former
15 accounting firm to furnish the continuing care community with a
16 letter stating whether it agrees with the statement of the
17 continuing care community under subdivision (a) and, if not,
18 stating why it does not agree. The letter shall be furnished by the
19 continuing care community to the department.

20 (4) If an entity owns multiple continuing care communities or
21 if the organization has 1 or more affiliates, the department may
22 require additional financial information for each continuing care
23 community or affiliate but shall not require any audited financial
24 statements other than the consolidated financial statements of the
25 entity.

26 (5) Within 30 days after the end of the first half of its
27 fiscal year, a continuing care community shall submit to the

1 department an unaudited semiannual financial statement that
2 includes at least all of the following:

- 3 (a) A balance sheet.
- 4 (b) An income statement.
- 5 (c) A statement of cash flows.
- 6 (d) A statement of how entrance fee proceeds are used.
- 7 (e) A management discussion explaining material fluctuations
8 in the balance sheet and income statement, compared to the prior
9 period or prior year-to-date.

10 Sec. 43. A pro forma financial plan shall include a financial
11 forecast for a period of 3 years, presented on the same accounting
12 basis as the financial statements, including all of the following:

- 13 (a) A balance sheet.
- 14 (b) A statement of changes and activities or statement of
15 operations.
- 16 (c) A statement of cash flow.
- 17 (d) Expected cash proceeds from sales of continuing care
18 agreements based on projected occupancy and attrition rates.
- 19 (e) Expected cash proceeds from monthly service fees,
20 donations, interest, and entrance fees.
- 21 (f) Amount of reserves expected to be provided for capital
22 replacement, improvements, maintenance, refunds, and other
23 expenses.
- 24 (g) A statement of assumptions and principles used to make the
25 forecast.

26 Sec. 45. (1) If a member pays funds to a continuing care
27 community before occupancy, the funds shall be held in a trust

1 account unless this requirement is waived or modified by the
2 department. Any interest or other income from the investment of the
3 funds held in the trust account shall accrue to the benefit of the
4 member. The department may, by rule or order, determine the
5 conditions of the trust account. Funds placed with a continuing
6 care community for continuing care at home are not subject to the
7 requirements of this subsection.

8 (2) The department may require a deposit with an escrow agent
9 acceptable to the department of an amount the department considers
10 necessary for the continuing care community to fulfill its
11 obligations if both of the following apply:

12 (a) The department finds 1 or more of the following:

13 (i) The financial condition of the continuing care community
14 may materially jeopardize the care of members.

15 (ii) The continuing care community is insolvent or in jeopardy
16 of becoming insolvent.

17 (iii) The continuing care community is not meeting its pro forma
18 financial plan.

19 (b) The department determines the escrow to be necessary and
20 appropriate to protect prospective members.

21 (3) If subsection (2)(a) and (b) applies, the department may
22 summarily order the temporary suspension of a continuing care
23 community's approval to offer continuing care agreements pending a
24 hearing under section 69(2).

25 (4) The department may direct the escrow agent to return all
26 the funds escrowed under subsection (2) to the members if any of
27 the following apply:

1 (a) The department finds that any condition of an escrow
2 agreement has not been satisfied or that any provision of this act
3 or rules promulgated under this act has not been complied with.

4 (b) The registration or exemption of the continuing care
5 community is revoked.

6 (5) An escrow agreement required under this section shall
7 comply with all of the following:

8 (a) Be executed by the escrow agent and continuing care
9 community.

10 (b) State that its purpose is to protect the members, that the
11 escrow is for the benefit of each member in the amount paid by each
12 member, and that all funds subject to the escrow shall be
13 deposited, held, or guaranteed under the arrangement to remain the
14 property of the respective members for whose account the proceeds
15 were deposited and not subject to any liens or charges by the
16 escrow agent or to judgments, garnishments, or creditor's claims
17 against the continuing care community until the funds are released
18 pursuant to this section.

19 (c) State that the department is authorized to inspect the
20 records of the escrow agent relating to the escrow account.

21 (d) State that, upon order of the department or a court of
22 competent jurisdiction, the escrow agent shall release and pay over
23 the funds, or a portion thereof, to the continuing care community
24 or member as ordered.

25 (e) Include on its face an acknowledgment executed by the
26 department indicating approval of the form and content of the
27 escrow agreement. The acknowledgment does not make the department a

1 party to the escrow agreement.

2 (f) Specify 1 of the following methodologies to be used to
3 determine the amount of funds that may be released pursuant to a
4 request under subsection (7):

5 (i) An amount up to 75% of the funds as a result of occupancy
6 of at least 75% of living units in the continuing care community.
7 The continuing care community may request release of an additional
8 5% of the funds in proportion to each 5-percentage-point increase
9 in occupancy. Upon achieving 90% occupancy of living units, the
10 continuing care community may request and the department may
11 authorize release of all the funds. For purposes of this
12 subparagraph and subparagraph (ii), occupancy shall be measured by
13 the total number of living units of the entire continuing care
14 community designated for occupancy under continuing care
15 agreements.

16 (ii) An amount equal to 1-1/2% per month of the total entrance
17 fees escrowed, with amortization beginning as of the date of
18 occupancy of a living unit by the member. Upon achieving 90%
19 occupancy of living units, the continuing care community may
20 request and the department may approve release of all funds subject
21 to the escrow arrangement.

22 (6) An escrow account under this section shall comply with all
23 of the following:

24 (a) Checks shall be made payable to the depository approved by
25 the department.

26 (b) The account shall be established with an escrow agent
27 acceptable to the department and the funds shall be kept and

1 maintained in an account separate and apart from any depository
2 account of the continuing care community.

3 (c) All proceeds deposited in escrow remain the property of
4 the respective members for whose account the proceeds were
5 deposited and are not subject to a lien or charge by the escrow
6 agent or to a judgment, garnishment, or creditor's claim against
7 the continuing care community until the funds are released to the
8 continuing care community as provided in this section.

9 (d) If required by the department, a quarterly statement
10 indicating the status of the escrow account shall be furnished by
11 the escrow agent to the department.

12 (7) A request for release of escrow funds under subsection (2)
13 or for the discontinuance or modification of an escrow arrangement
14 under subsection (2) shall be submitted by the administrator. The
15 request shall include the following documentation, unless the
16 documentation was previously provided in the most recent
17 registration application or unless waived or modified, in whole or
18 in part, by the department in the reasonable exercise of its
19 discretion:

20 (a) The methodology under subsection (5)(f) for calculating
21 the amount of funds to be released and supporting documentation.

22 (b) A statement by the continuing care community that the
23 funds were placed in escrow as required by an order of the
24 department imposing the escrow arrangement and pursuant to the
25 terms and conditions of the escrow agreement.

26 (c) A statement by the continuing care community that it has
27 satisfied all obligations for release of funds from escrow.

1 (d) If required by the department, a statement by the escrow
2 agent, signed by an appropriate officer, setting forth the
3 aggregate amount of escrowed funds placed with the escrow agent.

4 (e) The name of each member and the amount held in escrow for
5 the account of the member.

6 (f) A pro forma financial plan that complies with section 43.

7 (g) Documentation evidencing availability of adequate
8 resources to fund the continuing care community's capital
9 expenditures, debt service, refund of entrance fees, operating
10 costs, continuing care community maintenance, and other costs and
11 expenses projected for not less than 3 years.

12 (h) Audited financial statements for the continuing care
13 community's most recent 4 fiscal years and financial statements for
14 any portion of the current fiscal year ending within 120 days after
15 the date of filing.

16 (i) Commitments for construction and permanent loan financing
17 together with a copy of an adequate construction bond.

18 (j) Irrevocable lines or letters of credit, other irrevocable
19 instruments of credit, confirmations of deposits of proceeds of
20 sales of securities, leases, or evidences of any other valid
21 commitments or income.

22 (k) Assumptions and the basis of schedules for attrition
23 rates, occupancy rates, refund of entrance fees, debt service,
24 operating expenses, and operating income.

25 (l) A commitment to notify the department promptly in writing
26 of a material change in the information submitted under this
27 subsection.

1 (8) The amount released shall be based on the methodology
2 specified in the escrow agreement pursuant to subsection (5)(f),
3 unless a switch to the alternative methodology specified in
4 subsection (5)(f) is requested by the continuing care community and
5 approved by the department.

6 (9) After submission of a request for release of funds
7 pursuant to subsection (7), the department may approve release to
8 the continuing care community of funds held in escrow pursuant to
9 subsection (2). An order issued by the department approving the
10 release of funds held in escrow under subsection (2), in whole or
11 in part, or for modification or discontinuance of an escrow
12 arrangement imposed pursuant to subsection (2), shall include
13 authorization for the escrow agent to release to the continuing
14 care community those amounts of the escrowed funds applicable to a
15 specified member as stated in the order.

16 Sec. 47. (1) In lieu of an escrow arrangement imposed pursuant
17 to section 45(2), the department may approve an alternative
18 financial arrangement that separates or secures a designated amount
19 of funds of the continuing care community for the benefit of
20 members of the continuing care community or provides for the
21 payment of funds on behalf of members through a surety bond,
22 irrevocable letter of credit, trust account, guarantee, or other
23 acceptable financing method or arrangement approved by the
24 department. Documentation establishing an alternative financial
25 arrangement shall be approved by the department and shall name the
26 department as a party or third party beneficiary of the alternative
27 financial arrangement to act on behalf of the members of the

1 continuing care community.

2 (2) An alternative financial arrangement approved pursuant to
3 this section shall comply with all of the following requirements:

4 (a) Be established pursuant to 1 or more written agreements
5 approved by the department between the continuing care community
6 and a reputable financial institution, escrow agent, surety,
7 lender, guarantor, or other entity, which may include an affiliate
8 of the continuing care community, authorized to transact business
9 in this state.

10 (b) State that the purpose of the arrangement is to protect
11 members of the continuing care community from the inability of the
12 continuing care community to refund entrance fees when due.

13 (c) Be in an amount that is at least equal to the total
14 entrance fees that would be collected for the continuing care
15 community and that allows the continuing care community to fulfill
16 its obligations to members consistent with the purpose for
17 imposition of the arrangement.

18 (d) Require that all proceeds deposited, held, or guaranteed
19 under the arrangement remain the property of the respective members
20 for whose account the proceeds were deposited and are not subject
21 to any liens or charges by the escrow agent or to judgments,
22 garnishments, or creditor's claims against the continuing care
23 community until the proceeds are released pursuant to this section.

24 (e) Provide that, upon order of the department or a court of
25 competent jurisdiction, the appropriate amount of funds described
26 in this section shall be released and paid to the continuing care
27 community or member as ordered.

1 (f) Require that quarterly balance statements be provided to
2 the department directly from the escrow agent, financial
3 institution, or other entity with custody of the funds and
4 authorize the department to inspect the records pertinent to the
5 arrangement.

6 (g) Comply with such other terms or conditions imposed by the
7 department by rule or order.

8 (3) The department shall take into consideration the amount of
9 the entrance fees and other fees to be charged in addition to the
10 number of continuing care agreements to be offered, granted, or
11 sold in determining the initial amount of the alternative financial
12 arrangement and shall amend the amount of the alternative financial
13 arrangement, as the public interest requires, using the same
14 factors.

15 (4) If a continuing care community fails to complete its
16 obligations under a continuing care agreement, the financial
17 institution that is a party to the alternative financial
18 arrangement with the continuing care community shall, upon order of
19 the department, pay funds to the department or its designee for the
20 benefit of all members.

21 (5) If an instrument comprising an alternative financial
22 arrangement expires or is canceled and the continuing care
23 community is still under an obligation to provide certain items
24 under the continuing care agreement, the continuing care community,
25 at its option, may either establish a new alternative financial
26 arrangement under subsection (1) or have the department impose
27 under section 45(2) an escrow of entrance and other fees. Until an

1 alternative financial arrangement acceptable to the department is
2 established or escrow is imposed, the continuing care community
3 shall not enter into any additional continuing care agreements. An
4 alternative financial arrangement approved under this section may
5 be released in whole or in part by order of the department, subject
6 to the requirements for release of escrow funds pursuant to section
7 45.

8 Sec. 49. (1) A registered continuing care community shall
9 prepare and maintain for not less than 6 years all of the following
10 records:

11 (a) Accounts and records of each day's sales of memberships in
12 the continuing care community, receipts of cash, and other debits
13 and credits.

14 (b) Copies of contracts, including continuing care agreements
15 and terminated continuing care agreements, management contracts for
16 any material component of operations, contracts for construction of
17 buildings or other structures used to provide continuing care, and
18 contracts with affiliated persons related to any material component
19 of operations.

20 (c) Records of compensation paid to persons, directly or
21 indirectly, in connection with the offer or sale of continuing care
22 agreements. These records shall include all the following
23 information:

24 (i) The persons to whom payments are made.

25 (ii) The date and amount of each payment.

26 (iii) The reason for each payment.

27 (iv) The transaction from which each payment arose.

1 (d) Member records of all of the following:

2 (i) Each member's name, address, and age.

3 (ii) The total amount paid to date by each member and the dates
4 on which the payments were made.

5 (iii) The aggregate amount to be paid by each member.

6 (iv) The terms of payment.

7 (e) Complaint records of all of the following:

8 (i) Each written complaint by a member alleging violations of
9 this act or rules promulgated under this act.

10 (ii) The date of the complaint.

11 (iii) Any action taken by the continuing care community in
12 response to the complaint.

13 (2) Not more than 30 days after the end of each fiscal year
14 quarter, or such later date as may be authorized by the department,
15 a registered continuing care community shall submit the following
16 to the department, unless waived by the department:

17 (a) A quarterly sales report setting forth the continuing care
18 community's sales executed by new members and the proceeds derived
19 from the collection of entrance fees from such members.

20 (b) A quarterly occupancy report stating the percentage of
21 occupancy of living units in a continuing care community, the
22 number of occupants who have continuing care agreements, and the
23 number of members who have died or moved out of the continuing care
24 community since the last occupancy report was submitted.

25 (3) If required by the department in the reasonable exercise
26 of its discretion, a registered continuing care community shall
27 submit to the department a report that compares any increases in

1 monthly service fees to the annual consumer price index - all urban
2 consumers, over 5 preceding calendar years. This report shall be
3 submitted no later than February 1 following the end of each 5-year
4 period. The first 5-year period begins January 1 after the
5 effective date of this act.

6 Sec. 51. (1) A person shall not distribute or transmit an
7 advertisement or marketing communication described in this
8 subsection unless a true copy of the advertisement or marketing
9 communication has been submitted to and approved by the department
10 or unless an advertising waiver has been approved by the
11 department. This subsection applies only to an advertising or
12 marketing communication that contains any of the following
13 information:

14 (a) An entrance fee.

15 (b) A monthly service fee.

16 (c) A disclosure statement.

17 (d) A continuing care agreement.

18 (2) The department shall approve or reject in writing any
19 advertisement or marketing communication submitted under subsection
20 (1) within 10 days after the date it is received.

21 (3) To obtain an advertising waiver, a continuing care
22 community shall submit to the department a written request that
23 includes the reasons why the waiver should be approved. The
24 department shall grant or deny a waiver request in writing within
25 30 days after receipt. If the waiver is granted, the waiver shall
26 specify its expiration date, if any.

27 (4) This act does not impose liability, civil or criminal,

1 upon a person regularly engaged in the business of publishing a
2 bona fide newspaper or operating a radio or television station, and
3 acting solely in the person's official capacity, who publishes an
4 advertisement or marketing communication in good faith and without
5 knowledge that the advertisement or marketing communication
6 constitutes a violation of this act.

7 (5) A continuing care community shall maintain advertising or
8 marketing communications for not less than 3 years in physical copy
9 or electronic format and make these records available to the
10 department upon written request.

11 Sec. 55. (1) A person shall not, in connection with the offer
12 or sale of a continuing care agreement, directly or indirectly do
13 any of the following:

14 (a) Employ a device, scheme, or artifice to defraud.

15 (b) Engage in an act, practice, or course of business which
16 operates or would operate as a fraud or deceit.

17 (c) Make an untrue statement of a material fact or fail to
18 state a material fact necessary in order to make the statements
19 made not misleading, in the light of the circumstances under which
20 they are made, including an untrue statement of a material fact or
21 failure to state a material fact in any application, notice, or
22 report filed with the department under this act.

23 (d) Fail to notify the department of a reportable change as
24 required by section 33.

25 (e) Publish any advertisement or marketing communication that
26 contains false, fraudulent, misleading, or deceptive information.

27 This subdivision does not apply to a person that publishes an

1 advertisement or marketing communication on behalf of a continuing
2 care community and is not affiliated with the continuing care
3 community.

4 (2) Each of the following practices constitutes a false,
5 fraudulent, misleading, or deceptive advertising or marketing
6 communication for purposes of subsection (1)(e):

7 (a) A statement or inference that the purchase of a membership
8 in a continuing care community is a safe investment.

9 (b) A statement or inference that a continuing care community
10 is affiliated with a religious, nonprofit, or proprietary
11 organization if it is not so affiliated.

12 (c) A material misrepresentation of services, care, or
13 amenities, provided or to be provided by a continuing care
14 community.

15 Sec. 57. If a member becomes mentally or physically
16 incapacitated and is unable to handle his or her own personal or
17 financial affairs, the continuing care community may petition a
18 court of competent jurisdiction to appoint an independent
19 conservator or guardian. If the court approves the petition as well
20 as the costs associated with the petition, the continuing care
21 community may charge these costs to the member.

22 Sec. 59. (1) A dispute, claim, or grievance arising between a
23 member or a member's estate and a continuing care community shall
24 upon written consent of the parties be submitted to arbitration.
25 The arbitrator's decision is final and binding. The arbitration is
26 subject to the rules of the American arbitration association in
27 effect at the time of the dispute, claim, or grievance.

1 (2) A condition, stipulation, or provision purporting to bind
2 a member to waive compliance with any provision of this act or a
3 rule promulgated or order issued under this act is void.

4 Sec. 61. (1) An applicant for registration under this act,
5 other than a domestic corporation, shall file with the department,
6 on a form prescribed by the department, an irrevocable consent
7 appointing the department to be its attorney to receive service of
8 lawful process in a noncriminal action or proceeding against it or
9 its successor, executor, or administrator that arises under this
10 act or a rule promulgated or order issued under this act after the
11 consent has been filed. After the filing of the consent, process
12 received by the department has the same force and validity as if
13 served personally on the person filing consent.

14 (2) Service under subsection (1) may be made by leaving a copy
15 of the process in the office of the department but it is not
16 effective unless all of the following requirements are met:

17 (a) The plaintiff, who may be the department in an action or
18 proceeding instituted by it, immediately sends notice of the
19 service and a copy of the process by certified mail to the
20 defendant or respondent at its last address on file with the
21 department.

22 (b) The plaintiff's affidavit of compliance with subdivision
23 (a) is filed in the action, on or before the return day of the
24 process, if any, or within such further time as the court may
25 allow.

26 (3) When a person, including a nonresident of this state,
27 engages in conduct prohibited or made actionable by this act or a

1 rule promulgated or order issued under this act, whether or not a
2 consent to service of process has been filed and personal
3 jurisdiction can otherwise be obtained in this state, that conduct
4 shall be considered equivalent to the appointment of the department
5 to be the attorney to receive service of a lawful process in a
6 civil action or proceeding against the person or a successor,
7 executor, or administrator arising out of that conduct and which is
8 brought under this act or a rule promulgated or order issued under
9 this act, with the same force and validity as if served on the
10 person personally.

11 (4) Service under subsection (3) may be made by leaving a copy
12 of the process in the office of the department, but it is not
13 effective unless all of the following requirements are met:

14 (a) The plaintiff, which may be the department in an action or
15 proceeding instituted by it, immediately sends notice of the
16 service and a copy of the process by certified mail to the
17 defendant or respondent at its last known address or takes other
18 steps that are reasonably calculated to give actual notice.

19 (b) The plaintiff's affidavit of compliance with this section
20 is filed in the case on or before the return day of the process, if
21 any, or within such further time as the court allows.

22 Sec. 63. (1) The department may conduct investigations within
23 or outside this state to determine if any of the following apply:

24 (a) An offering of a continuing care agreement under this act
25 poses or may pose an unreasonable risk as described in subsection
26 (3).

27 (b) A person has violated or is about to violate this act or a

1 rule promulgated or order issued under this act.

2 (2) The department may require or permit a person to file a
3 written statement under oath or otherwise as to all the facts and
4 circumstances concerning the matter to be investigated under
5 subsection (1). If the person fails to reply with all required
6 information to a written request from the department within 15 days
7 after receipt of the letter, the department may issue a cease and
8 desist order.

9 (3) The department may determine that an offering creates an
10 unreasonable risk to members under this act if any of the following
11 apply:

12 (a) Monthly service fees or assessments are not used for the
13 purpose designated.

14 (b) With respect to an offering by a continuing care community
15 seeking registration or exemption, the offering fails to provide
16 for adequate reserves or other adequate revenue sources for
17 operations, repairs, and renovations. The department may utilize an
18 industry representative or accounting representative to determine
19 the adequacy of revenue sources.

20 (c) With respect to a continuing care community making an
21 offering, the continuing care community has been in operation less
22 than 1 year or is in the development stage at the time of
23 registration and has failed to achieve reservations for 75% of the
24 living units at the date of first occupancy, unless the department
25 finds that the financial condition of the continuing care community
26 or the escrow arrangements established in connection with the
27 offering are such as to outweigh any special risk.

1 (4) For the purpose of an investigation or proceeding under
2 this act, the department may administer oaths and affirmations and
3 receive evidence. To subpoena witnesses or require the production
4 of books, papers, or other documents or records, the department
5 must obtain an order of the circuit court by a showing that there
6 is good cause to believe that a violation has taken place or is
7 about to take place. However, in a contested case, the department
8 itself may issue subpoenas and is subject to section 73 of the
9 administrative procedures act of 1969, 1969 PA 306, MCL 24.273.

10 Sec. 65. (1) The department shall review all documents
11 submitted to the department under this act for compliance with this
12 act. The department may require the submission of supplemental
13 documents if the department considers the additional information
14 necessary for the purposes of this act.

15 (2) The records of a continuing care community are subject to
16 reasonable audit by a representative of the department, inside or
17 outside of this state, that the department considers necessary or
18 appropriate in the public interest and for the protection of
19 members or prospective members. The department may copy records the
20 department reasonably considers necessary to conduct the audit.

21 (3) A routine audit shall be conducted during normal business
22 hours and with reasonable advance notice. An audit in response to a
23 complaint or other special audit may be conducted at any time and
24 without advance notice.

25 Sec. 67. (1) A court or the department may by order authorize
26 a registrant to suspend repayment of an entrance fee for not more
27 than 180 days, upon a showing by the registrant that payment would

1 jeopardize the care of members in the continuing care community.
2 The order may be extended upon a showing of substantial progress in
3 resolving the financial difficulties of the continuing care
4 community.

5 (2) To obtain an order from the department allowing the
6 temporary suspension of repayment of an entrance fee pursuant to
7 subsection (1), a continuing care community shall submit to the
8 department a letter requesting a temporary suspension order. The
9 letter shall contain all of the following information:

10 (a) The name of the facility involved and its affiliates, if
11 any.

12 (b) The particular facts relied upon as a basis for the
13 suspension request.

14 (c) The time during which the facility desires the suspension
15 to be effective.

16 (d) Financial statements dated not more than 45 days before
17 the date of the request.

18 (e) Other information required by the department.

19 (3) The department may hold a public hearing to determine
20 whether the suspension should be granted.

21 Sec. 69. (1) The department may issue an order denying,
22 suspending, or revoking a registration if it finds that the order
23 is in the public interest and finds 1 or more of the following:

24 (a) The application for registration or the registration
25 statement in effect is not complete in a material respect or
26 contains a statement that was, in the light of the circumstances
27 under which it was made, false or misleading with respect to a

1 material fact.

2 (b) The registrant or applicant, or its agent or employee, has
3 violated this act or a rule promulgated or order issued under this
4 act.

5 (c) The offer and sale of a continuing care agreement is not
6 fair, just, and equitable or has worked or tended to work a fraud
7 or imposition or would so operate, or the terms of the offering
8 would create an unreasonable risk to members as defined by rules.

9 (d) The registrant's or applicant's method of business
10 includes or would include activities that are illegal where
11 performed.

12 (e) A person identified in the application is described in
13 section 19(1)(f)(i) or (ii) as a result of an act or omission
14 involving the illegal offering of a continuing care agreement,
15 franchise, or security and the department determines that the
16 involvement of the person in the sale of leases or management of
17 the continuing care community creates an unreasonable risk to
18 members.

19 (f) The registrant or applicant is the subject of a permanent
20 or temporary injunction entered under a federal or state act, and
21 the injunction is applicable to the offer and sale of a continuing
22 care agreement.

23 (g) The registrant or applicant has failed to pay the proper
24 fee required by, or fine imposed under, this act.

25 (h) The registrant has failed to submit an application for
26 renewal of a registration as required under section 25.

27 (2) Before issuing an order under subsection (1) or section

1 45(3), the department shall notify the registrant or applicant by
2 registered or certified mail. The notice shall include the proposed
3 order, the reasons for the proposed order, and a statement that, if
4 a hearing is requested in writing within 15 days after issuance of
5 the notice of intent, a hearing will be conducted on the matter
6 within 45 days after the receipt of the request, unless the
7 registrant or applicant consents to a later date. If a hearing is
8 not timely requested by the continuing care community and is not
9 ordered by the department, the department shall issue an order
10 under subsection (1). The order shall remain in effect until it is
11 modified or vacated by the department. If a hearing is timely
12 requested or ordered, the department, after notice and an
13 evidentiary hearing pursuant to the administrative procedures act
14 of 1969, 1969 PA 306, MCL 24.201 to 24.328, may enter an order
15 under subsection (1), or find that a violation or other condition
16 under which entry of an order is authorized has not occurred.

17 (3) The department may vacate or modify an order under this
18 section if it finds that the conditions on which it was based have
19 changed or that it is otherwise in the public interest to do so.

20 Sec. 71. (1) Subject to subsection (2), if the department
21 determines that a person has engaged, is engaging, or is about to
22 engage in an act, practice, or course of business constituting a
23 violation of this act or a rule promulgated or order issued under
24 this act, or that a person has materially aided, is materially
25 aiding, or is about to materially aid an act, practice, or course
26 of business constituting such a violation, the department may issue
27 an order directing the person to cease and desist from engaging in

1 the act, practice, or course of business or to take other action
2 necessary to comply with this act.

3 (2) Before issuing an order under subsection (1), the
4 department shall notify the person. The notice shall include the
5 proposed order, the reasons for the proposed order, and a statement
6 that, if a hearing is requested in writing within 15 days after
7 issuance of the notice of intent, a hearing will be conducted on
8 the matter within 45 days after receipt of the request, unless the
9 person consents to a later date. If a hearing is not timely
10 requested, the department shall issue an order under subsection
11 (1). If a hearing is timely requested, the department, after notice
12 and an evidentiary hearing pursuant to the administrative
13 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, may
14 enter a cease and desist order or find that a violation has not
15 occurred.

16 (3) A person that knowingly authorizes, directs, or aids in
17 violation of a final cease and desist order, or who knowingly fails
18 to comply with the terms of a final cease and desist order, may be
19 fined not more than \$10,000.00.

20 Sec. 73. If it appears to the department that a person has
21 engaged or is about to engage in an act or practice constituting a
22 violation of this act or a rule promulgated or order issued under
23 this act, the attorney general may bring an action in the name of
24 the people in the circuit court to enjoin the acts or practices or
25 to enforce compliance with this act or the rule or order. Upon a
26 proper showing, a preliminary or permanent injunction, restraining
27 order, or writ of mandamus shall be granted and a receiver or

1 conservator may be appointed for the defendant or the defendant's
2 assets. The court shall not require the department to post a bond.

3 Sec. 75. (1) If the director of the department finds that a
4 person violated this act or a rule promulgated or order issued
5 under this act, after an opportunity for an evidentiary hearing
6 under the administrative procedures act of 1969, 1969 PA 306, MCL
7 24.201 to 24.328, the director may order the person to pay a civil
8 fine of not less than \$1,000.00 or more than \$50,000.00. The
9 director may also order the respondent to pay the costs of the
10 investigation.

11 (2) After providing an opportunity for a contested case
12 hearing under the administrative procedures act of 1969, 1969 PA
13 306, MCL 24.201 to 24.328, the department may impose any of the
14 following sanctions on a person that violates this act or a rule
15 promulgated or order issued under this act:

16 (a) If the person is registered under this act, an
17 administrative fine of not more than \$10,000.00 for each violation.

18 (b) A requirement that restitution be made. The registration
19 of the person required to make the restitution may be suspended
20 until the restitution is made.

21 (3) If a continuing care agreement does not comply with the
22 requirements of this act, the continuing care agreement is
23 voidable. If the agreement is voided, the continuing care community
24 shall refund to the member the amount that the member paid when the
25 continuing care agreement was entered into.

26 Sec. 77. (1) A person that offers or sells a continuing care
27 agreement in violation of section 15 or 55 or an order issued under

1 section 69 is liable to the person executing the continuing care
2 agreement for all of the following:

3 (a) Damages.

4 (b) Repayment of all fees paid to the continuing care
5 community or entity purporting to operate as a continuing care
6 community under this act less, in the case of a continuing care
7 community, the reasonable cost of continuing care provided by the
8 continuing care community until discovery or until the violation
9 should reasonably have been discovered.

10 (c) 6% interest on the amounts under subdivisions (a) and (b).

11 (d) Reasonable attorney fees.

12 (e) Court costs.

13 (2) A person may not file or maintain an action under this
14 section if, before filing the action, the person received an offer
15 of rescission approved by the department to refund the entrance fee
16 together with interest at 6% per year from the date of purchase
17 less the reasonable cost of continuing care provided until
18 discovery, and the member failed to accept the offer within 30 days
19 after its receipt. When a continuing care community makes written
20 offer of rescission, the continuing care community shall file a
21 copy with the department. The rescission offer shall recite the
22 provisions of this section.

23 Sec. 79. Except as explicitly provided in this act, civil
24 liability in favor of a private party does not arise against a
25 person by implication from or as a result of the violation of this
26 act or a rule promulgated or order issued under this act. This act
27 does not limit liability that may exist under any other statute or

1 under common law.

2 Sec. 81. A person that directly controls a person that
3 violates this act, a partner in a firm that violates this act, a
4 principal executive officer or paid director or trustee of a
5 corporation that violates this act, a person occupying a similar
6 status as an executive officer or director performing similar
7 functions, or an employee of a person that violates this act who
8 materially aids in the act or transaction constituting the
9 violation is also liable jointly and severally with and to the same
10 extent as the person that violates this act, unless the person did
11 not have knowledge of or reasonable grounds to believe in the
12 existence of the facts constituting the violation.

13 Sec. 83. An action shall not be maintained to enforce a
14 liability created under this act unless brought before the
15 expiration of 3 years after the date of the act or transaction
16 constituting the violation.

17 Sec. 85. (1) A person that knowingly violates this act is
18 guilty of a felony punishable by imprisonment for not more than 7
19 years or a fine of not more than \$10,000.00, or both.

20 (2) The proceeds, the substituted proceeds, or an
21 instrumentality of a crime described in subsection (1) are subject
22 to seizure and forfeiture in the manner provided in chapter 47 of
23 the revised judicature act of 1961, 1961 PA 236, MCL 600.4701 to
24 600.4709.

25 Sec. 87. Pursuant to the administrative procedures act of
26 1969, 1969 PA 306, MCL 24.201 to 24.328, the department may
27 promulgate rules to implement this act.

1 Sec. 89. (1) Applications, reports, and other papers and
2 documents filed by applicants or registrants or experts or
3 appraisers with the department under this act are subject to
4 disclosure under the freedom of information act, 1976 PA 442, MCL
5 15.231 to 15.246. However, pro forma financial statements,
6 marketing plans, feasibility studies, and social security numbers
7 are exempt from disclosure. In addition, a continuing care
8 community may request, and the department may grant, subject to
9 section 13 of the freedom of information act, 1976 PA 442, MCL
10 15.243, confidentiality as to any other document received under
11 this act.

12 (2) Subject to subsection (1) the department or its examiners,
13 investigators, assistance, clerks, or deputies shall not disclose
14 information filed with or obtained by them under this act except
15 among themselves or when necessary or appropriate in a proceeding
16 or investigation under this act or to other federal or state
17 regulatory agencies. However, to aid in the enforcement of this act
18 or in the prescribing of rules and forms under this act, the
19 department may publish information concerning a violation of this
20 act or a rule promulgated or order issued under this act.

21 (3) The department shall take reasonable steps to protect the
22 confidentiality of social security numbers provided to the
23 department under this act.

24 Sec. 91. A life interest or long-term lease agreement entered
25 into under the former 1976 PA 440 is not invalidated by the repeal
26 of that act and the adoption of this act.

27 Sec. 93. A facility or person that was registered or exempt

1 from registration under the former living care disclosure act, 1976
2 PA 440, immediately before the effective date of this act shall be
3 considered to be registered or exempt from registration,
4 respectively, under this act until the registration or exemption
5 would have expired under the former living care disclosure act,
6 1976 PA 440, or 30 days after the effective date of this act,
7 whichever is later.

8 Enacting section 1. The living care disclosure act, 1976 PA
9 440, MCL 554.801 to 554.844, is repealed.

10 Enacting section 2. This act takes effect 90 days after the
11 date this act is enacted into law.