

SENATE BILL 962

O2, J3

11r3085

By: **Senator Kelley**

Introduced and read first time: March 3, 2011

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Department of Aging – Continuing Care in a Retirement**
3 **Community**

4 FOR the purpose of altering the requirements for certain continuing care retirement
5 community renewal applications; altering the information required to be
6 contained in a certain disclosure statement; altering the required membership
7 of the governing body of certain continuing care providers; requiring that a
8 certain member of a certain governing body be subject to a certain ratification;
9 requiring certain continuing care providers to make available certain
10 documents to certain persons; altering the requirements for a certain grievance
11 procedure; altering when transfers of assets by continuing care providers are
12 subject to approval by the Department of Aging; altering the circumstances
13 under which certain continuing care providers may remove certain assets or
14 records; prohibiting certain continuing care providers from becoming part of an
15 obligated group unless the provider obtains the consent of the Department in a
16 certain manner; prohibiting certain continuing care providers from consenting
17 to certain changes to an obligated group unless the provider obtains the consent
18 of the Department in a certain manner; prohibiting certain continuing care
19 providers from directly or indirectly assuming, guaranteeing, or being liable for
20 an obligation of a new continuing care community unless certain conditions are
21 met; requiring certain continuing care providers that are part of a certain
22 obligated group to submit certain information to the Department; specifying
23 certain requirements for certain obligated groups; authorizing the Department
24 to waive certain requirements under certain circumstances; providing that
25 certain provisions of this Act do not apply to certain transactions; authorizing
26 the Department to obtain the financial statements of certain affiliates of a
27 continuing care provider under certain circumstances; requiring continuing care
28 providers to provide certain individuals certain copies of certain financial
29 statements; altering the requirements for certain continuing care agreements;
30 authorizing the Department to examine continuing care agreements being

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 offered to prospective subscribers, for good cause; defining certain terms;
2 making stylistic changes; and generally relating to continuing care agreements.

3 BY repealing and reenacting, with amendments,
4 Article – Human Services
5 Section 10–401, 10–413 10–425, 10–427, 10–428, 10–436, 10–440, 10–444,
6 10–445, and 10–447
7 Annotated Code of Maryland
8 (2007 Volume and 2010 Supplement)

9 BY repealing and reenacting, without amendments,
10 Article – Human Services
11 Section 10–426 and 10–429
12 Annotated Code of Maryland
13 (2007 Volume and 2010 Supplement)

14 BY adding to
15 Article – Human Services
16 Section 10–440.1 and 10–442
17 Annotated Code of Maryland
18 (2007 Volume and 2010 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
20 MARYLAND, That the Laws of Maryland read as follows:

21 **Article – Human Services**

22 10–401.

23 (a) In this subtitle the following words have the meanings indicated.

24 (b) “Assisted living program” has the meaning stated in § 19–1801 of the
25 Health – General Article.

26 (c) “Certified financial statement” means a complete audit prepared and
27 certified by an independent certified public accountant.

28 (d) “Continuing care” means:

29 (1) continuing care in a retirement community; or

30 (2) continuing care at home.

31 (e) “Continuing care agreement” means an agreement between a provider
32 and a subscriber to provide continuing care.

33 (f) (1) “Continuing care at home” means providing medical, nursing, or
34 other health related services directly or by contractual arrangement:

1 (i) to an individual who is at least 60 years of age and not
2 related by blood or marriage to the provider;

3 (ii) for the life of the individual or for a period exceeding 1 year;
4 and

5 (iii) under a written agreement that requires a transfer of assets
6 or an entrance fee notwithstanding periodic charges.

7 (2) "Continuing care at home" includes providing assistance with the
8 physical maintenance of the individual's dwelling.

9 (g) "Continuing care in a retirement community" means providing shelter
10 and providing either medical and nursing or other health related services or making
11 the services readily accessible through the provider or an affiliate of the provider,
12 whether or not the services are specifically offered in the written agreement for
13 shelter:

14 (1) to an individual who is at least 60 years of age and not related by
15 blood or marriage to the provider;

16 (2) for the life of the individual or for a period exceeding 1 year; and

17 (3) under one or more written agreements that require a transfer of
18 assets or an entrance fee notwithstanding periodic charges.

19 (h) (1) "Contractual entrance fee refund" means a repayment of all or part
20 of a subscriber's entrance fee to the subscriber or the subscriber's estate or designated
21 beneficiary, as required by the terms of the continuing care agreement.

22 (2) "Contractual entrance fee refund" does not include a payment
23 required under § 10-446 or § 10-448 of this subtitle.

24 (i) "Conversion" means converting a physical plant that provides housing or
25 shelter into a facility if:

26 (1) the residential accommodations exist before a statement of intent
27 is filed under § 10-409(b) of this subtitle; and

28 (2) at least 60% of the available residential accommodations of the
29 facility owner were occupied during the two fiscal years prior to the filing of a
30 statement of intent.

31 (j) "Deposit" means a portion of an entrance fee.

32 (k) (1) "Entrance fee" means a sum of money or other consideration paid
33 initially or in deferred payments, that:

1 (i) assures a subscriber continuing care for the life of the
2 subscriber or for a period exceeding 1 year; and

3 (ii) is at least three times the weighted average of the monthly
4 cost of the periodic fees charged for independent living and assisted living units.

5 (2) "Entrance fee" includes a fee of similar form and application,
6 regardless of title.

7 (3) "Entrance fee" does not include a surcharge.

8 (1) (1) "Expansion" means any single new capital addition to an existing
9 facility that meets either of the following criteria:

10 (i) if independent or assisted living units are to be constructed,
11 the number of units to be constructed is less than or equal to 25% of the number of
12 existing independent and assisted living units; or

13 (ii) if independent or assisted living units are not to be
14 constructed, the total projected cost exceeds the sum of:

15 1. 10% of the total operating expenses, less depreciation,
16 amortization, and interest expense of the facility as shown on the certified financial
17 statement for the most recent fiscal year for which a certified financial statement is
18 available; and

19 2. the amount of the existing reserves properly allocable
20 to, and allocated for, the expansion.

21 (2) "Expansion" does not include renovation and normal repair and
22 maintenance.

23 **(M) "EXTENSIVE AGREEMENT" MEANS A CONTINUING CARE**
24 **AGREEMENT UNDER WHICH THE PROVIDER PROMISES TO PROVIDE**
25 **RESIDENTIAL FACILITIES, MEALS, AMENITIES, AND LONG-TERM CARE SERVICES**
26 **IN A LICENSED ASSISTED LIVING PROGRAM OR COMPREHENSIVE CARE**
27 **PROGRAM:**

28 **(1) FOR AS LONG AS THE SUBSCRIBER NEEDS THE SERVICES; AND**

29 **(2) FOR NO SUBSTANTIAL INCREASE IN THE SUBSCRIBER'S**
30 **ENTRANCE FEE OR PERIODIC FEES, EXCEPT FOR AN ADJUSTMENT TO ACCOUNT**
31 **FOR INCREASED OPERATING COSTS CAUSED BY INFLATION OR OTHER FACTORS**
32 **UNRELATED TO THE INDIVIDUAL SUBSCRIBER.**

1 **[(m)] (N)** “Facility” means a physical plant in which continuing care in a
2 retirement community is provided in accordance with this subtitle.

3 **(O) “FEE-FOR-SERVICE AGREEMENT” MEANS A CONTINUING CARE**
4 **AGREEMENT THAT IS EITHER:**

5 **(1) AN AGREEMENT:**

6 **(I) UNDER WHICH THE PROVIDER PROMISES TO PROVIDE**
7 **RESIDENTIAL FACILITIES, MEALS, AMENITIES, AND LONG-TERM CARE SERVICES**
8 **IN A LICENSED ASSISTED LIVING PROGRAM OR COMPREHENSIVE CARE**
9 **PROGRAM FOR AS LONG AS THE SUBSCRIBER NEEDS THE SERVICES; AND**

10 **(II) THAT PROVIDES THAT LONG-TERM CARE SERVICES IN A**
11 **LICENSED ASSISTED LIVING PROGRAM OR COMPREHENSIVE CARE PROGRAM**
12 **WILL BE PROVIDED AT A PER DIEM, A FEE-FOR-SERVICE, OR ANOTHER**
13 **AGREED-ON RATE THAT GENERALLY REFLECTS THE MARKET RATES FOR**
14 **ASSISTED LIVING AND COMPREHENSIVE CARE SERVICES; OR**

15 **(2) A CONTINUING CARE AGREEMENT THAT IS NOT AN EXTENSIVE**
16 **AGREEMENT OR A MODIFIED AGREEMENT.**

17 **[(n)] (P)** “Financial difficulty” means current or impending financial
18 conditions that impair or may impair the ability of a provider to meet existing or
19 future obligations.

20 **[(o)] (Q)** “Governing body” means a board of directors, board of trustees, or
21 similar group that ultimately directs the affairs of a provider, but whose members are
22 not required to have an equity interest in the provider.

23 **[(p)] (R)** (1) “Health related services” means services that are needed by
24 a subscriber to maintain the subscriber’s health.

25 (2) “Health related services” includes:

26 (i) priority admission to a nursing home or assisted living
27 program; or

28 (ii) except for the provision of meals, assistance with the
29 activities of daily living.

30 **(S) “MODIFIED AGREEMENT” MEANS A CONTINUING CARE AGREEMENT:**

31 **(1) UNDER WHICH THE PROVIDER PROMISES TO PROVIDE**
32 **RESIDENTIAL FACILITIES, MEALS, AMENITIES, AND A LIMITED AMOUNT OF**

1 LONG-TERM CARE SERVICES IN A LICENSED ASSISTED LIVING PROGRAM OR
2 COMPREHENSIVE CARE PROGRAM:

3 (I) FOR AS LONG AS THE SUBSCRIBER NEEDS THE
4 SERVICES; AND

5 (II) FOR NO SUBSTANTIAL INCREASE IN THE SUBSCRIBER'S
6 ENTRANCE FEE OR PERIODIC FEES, EXCEPT FOR AN ADJUSTMENT TO ACCOUNT
7 FOR INCREASED OPERATING COSTS CAUSED BY INFLATION OR OTHER FACTORS
8 UNRELATED TO THE INDIVIDUAL SUBSCRIBER; AND

9 (2) THAT PROVIDES THAT LONG-TERM CARE SERVICES IN A
10 LICENSED ASSISTED LIVING PROGRAM OR COMPREHENSIVE CARE PROGRAM
11 BEYOND THE LIMITED AMOUNT OF SERVICES TO BE PROVIDED UNDER
12 PARAGRAPH (1) OF THIS SUBSECTION WILL BE PROVIDED AT A PER DIEM, A
13 FEE-FOR-SERVICE, OR ANOTHER AGREED-ON RATE.

14 [(q)] (T) "Person" includes a governmental entity or unit.

15 [(r)] (U) "Processing fee" means a fee imposed by a provider for determining
16 the financial, mental, and physical eligibility of an applicant for entrance into a
17 facility.

18 [(s)] (V) "Provider" means a person who:

19 (1) undertakes to provide continuing care; and

20 (2) is:

21 (i) the owner or operator of a facility; or

22 (ii) an applicant for or the holder of a preliminary, initial, or
23 renewal certificate of registration.

24 [(t)] (W) "Records" means information maintained by a provider for the
25 proper operation of a facility under this subtitle.

26 [(u)] (X) (1) "Renovation" means any single capital improvement to, or
27 replacement of, all or part of an existing facility that will not increase the number of
28 independent or assisted living units and for which the total projected cost exceeds the
29 sum of:

30 (i) 20% of the total operating expenses, less depreciation,
31 amortization, and interest expense of the facility as shown on the certified financial
32 statement for the most recent fiscal year for which a certified financial statement is
33 available; and

1 (ii) the amount of existing reserves properly allocable to, and
2 allocated for, the renovation.

3 (2) “Renovation” does not include normal repair or maintenance.

4 [(v)] (Y) “Subscriber” means an individual for whom a continuing care
5 agreement is purchased.

6 [(w)] (Z) (1) “Surcharge” means a separate and additional charge that:

7 (i) is imposed simultaneously with the entrance fee; and

8 (ii) may be required of some, but not all, subscribers because of
9 a condition or circumstance that applies only to those subscribers.

10 (2) “Surcharge” does not include a second person entrance fee.

11 10–413.

12 (a) (1) Each year, within 120 days after the end of a provider’s fiscal year,
13 the provider shall file an application for a renewal certificate of registration in a form
14 satisfactory to the Department.

15 (2) A renewal application shall contain:

16 (i) any additions or changes to the information required by §§
17 10–408 through 10–410 of this subtitle;

18 (ii) an audited financial statement for the preceding fiscal year
19 prepared in accordance with an audit guide that the Department adopts;

20 (iii) an operating budget for the current fiscal year and a
21 projected operating budget for the next fiscal year;

22 (iv) a cash flow projection for the current fiscal year and the next
23 two fiscal years;

24 (v) a projection of the life expectancy and the number of
25 residents who will require nursing home care;

26 (vi) [an actuarial study reviewed by a qualified actuary and
27 submitted every 3 years,] unless the provider is exempted from the requirement for an
28 actuarial study by regulations adopted by the Department exempting categories of
29 providers that the Department determines have substantially limited [long-term
30 care] liability exposure, **AN ACTUARIAL STUDY REVIEWED BY A QUALIFIED
31 ACTUARY AND SUBMITTED AT LEAST:**

1 **1. EVERY 3 YEARS FOR A PROVIDER WITH**
2 **EXTENSIVE OR MODIFIED AGREEMENTS; AND**

3 **2. EVERY 5 YEARS FOR A PROVIDER WITH**
4 **FEE-FOR-SERVICE AGREEMENTS ONLY;**

5 (vii) the form and substance of any proposed advertisement,
6 advertising campaign, or other promotional material not previously submitted to the
7 Department; and

8 (viii) any further information that the Department requires.

9 (b) (1) The Department may charge a late fee if the application and
10 accompanying information are not received by the Department within 120 days after
11 the end of the provider's fiscal year.

12 (2) Failure to file the required information within 90 days after the
13 due date is a violation of this subtitle.

14 (c) The Department shall issue a renewal certificate of registration if the
15 Department determines that:

16 (1) the required documents have been filed;

17 (2) any revised continuing care agreements meet the requirements of
18 this subtitle;

19 (3) if the provider has been found to be in financial difficulty, the
20 provider has complied with Part VII of this subtitle;

21 (4) when appropriate, the facility has been licensed or certified by the
22 Department of Health and Mental Hygiene or the Department; and

23 (5) the form and substance of all advertisements, advertising
24 campaigns, and other promotional materials submitted to the Department are not
25 deceptive, misleading, or likely to mislead.

26 10-425.

27 (a) A **CONTINUING CARE** disclosure statement shall include:

28 (1) the name, address, and description of the facility and the identity
29 of the owner or owners of the facility and the land on which it is located;

30 (2) the name and address of the provider and of any parent or
31 subsidiary;

1 **(3) A CORPORATE STRUCTURE CHART SHOWING THE**
2 **RELATIONSHIP BETWEEN THE PROVIDER AND ANY PARENT OR SUBSIDIARY;**

3 **[(3)] (4)** the organizational structure and management of the
4 provider, including:

5 (i) for a corporation or limited liability company, its name, the
6 state in which it is incorporated or formed, and the name of the chief executive officer;

7 (ii) for a partnership, the names of the general partners, the
8 state governing its formation, and the name of the primary individual responsible for
9 managing it;

10 (iii) for an unincorporated association, the names of the
11 members, the state governing its activities, and the name of the primary individual
12 responsible for managing it;

13 (iv) for a partnership that has a corporation or limited liability
14 company as one or more of its general partners, the name of each corporation or
15 limited liability company, the state in which it is incorporated or formed, and the
16 name of the chief executive officer;

17 (v) for a trust, the name of the trustee, the names of the owners
18 of beneficial interests in the trust, the state governing it, and the name of the primary
19 individual responsible for overseeing its activities; **[and]**

20 (vi) a statement whether the provider is qualified, or intends to
21 qualify, as a tax-exempt organization under the Internal Revenue Code; **AND**

22 **(VII) AN INTERNAL ORGANIZATIONAL CHART OF THE**
23 **PROVIDER;**

24 **[(4)] (5)** the name and occupation of each officer, director, trustee,
25 managing or general partner, and each person with a 10% or greater equity or
26 beneficial interest in the provider, and a description of the person's financial interest
27 in or occupation with the provider;

28 **[(5)] (6)** the name and address of any entity in which a person
29 identified in item **[(4)] (5)** of this subsection has a 10% or greater financial interest
30 and that is anticipated to provide goods, premises, or services with a value of \$10,000
31 or more to the facility or provider in a fiscal year and a description of the goods,
32 premises, or services and their anticipated cost to the facility or provider, which need
33 not include salary, wage, or benefit information of employees of the provider;

34 **[(6)] (7)** a description of any matter in which an individual identified
35 in item **[(4)] (5)** of this subsection:

1 (i) has been convicted of a felony or pleaded nolo contendere to
2 a felony charge, if the felony involved fraud, embezzlement, fraudulent conversion, or
3 misappropriation of property;

4 (ii) has been held liable or enjoined in a civil action by final
5 judgment, if the civil action involved fraud, embezzlement, fraudulent conversion, or
6 misappropriation as a fiduciary;

7 (iii) has been subject to an effective injunctive or restrictive
8 order of a court of record in an action that arose out of or related to business activity or
9 health care, including an action that affected a license to operate a facility or service
10 for senior, impaired, or dependent persons; or

11 (iv) in the past 10 years, had a state or federal license or permit
12 suspended or revoked because a governmental unit brought an action that arose out of
13 or related to business activity or health care, including an action that affected a
14 license to operate a facility or service for senior, impaired, or dependent persons;

15 **[(7)] (8)** a description of the provider's form of governance and the
16 composition of its governing body, and a statement that the provider will satisfy the
17 requirements of §§ 10–426 and 10–427 of this subtitle;

18 **[(8)] (9)** a statement of any affiliation of the provider with a
19 religious, charitable, or other nonprofit organization, and the extent of the
20 organization's responsibility for the financial and contractual obligations of the
21 provider;

22 **(10) A DESCRIPTION OF THE PROCEDURES AND PROCESSES THAT**
23 **THE PROVIDER USES TO SATISFY THE REQUIREMENTS OF § 10–427 OF THIS**
24 **SUBTITLE;**

25 **[(9)] (11)** if the facility will be managed on a day-to-day basis by a
26 person other than an individual who is directly employed by the provider, the name of
27 the proposed manager or management company and a description of the business
28 experience of the manager or company in operating or managing similar facilities;

29 **[(10)] (12)** a copy of the most recent certified financial statement
30 obtainable under generally accepted accounting principles;

31 **[(11)] (13)** a description of the long-term financing for the facility;

32 **[(12)] (14)** a cash flow forecast for the current and the next two fiscal
33 years;

1 **(15) A STATEMENT OF ALL NET TRANSFERS BETWEEN THE**
2 **PROVIDER AND THE PROVIDER'S AFFILIATES DURING EACH OF THE PREVIOUS**
3 **10 YEARS;**

4 **[(13)] (16)** a description of any activity related to a renovation,
5 expansion, or new development during the preceding fiscal year or proposed for the
6 current fiscal year;

7 **[(14)] (17)** a description of:

8 (i) the steps that have been or will be taken to comply with the
9 operating reserve requirements under § 10-420(b) of this subtitle; and

10 (ii) the provider's investment policy related to the required
11 reserves, including how often and by whom the reserve fund investment is reviewed;

12 **[(15)] (18)** a description of the financial arrangements that the provider
13 has made, if any, to address the renewal and replacement of the buildings and
14 improvements at the facility, such as the establishment of a renewal and replacement
15 fund;

16 **(19) A STATEMENT OF THE NUMBER OF CONTRACTUAL ENTRANCE**
17 **FEE REFUNDS THAT THE PROVIDER DID NOT PAY WHEN DUE IN FULL DURING**
18 **THE PREVIOUS 3 YEARS;**

19 **(20) A STATEMENT SPECIFYING, AS OF THE END OF THE**
20 **PROVIDER'S MOST RECENT FISCAL YEAR, THE NUMBER OF CONTINUING CARE**
21 **UNITS THAT BOTH:**

22 **(I) HAVE BEEN VACANT FOR AT LEAST 1 YEAR; AND**

23 **(II) INVOLVE A CONTINUING CARE AGREEMENT THAT**
24 **REQUIRES, OR WILL REQUIRE AFTER REOCCUPANCY OF THE UNIT, A**
25 **CONTRACTUAL ENTRANCE FEE REFUND TO BE PAID BY THE PROVIDER;**

26 **(21) A STATEMENT EXPLAINING FOR EACH UNIT SPECIFIED UNDER**
27 **ITEM (20) OF THIS SUBSECTION WHY THE CONTRACTUAL ENTRANCE FEE**
28 **REFUND IS NOT YET DUE OR HAS NOT BEEN PAID;**

29 **[(16)] (22)** if the facility has not reached 85% occupancy of its
30 independent living units, a summary of the feasibility study;

31 **[(17)] (23)** if applicable, a description of the conditions under which the
32 provider may be issued an initial certificate of registration and may use escrowed
33 deposits;

1 **[(18)] (24)** a description of all basic fees, including entrance fees, fees
2 for health related services, and periodic fees that the provider collects from
3 subscribers, and the amount and frequency of any fee changes during the previous 5
4 years or, if the facility has been in operation less than 5 years, for each year of
5 operation;

6 **[(19)] (25)** a summary of the basic services provided or proposed to be
7 provided at the facility under the continuing care agreement, including the extent to
8 which health related services are provided, that clearly states which services are
9 indicated in the agreement as included in the basic fee and which services are or will
10 be made available at or by the facility at an extra charge;

11 **[(20)] (26)** if applicable, a statement that it is the provider's policy to
12 impose a surcharge on some, but not all, subscribers because of a condition or
13 circumstance that applies only to those subscribers and that the surcharge is not part
14 of the entrance fee refund required under § 10-448 of this subtitle;

15 **[(21)] (27)** a description of the role of any resident association **AND ANY**
16 **CHAPTER OF THE MARYLAND CONTINUING CARE RESIDENTS ASSOCIATION AT**
17 **THE COMMUNITY;**

18 **[(22)] (28)** a description of the internal grievance procedure;

19 **(29)** A STATEMENT AS TO WHETHER THE ENTRANCE FEE AND
20 **OTHER FEES CHARGED A SUBSCRIBER IN A CONTINUING CARE COMMUNITY:**

21 **(I)** MAY BE USED ONLY FOR PURPOSES DIRECTLY RELATED
22 TO THE CONSTRUCTION, OPERATION, MAINTENANCE, OR IMPROVEMENT OF THE
23 COMMUNITY IN WHICH THE SUBSCRIBER LIVES; OR

24 **(II)** MAY BE USED BY THE PROVIDER TO SUPPORT OTHER
25 COMMUNITIES OR EFFORTS BEYOND THE COMMUNITY IN WHICH THE
26 SUBSCRIBER LIVES;

27 **(30)** A STATEMENT THAT THE PROVIDER INTENDS TO CHANGE THE
28 CONTINUING CARE COMMUNITY INTO A COMMUNITY IN WHICH FUTURE REVENUE
29 FROM ENTRANCE FEES OR OTHER FEES CHARGED A SUBSCRIBER MAY BE USED
30 BY THE PROVIDER TO SUPPORT EFFORTS BEYOND THE COMMUNITY IN WHICH
31 THE SUBSCRIBER LIVES, IF:

32 **(I)** A COMMUNITY IS A STAND-ALONE COMMUNITY IN
33 WHICH REVENUE FROM THE ENTRANCE FEE AND OTHER FEES CHARGED A
34 SUBSCRIBER MAY BE USED ONLY FOR THE PURPOSES DIRECTLY RELATED TO THE

1 CONSTRUCTION, OPERATION, MAINTENANCE, OR IMPROVEMENT OF THE
2 COMMUNITY IN WHICH THE SUBSCRIBER LIVES; AND

3 (ii) THE PROVIDER DECIDES TO CHANGE THE COMMUNITY
4 INTO A COMMUNITY IN WHICH FUTURE REVENUE FROM ENTRANCE FEES OR
5 OTHER FEES CHARGED A SUBSCRIBER MAY BE USED BY THE PROVIDER TO
6 SUPPORT EFFORTS BEYOND THE COMMUNITY IN WHICH THE SUBSCRIBER
7 LIVES;

8 [(23)] (31) a statement that the provider will amend its disclosure
9 statement whenever the provider or the Department considers an amendment
10 necessary to prevent the disclosure statement from containing:

11 (i) a material misstatement of a fact required by this section to
12 be stated in the disclosure statement; or

13 (ii) an omission of a material fact required by this section to be
14 stated in the disclosure statement; and

15 [(24)] (32) any other material information about the facility or the
16 provider that the Department requires or that the provider wishes to include.

17 (b) The disclosure statement shall contain a cover page that states, in a
18 prominent location and type face:

19 (1) the date of the disclosure statement; and

20 (2) that the issuance of a certificate of registration does not:

21 (i) constitute approval, recommendation, or endorsement of the
22 facility by the Department; or

23 (ii) evidence or attest to the accuracy or completeness of the
24 information in the disclosure statement.

25 (c) (1) This subsection applies to a provider that:

26 (i) has a continuing care agreement that includes a provision to
27 provide assisted living program services; and

28 (ii) does not execute a separate assisted living agreement.

29 (2) In addition to any other requirement of this section, the disclosure
30 statement shall contain the following information about the assisted living program:

31 (i) the name and address and a description of each facility that
32 the provider operates;

1 (ii) a statement regarding the relationship of the provider to
2 other providers or services if the relationship affects the care of the resident;

3 (iii) a description of any special programming, staffing, and
4 training provided by the program for individuals with particular needs or conditions
5 such as cognitive impairment;

6 (iv) notice of:

7 1. the availability of locks for storage;

8 2. the availability of locks for the subscriber's room;

9 3. the security procedures that the provider will
10 implement to protect the subscriber and the subscriber's property; and

11 4. the provider's right, if any, to enter a subscriber's
12 room;

13 (v) a statement of the obligations of the provider, the
14 subscriber, or the subscriber's agent for:

15 1. arranging or overseeing medical care;

16 2. monitoring the subscriber's health status;

17 3. purchasing or renting essential or desired equipment
18 and supplies; and

19 4. ascertaining the cost of and purchasing durable
20 medical equipment;

21 (vi) an explanation of the assisted living program's complaint or
22 grievance procedure; and

23 (vii) notice of any material changes in the assisted living
24 program.

25 (3) The provider shall:

26 (i) give to each subscriber annually and without cost revisions
27 to the disclosure statement provisions under paragraph (2) of this subsection;

28 (ii) ensure that each subscriber or the subscriber's agent initials
29 the revised disclosure statement to acknowledge the revisions; and

1 (iii) make copies of the initialed disclosure statements available
2 for inspection by the Department of Health and Mental Hygiene under Title 19,
3 Subtitle 18 of the Health – General Article.

4 10–426.

5 (a) At least once a year, each provider shall hold a meeting open to all of the
6 provider’s subscribers.

7 (b) At the meeting, an authorized officer of the provider shall:

8 (1) summarize the provider’s operations, significant changes from the
9 previous year, and goals and objectives for the next year; and

10 (2) answer subscribers’ questions.

11 10–427.

12 (a) (1) If a provider has a governing body, at least [one] **TWO** of the
13 provider’s subscribers shall be [a] full and regular [member] **MEMBERS** of the
14 governing body **WITH STAGGERED TERMS**.

15 (2) If the provider owns or operates more than [three facilities] **ONE**
16 **FACILITY** in the State, the governing body shall include at least one [of the provider’s
17 subscribers for every three facilities] **SUBSCRIBER FROM EACH FACILITY** in the
18 State.

19 (3) Subject to paragraph (4) of this subsection, a member of the
20 governing body who is selected to meet the requirements of this subsection shall be a
21 subscriber at a facility in the State and be selected **FROM AMONG THOSE**
22 **SUBSCRIBERS WHO SUBMITTED THEIR RESUMES IN RESPONSE TO THE**
23 **GOVERNING BODY’S SOLICITATION TO ALL SUBSCRIBERS** according to the same
24 general written standards and criteria used to select other members of the governing
25 body.

26 (4) **(I)** The [governing body shall confer with the resident
27 association at each of the provider’s facilities before the] subscriber **MAY NOT** officially
28 [joins] **JOIN** the governing body **UNTIL THE SUBSCRIBER’S SELECTION IS**
29 **RATIFIED BY A MAJORITY OF THE SUBSCRIBERS FROM THE FACILITY WHO VOTE**.

30 **(II) THE RESIDENT ASSOCIATION SHALL CONDUCT THE**
31 **RATIFICATION VOTE**.

32 **(III) IF THE RESIDENT ASSOCIATION DOES NOT CONDUCT**
33 **THE RATIFICATION VOTE WITHIN 45 DAYS AFTER THE PROVIDER NOTIFIES THE**
34 **SUBSCRIBER ASSOCIATION IN WRITING OF THE NAME OF THE SUBSCRIBER**

1 **SELECTED BY THE PROVIDER, THE VOTE SHALL BE CONDUCTED BY THE**
2 **PROVIDER.**

3 (5) The Secretary may waive the requirements of this subsection for a
4 provider in the process of decertifying as a provider, if the Secretary determines that
5 there are no subscribers willing and able to serve on the governing body.

6 (b) (1) If a provider does not have a governing body, the provider shall
7 appoint a select committee of its officers or partners to meet at least twice a year with
8 the resident association at each of its facilities to address concerns of the subscribers
9 and to ensure that the opinions of subscribers are relayed to all officers or partners of
10 the provider.

11 (2) If a facility does not have a resident association, the committee
12 shall meet with a reasonable number of representatives, not required to exceed fifteen,
13 that the subscribers elect.

14 **(C) (1) THE NONCONFIDENTIAL PORTIONS OF THE MINUTES OF A**
15 **MEETING OF A PROVIDER'S GOVERNING BODY, OR A SUMMARY OF THE MINUTES,**
16 **SHALL BE MADE AVAILABLE TO THE PROVIDER'S SUBSCRIBERS WITHIN 1**
17 **MONTH OF THE APPROVAL OF THE MINUTES.**

18 **(2) FOR PURPOSES OF THIS SUBSECTION, THE TRANSFER OF**
19 **ASSETS TO A RELATED ENTITY IS NOT CONFIDENTIAL.**

20 **(D) A PROVIDER THAT IS DIRECTLY CONTROLLED BY ANOTHER LEGAL**
21 **ENTITY THAT IS NOT AN INDIVIDUAL, INCLUDING A CORPORATION,**
22 **PARTNERSHIP, OR LIMITED LIABILITY COMPANY, SHALL PROVIDE TO ANY**
23 **SUBSCRIBER OR ANY PROSPECTIVE SUBSCRIBER, ON REQUEST, A COPY OF THE**
24 **LATEST CERTIFIED FINANCIAL STATEMENT, IF ANY, OF THE ENTITY THAT**
25 **DIRECTLY CONTROLS THE PROVIDER.**

26 10-428.

27 (a) A provider shall establish an internal grievance procedure to address a
28 subscriber's grievance.

29 (b) The internal grievance procedure shall at least:

30 (1) allow a subscriber or group of subscribers collectively to submit a
31 written grievance to the provider;

32 **(2) ALLOW A SUBSCRIBER OR GROUP OF SUBSCRIBERS TO OBTAIN**
33 **ASSISTANCE AND COUNSEL FROM ANY PERSON OTHER THAN AN ATTORNEY WHO**
34 **IS NOT A RELATIVE OF A SUBSCRIBER SUBMITTING THE GRIEVANCE DURING**
35 **ANY STAGE OF THE INTERNAL GRIEVANCE PROCESS;**

1 [(2)] (3) require the provider to send a written acknowledgment to
2 the subscriber **OR GROUP OF SUBSCRIBERS** within 5 days after receipt of the written
3 grievance;

4 [(3)] (4) require the provider to assign personnel to investigate the
5 grievance;

6 [(4)] (5) give a subscriber **OR GROUP OF SUBSCRIBERS** who [files]
7 **FILE** a written grievance the right to meet with management of the provider within 30
8 days after receipt of the written grievance to present the [subscriber's] grievance; and

9 [(5)] (6) require the provider to respond within 45 days after receipt
10 of the written grievance regarding the investigation and resolution of the grievance.

11 (c) (1) Within 30 days after the conclusion of an internal grievance
12 procedure established under this section, a subscriber, **GROUP OF SUBSCRIBERS**, or
13 provider may seek mediation through one of the Community Mediation Centers in the
14 State or another mediation provider.

15 (2) If a provider [or], subscriber, **OR GROUP OF SUBSCRIBERS** seeks
16 mediation under paragraph (1) of this subsection:

17 (i) the mediation shall be nonbinding; and

18 (ii) **IF ALL PARTIES AGREE**, the provider and subscriber **OR**
19 **GROUP OF SUBSCRIBERS** may [not] be represented by counsel.

20 10-429.

21 A provider shall make readily available to its subscribers for review at the
22 facility copies of all materials that the provider submits to the Department that are
23 required to be disclosed under the Public Information Act.

24 10-436.

25 (a) This section does not apply to:

26 (1) a transaction undertaken under a contractual obligation in effect
27 on October 1, 1996;

28 (2) a transaction made in the ordinary course of business of operating
29 a facility;

30 (3) a refund under a contract entered into in the ordinary course of
31 business;

1 (4) a transfer of cash, securities, or other investment property in
2 connection with an ordinary investment transaction;

3 (5) a grant of a mortgage, deed of trust, or security interest to an
4 unrelated third party;

5 (6) a transaction involving an easement, right-of-way, road widening,
6 or similar conveyance for the benefit of a public body or a utility;

7 (7) a transaction made for an expansion or renovation; or

8 (8) any other sale, transfer, or other disposition exempted by the
9 Department by regulation.

10 (b) (1) A provider that holds a preliminary, initial, or renewal certificate
11 of registration may not sell, transfer, or otherwise dispose of more than [10%] 5% of
12 its total assets in any 12-month period unless the Department approves the sale,
13 transfer, or disposition in accordance with §§ 10-437 and 10-438 of this subtitle.

14 (2) A provider may not sell, transfer, or otherwise dispose of assets
15 equal to or less than 10% of its total assets if the sale, transfer, or disposition is likely,
16 according to standards set by regulation, to have an unreasonably adverse effect on:

17 (i) the financial stability of the provider; or

18 (ii) the capacity of the provider to perform its obligations under
19 its continuing care agreements.

20 (3) Determinations of total assets shall be based on the provider's
21 latest certified financial statements available at the time the sale, transfer, or other
22 disposition is made.

23 10-440.

24 (a) A provider may not remove a record or asset of the provider related to the
25 operation of a facility or the provision of services under a continuing care agreement
26 from the State unless the Department consents in writing **AS PROVIDED IN**
27 **SUBSECTION (B) OF THIS SECTION.**

28 (b) Consent shall be based on the provider's submission of satisfactory
29 evidence [that] **ESTABLISHING EITHER THAT IT HAS MET THE REQUIREMENTS OF**
30 **§ 10-440.1 OF THIS SUBTITLE OR THAT** the removal:

31 (1) will facilitate and make the operations of the provider more
32 economical; and

1 (2) will not diminish the service or protection to be given to the
2 provider's subscribers in the State.

3 **(C) FOR THE PURPOSES OF THIS SECTION, THE WORD "REMOVE"**
4 **INCLUDES THE ACT OF AGREEING TO DIRECTLY OR INDIRECTLY ASSUME,**
5 **GUARANTEE, OR BE LIABLE FOR INDEBTEDNESS OR OTHER OBLIGATIONS OF AN**
6 **OUT-OF-STATE RETIREMENT COMMUNITY OR OTHER OUT-OF-STATE**
7 **OPERATION.**

8 **10-440.1.**

9 **(A) IN THIS SECTION, "OBLIGATED GROUP" MEANS A GROUP IN WHICH,**
10 **FOR PURPOSES OF FACILITATING FINANCING:**

11 **(1) A PROVIDER AGREES TO DIRECTLY OR INDIRECTLY ASSUME,**
12 **GUARANTEE, OR BE LIABLE FOR AN OBLIGATION OF ONE OR MORE MEMBERS OF**
13 **THE GROUP; AND**

14 **(2) ONE OR MORE MEMBERS AGREE TO DIRECTLY OR INDIRECTLY**
15 **ASSUME, GUARANTEE, OR BECOME LIABLE FOR OBLIGATIONS OF THE**
16 **PROVIDER.**

17 **(B) A PROVIDER MAY NOT BECOME PART OF AN OBLIGATED GROUP**
18 **UNLESS THE PROVIDER CONSENTS BY SUBMITTING SATISFACTORY EVIDENCE,**
19 **INCLUDING APPROPRIATE CERTIFICATIONS AND CERTIFIED FINANCIAL**
20 **STATEMENTS:**

21 **(1) THAT THE OBLIGATED GROUP WILL COLLECTIVELY MEET THE**
22 **FOLLOWING REQUIREMENTS WHEN THE PROVIDER BECOMES A PART OF THE**
23 **OBLIGATED GROUP:**

24 **(I) THAT THERE WILL BE A DEBT SERVICE COVERAGE**
25 **RATIO OF AT LEAST 1:20;**

26 **(II) EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS**
27 **SECTION, THAT THERE WILL BE AT LEAST 180 DAYS OF CASH ON HAND; AND**

28 **(III) THAT EACH ENTITY THAT IS A PART OF THE OBLIGATED**
29 **GROUP WILL BE IN COMPLIANCE WITH ALL MATERIAL CONTRACTS TO WHICH**
30 **THE ENTITY IS A PARTY; AND**

31 **(2) THAT THE PROVIDER IS NOT A PARTY TO ANY CONTINUING**
32 **CARE AGREEMENTS WITH SUBSCRIBERS THAT LIMIT THE USE OF THE**
33 **SUBSCRIBERS' FEES TO THE COMMUNITY IN WHICH THE SUBSCRIBER RESIDES.**

1 **(C) A PROVIDER MAY NOT CONSENT TO OR OTHERWISE PERMIT THE**
2 **ADDITION OF ANY OTHER ENTITY TO AN OBLIGATED GROUP OF WHICH THE**
3 **PROVIDER IS A PART OR CONSENT TO OTHERWISE PERMIT THE RELEASE OF ANY**
4 **ENTITY THAT HAS ASSUMED, GUARANTEED, OR BECOME LIABLE FOR**
5 **INDEBTEDNESS OR OTHER OBLIGATIONS OF ENTITIES THAT ARE PART OF THE**
6 **OBLIGATED GROUP, UNLESS THE PROVIDER OBTAINS THE DEPARTMENT'S**
7 **WRITTEN CONSENT BY SUBMITTING SATISFACTORY EVIDENCE, INCLUDING**
8 **APPROPRIATE CERTIFICATIONS AND CERTIFIED FINANCIAL STATEMENTS,**
9 **THAT:**

10 **(1) IF THE ADDITION OR RELEASE UNDER THIS SUBSECTION HAD**
11 **OCCURRED AS OF THE FIRST DAY OF THE MOST RECENTLY COMPLETED FISCAL**
12 **YEAR, THE OBLIGATED GROUP WOULD HAVE ACHIEVED A DEBT SERVICE**
13 **COVERAGE RATIO OF AT LEAST 1:20; AND**

14 **(2) IMMEDIATELY AFTER GIVING EFFECT TO THE ADDITION OR**
15 **RELEASE UNDER THIS SUBSECTION, EACH OF THE FOLLOWING REQUIREMENTS**
16 **IS MET:**

17 **(I) EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS**
18 **SECTION, THAT THE OBLIGATED GROUP WILL COLLECTIVELY HAVE AT LEAST**
19 **180 DAYS OF CASH ON HAND;**

20 **(II) THAT EACH ENTITY THAT IS A PART OF THE OBLIGATED**
21 **GROUP WILL BE IN COMPLIANCE WITH ALL MATERIAL CONTRACTS TO WHICH**
22 **THE ENTITY IS A PARTY; AND**

23 **(III) THAT ANY BOND RATINGS OF THE OBLIGATED GROUP**
24 **ON ITS DEBT WILL NOT BE UNFAVORABLY IMPACTED BY ADDITION OR RELEASE.**

25 **(D) A PROVIDER AT AN EXISTING CONTINUING CARE COMMUNITY MAY**
26 **NOT DIRECTLY OR INDIRECTLY ASSUME, GUARANTEE, OR BE LIABLE FOR AN**
27 **OBLIGATION OF A NEW CONTINUING CARE COMMUNITY UNLESS THE NEW**
28 **COMMUNITY HAS ACHIEVED AT LEAST ONE FULL YEAR OF OCCUPANCY AT OR**
29 **ABOVE 85%.**

30 **(E) A PROVIDER THAT IS A PART OF AN OBLIGATED GROUP WITH MORE**
31 **THAN ONE MEMBER:**

32 **(1) SHALL SUBMIT TO THE DEPARTMENT ANNUALLY:**

33 **(I) THE CERTIFIED FINANCIAL STATEMENTS OF THE**
34 **OBLIGATED GROUP; AND**

1 **(II) WITH THE EXCEPTION OF OBLIGATED GROUPS IN**
2 **EXISTENCE BEFORE JULY 1, 2011, WITH THE SAME MEMBERSHIP ON OR AFTER**
3 **JULY 1, 2011, A CERTIFICATE THAT EACH MEMBER OF THE OBLIGATED GROUP**
4 **IS IN COMPLIANCE WITH EACH MATERIAL CONTRACT TO WHICH IT IS A PARTY;**

5 **(2) SHALL SUBMIT TO THE DEPARTMENT AT THE TIME WHEN ANY**
6 **OF THE FOLLOWING INFORMATION IS FILED OR OTHERWISE MADE AVAILABLE:**

7 **(I) ANY FINANCIAL AND OPERATING DATA FILED WITH THE**
8 **MUNICIPAL SECURITIES RULEMAKING BOARD;**

9 **(II) ANY OFFICIAL STATEMENT OR OTHER OFFERING**
10 **DOCUMENT USED IN CONNECTION WITH THE SALE OF ANY SECURITIES; AND**

11 **(III) ANY PROJECTION OR STUDY REQUIRED TO BE**
12 **PREPARED BY THE OBLIGATED GROUP IN CONNECTION WITH ANY FINANCING;**

13 **(3) EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS SECTION,**
14 **SHALL MAINTAIN 180 DAYS OF CASH ON HAND; AND**

15 **(4) MAY NOT ENTER INTO ANY CONTINUING CARE AGREEMENTS**
16 **THAT LIMIT THE USE OF A SUBSCRIBER'S FEES TO THE COMMUNITY IN WHICH**
17 **THE SUBSCRIBER RESIDES.**

18 **(F) (1) FOR AN OBLIGATED GROUP THAT WAS IN EXISTENCE WITH**
19 **MORE THAN ONE MEMBER BEFORE JULY 1, 2011, THAT WAS NOT**
20 **CONTRACTUALLY REQUIRED AS OF JULY 1, 2011, TO MAINTAIN COLLECTIVELY**
21 **AT LEAST 180 DAYS OF CASH ON HAND:**

22 **(I) THE DAYS OF CASH ON HAND REQUIREMENT FOR THE**
23 **OBLIGATED GROUP COLLECTIVELY MAY EQUAL THE NUMBER OF DAYS OF CASH**
24 **ON HAND THAT THE OBLIGATED GROUP WAS REQUIRED TO MAINTAIN AS OF**
25 **JULY 1, 2011, PROVIDED THE NUMBER OF DAYS IS NOT LESS THAN 120; AND**

26 **(II) THE DAYS OF CASH ON HAND REQUIREMENT FOR THE**
27 **PROVIDER MAY EQUAL THE DAYS OF CASH ON HAND REQUIREMENT**
28 **APPLICABLE TO IT AS A MEMBER OF THE OBLIGATED GROUP, PROVIDED THE**
29 **NUMBER OF DAYS IS NOT LESS THAN 120.**

30 **(2) WHEN AN OBLIGATED GROUP IS RELEASED FROM ITS**
31 **CONTRACTUAL OBLIGATION IN EXISTENCE ON JULY 1, 2011, THROUGH A**
32 **REFINANCING OF DEBT OR OTHERWISE, THE DAYS OF CASH ON HAND**
33 **REQUIREMENTS OF PARAGRAPH (1) OF THIS SUBSECTION DO NOT APPLY.**

1 **(G) IF THE DEPARTMENT DETERMINES IN WRITING THAT IT IS IN THE**
2 **BEST INTERESTS OF A PROVIDER AND ITS SUBSCRIBERS IN THE STATE TO**
3 **BECOME A PART OF AN OBLIGATED GROUP EVEN THOUGH THE REQUIREMENTS**
4 **OF SUBSECTIONS (B) THROUGH (E) OF THIS SECTION CANNOT BE MET, THE**
5 **DEPARTMENT MAY WAIVE ONE OR MORE OF THOSE REQUIREMENTS.**

6 **(H) THIS SECTION DOES NOT APPLY TO TRANSACTIONS IN WHICH THE**
7 **PROVIDER'S MAXIMUM POTENTIAL LIABILITY, EXCLUDING INTEREST,**
8 **ATTORNEY'S FEES, AND COLLECTION COSTS, IN CONNECTION WITH THE**
9 **TRANSACTION, DOES NOT EXCEED \$1,000,000, IF:**

10 **(1) THE MEMBERS OF THE OBLIGATED GROUP CONDUCT**
11 **BUSINESS ONLY IN THE STATE; AND**

12 **(2) THE PROVIDER DOES NOT AGREE TO DIRECTLY OR**
13 **INDIRECTLY ASSUME, GUARANTEE, OR BECOME LIABLE FOR AN OBLIGATION OF**
14 **AN OUT-OF-STATE RETIREMENT COMMUNITY OR OTHER OUT-OF-STATE**
15 **OPERATION.**

16 **10-442.**

17 **(A) (1) IF THE DEPARTMENT DETERMINES THAT A PROVIDER HAS**
18 **DIRECTLY OR INDIRECTLY TRANSFERRED FUNDS TO AN AFFILIATE WITHIN THE**
19 **LAST 5 YEARS OR PLANS TO TRANSFER FUNDS TO AN AFFILIATE IN THE NEXT 12**
20 **MONTHS, THE DEPARTMENT MAY REQUEST ANY FINANCIAL STATEMENT OF THE**
21 **AFFILIATE THAT WAS PREPARED IN ACCORDANCE WITH GENERALLY ACCEPTED**
22 **ACCOUNTING PRINCIPLES.**

23 **(2) THE PROVIDER SHALL SUBMIT ANY FINANCIAL STATEMENT**
24 **REQUESTED WITHIN 15 DAYS OF RECEIPT OF THE REQUEST.**

25 **(B) ON THE REQUEST OF A SUBSCRIBER OR PROSPECTIVE SUBSCRIBER**
26 **WHO HAS PAID A DEPOSIT OR AN ENTRANCE FEE, A PROVIDER SHALL PROVIDE**
27 **TO THE INDIVIDUAL WHO MADE THE REQUEST A COPY OF ANY FINANCIAL**
28 **STATEMENT SUBMITTED TO THE DEPARTMENT WITHIN THE PREVIOUS 3 YEARS,**
29 **UNDER SUBSECTION (A) OF THIS SECTION.**

30 **10-444.**

31 **(a) Except as provided in subsection [(b)(23)] (B)(24) of this section, a**
32 **requirement of this section does not apply to any continuing care agreement entered**
33 **into before the effective date of the requirement.**

1 (b) In a form acceptable to the Department, each continuing care agreement
2 shall:

3 (1) show the total consideration paid by the subscriber for continuing
4 care, including the value of all property transferred, donations, entrance fees,
5 subscriptions, monthly fees, and any other fees paid or payable by or on behalf of a
6 subscriber;

7 (2) specify all services that are to be provided by the provider to each
8 subscriber, such as food, shelter, medical care, nursing care, or other health related
9 services, including in detail all items that each subscriber will receive, and whether
10 the items will be provided for life or for a designated time period;

11 (3) designate the classes of subscribers according to types of payment
12 plans;

13 (4) subject to subsection (c) of this section, describe the procedures to
14 be followed by the provider when the provider temporarily or permanently changes the
15 subscriber's accommodations within the facility or transfers the subscriber to another
16 health facility;

17 (5) describe the policies that will be implemented if the subscriber
18 becomes unable to pay the monthly fees;

19 (6) state the policy of the provider concerning changes in
20 accommodations and the procedure to implement that policy if the number of persons
21 occupying an individual unit changes;

22 (7) provide in clear and understandable language, in boldface type,
23 and in the largest type used in the body of the agreement:

24 (i) the terms governing the refund of any portion of the
25 entrance fee if the provider discharges the subscriber or the subscriber cancels the
26 agreement; and

27 (ii) whether monthly fees, if charged, will be subject to periodic
28 increases;

29 (8) state the terms under which an agreement is canceled by the death
30 of the subscriber;

31 (9) provide that charges for care paid in advance in a lump sum may
32 not be increased or changed for the duration of the agreed-upon care;

33 (10) state that the **PROVIDER REPRESENTS THAT THE** subscriber has
34 received, at least two weeks before signing the agreement, the current version of the
35 written rules of the provider;

1 (11) describe the living quarters;

2 (12) if applicable, state the conditions under which a subscriber may
3 assign a unit for the use of another individual;

4 (13) state the provider's religious or charitable affiliations and the
5 extent, if any, to which the affiliate organization is responsible for the provider's
6 financial and contractual obligations;

7 (14) state the subscriber's and provider's respective rights and
8 obligations concerning:

9 (i) use of the facility; and

10 (ii) any real and personal property of the subscriber placed in
11 the provider's custody;

12 (15) state that subscribers have the right to organize and operate a
13 subscriber association at the facility and to meet privately to conduct business;

14 (16) state that there is an internal grievance procedure to address a
15 subscriber's grievance;

16 (17) state the fee adjustments, if any, that will be made if the
17 subscriber is voluntarily absent from the facility for an extended period of time;

18 (18) specify the circumstances, if any, under which the subscriber will
19 be required to apply for Medicaid, Medicare, public assistance, or any public benefit
20 program and whether the facility participates in Medicare or medical assistance;

21 (19) state that the subscriber received a copy of the latest certified
22 financial statement at least two weeks before signing the agreement and that the
23 subscriber has reviewed the statement;

24 (20) provide that, on request, the provider will make available to the
25 subscriber any certified financial statement submitted to the Department;

26 (21) if applicable, describe the conditions under which the provider may
27 be issued an initial certificate of registration and the conditions under which the
28 provider may use escrowed deposits, and state the amount of the subscriber's deposit;

29 (22) state that fees collected by a provider under the terms of a
30 continuing care agreement may only be used for purposes set forth in the agreement;

31 **(23) STATE WHETHER THE CONTINUING CARE COMMUNITY IS:**

1 **(I) A STAND-ALONE COMMUNITY FOR WHICH REVENUE**
2 **FROM THE ENTRANCE FEE AND OTHER FEES CHARGED A SUBSCRIBER MAY BE**
3 **USED ONLY FOR PURPOSES DIRECTLY RELATED TO THE CONSTRUCTION,**
4 **OPERATION, MAINTENANCE, OR IMPROVEMENT OF THE COMMUNITY IN WHICH**
5 **THE SUBSCRIBER LIVES; OR**

6 **(II) A COMMUNITY FOR WHICH REVENUE FROM THE**
7 **ENTRANCE FEE AND OTHER FEES CHARGED A SUBSCRIBER MAY BE USED BY**
8 **THE PROVIDER TO SUPPORT OTHER COMMUNITIES OR EFFORTS BEYOND THE**
9 **COMMUNITY IN WHICH THE SUBSCRIBER LIVES;**

10 **[(23)] (24)** allow a subscriber to designate a beneficiary to receive any
11 refundable portion of the entrance fee that is owed due to the death of the subscriber
12 on or after the date of occupancy, if the designation is:

- 13 (i) in writing;
- 14 (ii) witnessed by at least two competent witnesses;
- 15 (iii) not contingent; and
- 16 (iv) specified in percentages and accounts for 100% of the refund
17 due;

18 **[(24)] (25)** state the funeral and burial services, if any, that the
19 provider will provide; **[and]**

20 **(26) STATE THAT ANY CHANGES MADE TO THE PROVIDER'S**
21 **WRITTEN RULES SHALL BE DISTRIBUTED TO THE SUBSCRIBERS AT LEAST 5**
22 **DAYS BEFORE IMPLEMENTATION;**

23 **(27) CONTAIN A SEPARATE PAGE THAT:**

24 **(I) IDENTIFIES, BY TOPIC, THE PORTIONS OF THE**
25 **AGREEMENT THAT CONTAIN PROVISIONS CONCERNING ANY REFUND OF THE**
26 **ENTRANCE FEE, INCLUDING CHARGES THAT ARE PRECIPITATED BY THE**
27 **TERMINATION OF THE AGREEMENT; AND**

28 **(II) INCLUDES A STATEMENT, SIGNED BY THE SUBSCRIBER,**
29 **THAT THE SUBSCRIBER HAS REVIEWED THE PORTIONS OF THE AGREEMENT**
30 **IDENTIFIED; AND**

31 **[(25)] (28)** contain the following statement in boldface type and in the
32 largest type used in the agreement: "A preliminary certificate of registration or
33 certificate of registration is not an endorsement or guarantee of this facility by the

1 State of Maryland. The Maryland Department of Aging urges you to consult with an
2 attorney and a suitable financial advisor before signing any documents.”.

3 (c) A subscriber’s accommodations may be changed only to protect the health
4 or safety of the subscriber or the general and economic welfare of other residents.

5 (d) A continuing care agreement may contain, in a form acceptable to the
6 Department, any other appropriate provision to effectuate the purpose of the
7 agreement.

8 (e) (1) This subsection applies if:

9 (i) a provider’s continuing care agreement includes a provision
10 to provide assisted living program services; and

11 (ii) the provider does not execute a separate assisted living
12 agreement.

13 (2) In addition to any other requirement of this section, the continuing
14 care agreement shall include the following provisions concerning the assisted living
15 program:

16 (i) a statement of the level of care that the assisted living
17 program is licensed to offer;

18 (ii) a description of the procedures to be followed by the provider
19 for notifying the subscriber of the level of care the subscriber needs if the subscriber
20 transfers to an assisted living program;

21 (iii) a statement indicating the options available to a subscriber
22 if the subscriber’s level of care, after admission to an assisted living program, exceeds
23 the level of care for which the provider is licensed;

24 (iv) based on a sample list of assisted living program services
25 that the Department of Health and Mental Hygiene maintains, a statement of which
26 services are provided by the assisted living program and which services are not;

27 (v) a statement of the obligations of the provider and the
28 subscriber or the subscriber’s agent for handling the subscriber’s finances;

29 (vi) a statement of the obligations of the provider and the
30 subscriber or the subscriber’s agent for disposition of the subscriber’s property on the
31 subscriber’s discharge or death; and

32 (vii) the applicable rate structure and payment provisions
33 covering:

34 1. all rates to be charged to the subscriber, including:

- 1 A. service packages;
- 2 B. fee-for-service rates; and
- 3 C. any other nonservice-related charges;
- 4 2. criteria to be used for imposing additional charges to
5 provide additional services, if the subscriber's service and care needs change;
- 6 3. payment arrangements and fees, if known, for
7 third-party services not covered by the continuing care agreement, but arranged for
8 by the subscriber, the subscriber's agent, or the assisted living program;
- 9 4. identification of the persons responsible to pay all fees
10 and charges and a clear indication of whether the person's responsibility is or is not
11 limited to the extent of the subscriber's funds;
- 12 5. a provision for notice at least 45 days before any rate
13 increase, except for an increase necessitated by a change in the subscriber's medical
14 condition; and
- 15 6. fair and reasonable billing and payment policies.
- 16 10-445.
- 17 (a) (1) (i) If a provider's feasibility study has been approved under §
18 10-409 of this subtitle, the Department, within 120 days after receipt of a continuing
19 care agreement or any other related agreement submitted by a provider, shall
20 determine whether the agreement complies with the requirements of this subtitle.
- 21 (ii) At any time during the review process, the Department may
22 submit comments to or request additional information from the provider to determine
23 whether the agreement complies with the requirements of this subtitle.
- 24 (iii) If the Department submits comments or a request for
25 additional information under subparagraph (ii) of this paragraph, the 120-day review
26 period under subparagraph (i) of this paragraph is suspended.
- 27 (iv) On receipt of any requested information or modifications to
28 the agreement necessitated by the Department's comments under subparagraph (iii) of
29 this paragraph, the Department, within the number of days remaining in the 120-day
30 review period, shall:
- 31 1. complete its review to determine whether the
32 agreement meets the requirements of this subtitle; and
- 33 2. approve or disapprove the agreement.

1 (v) 1. If the Department does not approve the agreement,
2 the Department shall notify the provider in writing, including citations to the specific
3 provisions of law that the Department determined were not complied with in the
4 agreement.

5 2. A provider may appeal the disapproval of an
6 agreement under subparagraph (iv) of this paragraph under the provisions of Title 10,
7 Subtitle 2 of the State Government Article.

8 (2) If the Department does not act within 120 days, the agreement is
9 deemed approved.

10 (b) The provider shall maintain the continuing care agreement at the facility
11 and make it available for inspection by the Department of Health and Mental Hygiene
12 under Title 19, Subtitle 18, of the Health – General Article and Title 10, Subtitle 3 of
13 the Health – General Article.

14 (c) If a provider is seeking approval for a modification to an approved
15 continuing care agreement or other related agreement, the Department shall limit its
16 review to:

17 (1) the section of the agreement being modified and any sections
18 directly affected by the modification; and

19 (2) any section of the agreement that may have been affected by a
20 change in the law or a regulation that was enacted after the Department approved the
21 agreement.

22 (d) If the provider executes a separate assisted living agreement or
23 comprehensive care agreement, the provider is not required to submit the assisted
24 living agreement or comprehensive care agreement or any requests for modifications
25 to the Department for approval.

26 **(E) THE DEPARTMENT MAY EXAMINE CONTINUING CARE AGREEMENTS**
27 **BEING OFFERED TO PROSPECTIVE SUBSCRIBERS, FOR GOOD CAUSE, AT ANY**
28 **TIME.**

29 10–447.

30 [(a) (1) In this section the following words have the meanings indicated.

31 (2) “Extensive agreement” means a continuing care agreement under
32 which the provider promises to provide residential facilities, meals, amenities, and
33 long-term care services in a licensed assisted living program or comprehensive care
34 program:

1 (i) for as long as the subscriber needs the services; and

2 (ii) for no increase in the subscriber's entrance fee or periodic
3 fees, except for an adjustment to account for increased operating costs caused by
4 inflation or other factors unrelated to the individual subscriber.

5 (3) "Modified agreement" means a continuing care agreement:

6 (i) under which the provider promises to provide residential
7 facilities, meals, amenities, and a limited amount of long-term care services in a
8 licensed assisted living program or comprehensive care program:

9 1. for as long as the subscriber needs the services; and

10 2. for no increase in the subscriber's entrance fee or
11 periodic fees, except for an adjustment to account for increased operating costs caused
12 by inflation or other factors unrelated to the individual subscriber; and

13 (ii) that provides that long-term care services in a licensed
14 assisted living program or comprehensive care program beyond the limited amount of
15 services to be provided under item (i) of this paragraph will be provided at a per diem,
16 fee-for-service, or other agreed-upon rate.]

17 **[(b)] (A)** (1) A provider shall provide the assisted living services a
18 subscriber needs in accordance with paragraph (2) of this subsection if:

19 (i) the subscriber's continuing care agreement is an extensive
20 or modified agreement that promises the provider will provide assisted living services;
21 and

22 (ii) the provider does not have an assisted living bed available
23 at the facility when the subscriber needs the promised care.

24 (2) The provider shall provide assisted living services required under
25 paragraph (1) of this subsection to a subscriber:

26 (i) at the same rate the subscriber would pay if an assisted
27 living bed were available; and

28 (ii) at the provider's option:

29 1. in the subscriber's independent living unit; or

30 2. in a nearby licensed assisted living facility.

31 **[(c)] (B)** (1) A provider shall provide the comprehensive care services a
32 subscriber needs in accordance with paragraph (2) of this subsection if:

1 (i) the subscriber's continuing care agreement is an extensive
2 or modified agreement that promises the provider will provide the subscriber with
3 comprehensive care services if the subscriber needs them; and

4 (ii) the provider does not have a comprehensive care bed
5 available when the subscriber needs the promised care.

6 (2) The provider shall provide the services required under paragraph
7 (1) of this subsection:

8 (i) at the same rate the subscriber would pay if a
9 comprehensive bed were available; and

10 (ii) at the provider's option:

- 11 1. in the subscriber's independent or assisted living unit;
12 or
13 2. in a nearby licensed comprehensive care facility.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 2011.