SENATE BILL 355

Unofficial Copy 2002 Regular Session
O2 (2lr0076)

ENROLLED BILL
-- Finance/Environmental Matters --

Introduced by **Chairman, Finance Committee (Departmental - Aging)**

Read and Examined by Proofreaders:

_____
Proofreader.

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Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this _____ day of _____ at _____ o'clock, _____M.

_____
President.

CHAPTER 150

AN ACT concerning

Department of Aging - Continuing Care Retirement Communities - Regulation

FOR the purpose of requiring a continuing care provider to have an authorized officer to perform certain duties at certain meetings; requiring certain governing bodies of a continuing care provider to include certain subscribers as full and regular members of the governing body; altering the appointment to certain select committees; requiring a continuing care retirement community to make certain information available to its subscribers; modifying the requirements relating to operating reserves; requiring a continuing care facility's disclosure statement to include certain items; requiring the Department of Aging (Department) to approve a continuing care agreement within a certain time period under certain circumstances; requiring a continuing care provider to refund certain moneys paid within a certain time frame; requiring a provider to provide certain services related to assisted living and comprehensive care under certain circumstances; specifying when certain fees must be refunded; specifying the circumstances to be considered by the Financial Review Committee in the

Department ~~of Aging (Department)~~ when determining when there is a risk of financial failure of a continuing care facility; requiring certain communications within the Financial Review Committee to be confidential; requiring the Financial Review Committee, after receipt of an application, to notify the Department in writing of certain recommendations; requiring a continuing care provider to advise the Department of the dates, times, and locations of certain meetings; requiring a continuing care provider to make its approved financial plans available to its subscribers; providing for certain civil money penalties against a continuing care provider under certain circumstances after the Department issues certain notification of a violation; providing the provider an opportunity to correct certain violations under certain circumstances; providing that the Department may take certain actions if the provider does not correct certain violations within a certain time; requiring the Department to issue certain orders regarding certain civil money penalties; requiring a continuing care provider to pay certain penalties to the Department within a certain amount of time; providing for certain additional relief to certain subscribers injured by certain violations; altering who may institute certain actions for certain violations; specifying certain appeal rights for persons upon whom civil penalties are assessed; clarifying and expanding circumstances under which the Department may seek a receivership of certain continuing care retirement communities; providing for a delinquency proceeding under certain circumstances for certain continuing care providers; requiring certain liability immunity to certain persons under court order; providing for a court order under certain circumstances to direct certain persons to undertake certain steps against certain continuing care providers; requiring certain directives in an order to rehabilitate a continuing care provider; providing for an appointed receiver to be a conservator, rehabilitator, or receiver of certain continuing care providers; requiring the appointed receiver to report at certain times on certain court related issues concerning conservation, rehabilitation, and receivership of certain continuing care providers; providing for preferred claims and secured claims, contingent and unliquidated claims, and certain offsets of debts and credits; defining certain terms; modifying certain terms; making certain stylistic and technical changes; and generally relating to continuing care retirement communities.

BY repealing and reenacting, with amendments,
Article 70B - Department of Aging
Section 7, 9, 11A, 11B, 11C, 14, 17A, 19, 20, and 21
Annotated Code of Maryland
(1998 Replacement Volume and 2001 Supplement)

BY adding to
Article 70B - Department of Aging
Section 7A, 13(e), 14A, 15A, 18A, and 20A through ~~20U~~ 20T, inclusive
Annotated Code of Maryland
(1998 Replacement Volume and 2001 Supplement)

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

Article 70B - Department of Aging

7.

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

(b) "Assisted living program" has the meaning stated in § 19-1801 of the Health - General Article.

(c) "Certified financial statement" means a complete audit prepared and certified by an independent certified public accountant.

(d) [(1)] "Continuing care" means furnishing OR MAKING AVAILABLE shelter and either medical and nursing services or other health related services to an individual 60 years of age or older not related by blood or marriage to the provider for the life of the individual or for a period in excess of 1 year under [a] ONE OR MORE written [agreement] AGREEMENTS that [requires] REQUIRE a transfer of assets or an entrance fee notwithstanding periodic charges.

[(2) "Health related services" means, at a minimum, priority for nursing home admission or assistance in the activities of daily living, exclusive of the provision of meals.

(3) Medical and nursing services and other health related services may be covered by the entrance fee, the periodic charges, or may be purchased, at the option of the subscriber, for an additional fee.]

(e) "Continuing care agreement" means [the] AN agreement between [the] A provider and A subscriber to provide continuing care.

(F) (1) "CONTRACTUAL ENTRANCE FEE REFUND" MEANS A REPAYMENT OF ALL OR PART OF A SUBSCRIBER'S ENTRANCE FEE TO THE SUBSCRIBER OR THE SUBSCRIBER'S ESTATE OR DESIGNATED BENEFICIARY, AS REQUIRED BY THE TERMS OF THE CONTINUING CARE AGREEMENT.

(2) "CONTRACTUAL ENTRANCE FEE REFUND" DOES NOT MEAN A PAYMENT REQUIRED BY § 14 OR § 15 OF THIS SUBTITLE.

(G) "CREDITOR" MEANS A PERSON WITH A CLAIM AGAINST A CONTINUING CARE PROVIDER.

(H) "DELINQUENCY PROCEEDING" MEANS A PROCEEDING UNDER THIS SUBTITLE TO LIQUIDATE, REHABILITATE, REORGANIZE, OR CONSERVE A CONTINUING CARE PROVIDER.

[(f)] (I) "Deposit" means a portion of an entrance fee.

[(g)] (J) *(1)* "Entrance fee" means ~~an initial or deferred payment of a sum of money or any other consideration other than a surcharge that assures a subscriber continuing care for a term of years or for life. An accommodation fee, admission fee, or other fee of similar form and application shall be considered to be an entrance fee~~ *A SUM OF MONEY OR OTHER CONSIDERATION, OTHER THAN A SURCHARGE, PAID INTIALLY OR IN DEFERRED PAYMENTS, THAT:*

(I) ASSURES A SUBSCRIBER CONTINUING CARE FOR A TERM OF MORE THAN 1 YEAR OR FOR LIFE; AND

(II) IS AT LEAST THREE TIMES THE WEIGHTED AVERAGE OF THE MONTHLY COST OF THE PERIODIC FEES CHARGED FOR INDEPENDENT LIVING AND ASSISTED LIVING UNITS.

(2) "ENTRANCE FEE" INCLUDES A FEE OF SIMILAR FORM AND APPLICATION, REGARDLESS OF TITLE.

[(h)] (K) "Expansion" means any single new capital addition, excluding renovation and normal repair and maintenance, that meets either of the following criteria:

(1) If independent or assisted living units are to be constructed, then the number of units to be constructed must be less than or equal to 25% of the number of existing independent and assisted living units; or

(2) If independent or assisted living units are not to be constructed, then the total projected cost must be an amount that is more than the sum of:

(i) 10% of the total operating expenses, less depreciation, amortization, and interest expense of the facility as shown on the certified financial statement for the most recent fiscal year for which a certified financial statement is available; and

(ii) The amount of the existing reserves properly allocable to, and so allocated for, the expansion.

(L) "EXTENSIVE CONTRACT" MEANS A CONTINUING CARE AGREEMENT THAT PROVIDES RESIDENTIAL FACILITIES, MEALS, AMENITIES, AND LONG-TERM CARE SERVICES IN LICENSED ASSISTED LIVING AND COMPREHENSIVE CARE PROGRAMS FOR AS LONG AS A SUBSCRIBER NEEDS THEM AND FOR NO INCREASE IN THE SUBSCRIBER'S ENTRANCE FEE OR PERIODIC FEES, EXCEPT FOR AN ADJUSTMENT TO ACCOUNT FOR INCREASED OPERATING COSTS CAUSED BY INFLATION OR OTHER FACTORS UNRELATED TO THE INDIVIDUAL SUBSCRIBER.

[(i)] (M) "Facility" means a physical plant in which continuing care is provided in accordance with this subtitle.

[(j)] (N) "Financial difficulty" means current or impending financial conditions that impair or may impair the ability of the provider to meet existing or future obligations.

(O) "GENERAL ASSETS" MEANS:

(1) ALL PROPERTY THAT IS NOT SPECIFICALLY MORTGAGED, PLEDGED, DEPOSITED, OR OTHERWISE ENCUMBERED FOR THE SECURITY OR BENEFIT OF SPECIFIED PERSONS OR A LIMITED CLASS OF PERSONS;

(2) TO THE EXTENT THAT PROPERTY OF A CONTINUING CARE PROVIDER IS SPECIFICALLY ENCUMBERED, THE AMOUNT OF THE PROPERTY OR ITS PROCEEDS THAT EXCEEDS THE AMOUNT NECESSARY TO DISCHARGE THE ENCUMBRANCE; AND

(3) ASSETS HELD IN TRUST AND ASSETS HELD ON DEPOSIT FOR THE SECURITY OR BENEFIT OF ALL SUBSCRIBERS AND CREDITORS IN THE UNITED STATES.

(P) "GOVERNING BODY" MEANS A BOARD OF DIRECTORS, BOARD OF TRUSTEES, OR SIMILAR GROUP THAT ULTIMATELY DIRECTS THE AFFAIRS OF A PROVIDER, BUT WHOSE MEMBERS ARE NOT REQUIRED TO HAVE AN EQUITY INTEREST IN THE PROVIDER.

(Q) (1) "HEALTH RELATED SERVICES" MEANS SERVICES THAT ARE NEEDED BY A SUBSCRIBER TO MAINTAIN THE SUBSCRIBER'S HEALTH.

(2) "HEALTH RELATED SERVICES" INCLUDE:

(I) PRIORITY ADMISSION TO A NURSING HOME OR ASSISTED LIVING PROGRAM; OR

(II) ASSISTANCE IN THE ACTIVITIES OF DAILY LIVING NOT INCLUDING THE PROVISION OF MEALS.

(R) "MAKING AVAILABLE EITHER MEDICAL AND NURSING SERVICES OR OTHER HEALTH RELATED SERVICES" MEANS THE PROVIDER OR AN AFFILIATE OF THE PROVIDER HAS MADE THE SERVICES READILY ACCESSIBLE FOR USE BY A SUBSCRIBER WHETHER OR NOT THE SERVICES ARE SPECIFICALLY OFFERED IN THE WRITTEN AGREEMENT FOR SHELTER.

(S) "MODIFIED CONTRACT" MEANS A CONTINUING CARE AGREEMENT THAT:

(1) WOULD BE AN EXTENSIVE CONTRACT BUT FOR ITS LIMITING THE AMOUNT OF LONG-TERM CARE SERVICES TO BE PROVIDED IN A LICENSED ASSISTED LIVING OR COMPREHENSIVE CARE PROGRAM FOR NO INCREASE IN THE PERIODIC FEE; AND

(2) PROVIDES THAT LONG-TERM CARE SERVICES IN A LICENSED ASSISTED LIVING OR COMPREHENSIVE CARE PROGRAM BEYOND THE LIMITED AMOUNT TO BE PROVIDED FOR NO INCREASE IN THE PERIODIC FEE WILL BE PROVIDED ON A PER DIEM, FEE-FOR-SERVICE, OR OTHER AGREED UPON RATE.

[(k)] (T) "Person" means any natural person, firm, association, corporation, company, trust, partnership, limited liability company, public body, or other business or nonprofit entity.

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

[(m)] (V) "Provider" means any person who undertakes to provide continuing care and who is:

(1) The owner or operator of a facility; or

(2) An applicant for or the holder of a certificate of registration.

(W) "RECEIVER" INCLUDES A CONSERVATOR, REHABILITATOR, AND LIQUIDATOR.

[(n)] (X) "Records" means the information maintained by the provider for the proper operation of the facility under this subtitle.

[(o)] (Y) "Renovation" means any single capital improvement to, or replacement of, the existing facility, or any part of the existing facility, but excluding normal repair and maintenance, that will not increase the number of independent or assisted living units and for which the total projected cost is an amount that is more than the sum of:

(1) 20% of the total operating expenses, less depreciation, amortization, and interest expense of the facility as shown on the certified financial statement for the most recent fiscal year for which a certified financial statement is available; and

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

(Z) (1) "SECURED CLAIM" MEANS A CLAIM THAT:

(I) IS SECURED BY MORTGAGE, TRUST DEED, PLEDGE, DEPOSIT AS SECURITY, ESCROW, OR OTHERWISE; OR

(II) HAS BECOME A LIEN ON SPECIFIC ASSETS THROUGH JUDICIAL PROCESS.

(2) "SECURED CLAIM" DOES NOT INCLUDE A SPECIAL DEPOSIT CLAIM OR A CLAIM AGAINST GENERAL ASSETS.

(AA) (1) "SPECIAL DEPOSIT CLAIM" MEANS A CLAIM SECURED BY A DEPOSIT REQUIRED BY LAW FOR THE SECURITY OR BENEFIT OF A LIMITED CLASS OF PERSONS.

(2) "SPECIAL DEPOSIT CLAIM" DOES NOT INCLUDE A CLAIM AGAINST GENERAL ASSETS.

[(p)] (BB) "Subscriber" means an individual for whom a continuing care agreement is purchased.

[(q)] (CC) "Surcharge" means a separate and additional charge, other than a second person entrance fee, imposed simultaneously with the entrance fee, that may be required of some but not all subscribers because of a condition or circumstance that applies only to those subscribers.

(DD) "TRANSFER" MEANS, WHEN USED IN CONJUNCTION WITH PROPERTY:

(1) THE SALE OR OTHER DIRECT OR INDIRECT DISPOSITION OF PROPERTY OR AN INTEREST IN PROPERTY;

(2) THE FIXING OF A LIEN ON PROPERTY OR AN INTEREST IN PROPERTY; OR

(3) THE RETENTION OF A SECURITY TITLE TO PROPERTY DELIVERED TO A DEBTOR.

(EE) "WRITTEN AGREEMENT" DOES NOT INCLUDE AN AGREEMENT THAT IS REGULATED AS CONTINUING CARE AT HOME UNDER § 22A OF THIS SUBTITLE OR AS INSURANCE UNDER THE INSURANCE ARTICLE.

7A.

MEDICAL AND NURSING SERVICES AND OTHER HEALTH RELATED SERVICES MAY BE COVERED BY AN ENTRANCE FEE OR PERIODIC CHARGES OR, AT THE OPTION OF THE SUBSCRIBER, MAY BE PURCHASED FOR AN ADDITIONAL FEE.

9.

(a) A provider may not offer continuing care, enter into or renew continuing care agreements, begin construction for a new facility, begin construction of an expansion to or renovation of an existing facility, or collect deposits for continuing care in this State unless the provider has complied with the applicable provisions of §§ 10 and 11 of this subtitle. Any new capital addition that will result in the construction of a number of independent and assisted living units that is greater than 25% of the number of existing units is considered new development and is subject to § 10 of this subtitle. Any new capital addition that does not involve the construction of independent or assisted living units and that does not meet the standard of § [7(g)(2)] 7(K)(2) of this subtitle is not subject to Department review under §§ 10 and 11 of this subtitle. Any capital improvement or replacement that does not meet the standard of § [7(o)] 7(Y) of this subtitle, is not subject to Department review under § 10 or § 11 of this subtitle.

(b) When a provider has more than 1 facility offering continuing care, separate applications for preliminary and final certificates of registration and renewal certificates shall be made for each facility.

11A.

(a) At least annually, each provider shall conduct a meeting, open to all of the provider's subscribers, at which an authorized officer of the provider shall present a summary of the provider's operations, significant changes from the previous year, and the goals and objectives for the next year. The [governing body of the] provider shall make provisions to HAVE AN AUTHORIZED OFFICER receive and answer questions from subscribers at the meeting.

(B) (1) A PROVIDER THAT HAS A GOVERNING BODY SHALL INCLUDE AT LEAST ONE OF THE PROVIDER'S SUBSCRIBERS AS A FULL AND REGULAR MEMBER OF THE GOVERNING BODY.

(2) IF A PROVIDER THAT HAS A GOVERNING BODY OWNS OR OPERATES MORE THAN THREE FACILITIES IN THE STATE, THERE SHALL BE AT LEAST ONE OF THE PROVIDER'S SUBSCRIBERS AS A FULL AND REGULAR MEMBER OF THE GOVERNING BODY FOR EVERY THREE FACILITIES IN THE STATE.

(3) (I) SUBJECT TO THE PROVISIONS OF SUBPARAGRAPH (II) OF THIS PARAGRAPH, A GOVERNING BODY MEMBER SELECTED TO MEET THE REQUIREMENTS OF THIS SUBSECTION SHALL BE A SUBSCRIBER AT A FACILITY IN THE STATE AND BE SELECTED ACCORDING TO THE SAME GENERAL WRITTEN STANDARDS AND CRITERIA USED TO SELECT OTHER MEMBERS OF THE GOVERNING BODY.

(II) THE GOVERNING BODY SHALL CONFER WITH THE RESIDENT ASSOCIATION AT EACH FACILITY OF THE PROVIDER BEFORE THE SUBSCRIBER OFFICIALLY JOINS THE GOVERNING BODY.

[(b)] (C) [Each] A PROVIDER THAT DOES NOT HAVE A governing body [of a provider that does not have at least one subscriber as a member or as a regular attendee at its meeting with a right to address the governing body] shall appoint a select committee of its [members] OFFICERS OR PARTNERS to meet at least twice annually with the [facility's] resident association AT EACH OF ITS FACILITIES to address concerns of the subscribers and to ensure that the opinions of subscribers are relayed to [the governing body] ALL OFFICERS OR PARTNERS OF THE PROVIDER. If a [community] FACILITY does not have a resident association, the committee shall meet with a reasonable number of representatives, not required to exceed fifteen, elected by the subscribers.

(D) COPIES OF ALL MATERIALS THAT A PROVIDER SUBMITS TO THE DEPARTMENT THAT ARE REQUIRED TO BE DISCLOSED UNDER THE PUBLIC INFORMATION ACT SHALL BE MADE READILY AVAILABLE BY THE PROVIDER FOR ITS SUBSCRIBERS TO REVIEW AT THE FACILITY.

11B.

(a) In this section, "net operating expenses" means the provider's total operating expenses related to furnishing continuing care at each facility of the provider, less depreciation, amortization, unusual and infrequent expenses, and changes in the obligation to provide future services. Interest expenses may be

excluded from calculation of net operating expenses, if the provider has funded a debt service reserve or other interest reserve under requirements imposed by a financial institution or under applicable financing documents, to the extent and in the amount the fund includes amounts to cover interest for the year in question.

(b) Except as otherwise provided in this section, the provider shall set aside for each facility subject to this subtitle operating reserves that equal 15% of the facility's net operating expenses for the most recent fiscal year for which a certified financial statement is available. The reserves shall be maintained in reasonably liquid form in the judgment of the provider.

(c) The provider shall compute operating reserves for each facility as of the end of the facility's most recent fiscal year and, simultaneously with submission of its application for a renewal certificate, shall indicate compliance by setting forth in a letter to the Department from a certified public accountant the amount actually set aside or by disclosing the amount in a certified financial statement.

(d) A provider may apply toward the reserve required by this section any reserves, other than debt service reserves, maintained under applicable financing document requirements if the reserves are available to the provider to meet the facility's operating expenses.

(e) For the purpose of calculating the provider's operating reserves, investments held to the credit of the reserves shall be calculated at their market value as of the end of the provider's most recent fiscal year for which a certified financial statement is available.

(f) The provider shall notify the Department in writing simultaneously with drawing any amount from the funds available to satisfy the operating reserve that is required by subsection (b) of this section. Within 30 days of such draw, the provider shall submit to the Department a written plan for restoring the funds in the reserve to the level required by subsection (b) of this section.

(g) (1) [Any provider that holds a certificate of registration or a preliminary certificate of registration or approval of its feasibility study on October 1, 1996] A PROVIDER shall have up to 10 full fiscal years after THE LATER OF October 1, 1996 OR THE DATE OF ITS INITIAL CERTIFICATE to meet the requirement of subsection (b) of this section.

(2) [Any such] A provider shall meet the requirement of subsection (b) of this section at a minimum rate of 10% per year as of the end of each fiscal year after THE LATER OF October 1, 1996 OR THE DATE OF ITS INITIAL CERTIFICATE, up to a total of 100% as of the end of the 10th fiscal year.

(3) The Department may allow any such provider to modify the minimum rate or authorize an additional amount of time to meet the requirement of subsection (b) of this section, if the modification is necessary to maintain the financial viability of the facility.

[(h) (1) Except as provided under paragraph (2) of this subsection, a provider that does not by October 1, 1996 hold a certificate of registration or a preliminary certificate of registration or receive approval by the Department of the provider's feasibility study must meet the requirements of subsection (b) of this section from the end of the second full fiscal year after the fiscal year in which the provider may obtain, under § 11(c) of this subtitle, the use of funds held in escrow.

(2) For the time specified in paragraph (3) of this subsection, a provider that does not by October 1, 1996 hold a certificate of registration or a preliminary certificate of registration or receive approval of the Department of the provider's feasibility study is exempt from the requirements of subsection (b) of this section if the provider has a binding agreement with a financial institution, as defined in § 1-101 of the Financial Institutions Article, that unconditionally obligates the financial institution to furnish the provider credit in an amount at least equal to the amount required in subsection (b) of this section.

(3) A provider meeting the requirements of paragraph (2) of this subsection is exempt from the requirements of subsection (b) of this section until the earlier of:

(i) The end of the tenth full fiscal year after the fiscal year in which the provider may obtain, under § 11(c) of this subtitle, the use of funds held in escrow; or

(ii) The date on which the binding agreement with a financial institution expires.]

[(i)] (H) For any facility in which some residents are not parties to continuing care agreements, the provider shall compute the amount of the operating reserve requirement based on the portion of the net operating expenses which bears the same ratio to the total net operating expense as the number of units certified by the Department bears to the total number of living units.

11C.

(a) (1) The provider shall furnish without cost to all prospective subscribers, before payment of any part of the entrance fee or, if earlier, the execution of a continuing care agreement, and annually to all subscribers on request, a disclosure statement for each facility of the provider holding a preliminary certificate of registration or a certificate of registration.

(2) The provider shall submit its initial disclosure statement to the Department for review at least 45 days before distributing the statement to any prospective subscribers.

(b) (1) The provider shall revise the disclosure statement annually and file the disclosure statement with the Department within 120 days after the end of the provider's fiscal year.

(2) The Department shall review the disclosure statement solely to ensure compliance with this section.

(c) The disclosure statement shall include:

(1) The name, address, and description of the facility and the name and address of any parent or subsidiary person;

(2) The organizational structure and management of the provider, including:

(i) If the provider is a corporation or limited liability company, the name of the corporation or limited liability company, the state in which the corporation is incorporated or the limited liability company is formed, and the name of the chief executive officer;

(ii) If the provider is a partnership, the names of the general partners, the state governing the formation of the partnership, and the name of the primary individual responsible for managing the partnership;

(iii) If the provider is an unincorporated association, the names of the members, the state governing the association's activities, and the name of the primary individual responsible for managing the association;

(iv) If the provider is a partnership having a corporation or limited liability company as one or more of its general partners, the name of the corporation or limited liability company, the state in which the corporation is incorporated or the limited liability company is formed, and the name of the chief executive officer;

(v) If the provider is a trust, the name of the trustee, the names of the owners of the beneficial interests in the trust, the state governing the trust, and the name of the primary individual responsible for overseeing the trust's activities; and

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

(3) A statement regarding any affiliation of the provider with a religious, charitable, or other nonprofit organization, and the extent to which the organization is responsible for the financial and contractual obligations of the provider;

(4) A description of all basic fees, including entrance fees, fees for health related services, and periodic fees, collected by the provider from subscribers, setting forth the amount and frequency of the fee changes during each of the previous 5 years. If the facility has been in operation less than 5 years, then the description shall be for each year that it has been in operation;

(5) A statement describing provisions that have been or will be made to comply with the operating reserve requirements as described in § 11B of this subtitle, and a general statement regarding the provider's investment policy related to the

required reserves, including how often the reserve fund investment is reviewed and by whom;

(6) A copy of the most recent certified financial statement obtainable under generally accepted accounting principles;

(7) A description of the long-term financing for the facility;

(8) If the facility has not reached 85% occupancy of independent living units, a summary of the feasibility study;

(9) A cash flow forecast statement for the current and the next 2 fiscal years;

(10) The names and occupations of the officers, directors, trustees, managing or general partners, and any other persons with a 10% or greater equity or beneficial interest in the provider, and a description of the financial interest in or occupation with the provider;

(11) The name and address of any professional service firm, association, trust, partnership, company, or corporation in which a person identified in item (10) of this subsection has a 10% or greater financial interest and which is anticipated to provide goods, premises, or services to the facility or provider of a value of $10,000 or more within any fiscal year, including a description of the goods, premises, or services and their anticipated cost to the facility or provider. However, the disclosure of salary, wage, or benefit information of employees of the provider is not required;

(12) The name of the proposed manager or management company if the facility is or will be managed on a day-to-day basis by a person other than an individual directly employed by the provider, and a description of the business experience, if any, of the manager or company in the operation or management of similar facilities;

(13) A description of any matter in which an individual identified in item (10) of this subsection:

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

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

(iii) Has been subject to an effective injunctive or restrictive order of a court of record or, within the past 10 years, had any state or federal license or permit suspended or revoked as a result of an action brought by a governmental agency, arising out of or relating to business activity or health care, including actions affecting a license to operate any facility or service for aging, impaired, or dependent persons;

(14) A description of the form of governance of the provider, including the composition of the governing body, and a statement that the provider shall satisfy the requirements of § 11A of this subtitle;

(15) If applicable, a description of the conditions under which the provider may be issued a certificate of registration and may use escrowed deposits, and a statement of the amount of the subscriber's deposit that may be used;

(16) A summary of the basic services provided or proposed to be provided at the facility under the continuing care agreement, including the extent to which health related services are furnished, that clearly states which services are indicated in the agreement as included in the basic fee or fees and which services are or will be made available at or by the facility at an extra charge;

(17) A statement that the provider shall amend its disclosure statement if, at any time, in the opinion of the provider or the Department, an amendment is necessary to prevent the disclosure statement from containing any material misstatement of fact required by this section to be stated in the disclosure statement or omission of a material fact required by this section to be stated in the disclosure statement;

(18) A description of any activity involving a renovation or an expansion, whether or not subject to Department review, during the preceding fiscal year or proposed for the current fiscal year;

(19) A statement if it is the provider's policy to impose a surcharge on some, but not all, subscribers because of some condition or circumstance and that the surcharge will not be considered part of the entrance fee in the statutory refund under § 15 of this subtitle; [and]

(20) A DESCRIPTION OF THE EXISTENCE AND ROLE OF THE RESIDENT ASSOCIATION; AND

[(20)] (21) Such other material information concerning the facility or the provider as the Department requires or that the provider wishes to include.

(d) The disclosure statement shall contain a cover page that states, in a prominent location and type face, the date of the disclosure statement and that the issuance of a certificate of registration does not constitute approval, recommendation, or endorsement of the facility by the Department, nor is it evidence of, or does it attest to, the accuracy or completeness of the information set out in the disclosure statement.

(e) Any amended disclosure statement:

(1) Shall be filed with the Department at the same time that it is delivered to any subscriber or prospective subscriber; and

(2) Is subject to all the requirements of this subtitle.

(f) (1) In addition to any other requirements of this section, if a provider's continuing care agreement includes a provision to provide assisted living program services and the provider does not execute a separate assisted living agreement, the disclosure statement shall contain with regard to the assisted living program:

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

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

(iii) A description of any special [programing] PROGRAMMING, staffing, and training provided by the program for individuals with particular needs or conditions such as cognitive impairment;

(iv) Notice of:

1. The availability of locks for storage;

2. The availability of locks, if any, for the subscriber's room;

3. The security procedures which the provider shall implement to protect the subscriber and the subscriber's property; and

4. The provider's right, if any, to enter a subscriber's room;

(v) A statement of the obligations of the provider, the subscriber, or the subscriber's agent as to:

1. Arranging for or overseeing medical care;

2. Monitoring the health status of the subscriber;

3. Purchasing or renting essential or desired equipment and supplies; and

4. Ascertaining the cost of and purchasing durable medical equipment;

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

(vii) Notice of any material changes in the assisted living program.

(2) The provider shall:

(i) Furnish annually without cost to each subscriber revisions to the disclosure statement provisions under paragraph (1) of this subsection;

(ii) Ensure that each subscriber, or the subscriber's agent, initials the revised disclosure statement to indicate acknowledgment of the revisions; and

(iii) Make available a copy of each initialed disclosure statement for inspection by the Department of Health and Mental Hygiene under Title 19, Subtitle 18, of the Health - General Article.

13.

(E) (1) IF A PROVIDER'S FEASIBILITY STUDY HAS BEEN APPROVED UNDER § 10 OF THIS SUBHEADING, THE DEPARTMENT SHALL DECIDE WHETHER TO APPROVE A CONTINUING CARE AGREEMENT WITHIN 180 DAYS OF RECEIPT OF A COMPLETE AGREEMENT.

(2) IF THE DEPARTMENT TAKES NO ACTION WITHIN 180 DAYS, THE AGREEMENT IS DEEMED APPROVED.

14.

(a) A subscriber shall have the right to rescind a continuing care agreement for any reason prior to the date of occupancy by the said subscriber.

(b) (1) If, prior to the date of occupancy, the subscriber dies, the provider determines that the subscriber is ineligible for entrance into the facility, or the subscriber elects to terminate the continuing care agreement because of a substantial change in the subscriber's physical, mental or financial condition, the agreement shall be automatically canceled, and the subscriber or the subscriber's legal representative shall receive within 30 days thereafter a full refund of all moneys paid to the provider, except:

(i) Those special additional costs incurred by the provider due to modifications in the structure or furnishings of the unit specifically requested by the subscriber that do not exceed the costs of modification or reasonable costs of restoration actually incurred by the provider and set forth in writing in a separate addendum to the agreement and signed by the subscriber, and

(ii) A processing fee approved by the Department.

(2) In the event that the subscriber rescinds the continuing care agreement within 90 days after entering into the agreement and prior to the date of occupancy of the unit for any reason other than the reasons specified in subsection (b)(1) of this section, the refund provisions shall be the same as those provided for in subsection (b)(1) of this section. If, prior to the date of occupancy of a unit, the subscriber rescinds the continuing care agreement after the 90-day period for any reason other than the reasons specified in subsection (b)(1) of this section, the provider may require the subscriber to forfeit an amount up to 25% of the subscriber's entrance fee deposit.

(c) A subscriber may rescind a continuing care agreement at any time if the terms of the agreement are in violation of the terms of this subtitle and the subscriber is injured by the violation. The subscriber shall be entitled to treble damages for extensive injuries arising from the violations.

(d) (1) If an applicant for admission to a continuing care facility withdraws the application prior to execution of a continuing care agreement, the applicant shall receive a full refund of all moneys paid to the provider except a processing fee approved by the Department.

(2) THE REFUND SHALL BE PAID WITHIN 60 DAYS OF THE WITHDRAWAL.

14A.

(A) (1) IF A SUBSCRIBER'S CONTINUING CARE AGREEMENT IS AN EXTENSIVE OR MODIFIED AGREEMENT THAT PROMISES A PROVIDER WILL PROVIDE ASSISTED LIVING SERVICES, AND IF THE PROVIDER DOES NOT HAVE AN ASSISTED LIVING BED AVAILABLE AT THE FACILITY WHEN THE SUBSCRIBER NEEDS THE PROMISED CARE, THE PROVIDER SHALL PROVIDE THE ASSISTED LIVING SERVICES THE SUBSCRIBER NEEDS IN ACCORDANCE WITH PARAGRAPH (2) OF THIS SUBSECTION.

(2) THE PROVIDER SHALL PROVIDE ASSISTED LIVING SERVICES REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION TO A SUBSCRIBER:

(I) AT THE SAME RATE THE SUBSCRIBER WOULD HAVE TO PAY IF AN ASSISTED LIVING BED WAS AVAILABLE; AND

(II) AT THE PROVIDER'S OPTION:

1. IN THE SUBSCRIBER'S INDEPENDENT LIVING UNIT; OR

2. IN A NEARBY LICENSED ASSISTED LIVING FACILITY.

(B) (1) IF A SUBSCRIBER'S CONTINUING CARE AGREEMENT IS AN EXTENSIVE OR MODIFIED AGREEMENT THAT PROMISES THE PROVIDER WILL PROVIDE THE SUBSCRIBER WITH COMPREHENSIVE CARE SERVICES IF THE SUBSCRIBER NEEDS THEM, AND IF THE PROVIDER DOES NOT HAVE A COMPREHENSIVE CARE BED AVAILABLE WHEN THE SUBSCRIBER NEEDS THE PROMISED CARE, THE PROVIDER SHALL PROVIDE THE COMPREHENSIVE CARE SERVICES NEEDED IN ACCORDANCE WITH PARAGRAPH (2) OF THIS SUBSECTION.

(2) A PROVIDER SHALL PROVIDE THE SERVICES REQUIRED BY PARAGRAPH (1) OF THIS SUBSECTION:

(I) AT THE SAME RATES A SUBSCRIBER WOULD HAVE PAID IF A COMPREHENSIVE BED WAS AVAILABLE; AND

(II) AT THE PROVIDER'S OPTION:

1. IN THE SUBSCRIBER'S INDEPENDENT OR ASSISTED LIVING UNIT; OR

2. IN A NEARBY LICENSED COMPREHENSIVE CARE FACILITY.

15A.

(A) IF A CONTINUING CARE AGREEMENT IS TERMINATED BY THE SUBSCRIBER'S ELECTION OR DEATH WITHIN THE FIRST 90 DAYS OF OCCUPANCY, THE PROVIDER SHALL PAY ANY CONTRACTUAL ENTRANCE FEE REFUND WITHIN 30 DAYS OF THE EARLIER TO OCCUR OF:

(1) THE RECONTRACTING FOR THE UNIT OF THAT SUBSCRIBER; OR

(2) THE LATER TO OCCUR OF:

(I) THE 90TH DAY AFTER THE DATE OF TERMINATION; OR

(II) THE DAY THE INDEPENDENT LIVING UNITS AT THE FACILITY HAVE OPERATED AT 95% OF CAPACITY FOR THE PREVIOUS 6 MONTHS.

(B) A PROVIDER SHALL PAY ANY CONTRACTUAL ENTRANCE FEE REFUND DUE UNDER A CONTINUING CARE AGREEMENT TO WHICH IT IS A PARTY WITHIN 60 DAYS OF THE AGREEMENT BEING TERMINATED BY A SUBSCRIBER'S ELECTION OR DEATH, IF ON THE TERMINATION DATE THE FOLLOWING CONDITIONS EXIST:

(1) THE SUBSCRIBER NO LONGER RESIDES IN A UNIT AT THE LEVEL OF CARE IN WHICH THE SUBSCRIBER RESIDED UPON INITIALLY ENTERING THE FACILITY;

(2) THE SUBSCRIBER RESIDES IN A UNIT AT A HIGHER LEVEL OF CARE THAN THE LEVEL OF CARE IN WHICH THE SUBSCRIBER RESIDED UPON INITIALLY ENTERING THE FACILITY; AND

(3) THE LAST UNIT IN WHICH THE SUBSCRIBER RESIDED AT THE LEVEL OF CARE IN WHICH THE SUBSCRIBER RESIDED UPON INITIALLY ENTERING THE FACILITY HAS BEEN OCCUPIED BY OR RESERVED FOR ANOTHER SUBSCRIBER WHO HAS PAID AN ENTRANCE FEE.

17A.

(a) There is a Financial Review Committee.

(b) (1) The Committee consists of 7 members appointed by the Secretary.

(2) Of the 7 members, 2 shall be knowledgeable in the field of continuing care, 2 shall be certified public accountants, 1 shall be from the financial community, and 2 shall be consumer members, preferably subscribers of continuing care facilities.

(3) The term of a member is 3 years. The terms of members are staggered as required by the terms provided for members of the Committee on July 1, 1985.

(4) A member may serve consecutive terms.

(5) The Committee shall elect its chairman.

(6) Members may not receive compensation, however, members are entitled to reimbursement for expenses incurred in the performance of their official duties as provided for in the State budget.

(7) Any Financial Review Committee member shall have the immunity from liability described under § 5-514 of the Courts and Judicial Proceedings Article.

(8) A Financial Review Committee member may not participate in a review of a continuing care provider's financial condition if that member has an interest in the provider, as defined by the Maryland Public Ethics Law.

(9) The deliberations of the Committee AND COMMUNICATIONS BETWEEN THE DEPARTMENT AND THE COMMITTEE, INCLUDING BUT NOT LIMITED TO RECOMMENDATIONS OF THE COMMITTEE, shall be confidential.

(c) (1) After reviewing [the] A provider's application for a renewal certificate, the Department may refer the application and accompanying materials to the Committee for its consideration. The Committee shall review the application and the materials and may request additional information from the Department. Within 45 days of receipt of an application, the Committee shall notify the Department in writing:

(I) whether or not the Committee [finds] RECOMMENDS FINDING the provider in financial difficulty[,];

(II) WHETHER OR NOT THE COMMITTEE RECOMMENDS IDENTIFYING THE FINANCIAL DIFFICULTY AS INCLUDING A SIGNIFICANT RISK OF FINANCIAL FAILURE IN ACCORDANCE WITH SUBSECTION (H) OF THIS SECTION; AND

(III) stating the REASON OR reasons for its [findings] RECOMMENDATIONS.

~~(2) The Committee may request one 30-day extension from the Secretary. The Secretary may grant OR DENY the extension.~~

<u>(2) The Department may refer a finding of possible financial difficulty to the Committee for its consideration. The Committee shall review the finding and may request additional information from the Department. Within 45 days of receipt of a finding, the Committee shall notify the Department in writing:</u>

<u>(I) [whether] WHETHER or not the Committee [finds] RECOMMENDS FINDING the provider in financial difficulty[,]:</u>

<u>(II) WHETHER OR NOT THE COMMITTEE RECOMMENDS IDENTIFYING THE FINANCIAL DIFFICULTY AS INCLUDING A SIGNIFICANT RISK OF FINANCIAL FAILURE IN ACCORDANCE WITH SUBSECTION (H) OF THIS SECTION; AND</u>

<u>(III) [stating] STATING the REASON OR reasons for its [findings] RECOMMENDATIONS.</u>

(3) The Committee may request one 30-day extension from the Secretary UNDER PARAGRAPHS (1) OR (2) OF THIS SUBSECTION. The Secretary may grant OR DENY the extension.

(d) (1) Within 25 days of being notified of the Committee's ~~RECOMMENDED findings~~ RECOMMENDATIONS, the Department shall consider the ~~RECOMMENDED findings~~ RECOMMENDATIONS of the Committee and make a final determination of WHETHER financial difficulty EXISTS, INCLUDING WHETHER IT FINDS A SIGNIFICANT RISK OF FINANCIAL FAILURE IN ACCORDANCE WITH SUBSECTION (H) OF THIS SECTION. If the Department determines that the provider is in financial difficulty it shall immediately notify the provider by certified mail, return receipt requested, AND INFORM THE PROVIDER OF WHETHER THE DEPARTMENT HAS DETERMINED THAT THERE IS A SIGNIFICANT RISK OF FINANCIAL FAILURE.

(2) (I) THE PROVIDER SHALL ADVISE ITS SUBSCRIBERS OF THE DEPARTMENT'S DETERMINATION IN A MEETING TO BE HELD BY THE PROVIDER WITH REPRESENTATIVES OF THE SUBSCRIBERS.

(II) THE MEETING SHALL BE HELD WITHIN 10 DAYS OF THE PROVIDER'S RECEIPT OF NOTICE FROM THE DEPARTMENT.

(III) THE PROVIDER SHALL ADVISE THE DEPARTMENT OF THE DATE, TIME, AND LOCATION OF SUCH MEETING.

(e) [Any] A provider notified of financial difficulty by the Department shall prepare and submit to the Department for its approval a 5-year financial plan to correct the causes of the financial difficulty. The financial plan shall be submitted within 60 days of notification. The provider may request one 30-day extension from the Secretary. The Secretary may grant the extension. The Department shall respond to the provider within 60 days of receipt of the proposed plan. The Department may work with the provider to establish the financial plan and may consult with the Financial Review Committee prior to approving the plan. Upon approval the plan shall be implemented. THE PROVIDER SHALL MAKE AVAILABLE TO ITS SUBSCRIBERS COPIES OF ITS APPROVED 5-YEAR PLAN.

(f) The Department may withhold the renewal certificate or withdraw a certificate of registration:

(1) If the provider does not prepare a financial plan;

(2) If the provider is unwilling or unable to prepare a financial plan;

(3) If the financial plan is inadequate to correct the current or impending financial condition which necessitated the financial plan; or

(4) If the provider fails to implement the plan.

(g) The provider shall submit to the Department an annual progress report for the term of its financial plan and shall revise its financial plan if the Department determines that revisions are necessary.

(H) THE DEPARTMENT MAY DETERMINE THAT THERE EXISTS A SIGNIFICANT RISK OF THE FINANCIAL FAILURE OF A PROVIDER BASED ON ONE OR MORE OF THE FOLLOWING FINDINGS OR CIRCUMSTANCES:

(1) THE PROVIDER HAS FAILED TO MEET LOAN COVENANTS THAT GIVE A LENDER OR A BOND TRUSTEE THE OPTION TO EXERCISE REMEDIES ON ITS COLLATERAL;

(2) AN ACTUARIAL REPORT HAS BEEN PROVIDED TO THE DEPARTMENT REFLECTING SIGNIFICANT UNDERFUNDING OF FUTURE LIABILITIES THAT ARE UNLIKELY TO BE READILY ADDRESSED;

(3) THERE IS A SIGNIFICANT SHORTFALL BY THE PROVIDER IN MAINTAINING REQUIRED RESERVES FOR A SIGNIFICANT PERIOD OF TIME;

(4) A SIGNIFICANT BALLOON PAYMENT OR FUTURE LOAN PAYMENT WILL BECOME DUE WITHIN THE NEXT 12 MONTHS AND THE PROVIDER IS UNABLE TO DEMONSTRATE THAT IT WILL OBTAIN A MODIFICATION FROM ITS LENDER, HAVE THE RESOURCES TO MAKE THE PAYMENT, OR HAVE THE ABILITY TO REFINANCE;

(5) THERE IS A SIGNIFICANT DECLINING OCCUPANCY LIKELY TO HAVE A MATERIAL ADVERSE FINANCIAL IMPACT;

(6) THERE HAS BEEN A MATERIAL ADVERSE CHANGE IN DEBT SERVICE COVERAGE RATIO FOR AN EXTENDED PERIOD OF TIME THAT REDUCES THE RATIO TO LESS THAN 1.0;

(7) THERE HAS BEEN A SIGNIFICANT DECLINE IN ~~DAY'S~~ DAYS CASH ON HAND THAT IS UNRELATED TO ADDITIONS TO PROPERTY, PLANT, AND EQUIPMENT OR OTHER COMMUNITY ENHANCEMENTS AND THAT COULD RESULT IN AN INABILITY TO PAY OBLIGATIONS OF THE PROVIDER AS THEY BECOME DUE;

(8) THERE HAS BEEN A SIGNIFICANT INCREASE IN THE OPERATING RATIO, ADJUSTED FOR UNREALIZED GAINS AND LOSSES ON INVESTMENTS, THAT COULD RESULT IN THE INABILITY OF THE PROVIDER TO MEET ITS OBLIGATIONS; OR

(9) THE REFUSAL OR INABILITY OF THE PROVIDER TO PROVIDE ACCURATE INFORMATION OR DATA REQUIRED TO BE SUBMITTED TO THE DEPARTMENT UNDER THIS SUBTITLE AND RELATED REGULATIONS.

18A.

(A) ~~(1)~~ THE DEPARTMENT MAY IMPOSE A CIVIL MONEY PENALTY AGAINST A PROVIDER FOR ACTION OR INACTION THAT VIOLATES THIS SUBTITLE OR ANY REGULATION ADOPTED BY THE DEPARTMENT UNDER THIS SUBTITLE.

~~(2) (I) IF A VIOLATION RESULTS FROM A PROVIDER'S FAILURE TO OBTAIN AN APPROVAL FROM THE DEPARTMENT THAT IS REQUIRED BY THIS SUBTITLE OR A REGULATION ADOPTED UNDER THIS SUBTITLE, THE DEPARTMENT~~

~~MAY IMMEDIATELY IMPOSE A CIVIL MONEY PENALTY IN ACCORDANCE WITH SUBSECTION (D) OF THIS SECTION.~~

~~(II) IF A VIOLATION DOES NOT RESULT FROM A PROVIDER'S FAILURE TO OBTAIN AN APPROVAL FROM THE DEPARTMENT REQUIRED BY THIS SUBTITLE OR A REGULATION ADOPTED UNDER THIS SUBTITLE, THE PROVIDER SHALL BE GIVEN AN OPPORTUNITY TO CORRECT THE VIOLATION IN ACCORDANCE WITH SUBSECTIONS (B) AND (C) OF THIS SECTION.~~

(B) (1) ~~IF THE DEPARTMENT ISSUES A NOTICE TO CORRECT A VIOLATION UNDER SUBSECTION (A) OF THIS SECTION, THE NOTICE SHALL PROVIDE:~~ BEFORE IMPOSING A CIVIL MONEY PENALTY UNDER SUBSECTION (A) OF THIS SECTION, THE DEPARTMENT SHALL ISSUE A NOTICE OF VIOLATION TO THE PROVIDER.

(2) THE NOTICE SHALL PROVIDE:

~~(1)~~ (I) THE TIME IN WHICH A PLAN OF CORRECTION THAT IS ACCEPTABLE TO THE DEPARTMENT IS TO BE SUBMITTED;

~~(2)~~ (II) THE TIME IN WHICH AN IDENTIFIED VIOLATION MUST BE SUBSTANTIALLY CORRECTED, WHICH TIME MAY NOT BE LESS THAN 30 DAYS; AND

~~(3)~~ (III) THAT FAILURE TO SUBMIT AN ACCEPTABLE PLAN OF CORRECTION AS REQUIRED BY ITEM (1) OF THIS SUBSECTION OR TO CORRECT THE IDENTIFIED VIOLATION MAY RESULT IN AN ORDER IMPOSING A CIVIL MONEY PENALTY UNDER SUBSECTION (D) OF THIS SECTION.

(C) IF AT THE EXPIRATION OF THE TIME SET FORTH IN SUBSECTION (B)(2) OF THIS SECTION THE DEPARTMENT DETERMINES A VIOLATION HAS NOT BEEN CORRECTED, THE DEPARTMENT MAY:

(1) EXTEND THE TIME FRAME IN WHICH THE VIOLATION MUST BE CORRECTED; OR

(2) IMPOSE A CIVIL MONEY PENALTY UNDER SUBSECTION (D) OF THIS SECTION.

(D) (1) THE DEPARTMENT MAY IMPOSE A CIVIL MONEY PENALTY NOT TO EXCEED $5,000 FOR EACH VIOLATION.

(2) IN SETTING THE AMOUNT OF A CIVIL MONEY PENALTY UNDER THIS SECTION, THE DEPARTMENT SHALL CONSIDER THE FOLLOWING FACTORS:

(I) THE NUMBER, NATURE, AND SERIOUSNESS OF THE VIOLATIONS;

(II) THE DEGREE OF RISK TO THE HEALTH, LIFE, OR PHYSICAL OR FINANCIAL SAFETY OF THE SUBSCRIBERS CAUSED BY THE VIOLATIONS;

(III) THE EFFORTS MADE BY THE PROVIDER TO CORRECT THE VIOLATIONS;

(IV) WHETHER THE AMOUNT OF THE PROPOSED CIVIL MONEY PENALTY WILL JEOPARDIZE THE FINANCIAL ABILITY OF THE PROVIDER TO CONTINUE OPERATING; AND

(V) OTHER FACTORS AS JUSTICE MAY REQUIRE.

(3) IF A CIVIL MONEY PENALTY IS IMPOSED UNDER THIS SECTION, THE DEPARTMENT SHALL ISSUE AN ORDER STATING:

(I) THE BASIS ON WHICH THE ORDER IS MADE;

(II) EACH REGULATION OR STATUTE VIOLATED;

(III) EACH PENALTY IMPOSED AND THE TOTAL AMOUNT OF THE CIVIL MONEY PENALTY IMPOSED; AND

(IV) THE MANNER IN WHICH THE AMOUNT OF THE CIVIL MONEY PENALTY WAS CALCULATED.

(4) (I) THE DEPARTMENT SHALL PROVIDE WRITTEN NOTICE TO A PROVIDER OF THE IMPOSITION OF A CIVIL MONEY PENALTY.

(II) THE NOTICE SHALL BE SERVED ON THE PROVIDER BY CERTIFIED MAIL AND SHALL INCLUDE THE ORDER AND A STATEMENT ON HOW TO FILE AN ADMINISTRATIVE APPEAL.

(5) IF A CIVIL MONEY PENALTY IS IMPOSED UNDER THIS SECTION, THE PROVIDER SHALL HAVE THE RIGHT TO APPEAL FROM THE ORDER IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 (ADMINISTRATIVE PROCEDURE ACT) OF THE STATE GOVERNMENT ARTICLE.

(E) (1) A PROVIDER SHALL PAY ALL PENALTIES TO THE DEPARTMENT WITHIN 10 DAYS AFTER THE PROVIDER RECEIVES A FINAL ORDER IMPOSING A CIVIL MONEY PENALTY.

(2) AN ORDER IMPOSING A CIVIL MONEY PENALTY IS FINAL WHEN THE PROVIDER HAS EXHAUSTED ALL OPPORTUNITIES TO CONTEST THE PENALTY IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT.

(3) IF A PROVIDER DOES NOT COMPLY WITH THIS SECTION, THE DEPARTMENT MAY FILE A CIVIL ACTION TO RECOVER THE PENALTY.

(4) THE DEPARTMENT SHALL DEPOSIT ALL PENALTIES COLLECTED UNDER THIS SECTION INTO THE GENERAL FUND.

19.

Any subscriber injured by a violation of this subtitle may bring an APPROPRIATE ACTION FOR EQUITABLE RELIEF OR AN action for the recovery of damages in any court of general jurisdiction. In such cases the court may award reasonable attorney's fees to a subscriber in whose favor a judgment is rendered.

20.

(a) [Any subscriber injured by a violation of this subtitle, or the] THE Department [on behalf of any subscriber,] may institute an action for an appropriate temporary restraining order or injunction FOR A VIOLATION OF THIS SUBTITLE.

(B) THE DEPARTMENT MAY USE THE RECEIVERSHIP PROVISIONS OF THIS SUBTITLE TO PROTECT THE INTERESTS OF CONTINUING CARE SUBSCRIBERS IN:

(1) THE SUBSTANTIAL ADVANCE PAYMENTS SUBSCRIBERS HAVE MADE IN THE FORM OF ENTRANCE FEES AND, WHEN APPLICABLE, PERIODIC FEES, FOR FUTURE CONTINUING CARE WITHOUT NECESSARILY HAVING ANY OWNERSHIP IN OR CONTROL OF THE PROVIDER OR THE FACILITY;

(2) THE INSURANCE ASPECTS OF CONTINUING CARE AGREEMENTS, AS APPLICABLE; AND

(3) THE CONTINUED DELIVERY OF SERVICES COMMITTED TO UNDER CONTINUING CARE AGREEMENTS.

(C) [Any injured subscriber, or the] THE Department [on behalf of any injured subscriber,] may petition for the appointment of a receiver:

(1) In the event of a threat of immediate closure of a facility;

(2) If the provider is not honoring its contracts with its subscribers; [or]

(3) To prohibit the improper diversion of its assets and records from the facility or the State; OR

(4) IF THE DEPARTMENT HAS MADE A DETERMINATION OF A SIGNIFICANT RISK OF FINANCIAL FAILURE IN ACCORDANCE WITH § 17A(D) AND (H) OF THIS SUBTITLE.

(D) THE DEPARTMENT MAY PURSUE THE APPOINTMENT OF A RECEIVER PRIOR TO THE PROVIDER FILING A PLAN OF CORRECTION.

[(b)] (E) The receiver shall have such power to rehabilitate, conserve, or liquidate as is conferred by the order of appointment and by the provisions of [Title 9, Subtitle 2 of the Insurance Article relating to rehabilitation and liquidation of insurance companies] SECTIONS 20A THROUGH 20U OF THIS SUBTITLE.

20A.

NOTWITHSTANDING ANY OTHER PROVISION OF LAW AND SUBJECT TO THE PROVISIONS OF § 21 OF THIS ARTICLE, A DELINQUENCY PROCEEDING WITH RESPECT TO A CONTINUING CARE PROVIDER IS THE EXCLUSIVE METHOD OF LIQUIDATING, REHABILITATING, REORGANIZING, OR CONSERVING THE CONTINUING CARE PROVIDER.

20B.

THE SECRETARY, DEPUTY SECRETARY, SPECIAL DEPUTY SECRETARY, OR ANY PERSON ACTING AS RECEIVER IN A REHABILITATION, LIQUIDATION, OR CONSERVATION OF A CONTINUING CARE PROVIDER AS A RESULT OF A COURT ORDER SHALL HAVE THE SAME IMMUNITY FROM LIABILITY THAT THE INSURANCE COMMISSIONER, DEPUTY COMMISSIONER, SPECIAL DEPUTY COMMISSIONER, OR ANY PERSON ACTING AS RECEIVER IN A REHABILITATION, LIQUIDATION, OR CONSERVATION OF AN INSURER WOULD HAVE UNDER § 5-410 OF THE COURTS ARTICLE.

20C.

(A) (1) THIS SUBSECTION APPLIES EVEN IF A PAPER OR INSTRUMENT IS NOT:

(I) EXECUTED BY THE SECRETARY OR A DEPUTY, EMPLOYEE, OR ATTORNEY OF RECORD OF THE SECRETARY; AND

(II) CONNECTED WITH THE COMMENCEMENT OF AN ACTION OR PROCEEDING BY OR AGAINST THE SECRETARY OR WITH THE SUBSEQUENT CONDUCT OF THE ACTION OR PROCEEDING.

(2) SUBJECT TO SUBSECTION (B) OF THIS SECTION, THE SECRETARY MAY NOT BE REQUIRED TO PAY TO A PUBLIC OFFICER IN THE STATE A FEE FOR FILING, RECORDING, OR ISSUING A TRANSCRIPT OR CERTIFICATE OR FOR AUTHENTICATING A PAPER OR INSTRUMENT THAT RELATES TO THE EXERCISE BY THE SECRETARY OF A POWER OR DUTY OF THE SECRETARY UNDER THIS SUBTITLE.

(B) (1) THE SECRETARY OR DEPUTY SECRETARY, WHEN ACTING AS RECEIVER OR ANCILLARY RECEIVER UNDER THIS SUBTITLE, SHALL PAY ALL COURT COSTS OUT OF THE ASSETS OF THE CONTINUING CARE PROVIDER BEFORE ANY DISTRIBUTION TO CREDITORS OR TERMINATION OF REHABILITATION.

(2) IN ALL CASES, COURT COSTS AND THOSE SPECIFIED IN SUBSECTION (A) OF THIS SECTION SHALL:

(I) BE CHARGED IN THE ACCOUNTS OF THE SECRETARY TO THE COURT; OR

(II) BE PAID BY THE CONTINUING CARE PROVIDER AS A CONDITION OF TERMINATION OF THE ACTION OR PROCEEDING.

20D.

(A) (1) IN A DELINQUENCY PROCEEDING IN WHICH THE SECRETARY HAS BEEN APPOINTED RECEIVER, THE SECRETARY MAY:

(I) APPOINT ONE OR MORE SPECIAL DEPUTY SECRETARIES TO ACT FOR THE SECRETARY; AND

(II) EMPLOY COUNSEL, CLERKS, AND ASSISTANTS.

(2) COMPENSATION OF THE SPECIAL DEPUTIES, COUNSEL, CLERKS, AND ASSISTANTS AND ALL EXPENSES OF TAKING POSSESSION OF THE CONTINUING CARE PROVIDER AND OF CONDUCTING THE DELINQUENCY PROCEEDING:

(I) SHALL BE SET BY THE SECRETARY, SUBJECT TO APPROVAL BY THE COURT; AND

(II) SHALL BE PAID OUT OF THE ASSETS OR FUNDS OF THE CONTINUING CARE PROVIDER.

(3) WITHIN THE LIMITS OF DUTIES IMPOSED ON A SPECIAL DEPUTY CONCERNING A DELINQUENCY PROCEEDING, THE SPECIAL DEPUTY:

(I) SHALL POSSESS ALL POWERS GIVEN TO THE RECEIVER; AND

(II) IN THE EXERCISE OF THOSE POWERS, IS SUBJECT TO ALL THE DUTIES IMPOSED ON THE RECEIVER CONCERNING THE DELINQUENCY PROCEEDING.

(B) IN A CIVIL PROCEEDING FILED AGAINST A SPECIAL DEPUTY SECRETARY APPOINTED UNDER THIS SUBTITLE, THE SPECIAL DEPUTY SECRETARY IS ENTITLED TO REPRESENTATION BY THE ATTORNEY GENERAL AS SPECIFIED IN TITLE 12, SUBTITLE 3, PART II OF THE STATE GOVERNMENT ARTICLE.

20E.

(A) THE CIRCUIT COURT OF BALTIMORE CITY:

(1) HAS EXCLUSIVE ORIGINAL JURISDICTION OVER DELINQUENCY PROCEEDINGS; AND

(2) MAY ISSUE ALL NECESSARY AND PROPER ORDERS TO CARRY OUT THIS SUBTITLE.

(B) IF SERVICE IS MADE IN ACCORDANCE WITH THE MARYLAND RULES OR OTHER APPLICABLE LAW, A COURT WITH SUBJECT MATTER JURISDICTION OVER AN ACTION BROUGHT UNDER THIS SUBTITLE ALSO HAS JURISDICTION OVER:

(1) AN OFFICER, DIRECTOR, MANAGER, TRUSTEE, ORGANIZER, PROMOTER, OR ATTORNEY IN FACT OF A CONTINUING CARE PROVIDER AGAINST WHICH A DELINQUENCY PROCEEDING HAS BEEN COMMENCED, IN AN ACTION

RESULTING FROM OR INCIDENTAL TO THE PERSON'S RELATIONSHIP WITH THE CONTINUING CARE PROVIDER;

(2) A PERSON THAT, AT THE TIME OF OR AFTER COMMENCEMENT OF THE DELINQUENCY PROCEEDING, HELD OR WAS IN CONTROL OF ASSETS IN WHICH THE RECEIVER CLAIMS AN INTEREST ON BEHALF OF THE CONTINUING CARE PROVIDER, IN AN ACTION CONCERNING THE ASSETS OF THE PROVIDER; AND

(3) A PERSON OBLIGATED TO THE CONTINUING CARE PROVIDER IN ANY WAY, IN AN ACTION ON OR INCIDENTAL TO THE OBLIGATION.

(C) THE VENUE OF ALL DELINQUENCY PROCEEDINGS IS IN BALTIMORE CITY.

20F.

(A) THE SECRETARY SHALL COMMENCE A DELINQUENCY PROCEEDING AGAINST A CONTINUING CARE PROVIDER BY APPLYING TO THE COURT FOR AN ORDER THAT DIRECTS THE CONTINUING CARE PROVIDER TO SHOW CAUSE WHY THE COURT SHOULD NOT GRANT THE RELIEF REQUESTED.

(B) (1) THE COURT MAY CONSIDER AN APPLICATION FOR COMMENCEMENT OF A DELINQUENCY PROCEEDING ONLY IF THE APPLICATION IS FILED BY THE SECRETARY IN THE NAME OF THE STATE.

(2) AFTER A HEARING UNDER THE TERMS OF THE SHOW CAUSE ORDER, THE COURT:

(I) SHALL GRANT OR DENY THE APPLICATION; AND

(II) MAY ORDER OTHER RELIEF AS THE NATURE OF THE CASE AND THE INTERESTS OF THE CREDITORS, STOCKHOLDERS, MEMBERS, SUBSCRIBERS, OR THE PUBLIC MAY REQUIRE.

20G.

(A) THE SECRETARY MAY APPLY TO THE COURT FOR AN ORDER THAT DIRECTS THE SECRETARY TO CONSERVE OR REHABILITATE A CONTINUING CARE PROVIDER, IF THE CONTINUING CARE PROVIDER:

(1) IS A CONTINUING CARE PROVIDER FOR WHICH THE DEPARTMENT HAS MADE A DETERMINATION OF SIGNIFICANT RISK OF FINANCIAL FAILURE UNDER § 17A OF THIS SUBTITLE;

(2) HAS REFUSED TO SUBMIT TO THE SECRETARY OR A DEPUTY OR EXAMINER OF THE SECRETARY, FOR REASONABLE EXAMINATION, ANY OF THE PROPERTY, BOOKS, RECORDS, ACCOUNTS, OR AFFAIRS OF THE CONTINUING CARE PROVIDER, OR OF A SUBSIDIARY OR RELATED COMPANY OF THE CONTINUING CARE PROVIDER WITHIN THE CONTINUING CARE PROVIDER'S CONTROL;

(3) HAS CONCEALED OR REMOVED ITS ASSETS OR RECORDS;

(4) HAS WILLFULLY VIOLATED ITS CHARTER, ARTICLES OF INCORPORATION, A STATE LAW, OR AN ORDER OF THE SECRETARY;

(5) AFTER REASONABLE NOTICE, HAS FAILED PROMPTLY AND EFFECTIVELY TO TERMINATE THE EMPLOYMENT, STATUS, AND INFLUENCE OVER THE MANAGEMENT OF THE CONTINUING CARE PROVIDER OF A PERSON THAT HAS EXECUTIVE AUTHORITY IN FACT OVER THE CONTINUING CARE PROVIDER AND HAS REFUSED TO BE EXAMINED UNDER OATH ABOUT THE AFFAIRS OF THE CONTINUING CARE PROVIDER IN THE STATE OR ELSEWHERE;

(6) HAS BEEN OR IS THE SUBJECT OF AN APPLICATION FOR APPOINTMENT OF A RECEIVER, TRUSTEE, CUSTODIAN, SEQUESTRATOR, OR SIMILAR FIDUCIARY OF THE CONTINUING CARE PROVIDER OR ITS PROPERTY IN AN ACTION THAT WAS NOT FILED UNDER THIS SUBTITLE, REGARDLESS OF WHETHER THE APPOINTMENT:

(I) HAS BEEN MADE;

(II) MAY DENY THE COURTS OF THE STATE JURISDICTION; OR

(III) MAY PREJUDICE AN ORDERLY DELINQUENCY PROCEEDING UNDER THIS SUBTITLE;

(7) HAS CONSENTED TO THE ORDER FOR CONSERVATION OR REHABILITATION THROUGH A MAJORITY OF ITS DIRECTORS, STOCKHOLDERS, MEMBERS, OR SUBSCRIBERS;

(8) HAS FAILED TO PAY A FINAL JUDGMENT RENDERED AGAINST IT IN THE STATE ON A CONTINUING CARE AGREEMENT ISSUED OR ASSUMED BY THE CONTINUING CARE PROVIDER, WITHIN 60 DAYS AFTER THE LATEST OF:

(I) THE DAY ON WHICH THE JUDGMENT BECAME FINAL;

(II) THE DAY ON WHICH THE TIME FOR TAKING AN APPEAL EXPIRED; OR

(III) THE DAY ON WHICH AN APPEAL WAS DISMISSED BEFORE FINAL TERMINATION;

(9) AFTER EXAMINATION BY THE SECRETARY, IS FOUND TO BE IN A CONDITION IN WHICH FURTHER TRANSACTION OF ITS BUSINESS WILL BE HAZARDOUS TO ITS SUBSCRIBERS, BONDHOLDERS, CREDITORS, OR THE PUBLIC;

(10) HAS FAILED TO REMOVE A PERSON THAT HAS EXECUTIVE AUTHORITY IN FACT OVER THE CONTINUING CARE PROVIDER AFTER THE SECRETARY HAS FOUND THAT PERSON TO BE DISHONEST OR UNTRUSTWORTHY IN A MANNER THAT MAY AFFECT THE BUSINESS OF THE CONTINUING CARE PROVIDER;

(11) HAS REASONABLE CAUSE TO KNOW, OR SHOULD HAVE KNOWN, THAT THERE HAS BEEN:

(I) EMBEZZLEMENT OF FUNDS FROM THE CONTINUING CARE PROVIDER;

(II) WRONGFUL SEQUESTRATION OR DIVERSION OF ASSETS OF THE CONTINUING CARE PROVIDER;

(III) FORGERY OR FRAUD THAT AFFECTS THE CONTINUING CARE PROVIDER; OR

(IV) OTHER ILLEGAL CONDUCT IN, BY, OR WITH RESPECT TO THE CONTINUING CARE PROVIDER;

(12) IS CONTROLLED DIRECTLY OR INDIRECTLY BY A PERSON THAT THE SECRETARY FINDS TO BE UNTRUSTWORTHY; OR

(13) HAS FAILED TO FILE A FINANCIAL REPORT REQUIRED BY LAW WITHIN THE TIME ALLOWED BY LAW AND, AFTER WRITTEN DEMAND BY THE SECRETARY, HAS FAILED TO GIVE AN IMMEDIATE AND ADEQUATE EXPLANATION.

(B) (1) IF THE APPOINTMENT OF THE SECRETARY AS RECEIVER IS NOT THEN IN EFFECT, AND EVEN IF NO PREVIOUS ORDER HAS DIRECTED THE SECRETARY TO REHABILITATE A CONTINUING CARE PROVIDER, THE SECRETARY MAY APPLY TO THE COURT FOR AN ORDER THAT APPOINTS THE SECRETARY AS RECEIVER AND THAT DIRECTS THE SECRETARY TO LIQUIDATE THE CONTINUING CARE PROVIDER IF THE CONTINUING CARE PROVIDER:

(I) HAS NOT DONE BUSINESS FOR AT LEAST 1 YEAR;

(II) IS A CONTINUING CARE PROVIDER DETERMINED TO HAVE A SIGNIFICANT RISK OF FINANCIAL FAILURE UNDER § 17A OF THIS SUBTITLE AND HAS COMMENCED VOLUNTARY LIQUIDATION OR DISSOLUTION, OR ATTEMPTS TO COMMENCE OR PROSECUTE AN ACTION OR PROCEEDING TO LIQUIDATE ITS BUSINESS OR AFFAIRS, TO DISSOLVE ITS CORPORATE CHARTER, OR TO PROCURE THE APPOINTMENT OF A RECEIVER, TRUSTEE, CUSTODIAN, OR SEQUESTRATOR UNDER ANY LAW EXCEPT THIS ARTICLE;

(III) IS DOING BUSINESS IN A FRAUDULENT MANNER; OR

(IV) IS IN A CONDITION IN WHICH FURTHER REHABILITATION EFFORTS ON ANY GROUNDS SPECIFIED IN SUBSECTION (A) OF THIS SECTION APPEAR TO BE USELESS.

(2) IF AT ANY TIME DURING A REHABILITATION PROCEEDING THE SECRETARY DETERMINES THAT FURTHER EFFORTS TO REHABILITATE THE CONTINUING CARE PROVIDER WOULD BE USELESS, THE SECRETARY MAY APPLY TO THE COURT FOR AN ORDER OF LIQUIDATION.

20H.

(A) (1) AN ORDER TO REHABILITATE A CONTINUING CARE PROVIDER SHALL:

(I) APPOINT THE SECRETARY AS REHABILITATOR;

(II) DIRECT THE SECRETARY:

1. TO TAKE POSSESSION OF THE PROPERTY OF THE CONTINUING CARE PROVIDER AND CONDUCT THE BUSINESS OF THE CONTINUING CARE PROVIDER UNDER THE GENERAL SUPERVISION OF THE COURT; AND

2. TO TAKE ACTION THE COURT DIRECTS TO REMOVE THE CAUSES AND CONDITIONS THAT HAVE MADE REHABILITATION NECESSARY;

(III) VEST TITLE TO ALL PROPERTY OF THE CONTINUING CARE PROVIDER IN THE REHABILITATOR; AND

(IV) REQUIRE THE REHABILITATOR TO MAKE ACCOUNTINGS TO THE COURT THAT:

1. ARE AT INTERVALS AS THE COURT SPECIFIES IN ITS ORDER, BUT NOT LESS FREQUENTLY THAN TWO TIMES EACH YEAR; AND

2. INCLUDE THE OPINION OF THE REHABILITATOR ABOUT THE LIKELIHOOD OF SUCCESS OF THE REHABILITATION.

(2) ISSUANCE OF AN ORDER OF REHABILITATION:

(I) DOES NOT CONSTITUTE AN ANTICIPATORY BREACH OF ANY CONTRACT OF THE CONTINUING CARE PROVIDER; AND

(II) IS NOT GROUNDS FOR RETROACTIVE REVOCATION OR RETROACTIVE CANCELLATION OF A CONTRACT OF THE CONTINUING CARE PROVIDER, UNLESS THE REHABILITATOR REVOKES OR CANCELS THE CONTRACT.

(B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE SECRETARY, OR AN INTERESTED PERSON ON DUE NOTICE TO THE SECRETARY, MAY APPLY TO THE COURT AT ANY TIME FOR AN ORDER THAT:

(I) TERMINATES A REHABILITATION PROCEEDING; AND

(II) ALLOWS THE CONTINUING CARE PROVIDER TO RESUME POSSESSION OF ITS PROPERTY AND THE CONDUCT OF ITS BUSINESS.

(2) AN ORDER UNDER THIS SUBSECTION MAY NOT BE ISSUED UNLESS, AFTER A HEARING, THE COURT DETERMINES THAT THE PURPOSES OF THE REHABILITATION PROCEEDING HAVE BEEN FULLY ACCOMPLISHED.

(C) (1) AN ORDER TO LIQUIDATE THE BUSINESS OF A CONTINUING CARE PROVIDER SHALL DIRECT THE SECRETARY PROMPTLY TO:

(I) TAKE POSSESSION OF THE PROPERTY OF THE CONTINUING CARE PROVIDER;

(II) LIQUIDATE THE BUSINESS OF THE CONTINUING CARE PROVIDER;

(III) DEAL WITH THE PROPERTY AND BUSINESS OF THE CONTINUING CARE PROVIDER IN THE NAME OF THE SECRETARY OR IN THE NAME OF THE CONTINUING CARE PROVIDER, AS THE COURT DIRECTS; AND

(IV) NOTIFY EACH CREDITOR THAT MAY HAVE A CLAIM AGAINST THE CONTINUING CARE PROVIDER TO PRESENT THE CREDITOR'S CLAIM.

(2) THE SECRETARY MAY APPLY FOR, AND THE COURT MAY ISSUE, AN ORDER TO DISSOLVE THE CORPORATE EXISTENCE OF A CONTINUING CARE PROVIDER:

(I) ON APPLICATION OF THE SECRETARY FOR AN ORDER TO LIQUIDATE THE CONTINUING CARE PROVIDER; OR

(II) AT ANY TIME AFTER THE COURT HAS GRANTED THE ORDER OF LIQUIDATION.

(D) AN ORDER TO CONSERVE THE ASSETS OF A CONTINUING CARE PROVIDER SHALL REQUIRE THE SECRETARY PROMPTLY TO TAKE POSSESSION OF AND CONSERVE THE PROPERTY OF THE CONTINUING CARE PROVIDER IN THE STATE, SUBJECT TO FURTHER DIRECTION BY THE COURT.

20-I.

(A) IN THIS SECTION, "APPOINTED RECEIVER" MEANS A PERSON, OTHER THAN THE SECRETARY, THAT THE COURT APPOINTS AS A CONSERVATOR, REHABILITATOR, OR RECEIVER UNDER THIS SECTION.

(B) (1) ON MOTION OF THE COURT OR THE SECRETARY, THE COURT MAY ISSUE AN ORDER THAT APPOINTS OR SUBSTITUTES A PERSON OTHER THAN THE SECRETARY AS CONSERVATOR, REHABILITATOR, OR RECEIVER:

(I) ON INITIAL APPLICATION BY THE SECRETARY FOR AN ORDER TO APPOINT THE SECRETARY AS CONSERVATOR, REHABILITATOR, OR RECEIVER UNDER THIS SUBTITLE; OR

(II) AT ANY TIME DURING THE COURSE OF A CONSERVATORSHIP, REHABILITATION, OR RECEIVERSHIP UNDER THIS SUBTITLE.

(2) AN APPOINTED RECEIVER HAS THE SAME POWERS AND DUTIES THAT THE SECRETARY HAS UNDER THIS SUBTITLE AS CONSERVATOR, REHABILITATOR, OR RECEIVER.

(C) (1) IN ADDITION TO ANY OTHER REPORT REQUIRED BY THE COURT, THE COURT SHALL REQUIRE AN APPOINTED RECEIVER AT LEAST QUARTERLY TO FILE WITH THE SECRETARY AND COURT A REPORT ABOUT:

(I) THE STATUS OF THE CONSERVATORSHIP, REHABILITATION, OR RECEIVERSHIP; AND

(II) THE ACTIVITIES OF THE APPOINTED RECEIVER SINCE THE LAST REPORT FILED UNDER THIS PARAGRAPH.

(2) THE REPORT REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION AT A MINIMUM SHALL INCLUDE:

(I) INFORMATION OF THE CHARACTER REQUIRED BY TITLE 13 OF THE MARYLAND RULES THAT APPLIES TO RECEIVERS GENERALLY;

(II) ANY OTHER INFORMATION NECESSARY TO PROVIDE A COMPLETE REPORT ON THE FINANCIAL AFFAIRS AND CONDITION OF THE CONSERVATORSHIP, REHABILITATION, OR RECEIVERSHIP;

(III) A COMPLETE ACCOUNT OF ALL EFFORTS BY THE APPOINTED RECEIVER SINCE THE LAST REPORT:

1. TO SELL OR DISPOSE OF THE REMAINING BUSINESS OR ASSETS OF THE CONTINUING CARE PROVIDER; OR

2. TO OTHERWISE BRING TO A PROMPT CONCLUSION THE CONSERVATORSHIP, REHABILITATION, OR RECEIVERSHIP; AND

(IV) COPIES OF ANY ACTUARIAL OR OTHER EVALUATIONS OF THE BUSINESS AND ASSETS UNDER THE CONTROL OF THE APPOINTED RECEIVER.

(3) THE REPORT SHALL BE AUDITED UNLESS FOR GOOD CAUSE THE COURT WAIVES THE AUDIT.

(D) SUBJECT TO ANY PROTECTIVE ORDER THAT THE COURT CONSIDERS APPROPRIATE, INFORMATION FILED UNDER SEAL SHALL BE PROVIDED TO THE SECRETARY.

(E) THE APPOINTED RECEIVER SHALL GIVE THE SECRETARY FULL ACCESS TO ALL DOCUMENTS AND RECORDS RELATED TO THE CONSERVATORSHIP, REHABILITATION, OR RECEIVERSHIP THAT ARE IN THE POSSESSION OF THE APPOINTED RECEIVER.

(F) THE SECRETARY MAY BE A PARTY TO A CONSERVATORSHIP, REHABILITATION, OR RECEIVERSHIP FOR WHICH THERE IS AN APPOINTED RECEIVER.

(G) (1) SUBJECT TO APPROVAL OF THE COURT, THE SECRETARY MAY NEGOTIATE FOR SALE OF ALL OR PART OF THE ASSETS OR BUSINESS OF THE CONTINUING CARE PROVIDER PLACED IN CONSERVATORSHIP, REHABILITATION, OR RECEIVERSHIP.

(2) THE APPOINTED RECEIVER:

(I) SHALL COOPERATE FULLY IN ANY SALES NEGOTIATION UNDER PARAGRAPH (1) OF THIS SUBSECTION; AND

(II) MAY OBJECT TO THE TERMS OF A SALE OF THE ASSETS OR BUSINESS OF THE CONTINUING CARE PROVIDER THAT RESULTS FROM THE NEGOTIATION.

(3) AFTER NOTICE AND AN OPPORTUNITY TO BE HEARD, THE COURT MAY LIMIT THE EFFORTS OF THE SECRETARY TO UNDERTAKE OR CONTINUE NEGOTIATIONS FOR THE SALE OF THE ASSETS OR BUSINESS OF THE CONTINUING CARE PROVIDER IF THE NEGOTIATIONS WOULD IMPAIR THE ABILITY OF THE APPOINTED RECEIVER TO ENGAGE IN SIMILAR NEGOTIATIONS OR DISCHARGE OTHER RESPONSIBILITIES.

(H) (1) IF THE SECRETARY DETERMINES THAT AN APPOINTED RECEIVER IS NOT ADEQUATELY DISCHARGING THE DUTIES AND RESPONSIBILITIES OF THE POSITION, THE SECRETARY MAY FILE WITH THE COURT AN APPLICATION THAT SEEKS TO DISCHARGE THE APPOINTED RECEIVER AND TO APPOINT THE SECRETARY AS CONSERVATOR, REHABILITATOR, OR RECEIVER OR TO APPOINT ANOTHER RECEIVER.

(2) IF THE SECRETARY ESTABLISHES BY A PREPONDERANCE OF THE EVIDENCE THAT GROUNDS EXIST FOR DISCHARGE OF AN APPOINTED RECEIVER, THE COURT SHALL GRANT THE APPLICATION OF THE SECRETARY TO DISCHARGE THE APPOINTED RECEIVER AND TO APPOINT THE SECRETARY AS CONSERVATOR, REHABILITATOR, OR RECEIVER OR TO APPOINT ANOTHER RECEIVER.

20J.

WITHIN 15 DAYS AFTER APPOINTMENT AS RECEIVER OR CONSERVATOR FOR A CONTINUING CARE PROVIDER AGAINST WHICH A DELINQUENCY PROCEEDING HAS BEEN COMMENCED, THE RECEIVER OR CONSERVATOR SHALL NOTIFY EACH SUBSCRIBER OF THE CONTINUING CARE PROVIDER, BY LETTER OR OTHER MEANS APPROVED BY THE COURT, OF THE COMMENCEMENT OF THE DELINQUENCY PROCEEDING AND OF THE POSSIBILITY THAT THE CONTINUING CARE AGREEMENT OF THE SUBSCRIBER MAY BE CANCELED.

20K.

AN APPEAL MAY BE TAKEN TO THE COURT OF SPECIAL APPEALS FROM:

(1) AN ORDER THAT GRANTS OR REFUSES REHABILITATION, LIQUIDATION, OR CONSERVATION; AND

(2) ANY OTHER ORDER IN A DELINQUENCY PROCEEDING THAT HAS THE CHARACTER OF A FINAL ORDER AS TO THE PARTICULAR PART OF THE DELINQUENCY PROCEEDING COVERED BY THE ORDER.

20L.

(A) TO FACILITATE THE REHABILITATION, LIQUIDATION, CONSERVATION, OR DISSOLUTION OF A CONTINUING CARE PROVIDER UNDER THIS SUBTITLE, THE SECRETARY, SUBJECT TO THE APPROVAL OF THE COURT, MAY:

(1) BORROW MONEY;

(2) EXECUTE, ACKNOWLEDGE, AND DELIVER NOTES OR OTHER EVIDENCES OF INDEBTEDNESS FOR THE LOAN;

(3) SECURE THE REPAYMENT OF THE LOAN BY THE MORTGAGE, PLEDGE, ASSIGNMENT, OR TRANSFER IN TRUST OF ALL OR PART OF THE PROPERTY OF THE CONTINUING CARE PROVIDER; AND

(4) TAKE ANY OTHER ACTION NECESSARY AND PROPER TO CONSUMMATE THE LOAN AND TO PROVIDE FOR ITS REPAYMENT.

(B) THE SECRETARY IS NOT OBLIGATED PERSONALLY OR IN AN OFFICIAL CAPACITY TO REPAY A LOAN MADE UNDER THIS SECTION.

20M.

(A) WHENEVER UNDER THIS SUBTITLE A RECEIVER IS TO BE APPOINTED IN A DELINQUENCY PROCEEDING FOR A CONTINUING CARE PROVIDER, THE COURT SHALL:

(1) APPOINT THE SECRETARY AS RECEIVER; AND

(2) ORDER THE SECRETARY PROMPTLY TO TAKE POSSESSION OF THE ASSETS OF THE CONTINUING CARE PROVIDER AND TO ADMINISTER THE ASSETS UNDER THE ORDERS OF THE COURT.

(B) ~~SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION~~ SUBSECTION (A)(2) ~~OF THIS SECTION,~~ BEGINNING ON THE DATE OF ISSUANCE OF AN ORDER THAT DIRECTS THE SECRETARY TO REHABILITATE OR LIQUIDATE A CONTINUING CARE PROVIDER, THE SECRETARY AS RECEIVER IS VESTED BY OPERATION OF LAW WITH TITLE TO AND MAY TAKE POSSESSION OF ALL OF THE PROPERTY, CONTRACTS, RIGHTS OF ACTION, BOOKS, AND RECORDS OF THE CONTINUING CARE PROVIDER, WHEREVER LOCATED.

(C) THE FILING OF THE ORDER THAT DIRECTS POSSESSION TO BE TAKEN, OR A CERTIFIED COPY OF THE ORDER, IN AN OFFICE WHERE INSTRUMENTS AFFECTING TITLE TO PROPERTY ARE REQUIRED TO BE FILED PROVIDES THE SAME NOTICE AS WOULD BE PROVIDED BY A DEED, BILL OF SALE, OR OTHER EVIDENCE OF TITLE THAT IS SO FILED.

(D) (1) THE SECRETARY AS RECEIVER SHALL ADMINISTER PROPERLY ALL ASSETS THAT COME INTO THE POSSESSION OR CONTROL OF THE SECRETARY.

(2) IF CONSIDERED DESIRABLE TO PROTECT THE ASSETS, THE COURT AT ANY TIME MAY REQUIRE A BOND FROM THE SECRETARY OR DEPUTY SECRETARY.

(3) ON TAKING POSSESSION OF THE ASSETS OF A CONTINUING CARE PROVIDER AND SUBJECT TO THE DIRECTION OF THE COURT, THE SECRETARY IMMEDIATELY SHALL:

(I) CONDUCT THE BUSINESS OF THE DOMESTIC CONTINUING CARE PROVIDER; OR

(II) TAKE ACTION AUTHORIZED BY THIS SUBTITLE TO REHABILITATE, LIQUIDATE, OR CONSERVE THE AFFAIRS OR ASSETS OF THE ~~DOMESTIC~~ CONTINUING CARE PROVIDER.

20N.

~~(A) (1) WHENEVER UNDER THIS SUBTITLE AN ANCILLARY RECEIVER IS TO BE APPOINTED IN A DELINQUENCY PROCEEDING FOR A CONTINUING CARE PROVIDER NOT DOMICILED IN THE STATE, THE COURT SHALL APPOINT THE SECRETARY AS ANCILLARY RECEIVER.~~

~~(2) THE SECRETARY SHALL FILE A PETITION REQUESTING APPOINTMENT AS ANCILLARY RECEIVER UNDER § 20G(E) OF THIS SUBTITLE IF:~~

~~(I) THE SECRETARY FINDS THAT THERE ARE SUFFICIENT ASSETS OF THE CONTINUING CARE PROVIDER LOCATED IN THE STATE TO JUSTIFY THE APPOINTMENT OF AN ANCILLARY RECEIVER; OR~~

~~(II) TEN OR MORE PERSONS RESIDING IN THE STATE WITH CLAIMS AGAINST THE CONTINUING CARE PROVIDER FILE A PETITION WITH THE SECRETARY REQUESTING THE APPOINTMENT OF AN ANCILLARY RECEIVER.~~

~~(B) FOR THE PURPOSE OF LIQUIDATING A CONTINUING CARE PROVIDER DOMICILED IN A RECIPROCAL STATE, THE DOMICILIARY RECEIVER:~~

~~(1) IS VESTED BY OPERATION OF LAW WITH TITLE TO ALL OF THE PROPERTY, CONTRACTS, AND RIGHTS OF ACTION, AND ALL OF THE BOOKS AND RECORDS OF THE CONTINUING CARE PROVIDER LOCATED IN THIS STATE;~~

~~(2) IMMEDIATELY MAY OBTAIN POSSESSION OF ANY BOOKS AND RECORDS OF THE CONTINUING CARE PROVIDER FOUND IN THIS STATE;~~

~~(3) SUBJECT TO SUBSECTION (C)(1) OF THIS SECTION, MAY RECOVER OTHER ASSETS OF THE CONTINUING CARE PROVIDER LOCATED IN THIS STATE; AND~~

~~(4) MAY SUE IN THIS STATE TO RECOVER ANY ASSETS OF THE CONTINUING CARE PROVIDER TO WHICH THE DOMICILIARY RECEIVER IS ENTITLED UNDER THE LAWS OF THIS STATE.~~

~~(C) (1) ON APPOINTMENT OF AN ANCILLARY RECEIVER IN THIS STATE, THE ANCILLARY RECEIVER:~~

~~(I) HAS THE SOLE RIGHT TO RECOVER OTHER ASSETS OF THE CONTINUING CARE PROVIDER SPECIFIED IN SUBSECTION (B)(3) OF THIS SECTION DURING THE ANCILLARY RECEIVERSHIP PROCEEDING;~~

~~(II) SHALL:~~

~~1. AS SOON AS PRACTICABLE LIQUIDATE FROM THE SECURITIES OF THE ANCILLARY RECEIVER THOSE SPECIAL DEPOSIT CLAIMS AND SECURED CLAIMS THAT ARE PROVED AND ALLOWED IN AN ANCILLARY PROCEEDING IN THIS STATE; AND~~

~~2. PAY THE NECESSARY EXPENSES OF THE ANCILLARY PROCEEDING; AND~~

~~(III) SHALL TRANSFER PROMPTLY ALL REMAINING ASSETS TO THE DOMICILIARY RECEIVER.~~

~~(2) SUBJECT TO PARAGRAPH (1) OF THIS SUBSECTION, THE ANCILLARY RECEIVER AND DEPUTIES OF THE ANCILLARY RECEIVER HAVE THE SAME POWERS AND ARE SUBJECT TO THE SAME DUTIES CONCERNING ADMINISTRATION OF THE ASSETS OF THE CONTINUING CARE PROVIDER AS A RECEIVER OF A CONTINUING CARE PROVIDER DOMICILED IN THIS STATE.~~

~~20-O.~~

(A) DURING PENDENCY OF A DELINQUENCY PROCEEDING FOR A CONTINUING CARE PROVIDER ~~IN THIS STATE OR A RECIPROCAL STATE~~, AN ATTACHMENT, GARNISHMENT, EXECUTION, OR SIMILAR ACTION OR PROCEEDING MAY NOT BE COMMENCED OR MAINTAINED IN A COURT OF THIS STATE AGAINST THE CONTINUING CARE PROVIDER OR ITS ASSETS.

(B) A LIEN OBTAINED OR AN ACTION OR PROCEEDING PROHIBITED BY SUBSECTION (A) OF THIS SECTION IS VOID AS AGAINST ANY RIGHTS ARISING IN THE DELINQUENCY PROCEEDING, IF THE LIEN WAS OBTAINED OR THE ACTION OR PROCEEDING COMMENCED WITHIN 4 MONTHS BEFORE OR AT ANY TIME AFTER COMMENCEMENT OF A DELINQUENCY PROCEEDING.

~~20P.~~ 20-O.

(A) A TRANSFER OF OR LIEN ON THE PROPERTY OF A CONTINUING CARE PROVIDER IS VOIDABLE IF THE TRANSFER OR LIEN IS:

(1) MADE OR CREATED WITHIN 4 MONTHS BEFORE THE ISSUANCE OF A SHOW CAUSE ORDER UNDER THIS SUBTITLE;

(2) MADE OR CREATED WITH THE INTENT TO GIVE A CREDITOR A PREFERENCE OR TO ENABLE THE CREDITOR TO OBTAIN A GREATER PERCENTAGE OF THE DEBT THAN ANOTHER CREDITOR OF THE SAME CLASS; AND

(3) ACCEPTED BY THE CREDITOR HAVING REASONABLE CAUSE TO BELIEVE THAT THE PREFERENCE WILL OCCUR.

(B) EACH DIRECTOR, OFFICER, EMPLOYEE, STOCKHOLDER, MEMBER, SUBSCRIBER, AND ANY OTHER PERSON ACTING ON BEHALF OF A CONTINUING CARE PROVIDER THAT IS CONCERNED IN A VOIDABLE TRANSFER UNDER SUBSECTION (A) OF THIS SECTION AND EACH PERSON THAT, AS A RESULT OF THE VOIDABLE TRANSFER, RECEIVES ANY PROPERTY OF THE CONTINUING CARE PROVIDER OR BENEFITS FROM THE VOIDABLE TRANSFER:

(1) IS PERSONALLY LIABLE; AND

(2) SHALL ACCOUNT TO THE SECRETARY.

(C) THE SECRETARY AS RECEIVER IN A DELINQUENCY PROCEEDING MAY:

(1) AVOID A TRANSFER OF OR LIEN ON THE PROPERTY OF A CONTINUING CARE PROVIDER THAT A CREDITOR, STOCKHOLDER, SUBSCRIBER, OR MEMBER OF THE CONTINUING CARE PROVIDER MIGHT HAVE AVOIDED; AND

(2) RECOVER THE TRANSFERRED PROPERTY OR ITS VALUE FROM THE PERSON THAT RECEIVED IT UNLESS THAT PERSON WAS A BONA FIDE HOLDER FOR VALUE BEFORE THE DATE OF ISSUANCE OF A SHOW CAUSE ORDER UNDER THIS SUBTITLE.

~~20Q.~~ 20P.

(A) (1) THE SECRETARY SHALL DEPOSIT MONEYS COLLECTED IN A DELINQUENCY PROCEEDING IN A STATE OR NATIONAL BANK, SAVINGS BANK, OR TRUST COMPANY.

(2) DEPOSITS MADE BY THE SECRETARY UNDER PARAGRAPH (1) OF THIS SUBSECTION HAVE PRIORITY OF PAYMENT EQUAL TO ANY OTHER PRIORITY SPECIFIED BY THE BANKING LAWS OF THIS STATE IF THE DEPOSITORY:

(I) IS AN INSTITUTION ORGANIZED AND SUPERVISED UNDER THE LAWS OF THIS STATE; AND

(II) BECOMES INSOLVENT OR LIQUIDATES VOLUNTARILY OR INVOLUNTARILY.

(3) THE SECRETARY MAY DEPOSIT ALL OR PART OF THE MONEYS COLLECTED IN A NATIONAL BANK OR TRUST COMPANY AS A TRUST FUND.

(B) TO THE EXTENT THAT AN INVESTMENT OR ACCOUNT IS INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION, THE SECRETARY MAY INVEST IN SHARES OF OR DEPOSITS IN A SAVINGS AND LOAN ASSOCIATION OR BUILDING AND LOAN ASSOCIATION.

~~20R.~~ 20Q.

(A) (1) IF ON ISSUANCE OF AN ORDER OF LIQUIDATION UNDER THIS SUBTITLE OR AT ANY TIME DURING A LIQUIDATION PROCEEDING THE CONTINUING CARE PROVIDER IS NOT CLEARLY SOLVENT, THE COURT, AFTER NOTICE IT CONSIDERS PROPER AND A HEARING, SHALL ISSUE AN ORDER THAT THE CONTINUING CARE PROVIDER IS AN IMPAIRED CONTINUING CARE PROVIDER.

(2) NOTWITHSTANDING ANY PREVIOUS NOTICE GIVEN TO CREDITORS, AFTER ISSUANCE OF AN ORDER UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE SECRETARY SHALL NOTIFY EACH PERSON THAT MAY HAVE A CLAIM AGAINST THE CONTINUING CARE PROVIDER THAT THE CLAIM IS FOREVER BARRED UNLESS THE PERSON FILES THE CLAIM WITH THE SECRETARY AT A PLACE AND WITHIN THE TIME SPECIFIED IN THE NOTICE.

(3) THE TIME SPECIFIED IN THE NOTICE:

(I) SHALL BE AS SET BY THE COURT FOR FILING CLAIMS; BUT

(II) MAY NOT BE LESS THAN 6 MONTHS AFTER ISSUANCE OF THE ORDER THAT THE CONTINUING CARE PROVIDER IS AN IMPAIRED CONTINUING CARE PROVIDER.

(4) THE NOTICE SHALL BE GIVEN IN THE MANNER AND FOR THE REASONABLE PERIOD OF TIME THAT THE COURT ORDERS.

(B) (1) EACH CLAIMANT SHALL SET FORTH IN REASONABLE DETAIL:

(I) THE AMOUNT OF THE CLAIM OR THE BASIS ON WHICH THE AMOUNT CAN BE DETERMINED;

(II) THE FACTS ON WHICH THE CLAIM IS BASED; AND

(III) ANY PRIORITY ASSERTED BY THE CLAIMANT.

(2) EACH CLAIM SHALL:

(I) BE VERIFIED BY THE AFFIDAVIT OF THE CLAIMANT OR A PERSON AUTHORIZED TO ACT ON BEHALF OF THE CLAIMANT WHO HAS KNOWLEDGE OF THE FACTS; AND

(II) BE SUPPORTED BY ANY DOCUMENTS THAT MAY BE MATERIAL TO THE CLAIM.

(3) EACH CLAIM ~~FILED IN THE STATE~~ SHALL BE FILED WITH THE ~~DOMICILIARY RECEIVER OR ANCILLARY~~ RECEIVER IN THE STATE ON OR BEFORE THE LAST DATE SPECIFIED UNDER THIS SUBTITLE FOR FILING OF CLAIMS.

(C) THE RECEIVER SHALL:

(1) REPORT A CLAIM TO THE COURT:

(I) WITHIN 10 DAYS AFTER RECEIVING THE CLAIM; OR

(II) WITHIN AN ADDITIONAL PERIOD SET BY THE COURT FOR GOOD CAUSE SHOWN; AND

(2) RECOMMEND IN THE REPORT ACTION TO BE TAKEN ON THE CLAIM.

(D) (1) ON RECEIPT OF THE REPORT OF THE RECEIVER, THE COURT SHALL:

(I) SET A TIME FOR HEARING THE CLAIM; AND

(II) DIRECT THE CLAIMANT OR RECEIVER TO GIVE NOTICE AS THE COURT DETERMINES TO EACH PERSON THAT APPEARS TO THE COURT TO BE INTERESTED IN THE CLAIM.

(2) THE NOTICE GIVEN IN ACCORDANCE WITH THIS SUBSECTION SHALL:

(I) SPECIFY THE TIME AND PLACE OF THE HEARING; AND

(II) STATE CONCISELY:

1. THE AMOUNT AND NATURE OF THE CLAIM;

2. ANY PRIORITY ASSERTED BY THE CLAIMANT; AND

3. THE RECOMMENDATION OF THE RECEIVER ABOUT THE CLAIM.

(E) (1) AT THE HEARING SPECIFIED UNDER SUBSECTION (D) OF THIS SECTION:

(I) EACH PERSON WITH AN INTEREST IN THE CLAIM MAY APPEAR; AND

(II) THE COURT SHALL ISSUE AN ORDER IN WHICH THE COURT ALLOWS IN PART, OR DISALLOWS THE CLAIM.

(2) AN ORDER UNDER THIS SUBSECTION IS A FINAL ORDER SUBJECT TO APPEAL.

~~(F) (1) IN A DELINQUENCY PROCEEDING COMMENCED IN THIS STATE AGAINST A DOMESTIC CONTINUING CARE PROVIDER, A CLAIMANT WHO RESIDES IN A RECIPROCAL STATE MAY FILE A CLAIM WITH:~~

~~(I) ANY ANCILLARY RECEIVER IN THE RECIPROCAL STATE; OR~~

~~(II) THE DOMICILIARY RECEIVER.~~

~~(2) EACH CLAIM FILED UNDER THIS SUBSECTION MUST BE FILED ON OR BEFORE THE LAST DATE SET FOR THE FILING OF CLAIMS IN THE DELINQUENCY PROCEEDING IN THE DOMICILIARY STATE.~~

~~(3) A CONTROVERTED CLAIM OF A CLAIMANT WHO RESIDES IN A RECIPROCAL STATE MAY BE PROVED:~~

~~(I) IN THIS STATE; OR~~

~~(II) IF AN ANCILLARY PROCEEDING HAS BEEN COMMENCED IN THE RECIPROCAL STATE, IN THE ANCILLARY PROCEEDING.~~

~~(4) IF THE CLAIMANT ELECTS TO PROVE A CLAIM IN THE ANCILLARY PROCEEDING, AND IF THE SAME NOTICE AND OPPORTUNITY TO BE HEARD IS GIVEN THE DOMICILIARY RECEIVER OF THIS STATE AS IS PROVIDED UNDER SUBSECTION (G) OF THIS SECTION FOR AN ANCILLARY PROCEEDING IN THIS STATE, THE FINAL ALLOWANCE OF THE CLAIM BY THE COURTS OF THE ANCILLARY STATE SHALL BE ACCEPTED IN THIS STATE AS CONCLUSIVE AS TO:~~

~~(I) THE AMOUNT OF THE CLAIM; AND~~

~~(II) ANY PRIORITY OF THE CLAIM AGAINST SPECIAL DEPOSITS OR OTHER SECURITY LOCATED IN THE ANCILLARY STATE.~~

~~(G) (1) IN A DELINQUENCY PROCEEDING IN A RECIPROCAL STATE AGAINST A CONTINUING CARE PROVIDER DOMICILED IN THAT STATE, A CLAIMANT WHO RESIDES IN THIS STATE MAY FILE A CLAIM WITH:~~

~~(I) ANY ANCILLARY RECEIVER APPOINTED IN THIS STATE; OR~~

~~(II) THE DOMICILIARY RECEIVER.~~

~~(2) EACH CLAIM FILED UNDER THIS SUBSECTION MUST BE FILED ON OR BEFORE THE LAST DATE SET FOR THE FILING OF CLAIMS IN THE DELINQUENCY PROCEEDING IN THE DOMICILIARY STATE.~~

~~(3) A CONTROVERTED CLAIM OF A CLAIMANT WHO RESIDES IN THIS STATE MAY BE PROVED:~~

~~(I) IN THE DOMICILIARY STATE, AS PROVIDED BY THE LAW OF THE DOMICILIARY STATE; OR~~

~~(II) IF AN ANCILLARY PROCEEDING HAS BEEN COMMENCED IN THIS STATE, IN THE ANCILLARY PROCEEDING.~~

~~(4) IF THE CLAIMANT ELECTS TO PROVE THE CLAIM IN THIS STATE, THE CLAIMANT SHALL:~~

~~(I) FILE THE CLAIM WITH THE ANCILLARY RECEIVER; AND~~

~~(II) GIVE WRITTEN NOTICE TO THE DOMICILIARY RECEIVER BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, BEARING A POSTMARK FROM THE UNITED STATES POSTAL SERVICE, OR BY PERSONAL SERVICE AT LEAST 40 DAYS BEFORE THE DATE SET FOR THE HEARING.~~

~~(5) THE NOTICE SHALL CONTAIN:~~

~~(I) A CONCISE STATEMENT OF THE AMOUNT OF THE CLAIM;~~

~~(II) THE FACTS ON WHICH THE CLAIM IS BASED; AND~~

~~(III) ANY PRIORITY ASSERTED BY THE CLAIMANT.~~

~~(6) THE DOMICILIARY RECEIVER MAY APPEAR OR BE REPRESENTED IN ANY PROCEEDING IN THIS STATE THAT INVOLVES ADJUDICATION OF THE CLAIM IF, WITHIN 30 DAYS AFTER THE CLAIMANT GIVES THE NOTICE REQUIRED BY THIS SUBSECTION, THE DOMICILIARY RECEIVER GIVES WRITTEN NOTICE OF AN INTENT TO CONTEST THE CLAIM:~~

~~(I) TO THE ANCILLARY RECEIVER AND TO THE CLAIMANT; AND~~

~~(II) BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, BEARING A POSTMARK FROM THE UNITED STATES POSTAL SERVICE OR BY PERSONAL SERVICE.~~

~~(7) THE FINAL ALLOWANCE OF THE CLAIM BY THE COURTS OF THIS STATE SHALL BE ACCEPTED AS CONCLUSIVE AS TO:~~

~~(I) THE AMOUNT OF THE CLAIM; AND~~

~~(II) ANY PRIORITY OF THE CLAIM AGAINST SPECIAL DEPOSITS OR OTHER SECURITY LOCATED IN THIS STATE.~~

~~20S.~~ 20R.

(A) IN THIS SECTION, "PREFERRED CLAIM" MEANS A CLAIM THAT IS GIVEN PRIORITY OF PAYMENT FROM THE GENERAL ASSETS OF A CONTINUING CARE PROVIDER UNDER THE LAWS OF THE STATE OR THE UNITED STATES.

(B) (1) THE FIRST $500 OF COMPENSATION OR WAGES OWED TO AN OFFICER OR EMPLOYEE OF A CONTINUING CARE PROVIDER FOR SERVICES RENDERED WITHIN 3 MONTHS BEFORE THE COMMENCEMENT OF A DELINQUENCY PROCEEDING AGAINST THE CONTINUING CARE PROVIDER SHALL BE PAID BEFORE PAYMENT OF ANY OTHER DEBT OR CLAIM.

(2) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, THE SECRETARY MAY PAY THE COMPENSATION REQUIRED TO BE PAID UNDER THIS SUBSECTION AS SOON AS PRACTICABLE AFTER COMMENCEMENT OF THE DELINQUENCY PROCEEDING.

(3) AT ALL TIMES, THE SECRETARY SHALL RESERVE FUNDS THAT THE SECRETARY BELIEVES ARE SUFFICIENT FOR EXPENSES OF ADMINISTRATION.

(4) THE PRIORITY REQUIRED UNDER THIS SUBSECTION IS INSTEAD OF ANY OTHER SIMILAR PRIORITY THAT MAY BE AUTHORIZED BY LAW AS TO WAGES OR COMPENSATION.

(C) PRIORITY OVER ALL OTHER CLAIMS IN A LIQUIDATION PROCEEDING, OTHER THAN CLAIMS FOR WAGES SPECIFIED IN SUBSECTION (B) OF THIS SECTION, EXPENSES OF ADMINISTRATION, AND TAXES, SHALL BE GIVEN TO CLAIMS BY SUBSCRIBERS THAT ARISE FROM CONTINUING CARE AGREEMENTS WITH THE CONTINUING CARE PROVIDER, INCLUDING CLAIMS TO THE STATUTORY REFUND MANDATED BY § 15 OF THIS SUBTITLE.

(D) (1) THE OWNER OF A SECURED CLAIM AGAINST A CONTINUING CARE PROVIDER FOR WHICH A RECEIVER HAS BEEN APPOINTED IN THIS STATE OR ANOTHER STATE MAY:

(I) SURRENDER THE SECURITY AND FILE THE CLAIM AS A GENERAL CREDITOR; OR

(II) HAVE THE CLAIM DISCHARGED BY RESORT TO THE SECURITY.

(2) IF THE OWNER OF A SECURED CLAIM HAS THE CLAIM DISCHARGED BY RESORT TO THE SECURITY, ANY DEFICIENCY SHALL BE TREATED AS A CLAIM AGAINST THE GENERAL ASSETS OF THE CONTINUING CARE PROVIDER ON THE SAME BASIS AS THE CLAIMS OF UNSECURED CREDITORS.

(3) THE AMOUNT OF A DEFICIENCY IS CONCLUSIVE IF ADJUDICATED~~:~~

~~(I) IN AN ANCILLARY PROCEEDING UNDER THIS SUBTITLE; OR~~

~~(II)~~ BY A COURT OF COMPETENT JURISDICTION IN A PROCEEDING IN WHICH THE ~~DOMICILIARY~~ RECEIVER HAS BEEN GIVEN NOTICE AND AN OPPORTUNITY TO BE HEARD.

(4) IF THE AMOUNT OF A DEFICIENCY IS NOT CONCLUSIVE, THE AMOUNT SHALL BE DETERMINED IN A DELINQUENCY PROCEEDING IN THE ~~DOMICILIARY~~ STATE.

~~(E) (1) IN A DELINQUENCY PROCEEDING AGAINST A CONTINUING CARE PROVIDER DOMICILED IN THE STATE, CLAIMS OWING TO RESIDENTS OF ANCILLARY STATES ARE PREFERRED CLAIMS IF SIMILAR CLAIMS ARE PREFERRED UNDER THE LAWS OF THIS STATE.~~

~~(2) ALL CLAIMS OWING TO RESIDENTS OF ANCILLARY STATES OR NONRESIDENTS HAVE EQUAL PRIORITY OF PAYMENT FROM GENERAL ASSETS REGARDLESS OF WHERE THE GENERAL ASSETS ARE LOCATED.~~

~~(F) IN A DELINQUENCY PROCEEDING AGAINST A CONTINUING CARE PROVIDER DOMICILED IN A RECIPROCAL STATE, CLAIMS OWING TO RESIDENTS OF THIS STATE ARE PREFERRED CLAIMS IF SIMILAR CLAIMS ARE PREFERRED UNDER THE LAWS OF THAT STATE.~~

~~20T.~~ 20S.

(A) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, CONTINGENT AND UNLIQUIDATED CLAIMS MAY NOT SHARE IN A DISTRIBUTION OF THE ASSETS OF A CONTINUING CARE PROVIDER THAT HAS BEEN ADJUDICATED TO BE AN IMPAIRED CONTINUING CARE PROVIDER BY AN ORDER ISSUED UNDER THIS SUBTITLE.

(2) IF PROPERLY PRESENTED, A CONTINGENT AND UNLIQUIDATED CLAIM SHALL BE CONSIDERED AND MAY BE ALLOWED TO SHARE IF:

(I) THE CLAIM BECOMES ABSOLUTE AGAINST THE CONTINUING CARE PROVIDER ON OR BEFORE THE LAST DAY FOR FILING CLAIMS AGAINST THE ASSETS OF THE CONTINUING CARE PROVIDER; OR

(II) THERE IS A SURPLUS AND THE LIQUIDATION IS SUBSEQUENTLY CONDUCTED ON THE BASIS THAT THE CONTINUING CARE PROVIDER IS SOLVENT.

(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A CLAIM OF A PERSON THAT HAS A SECURED CLAIM MAY NOT BE ALLOWED AT A SUM GREATER THAN THE DIFFERENCE BETWEEN:

(I) THE VALUE OF THE CLAIM WITHOUT SECURITY; AND

(II) THE VALUE OF THE SECURITY ITSELF ON:

1. THE DATE OF ISSUANCE OF THE LIQUIDATION ORDER; OR

2. ANOTHER DATE SET BY THE COURT FOR DETERMINING RIGHTS AND LIABILITIES AS PROVIDED IN SUBSECTION (C) OF THIS SECTION.

(2) IF THE CLAIMANT SURRENDERS THE SECURITY TO THE SECRETARY, THE CLAIM SHALL BE ALLOWED IN THE FULL AMOUNT FOR WHICH IT IS VALUED.

(C) SUBJECT TO THE PROVISIONS OF THIS SUBTITLE ON THE RIGHTS OF CLAIMANTS HOLDING CONTINGENT CLAIMS, AND UNLESS OTHERWISE DIRECTED BY THE COURT, THE RIGHTS AND LIABILITIES OF A CONTINUING CARE PROVIDER AND CREDITORS, STOCKHOLDERS, MEMBERS, SUBSCRIBERS, AND OTHER PERSONS INTERESTED IN THE ESTATE OF THE CONTINUING CARE PROVIDER ARE FIXED ON THE DATE ON WHICH THE ORDER THAT DIRECTS THE LIQUIDATION OF THE

CONTINUING CARE PROVIDER IS FILED IN THE OFFICE OF THE CLERK OF THE COURT THAT ISSUED THE ORDER.

~~20U.~~ 20T.

(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, IN ALL CASES OF MUTUAL DEBTS AND CREDITS BETWEEN A CONTINUING CARE PROVIDER AND ANOTHER PERSON IN CONNECTION WITH A DELINQUENCY PROCEEDING, THE DEBTS AND CREDITS SHALL BE OFFSET AND THE BALANCE ONLY SHALL BE ALLOWED OR PAID.

(B) AN OFFSET MAY NOT BE ALLOWED IN FAVOR OF ANOTHER PERSON IF:

(1) ON THE DATE OF ISSUANCE OF A LIQUIDATION ORDER OR OTHERWISE, AS SPECIFIED IN § 20S(C) OF THIS SUBTITLE, THE OBLIGATION OF THE CONTINUING CARE PROVIDER TO THE PERSON WOULD NOT ENTITLE THE PERSON TO SHARE AS A CLAIMANT IN THE ASSETS OF THE CONTINUING CARE PROVIDER; OR

(2) THE OBLIGATION OF THE CONTINUING CARE PROVIDER TO THE PERSON WAS PURCHASED BY OR TRANSFERRED TO THE PERSON FOR USE AS AN OFFSET.

21.

If [the] A provider [files for] IS THE SUBJECT OF A bankruptcy or [is placed in] receivership ACTION, the CLAIMS OF subscribers [as a class] shall be [considered as creditors] ADMINISTERED IN ACCORDANCE WITH ~~§ 20S~~ § 20R(C) OF THIS SUBTITLE for the purpose of any legal action in conjunction with the bankruptcy or receivership.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) (1) If a person's existing operations become subject to the Continuing Care Contracts subtitle of Article 70B of the Annotated Code of Maryland on October 1, 2002 when this Act becomes effective, the person shall have until:

(i) January 1, 2003 to submit a feasibility study to the Department of Aging that satisfies the requirement of § 10 of Article 70B of the Annotated Code of Maryland;

(ii) 2 months after the feasibility study is approved by the Department of Aging, to submit an application for a preliminary certificate that satisfies the requirements of § 10 of Article 70B of the Annotated Code of Maryland; and

(iii) 2 months after the Department of Aging issues a preliminary certificate to submit an application for an initial certificate that satisfies the requirements of § 11 of Article 70B of the Annotated Code of Maryland.

(2) The Secretary of Aging for good cause may extend the time requirements of this subsection.

(b) When determining whether a continuing care provider, whose existing operations become subject to the Continuing Care Contracts subtitle of Article 70B of the Annotated Code of Maryland as a result of the Act has met the 65% presales requirement of Article 70B, § 11(a)(1) of the Annotated Code of Maryland, the Department of Aging may count the agreements the person entered into before October 1, 2002 even if the agreements were not approved in advance by the Department for use as a continuing care agreement.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2002.