
By: Senators Hoffman, Hollinger, Derr, and Boozer

Introduced and read first time: February 2, 1996

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Continuing Care Contracts**

3 FOR the purpose of requiring a provider of continuing care to maintain certain reserves;
4 requiring approval by the Office on Aging before a change in ownership or sale of
5 more than a certain percentage of the ownership of a provider or facility; requiring
6 approval by the Office on Aging before the transfer of assets of a provider in excess
7 of a certain aggregate percentage within a certain time period; requiring a provider
8 to issue a disclosure statement to current and prospective subscribers of continuing
9 care; establishing minimum contents of the disclosure statement; requiring the
10 provider to hold an annual meeting with resident representatives for a certain
11 purpose; enabling subscribers of continuing care to be deemed creditors of a
12 provider's estate under certain circumstances; amending existing requirements for
13 providers that seek to expand or renovate continuing care facilities; defining certain
14 terms; making certain stylistic changes; providing for the application of various
15 portions of this Act; making a part of this Act contingent; and generally relating to
16 continuing care contracts.

17 BY repealing and reenacting, with amendments,
18 Article 70B - Office on Aging
19 Section 7 through 11, 13 through 15, 17A, 20, 22, and 23
20 Annotated Code of Maryland
21 (1995 Replacement Volume)

22 BY adding to
23 Article 70B - Office on Aging
24 Section 11A through 11E and 21
25 Annotated Code of Maryland
26 (1995 Replacement Volume)

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

2

1 **Article 70B - Office on Aging**

2 7.

3 (a) ["Office" means Maryland Office on Aging.] IN THIS SUBTITLE THE
4 FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

5 (B) "CERTIFIED FINANCIAL STATEMENT" MEANS A COMPLETE AUDIT
6 PREPARED AND CERTIFIED BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT.

7 [(b)] (C) (1) "Continuing care" means furnishing shelter and either medical and
8 nursing services or other health related benefits to an individual 60 years of age or older
9 not related by blood or marriage to the provider for the life of the individual or for a
10 period in excess of 1 year under a written agreement that requires a transfer of assets or
11 an entrance fee notwithstanding periodic charges.

12 (2) "Health related benefits" means, at a minimum, priority nursing
13 home admission or assistance in the activities of daily living, exclusive of the provision of
14 meals.

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

18 (D) "CONTINUING CARE AGREEMENT" MEANS THE AGREEMENT BETWEEN
19 THE PROVIDER AND SUBSCRIBER TO PROVIDE CONTINUING CARE.

20 (E) "DEPOSIT" MEANS A PORTION OF AN ENTRANCE FEE.

21 (f) "Entrance fee" means an initial or deferred payment of a sum of money or any
22 other consideration OTHER THAN A SURCHARGE [which] THAT assures a subscriber [a
23 place in a facility] CONTINUING CARE for a term of years or for life. An accommodation
24 fee, admission fee, or other fee of similar form and application shall be considered to be
25 an entrance fee.

26 [(g) "Records" means the financial information and personnel data maintained by
27 the provider for the proper operation of the facility pursuant to this subtitle.]

28 (G) "EXPANSION" MEANS ANY SINGLE NEW CAPITAL ADDITION, EXCLUDING
29 RENOVATION AND NORMAL REPAIR AND MAINTENANCE, THAT MEETS EITHER OF
30 THE FOLLOWING CRITERIA:

31 (1) IF INDEPENDENT OR ASSISTED LIVING UNITS ARE TO BE
32 CONSTRUCTED THEN, THE NUMBER OF UNITS TO BE CONSTRUCTED MUST BE LESS
33 THAN OR EQUAL TO 25% OF THE NUMBER OF EXISTING INDEPENDENT AND
34 ASSISTED LIVING UNITS; OR

35 (2) IF INDEPENDENT OR ASSISTED LIVING UNITS ARE NOT TO BE
36 CONSTRUCTED THEN, THE TOTAL PROJECTED COST MUST BE AN AMOUNT THAT IS
37 MORE THAN THE SUM OF:

38 (I) 10% OF THE TOTAL OPERATING EXPENSES, LESS
39 DEPRECIATION, AMORTIZATION, AND INTEREST EXPENSE OF THE FACILITY AS

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1 SHOWN ON THE CERTIFIED FINANCIAL STATEMENT FOR THE MOST RECENT FISCAL
2 YEAR FOR WHICH A CERTIFIED FINANCIAL STATEMENT IS AVAILABLE; AND

3 (II) THE AMOUNT OF THE EXISTING RESERVES PROPERLY
4 ALLOCABLE TO, AND SO ALLOCATED FOR, THE EXPANSION.

5 [(c)] (H) "Facility" means a physical plant in which continuing care is provided in
6 accordance with this subtitle.

7 [(h) "Fiscal year" means the fiscal year of the provider.]

8 [(i) "Processing fee" means those costs incurred by the provider in determining
9 the financial, mental, and physical eligibility of an applicant for entrance into a facility.]

10 (I) "FINANCIAL DIFFICULTY" MEANS CURRENT OR IMPENDING FINANCIAL
11 CONDITIONS THAT IMPAIR OR MAY IMPAIR THE ABILITY OF THE PROVIDER TO
12 MEET EXISTING OR FUTURE OBLIGATIONS.

13 [(j) "Certified financial statement" means a complete audit prepared and certified
14 to by an independent certified public accountant.]

15 (J) "OFFICE" MEANS THE MARYLAND OFFICE ON AGING.

16 (K) "PERSON" MEANS ANY NATURAL PERSON, FIRM, ASSOCIATION,
17 CORPORATION, COMPANY, TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY,
18 PUBLIC BODY, OR OTHER BUSINESS OR NONPROFIT ENTITY.

19 (L) "PROCESSING FEE" MEANS THE FEE IMPOSED BY THE PROVIDER FOR
20 DETERMINING THE FINANCIAL, MENTAL, AND PHYSICAL ELIGIBILITY OF AN
21 APPLICANT FOR ENTRANCE INTO A FACILITY.

22 [(d)] (M) "Provider" means [the owner or operator, whether a natural person,
23 partnership, unincorporated association, however organized, trust, or corporation, of an
24 institution, building, residence, or other place, whether operated for profit or not, which
25 owner or operator] ANY PERSON WHO undertakes to provide continuing care AND WHO
26 IS:

27 (1) THE OWNER OR OPERATOR OF A FACILITY; OR

28 (2) AN APPLICANT FOR THE HOLDER OF A CERTIFICATE OF
29 REGISTRATION.

30 (N) "RECORDS" MEANS THE INFORMATION MAINTAINED BY THE PROVIDER
31 FOR THE PROPER OPERATION OF THE FACILITY UNDER THIS SUBTITLE.

32 (O) "RENOVATION" MEANS ANY SINGLE CAPITAL IMPROVEMENT TO, OR
33 REPLACEMENT OF, THE EXISTING FACILITY, OR ANY PART OF THE EXISTING
34 FACILITY, BUT EXCLUDING NORMAL REPAIR AND MAINTENANCE, THAT WILL NOT
35 INCREASE THE NUMBER OF INDEPENDENT OR ASSISTED LIVING UNITS AND FOR
36 WHICH THE TOTAL PROJECTED COST IS AN AMOUNT THAT IS MORE THAN THE SUM
37 OF:

38 (1) 20% OF THE TOTAL OPERATING EXPENSES, LESS DEPRECIATION,
39 AMORTIZATION, AND INTEREST EXPENSE OF THE FACILITY AS SHOWN ON THE

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1 CERTIFIED FINANCIAL STATEMENT FOR THE MOST RECENT FISCAL YEAR FOR
2 WHICH A CERTIFIED FINANCIAL STATEMENT IS AVAILABLE; AND

3 (2) THE AMOUNT OF THE EXISTING RESERVES PROPERLY ALLOCABLE
4 TO, AND SO ALLOCATED FOR, THE RENOVATION.

5 [(e)] (P) "Subscriber" means [a purchaser of, or nominee of,] AN INDIVIDUAL
6 FOR WHOM a continuing care agreement IS PURCHASED.

7 (Q) "SURCHARGE" MEANS A SEPARATE AND ADDITIONAL CHARGE, OTHER
8 THAN A SECOND PERSON ENTRANCE FEE, IMPOSED SIMULTANEOUSLY WITH THE
9 ENTRANCE FEE, THAT MAY BE REQUIRED OF SOME BUT NOT ALL SUBSCRIBERS
10 BECAUSE OF A CONDITION OR CIRCUMSTANCE THAT APPLIES ONLY TO THOSE
11 SUBSCRIBERS.

12 8.

13 The administration of this subtitle is vested in the State Office on Aging, which
14 shall:

15 (1) Prepare and furnish all forms necessary or desirable under the
16 provisions of this subtitle;

17 (2) Establish and collect reasonable filing fees established for the
18 implementation of this subtitle;

19 (3) Adopt [rules and] regulations necessary to enforce this subtitle; and

20 (4) Prepare and distribute relevant public information and educational
21 materials designed to advise individuals, institutions, and organizations of their rights and
22 responsibilities under this subtitle.

23 9.

24 (a) [No] A provider [shall] MAY NOT offer continuing care, enter into or renew
25 continuing care agreements, begin construction for A new [or expanded facilities]
26 FACILITY, BEGIN CONSTRUCTION OF AN EXPANSION TO OR RENOVATION OF AN
27 EXISTING FACILITY, or collect deposits for continuing care in this State unless the
28 provider has complied with the APPLICABLE provisions of §§ 10 and 11 of this [article]
29 SUBTITLE. ANY NEW CAPITAL ADDITION THAT WILL RESULT IN THE CONSTRUCTION
30 OF A NUMBER OF INDEPENDENT AND ASSISTED LIVING UNITS THAT IS GREATER
31 THAN 25% OF THE NUMBER OF EXISTING UNITS IS CONSIDERED NEW DEVELOPMENT
32 AND IS SUBJECT TO § 10 OF THIS SUBTITLE. ANY NEW CAPITAL ADDITION THAT DOES
33 NOT INVOLVE THE CONSTRUCTION OF INDEPENDENT OR ASSISTED LIVING UNITS
34 AND THAT DOES NOT MEET THE STANDARD OF § 7(G)(2) OF THIS SUBTITLE IS NOT
35 SUBJECT TO OFFICE REVIEW UNDER §§ 10 AND 11 OF THIS SUBTITLE. ANY CAPITAL
36 IMPROVEMENT OR REPLACEMENT THAT DOES NOT COST ENOUGH TO CONSTITUTE
37 A RENOVATION, IS NOT SUBJECT TO OFFICE REVIEW UNDER § 10 OR § 11 OF THIS
38 SUBTITLE.

39 [(b) Any provider who is offering continuing care when this subtitle takes effect
40 shall be given a reasonable time, not to exceed 6 months from the date of the issuance of

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1 the applicable rules adopted pursuant to this subtitle, within which to comply with this
2 subtitle and the rules promulgated pursuant thereto.]

3 [(c)] (B) When [an applicant] A PROVIDER has more than 1 facility offering
4 continuing care, separate applications for preliminary and final certificates of registration
5 and renewal certificates shall be made for each facility.

6 10.

7 (a) All providers who intend to develop[, expand, or renovate continuing care
8 communities] A FACILITY shall file with the Office a statement of intent to provide
9 continuing care at least 30 days prior to submission of a feasibility study for approval by
10 the Office.

11 (b) A provider may not collect deposits for continuing care or begin construction
12 of A new [or expanded facilities] FACILITY without approval of a feasibility study. The
13 feasibility study shall be filed in a form satisfactory to the Office [on Aging] and shall
14 include at least the following information:

15 (1) A statement of the purpose [and need] for the [project and the reasons
16 for the] proposed construction[, expansion, or renovation];

17 (2) [A statement] DOCUMENTATION of THE financial resources of the
18 provider;

19 (3) A statement of the capital expenditures necessary to accomplish the
20 project AND THE PLAN FOR ACQUIRING THE NECESSARY CAPITAL;

21 (4) A [statement of] PLAN DEMONSTRATING THE financial feasibility
22 [for] OF the proposed project [which] THAT shall include [a statement of] future
23 funding sources; [and]

24 (5) A STUDY THAT DEMONSTRATES THE MARKET FOR THE PROJECT;

25 [(5)] (6) An actuarial forecast reviewed by a [certified actuary.]
26 QUALIFIED ACTUARY;

27 (7) A STATEMENT OF THE PLANNED FEE STRUCTURE, INCLUDING ANY
28 PROPOSED ESCALATOR OR OTHER AUTOMATIC ADJUSTMENT PROVISION;

29 (8) A DESCRIPTION OF THE FACILITY THAT IS PROPOSED TO BE USED
30 OR IS BEING USED TO FURNISH CONTINUING CARE;

31 (9) A COPY OF THE PROPOSED ESCROW AND DEPOSIT AGREEMENTS;
32 AND

33 (10) THE FORM AND SUBSTANCE OF ANY ADVERTISING CAMPAIGN OR
34 PROPOSED ADVERTISEMENT FOR THE FACILITY THAT IS AVAILABLE AT THE TIME
35 OF FILING.

36 (c) The provider may collect deposits from prospective [members]
37 SUBSCRIBERS, provided that a feasibility study has been approved by the Office and that
38 funds collected are maintained in an escrow account.

6

1 (d) A feasibility study may be approved by the Office when it determines that:

2 (1) The number of comprehensive[,] OR domiciliary[, or extendedcare]
3 beds in the [continuing care] facility, for which licenses are requiredby the Department
4 of Health and Mental Hygiene, is not inconsistent with the State healthplan;

5 (2) A reasonable financial plan has been developed for [constructing]
6 DEVELOPING AND OPERATING the project;

7 (3) A market for the [continuing care] facility appears to exist;

8 (4) The feasibility study was prepared by a [certified public accountant or
9 other] recognized authority;

10 (5) The actuarial forecast supports the [need] PROJECTIONS for the
11 project; and

12 (6) The APPROVED escrow agreement and deposit agreement ARE
13 EXECUTED BY THE PROVIDER AND THE FINANCIAL INSTITUTION AND state that all
14 deposits will be held in escrow until the issuance of a certificate of registration,
15 construction is complete, the provider has been issued a certificate ofoccupancy or the
16 equivalent by the appropriate local jurisdiction, and the provider has been issued
17 appropriate licenses or certificates by the Department of Health and Mental Hygiene or
18 the Office.

19 (e) A provider may not enter into a continuing care agreement until the issuance
20 of a preliminary certificate of registration by the Office. The application shall be filed in
21 a form satisfactory to the Office and shall contain at least the following information:

22 (1) The name and address of the facility and the name and address of any
23 [affiliated] AFFILIATE, parent or subsidiary [corporation or partnership] PERSON;

24 [(2) The name and address of the provider if the provider is anindividual,
25 the names and addresses of the partners or members if the provider is apartnership or
26 other unincorporated association, or the names and addresses of the stockholders holding
27 at least a 10 percent interest in a stock corporation, or the names andaddresses of the
28 members in a nonstock corporation, and the names and addresses of the members of the
29 board of directors if the provider is a corporation, along with any significant financial
30 interests such persons may have with a vendor or provider of services at the facility. As
31 used in this paragraph, a "significant financial interest" means an interest of 10 percent or
32 more;]

33 (2) THE ORGANIZATIONAL STRUCTURE AND MANAGEMENT OF THE
34 PROVIDER, INCLUDING:

35 (I) IF THE PROVIDER IS A CORPORATION OR LIMITED LIABILITY
36 COMPANY, THE NAME OF THE CORPORATION OR LIMITED LIABILITY COMPANY, THE
37 STATE IN WHICH THE CORPORATION IS INCORPORATED OR THE LIMITED LIABILITY
38 COMPANY IS FORMED, AND THE NAME OF THE CHIEF EXECUTIVE OFFICER;

39 (II) IF THE PROVIDER IS A PARTNERSHIP, THE NAMES OF THE
40 GENERAL PARTNERS, THE STATE GOVERNING THE FORMATION OF THE

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1 PARTNERSHIP, AND THE NAME OF THE PRIMARY INDIVIDUAL RESPONSIBLE FOR
2 MANAGING THE PARTNERSHIP;

3 (III) IF THE PROVIDER IS AN UNINCORPORATED ASSOCIATION, THE
4 NAMES OF THE MEMBERS, THE STATE GOVERNING THE ASSOCIATION'S ACTIVITIES,
5 AND THE NAME OF THE PRIMARY INDIVIDUAL RESPONSIBLE FOR MANAGING THE
6 ASSOCIATION;

7 (IV) IF THE PROVIDER IS A PARTNERSHIP HAVING A CORPORATION
8 OR LIMITED LIABILITY COMPANY AS ONE OR MORE OF ITS GENERAL PARTNERS,
9 THE NAME OF THE CORPORATION OR LIMITED LIABILITY COMPANY, THE STATE IN
10 WHICH THE CORPORATION IS INCORPORATED OR THE LIMITED LIABILITY
11 COMPANY IS FORMED, AND THE NAME OF THE CHIEF EXECUTIVE OFFICER;

12 (V) IF THE PROVIDER IS A TRUST, THE NAME OF THE TRUSTEE,
13 THE NAMES OF THE OWNERS OF BENEFICIAL INTERESTS IN THE TRUST, THE STATE
14 GOVERNING THE TRUST, AND THE NAME OF THE PRIMARY INDIVIDUAL
15 RESPONSIBLE FOR OVERSEEING THE TRUST'S ACTIVITIES;

16 (VI) THE NAMES AND OCCUPATION OF ANY OF THE OFFICERS,
17 DIRECTORS, TRUSTEES, MANAGING OR GENERAL PARTNERS, AND ANY OTHER
18 PERSON WITH A 10% OR GREATER FINANCIAL EQUITY OR BENEFICIAL INTEREST IN
19 THE PROVIDER AND A DESCRIPTION OF THE PERSON'S FINANCIAL INTEREST IN OR
20 OCCUPATION WITH THE PROVIDER;

21 (VII) THE NAME AND ADDRESS OF ANY PROFESSIONAL SERVICE
22 FIRM, ASSOCIATION, TRUST, PARTNERSHIP, COMPANY, OR CORPORATION IN WHICH
23 A PERSON IDENTIFIED IN ITEM (VI) OF THIS PARAGRAPH HAS A 10% OR GREATER
24 FINANCIAL INTEREST AND WHICH IS ANTICIPATED TO PROVIDE GOODS, PREMISES,
25 OR SERVICES TO THE FACILITY OR PROVIDER OF A VALUE OF \$10,000 OR MORE
26 WITHIN ANY FISCAL YEAR, INCLUDING A DESCRIPTION OF THE GOODS, PREMISES,
27 OR SERVICES AND THEIR ANTICIPATED COST TO THE FACILITY OR PROVIDER;
28 HOWEVER, DISCLOSURE OF SALARY, WAGE, OR BENEFIT INFORMATION OF
29 EMPLOYEES OF THE PROVIDER IS NOT REQUIRED; AND

30 (VIII) A STATEMENT REGARDING WHETHER THE PROVIDER IS
31 QUALIFIED, OR INTENDS TO QUALIFY, AS A TAX EXEMPT ORGANIZATION UNDER
32 THE INTERNAL REVENUE CODE;

33 (3) A copy of the corporate charter, partnership agreement, articles of
34 association, membership agreement, [or] trust [agreement] AGREEMENT, ORSIMILAR
35 INSTRUMENT OR AGREEMENT [as it pertains] PERTAINING to the legal organization
36 of the [applicant] PROVIDER;

37 (4) A certified FINANCIAL statement of the [applicant's] PROVIDER
38 [financial condition, including balance sheet and income statements for the 3 most recent
39 fiscal years, or all years of operation if fewer than 3 years] FOR AS MANY OF THE MOST
40 RECENT FISCAL YEARS, NOT EXCEEDING 3 YEARS, FOR WHICH CERTIFIED
41 FINANCIAL STATEMENTS ARE OBTAINABLE UNDER GENERALLY ACCEPTED
42 ACCOUNTING PRINCIPLES. If the [applicant's] PROVIDER'S fiscal year ended more
43 than 90 days prior to the date of filing, there shall also be included an income statement,

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1 which need not be certified, covering the period between the date the fiscal year ended
2 and a date not more than 90 days prior to the date the application is filed;

3 (5) A statement as to any affiliation with a religious, charitable, or other
4 nonprofit organization; the extent of any [affiliation;] AFFILIATION, and the extent, if
5 any, to which the affiliate organization will be responsible for the financial and
6 contractual obligations of the [applicant] PROVIDER;

7 (6) A copy of the agreement to be entered into between the provider and
8 subscriber for continuing [care] CARE, AND ANY PRIORITY ADMISSION AGREEMENTS
9 BETWEEN THE PROVIDER AND ANY HEALTH CARE PROVIDER TO PROVIDE
10 HEALTH-RELATED BENEFITS;

11 (7) A statement of the MOST CURRENT fee structure, including escalator or
12 other automatic adjustment provisions;

13 [(8) A description of the facility which is proposed to be used or is being used
14 to furnish continuing care;]

15 [(9)] (8) A statement of the role of any publicly funded benefit or insurance
16 program in the financing of care;

17 [(10)] (9) [A sample] THE FORM AND SUBSTANCE of ANY ADVERTISING
18 CAMPAIGN, [each planned or previously published advertisement] ADVERTISEMENT,
19 or [circular] OTHER PROMOTIONAL MATERIAL for the facility [during the past 5
20 years] NOT PREVIOUSLY APPROVED BY THE OFFICE; and

21 [(11)] (10) Other reasonable and pertinent data [as] THAT the Office [may
22 require] REQUIRES.

23 (F) IF THE PROVIDER PLANS TO ADVERTISE BEFORE HAVING A CERTIFICATE
24 OF REGISTRATION ISSUED UNDER § 11 OF THIS SUBTITLE, THE FORM AND
25 SUBSTANCE OF ANY ADVERTISEMENT OR ADVERTISING CAMPAIGN MUST BE
26 SUBMITTED TO THE OFFICE AND APPROVED BEFORE THE ADVERTISEMENT OR
27 ADVERTISING CAMPAIGN MAY BE USED.

28 [(f)] (G) A preliminary certificate of registration shall be issued by the Office if it
29 determines that:

30 (1) The feasibility study has been approved;

31 (2) The CONTINUING CARE agreement to be used between the provider
32 and the subscriber meets the requirements of §§ 13, 14, and 15 of this [article]
33 SUBTITLE;

34 (3) All of the financial and organizational materials required to be
35 submitted under subsection (e) of this section have been submitted to the Office; and

36 (4) [All] THE FORM AND SUBSTANCE OF ALL advertising and OTHER
37 promotional materials [have been approved by the Office] FILED ARE NOT DECEPTIVE,
38 MISLEADING, OR LIKELY TO MISLEAD.

1 [(g)] (H) If a preliminary certificate of registration is not obtained from the Office
2 within 6 months of the approval of a feasibility study, or such longer time as is allowed by
3 the Office for good cause shown, the provider shall refund all deposits and cease in its
4 attempts to market continuing care [at the location specified in the] UNDER THAT
5 application.

6 11.

7 (a) A provider may not provide continuing care until the issuance of a certificate
8 of registration by the Office. The application shall be filed in a form satisfactory to the
9 Office. The application shall contain at least the following information:

10 (1) Verification that subscribers' continuing care agreements have been
11 executed for at least 65 percent of the independent living units and at least 10 percent of
12 the total entrance fee for each contracted unit has been collected;

13 (2) Verification that the [applicant] PROVIDER has received a written
14 commitment for permanent long-term financing, [and] AND, when requested by the
15 permanent financing lender, the Office may issue a letter stating that all requirements of
16 paragraph (1) of this subsection have been met; and

17 (3) Verification that application for construction financing has taken place.
18 When requested by a construction lender, the Office may issue a letter stating that all
19 requirements of paragraphs (1) and (2) of this subsection have been met and on closing of
20 the construction loan the certificate of registration shall be issued.

21 (b) (1) A certificate of registration shall be issued by the Office when it
22 determines that:

23 (i) The [applicant] PROVIDER has been issued a preliminary
24 certificate of registration;

25 (ii) The documents required have been filed;

26 (iii) The FORM AND SUBSTANCE OF ALL advertising AND OTHER
27 PROMOTIONAL materials [and circulars] filed are not deceptive, misleading, or likely to
28 mislead;

29 (iv) At least 65 percent of the independent living units have been
30 contracted for with a minimum 10 percent of the entrance fee paid as a deposit for each
31 contracted unit;

32 (v) Closing on construction financing has taken place; and

33 (vi) There is a commitment for permanent long-term financing.

34 (2) The initial certificate of registration may be issued for a period of up to
35 18 months at the discretion of the Office.

36 (c) A deposit held in escrow may not be used until a certificate of registration has
37 been issued, construction is completed, the provider has been issued a certificate of
38 occupancy, or the equivalent, by the appropriate local jurisdiction, and the provider has
39 been issued appropriate licenses or certificates by the Department of Health and Mental
40 Hygiene or by the Office.

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1 (d) If a certificate of registration is not issued within 24 months of the issuance of
2 a preliminary certificate of registration or longer time as is allowed by the Office for good
3 cause shown, the provider shall refund all deposits and cease in its attempts to offer
4 continuing care [at the location specified in the] UNDER THAT application.

5 (e) Annually, within 120 days after the end of the fiscal year, the provider shall
6 file an application for a renewal certificate in a form satisfactory to the Office which shall
7 contain the following information:

8 (1) Any additions or changes to the information required by § 10 of this
9 [article] SUBTITLE;

10 (2) [A certified] AN AUDITED financial statement for the preceding fiscal
11 year prepared in accordance with an audit guide adopted by the Office;

12 (3) [A cash basis operation] AN OPERATING budget for the current fiscal
13 year, and a projected [cash basis] operating budget for the next succeeding fiscal year;

14 (4) A CASH FLOW PROJECTION FOR THE CURRENT FISCAL YEAR AND
15 THE NEXT 2 FISCAL YEARS;

16 [(4)] (5) A projection of the life expectancy and the number of residents
17 who will require nursing home care;

18 [(5)] (6) An actuarial study reviewed by a [certified actuary,] QUALIFIED
19 ACTUARY and submitted every 3 years; [and]

20 (7) THE FORM AND SUBSTANCE OF ANY ADVERTISING CAMPAIGN OR
21 PROPOSED ADVERTISEMENT AND OTHER PROMOTIONAL MATERIALS NOT
22 PREVIOUSLY FILED WITH THE OFFICE; AND

23 [(6)] (8) Any further information [which may be required by] THAT the
24 Office REQUIRES.

25 (f) If the application and accompanying information is not received by the Office
26 within the 120-day period, a late fee may be charged. Failure to file the required
27 information within 90 days of the due date shall be a violation of this subtitle.

28 (g) A renewal of a certificate of registration shall be issued by the Office when it
29 determines that:

30 (1) The documents required have been filed;

31 (2) Any revised continuing care agreements meet the requirements of this
32 subtitle;

33 (3) The provider has complied with § 17A of this [article] SUBTITLE if it
34 has been found to be in financial difficulty;

35 (4) When appropriate, the [facilities have] FACILITY HAS been licensed or
36 certified by the Department of Health and Mental Hygiene or the Office; and

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1 (5) The FORM AND SUBSTANCE OF ALL advertising AND OTHER
2 PROMOTIONAL materials [and circulars] filed are not deceptive, misleading, or likely to
3 mislead.

4 (H) A PROVIDER SHALL FILE A REQUEST FOR APPROVAL FOR EACH
5 RENOVATION IN A FORM SATISFACTORY TO THE OFFICE. AT LEAST 30 DAYS BEFORE
6 FILING THE REQUEST, THE PROVIDER SHALL SUBMIT TO THE OFFICE A WRITTEN
7 STATEMENT THAT SETS FORTH THE PROVIDER'S INTENT TO FILE A RENOVATION
8 APPROVAL REQUEST. A REQUEST FOR APPROVAL SHALL INCLUDE:

9 (1) A STATEMENT OF THE PURPOSE OF AND NEED FOR THE
10 RENOVATION;

11 (2) A FINANCIAL PLAN THAT DEMONSTRATES TO THE SATISFACTION OF
12 THE OFFICE THAT THE RENOVATION WILL NOT HAVE AN UNREASONABLY ADVERSE
13 AFFECT ON THE FINANCIAL ABILITY OF THE PROVIDER TO FURNISH CONTINUING
14 CARE IN ACCORDANCE WITH THE PROVIDER'S CONTINUING CARE AGREEMENTS
15 AND THIS SUBTITLE AT THE FACILITY IDENTIFIED IN THE PLAN AND AT EACH
16 OTHER FACILITY OF THE PROVIDER IN THE STATE; AND

17 (3) ANY OTHER INFORMATION THAT THE OFFICE REQUIRES.

18 (I) THE OFFICE SHALL APPROVE ANY RENOVATION REQUESTED IN
19 ACCORDANCE WITH THIS SECTION IF THE OFFICE DETERMINES THAT THE
20 PROPOSED RENOVATION WILL NOT HAVE AN UNREASONABLY ADVERSE AFFECT ON
21 THE FINANCIAL ABILITY OF THE PROVIDER TO FURNISH CONTINUING CARE IN
22 ACCORDANCE WITH THE PROVIDER'S CONTINUING CARE AGREEMENTS AND THIS
23 SUBTITLE. A PROVIDER MAY NOT BEGIN CONSTRUCTION OF THE RENOVATION
24 UNTIL THE PROVIDER RECEIVES WRITTEN APPROVAL FROM THE OFFICE.

25 (J) A PROVIDER SHALL FILE A REQUEST FOR APPROVAL FOR EACH
26 EXPANSION IN A FORM SATISFACTORY TO THE OFFICE. AT LEAST 30 DAYS BEFORE
27 FILING THE REQUEST, THE PROVIDER SHALL SUBMIT TO THE OFFICE A WRITTEN
28 STATEMENT THAT SETS FORTH THE PROVIDER'S INTENT TO FILE AN EXPANSION
29 REQUEST. THE REQUEST SHALL INCLUDE:

30 (1) A STATEMENT OF THE PURPOSE OF AND NEED FOR THE EXPANSION;

31 (2) IF THE EXPANSION INVOLVES LIVING UNITS, A PLAN THAT
32 DEMONSTRATES TO THE SATISFACTION OF THE OFFICE THAT A MARKET EXISTS
33 FOR THE ADDITIONAL LIVING UNITS;

34 (3) A FINANCIAL PLAN THAT DEMONSTRATES TO THE SATISFACTION OF
35 THE OFFICE THAT THE EXPANSION WILL NOT HAVE AN UNREASONABLY ADVERSE
36 AFFECT ON THE FINANCIAL ABILITY OF THE PROVIDER TO FURNISH CONTINUING
37 CARE IN ACCORDANCE WITH THE PROVIDER'S CONTINUING CARE AGREEMENTS
38 AND THIS SUBTITLE AT THE FACILITY IDENTIFIED IN THE PLAN AND AT EACH
39 OTHER FACILITY OF THE PROVIDER IN THE STATE; AND

40 (4) ANY OTHER INFORMATION THAT THE OFFICE REQUIRES.

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1 (K) THE OFFICE SHALL APPROVE ANY EXPANSION REQUESTED IN
2 ACCORDANCE WITH THIS SECTION AND, IF APPROPRIATE, ISSUE A NEW
3 CERTIFICATE OF REGISTRATION IF THE OFFICE DETERMINES THAT THE PROPOSED
4 EXPANSION WILL NOT HAVE AN UNREASONABLY ADVERSE AFFECT ON THE
5 FINANCIAL ABILITY OF THE PROVIDER TO FURNISH CONTINUING CARE IN
6 ACCORDANCE WITH THE PROVIDER'S CONTINUING CARE AGREEMENTS AND THIS
7 SUBTITLE. A PROVIDER MAY NOT BEGIN CONSTRUCTION OF THE EXPANSION UNTIL
8 THE PROVIDER RECEIVES WRITTEN APPROVAL FROM THE OFFICE.

9 [(h)] (L) It shall be the responsibility of the Office to make the information
10 REQUIRED TO BE provided pursuant to this subtitle available to all interested persons.
11 The Office shall publicize the availability of this information.

12 11A.

13 (A) AT LEAST ANNUALLY, EACH PROVIDER SHALL CONDUCT A MEETING,
14 OPEN TO ALL OF THE PROVIDER'S SUBSCRIBERS, AT WHICH AN AUTHORIZED
15 OFFICER OF THE PROVIDER SHALL PRESENT A SUMMARY OF THE PROVIDER'S
16 OPERATIONS, SIGNIFICANT CHANGES FROM THE PREVIOUS YEAR, AND THE GOALS
17 AND OBJECTIVES FOR THE NEXT YEAR. THE GOVERNING BODY OF THE PROVIDER
18 SHALL MAKE PROVISIONS TO RECEIVE AND ANSWER QUESTIONS FROM
19 SUBSCRIBERS AT THE MEETING.

20 (B) EACH GOVERNING BODY OF A PROVIDER THAT DOES NOT HAVE AT
21 LEAST ONE SUBSCRIBER AS A MEMBER OR AS A REGULAR ATTENDEE AT ITS
22 MEETING WITH A RIGHT TO ADDRESS THE GOVERNING BODY SHALL APPOINT A
23 SELECT COMMITTEE OF ITS MEMBERS TO MEET AT LEAST TWICE ANNUALLY WITH
24 THE FACILITY'S RESIDENT ASSOCIATION TO ADDRESS CONCERNS OF THE
25 SUBSCRIBERS AND TO ENSURE THAT THE OPINIONS OF SUBSCRIBERS ARE RELAYED
26 TO THE GOVERNING BODY. IF A COMMUNITY DOES NOT HAVE A RESIDENT
27 ASSOCIATION, THE COMMITTEE SHALL MEET WITH A REASONABLE NUMBER OF
28 REPRESENTATIVES, NOT REQUIRED TO EXCEED FIFTEEN, ELECTED BY THE
29 SUBSCRIBERS.

30 11B.

31 (A) IN THIS SECTION, "NET OPERATING EXPENSES" MEANS THE PROVIDER'S
32 TOTAL OPERATING EXPENSES RELATED TO FURNISHING CONTINUING CARE AT
33 EACH FACILITY OF THE PROVIDER, LESS DEPRECIATION, AMORTIZATION, UNUSUAL
34 AND INFREQUENT EXPENSES, AND CHANGES IN THE OBLIGATION TO PROVIDE
35 FUTURE SERVICES. INTEREST EXPENSES MAY BE EXCLUDED FROM CALCULATION
36 OF NET OPERATING EXPENSES, IF THE PROVIDER HAS FUNDED A DEBT SERVICE
37 RESERVE OR OTHER INTEREST RESERVE UNDER REQUIREMENTS IMPOSED BY A
38 FINANCIAL INSTITUTION OR UNDER APPLICABLE FINANCING DOCUMENTS, TO THE
39 EXTENT AND IN THE AMOUNT THE FUND INCLUDES AMOUNTS TO COVER INTEREST
40 FOR THE YEAR IN QUESTION.

41 (B) THE PROVIDER SHALL SET ASIDE FOR EACH FACILITY SUBJECT TO THIS
42 SUBTITLE OPERATING RESERVES THAT EQUAL 15% OF THE FACILITY'S NET
43 OPERATING EXPENSES FOR THE MOST RECENT FISCAL YEAR FOR WHICH A
44 CERTIFIED FINANCIAL STATEMENT IS AVAILABLE. THE RESERVES SHALL BE

13

1 MAINTAINED IN REASONABLY LIQUID FORM IN THE JUDGEMENT OF THE
2 PROVIDER.

3 (C) THE PROVIDER SHALL COMPUTE OPERATING RESERVES FOR EACH
4 FACILITY AS OF THE END OF THE FACILITY'S MOST RECENT FISCAL YEAR AND,
5 SIMULTANEOUSLY WITH SUBMISSION OF ITS APPLICATION FOR A RENEWAL
6 CERTIFICATE, SHALL INDICATE COMPLIANCE BY SETTING FORTH IN A LETTER TO
7 THE OFFICE FROM A CERTIFIED PUBLIC ACCOUNTANT THE AMOUNT ACTUALLY SET
8 ASIDE OR BY DISCLOSING THE AMOUNT IN A CERTIFIED FINANCIAL STATEMENT.

9 (D) A PROVIDER MAY APPLY TOWARD THE RESERVE REQUIRED BY THIS
10 SECTION ANY RESERVES, OTHER THAN DEBT SERVICE RESERVES, MAINTAINED
11 UNDER APPLICABLE FINANCING DOCUMENT REQUIREMENTS IF THE RESERVES ARE
12 AVAILABLE TO THE PROVIDER TO MEET THE FACILITY'S OPERATING EXPENSES.

13 (E) FOR THE PURPOSE OF CALCULATING THE PROVIDER'S OPERATING
14 RESERVES, INVESTMENTS HELD TO THE CREDIT OF THE RESERVES SHALL BE
15 CALCULATED AT THEIR MARKET VALUE AS OF THE END OF THE PROVIDER'S MOST
16 RECENT FISCAL YEAR FOR WHICH A CERTIFIED FINANCIAL STATEMENT IS
17 AVAILABLE.

18 (F) THE PROVIDER SHALL NOTIFY THE OFFICE IN WRITING
19 SIMULTANEOUSLY WITH DRAWING ANY AMOUNT FROM THE FUNDS AVAILABLE TO
20 SATISFY THE OPERATING RESERVE THAT IS REQUIRED BY SUBSECTION (B) OF THIS
21 SECTION. WITHIN 30 DAYS OF SUCH DRAW, THE PROVIDER SHALL SUBMIT TO THE
22 OFFICE A WRITTEN PLAN FOR RESTORING THE FUNDS IN THE RESERVE TO THE
23 LEVEL REQUIRED BY SUBSECTION (B) OF THIS SECTION.

24 (G) (1) ANY PROVIDER THAT HOLDS A CERTIFICATE OF REGISTRATION OR
25 A PRELIMINARY CERTIFICATE OF REGISTRATION OR APPROVAL OF ITS FEASIBILITY
26 STUDY AS OF THE EFFECTIVE DATE OF THIS SECTION SHALL HAVE UP TO 10 FULL
27 FISCAL YEARS AFTER THE EFFECTIVE DATE TO MEET THE REQUIREMENT OF
28 SUBSECTION (B) OF THIS SECTION.

29 (2) ANY SUCH PROVIDER SHALL MEET THE REQUIREMENT OF
30 SUBSECTION (B) OF THIS SECTION AT A MINIMUM RATE OF 10% PER YEAR AS OF THE
31 END OF EACH FISCAL YEAR AFTER THE EFFECTIVE DATE, UP TO A TOTAL OF 100%
32 AS OF THE END OF THE 10TH FISCAL YEAR.

33 (3) THE OFFICE MAY ALLOW ANY SUCH PROVIDER TO MODIFY THE
34 MINIMUM RATE OR AUTHORIZE AN ADDITIONAL AMOUNT OF TIME TO MEET THE
35 REQUIREMENT OF SUBSECTION (B) OF THE SECTION, IF THE MODIFICATION IS
36 NECESSARY TO MAINTAIN THE FINANCIAL VIABILITY OF THE FACILITY.

37 (H) (1) ANY PROVIDER THAT DOES NOT HOLD A CERTIFICATE OF
38 REGISTRATION OR A PRELIMINARY CERTIFICATE OF REGISTRATION OR APPROVAL
39 OF ITS FEASIBILITY STUDY AS OF THE EFFECTIVE DATE OF THIS SECTION SHALL
40 MEET THE REQUIREMENT OF SUBSECTION (B) OF THIS SECTION AS OF THE END OF
41 THE SECOND FULL FISCAL YEAR AFTER THE FISCAL YEAR IN WHICH THE PROVIDER
42 IS ENTITLED, UNDER SUBSECTION 11(C) OF THIS SECTION, TO THE RELEASE OF ALL
43 OF THE FUNDS HELD IN ESCROW.

14

1 (2) (I) A PROVIDER MEETING THE STANDARDS OF PARAGRAPH (1) OF
2 THIS SUBSECTION MAY SATISFY THE REQUIREMENT OF PARAGRAPH (1) OF THIS
3 SUBSECTION BY MEANS OF A BINDING AGREEMENT THAT UNCONDITIONALLY
4 OBLIGATES A FINANCIAL INSTITUTION TO FURNISH THE PROVIDER CREDIT IN AN
5 AMOUNT AT LEAST EQUAL TO THE AMOUNT REQUIRED IN PARAGRAPH (1) OF THIS
6 SUBSECTION.

7 (II) THE PROVIDER MUST MEET THE REQUIREMENTS OF
8 PARAGRAPH (1) OF THIS SUBSECTION THROUGH A RESERVE AS OF THE EARLIER TO
9 OCCUR OF:

10 1. THE END OF THE 10TH FULL FISCAL YEAR FOLLOWING
11 THE FISCAL YEAR IN WHICH THE PROVIDER IS ENTITLED, TO THE RELEASE OF ALL
12 OF THE FUNDS HELD IN ESCROW UNDER § 11(C) OF THIS SUBTITLE; AND

13 2. THE DATE ON WHICH THE BINDING AGREEMENT WITH A
14 FINANCIAL INSTITUTION EXPIRES, TERMINATES, OR IS NOT RENEWED.

15 (I) FOR ANY FACILITY IN WHICH SOME RESIDENTS ARE NOT PARTIES TO
16 CONTINUING CARE AGREEMENTS, THE PROVIDER SHALL COMPUTE THE AMOUNT
17 OF THE OPERATING RESERVE REQUIREMENT BASED ON THE PORTION OF THE NET
18 OPERATING EXPENSES WHICH BEARS THE SAME RATIO TO THE TOTAL NET
19 OPERATING EXPENSE AS THE NUMBER OF UNITS CERTIFIED BY THE OFFICE BEARS
20 TO THE TOTAL NUMBER OF LIVING UNITS.

21 11C.

22 (A) (1) THE PROVIDER SHALL FURNISH WITHOUT COST TO ALL
23 PROSPECTIVE SUBSCRIBERS, BEFORE PAYMENT OF ANY PART OF THE ENTRANCE
24 FEE OR, IF EARLIER, THE EXECUTION OF A CONTINUING CARE AGREEMENT, AND
25 ANNUALLY TO ALL SUBSCRIBERS ON REQUEST, A DISCLOSURE STATEMENT FOR
26 EACH FACILITY OF THE PROVIDER HOLDING A PRELIMINARY CERTIFICATE OF
27 REGISTRATION OR A CERTIFICATE OF REGISTRATION.

28 (2) THE PROVIDER SHALL SUBMIT ITS INITIAL DISCLOSURE STATEMENT
29 TO THE OFFICE FOR REVIEW AT LEAST 45 DAYS BEFORE DISTRIBUTING THE
30 STATEMENT TO ANY PROSPECTIVE SUBSCRIBERS.

31 (B) (1) THE PROVIDER SHALL REVISE THE DISCLOSURE STATEMENT
32 ANNUALLY AND FILE THE DISCLOSURE STATEMENT WITH THE OFFICE WITHIN 120
33 DAYS AFTER THE END OF THE PROVIDER'S FISCAL YEAR.

34 (2) THE OFFICE SHALL REVIEW THE DISCLOSURE STATEMENT SOLELY
35 TO ENSURE COMPLIANCE WITH THIS SECTION.

36 (C) THE DISCLOSURE STATEMENT SHALL INCLUDE:

37 (1) THE NAME, ADDRESS, AND DESCRIPTION OF THE FACILITY AND THE
38 NAME AND ADDRESS OF ANY PARENT OR SUBSIDIARY PERSON;

39 (2) THE ORGANIZATIONAL STRUCTURE AND MANAGEMENT OF THE
40 PROVIDER, INCLUDING:

15

1 (I) IF THE PROVIDER IS A CORPORATION OR LIMITED LIABILITY
2 COMPANY, THE NAME OF THE CORPORATION OR LIMITED LIABILITY COMPANY, THE
3 STATE IN WHICH THE CORPORATION IS INCORPORATED OR THE LIMITED LIABILITY
4 COMPANY IS FORMED, AND THE NAME OF THE CHIEF EXECUTIVE OFFICER;

5 (II) IF THE PROVIDER IS A PARTNERSHIP, THE NAMES OF THE
6 GENERAL PARTNERS, THE STATE GOVERNING THE FORMATION OF THE
7 PARTNERSHIP, AND THE NAME OF THE PRIMARY INDIVIDUAL RESPONSIBLE FOR
8 MANAGING THE PARTNERSHIP;

9 (III) IF THE PROVIDER IS AN UNINCORPORATED ASSOCIATION, THE
10 NAMES OF THE MEMBERS, THE STATE GOVERNING THE ASSOCIATION'S ACTIVITIES,
11 AND THE NAME OF THE PRIMARY INDIVIDUAL RESPONSIBLE FOR MANAGING THE
12 ASSOCIATION;

13 (IV) IF THE PROVIDER IS A PARTNERSHIP HAVING A CORPORATION
14 OR LIMITED LIABILITY COMPANY AS ONE OR MORE OF ITS GENERAL PARTNERS,
15 THE NAME OF THE CORPORATION OR LIMITED LIABILITY COMPANY, THE STATE IN
16 WHICH THE CORPORATION IS INCORPORATED OR THE LIMITED LIABILITY
17 COMPANY IS FORMED, AND THE NAME OF THE CHIEF EXECUTIVE OFFICER;

18 (V) IF THE PROVIDER IS A TRUST, THE NAME OF THE TRUSTEE,
19 THE NAMES OF THE OWNERS OF THE BENEFICIAL INTERESTS IN THE TRUST, THE
20 STATE GOVERNING THE TRUST, AND THE NAME OF THE PRIMARY INDIVIDUAL
21 RESPONSIBLE FOR OVERSEEING THE TRUST'S ACTIVITIES; AND

22 (VI) A STATEMENT REGARDING WHETHER THE PROVIDER IS
23 QUALIFIED, OR INTENDS TO QUALIFY, AS A TAX-EXEMPT ORGANIZATION UNDER
24 THE INTERNAL REVENUE CODE;

25 (3) A STATEMENT REGARDING ANY AFFILIATION OF THE PROVIDER
26 WITH A RELIGIOUS, CHARITABLE, OR OTHER NONPROFIT ORGANIZATION, AND THE
27 EXTENT TO WHICH THE ORGANIZATION IS RESPONSIBLE FOR THE FINANCIAL AND
28 CONTRACTUAL OBLIGATIONS OF THE PROVIDER;

29 (4) A DESCRIPTION OF ALL FEES, INCLUDING ENTRANCE FEES, HEALTH
30 CARE FEES, AND PERIODIC FEES, COLLECTED BY THE PROVIDER FROM
31 SUBSCRIBERS, SETTING FORTH THE FREQUENCY OF THE ANNUAL PERCENTAGE
32 CHANGES DURING EACH OF THE PREVIOUS 5 YEARS. IF THE FACILITY HAS BEEN IN
33 OPERATION LESS THAN 5 YEARS, THEN THE DESCRIPTION SHALL BE FOR EACH
34 YEAR THAT IT HAS BEEN IN OPERATION;

35 (5) A STATEMENT THAT PROVISIONS HAVE BEEN OR WILL BE MADE TO
36 COMPLY WITH THE OPERATING RESERVE REQUIREMENTS AS DESCRIBED IN § 11B
37 OF THIS SUBTITLE, AND A GENERAL STATEMENT REGARDING THE PROVIDER'S
38 INVESTMENT POLICY RELATED TO THE REQUIRED RESERVES, INCLUDING HOW
39 OFTEN THE RESERVE FUND INVESTMENT IS REVIEWED AND BY WHOM;

40 (6) A COPY OF THE MOST RECENT CERTIFIED FINANCIAL STATEMENT
41 OBTAINABLE UNDER GENERALLY ACCEPTED ACCOUNTING PRINCIPLES;

42 (7) A DESCRIPTION OF THE LONG-TERM FINANCING FOR THE FACILITY;

16

1 (8) IF THE FACILITY HAS NOT REACHED 85% OCCUPANCY OF
2 INDEPENDENT LIVING UNITS, A SUMMARY OF THE FEASIBILITY STUDY;

3 (9) A CASH FLOW FORECAST STATEMENT FOR THE CURRENT AND THE
4 NEXT 2 FISCAL YEARS;

5 (10) THE NAMES AND OCCUPATIONS OF THE OFFICERS, DIRECTORS,
6 TRUSTEES, MANAGING OR GENERAL PARTNERS, AND ANY OTHER PERSONS WITH A
7 10% OR GREATER EQUITY OR BENEFICIAL INTEREST IN THE PROVIDER, AND A
8 DESCRIPTION OF THE FINANCIAL INTEREST IN OR OCCUPATION WITH THE
9 PROVIDER;

10 (11) THE NAME AND ADDRESS OF ANY PROFESSIONAL SERVICE FIRM,
11 ASSOCIATION, TRUST, PARTNERSHIP, COMPANY, OR CORPORATION IN WHICH A
12 PERSON IDENTIFIED IN ITEM (10) OF THIS SUBSECTION HAS A 10% OR GREATER
13 FINANCIAL INTEREST AND WHICH IS ANTICIPATED TO PROVIDE GOODS, PREMISES,
14 OR SERVICES TO THE FACILITY OR PROVIDER OF A VALUE OF \$10,000 OR MORE
15 WITHIN ANY FISCAL YEAR, INCLUDING A DESCRIPTION OF THE GOODS, PREMISES,
16 OR SERVICES AND THEIR ANTICIPATED COST TO THE FACILITY OR PROVIDER.
17 HOWEVER, THE DISCLOSURE OF SALARY, WAGE, OR BENEFIT INFORMATION OF
18 EMPLOYEES OF THE PROVIDER IS NOT REQUIRED;

19 (12) THE NAME OF THE PROPOSED MANAGER OR MANAGEMENT
20 COMPANY IF THE FACILITY IS OR WILL BE MANAGED ON A DAY-TO-DAY BASIS BY A
21 PERSON OTHER THAN AN INDIVIDUAL DIRECTLY EMPLOYED BY THE PROVIDER,
22 AND A DESCRIPTION OF THE BUSINESS EXPERIENCE, IF ANY, OF THE MANAGER OR
23 COMPANY IN THE OPERATION OR MANAGEMENT OF SIMILAR FACILITIES;

24 (13) A DESCRIPTION OF ANY MATTER IN WHICH AN INDIVIDUAL
25 IDENTIFIED IN ITEM (10) OF THIS SUBSECTION:

26 (I) HAS BEEN CONVICTED OF A FELONY OR PLEADED NOLO
27 CONTENDERE TO A FELONY CHARGE, IF THE FELONY INVOLVED FRAUD,
28 EMBEZZLEMENT, FRAUDULENT CONVERSION, OR MISAPPROPRIATION OF
29 PROPERTY;

30 (II) HAS BEEN HELD LIABLE OR ENJOINED IN A CIVIL ACTION BY
31 FINAL JUDGMENT IF THE CIVIL ACTION INVOLVED FRAUD, EMBEZZLEMENT,
32 FRAUDULENT CONVERSION, OR MISAPPROPRIATION AS A FIDUCIARY; OR

33 (III) HAS BEEN SUBJECT TO AN EFFECTIVE INJUNCTIVE OR
34 RESTRICTIVE ORDER OF A COURT OF RECORD OR, WITHIN THE PAST 10 YEARS, HAD
35 ANY STATE OR FEDERAL LICENSE OR PERMIT SUSPENDED OR REVOKED AS A
36 RESULT OF AN ACTION BROUGHT BY A GOVERNMENTAL AGENCY, ARISING OUT OF
37 OR RELATING TO BUSINESS ACTIVITY OR HEALTH CARE, INCLUDING ACTIONS
38 AFFECTING A LICENSE TO OPERATE ANY FACILITY OR SERVICE FOR AGING,
39 IMPAIRED, OR DEPENDENT PERSONS;

40 (14) A DESCRIPTION OF THE FORM OF GOVERNANCE OF THE PROVIDER,
41 INCLUDING THE COMPOSITION OF THE GOVERNING BODY, AND A STATEMENT THAT
42 THE PROVIDER SHALL SATISFY THE REQUIREMENTS OF § 11A OF THIS SUBTITLE;

17

1 (15) IF APPLICABLE, A DESCRIPTION OF THE CONDITIONS UNDER WHICH
2 THE PROVIDER MAY BE ISSUED A CERTIFICATE OF REGISTRATION AND MAY USE
3 ESCROWED DEPOSITS, AND A STATEMENT OF THE AMOUNT OF THE SUBSCRIBER'S
4 DEPOSIT THAT MAY BE USED ON ISSUANCE OF A CERTIFICATE OF REGISTRATION;

5 (16) A SUMMARY OF THE BASIC SERVICES PROVIDED OR PROPOSED TO
6 BE PROVIDED AT THE FACILITY UNDER THE CONTINUING CARE AGREEMENT,
7 INCLUDING THE EXTENT TO WHICH HEALTH RELATED SERVICES ARE FURNISHED,
8 THAT CLEARLY STATES WHICH SERVICES ARE INDICATED IN THE AGREEMENT AS
9 INCLUDED IN THE BASIC FEE OR FEES AND WHICH SERVICES ARE OR WILL BE MADE
10 AVAILABLE AT OR BY THE FACILITY AT AN EXTRA CHARGE;

11 (17) A STATEMENT THAT THE PROVIDER SHALL AMEND ITS DISCLOSURE
12 STATEMENT IF, AT ANY TIME, IN THE OPINION OF THE PROVIDER OR THE OFFICE,
13 AN AMENDMENT IS NECESSARY TO PREVENT THE DISCLOSURE STATEMENT FROM
14 CONTAINING ANY MATERIAL MISSTATEMENT OF FACT REQUIRED BY THIS SECTION
15 TO BE STATED IN THE DISCLOSURE STATEMENT OR OMISSION OF A MATERIAL FACT
16 REQUIRED BY THIS SECTION TO BE STATED IN THE DISCLOSURE STATEMENT;

17 (18) A DESCRIPTION OF ANY ACTIVITY INVOLVING A RENOVATION OR
18 AN EXPANSION, WHETHER OR NOT SUBJECT TO OFFICE REVIEW, DURING THE
19 PRECEDING FISCAL YEAR OR PROPOSED FOR THE CURRENT FISCAL YEAR;

20 (19) A STATEMENT IF IT IS THE PROVIDER'S POLICY TO IMPOSE A
21 SURCHARGE ON SOME, BUT NOT ALL, SUBSCRIBERS BECAUSE OF SOME CONDITION
22 OR CIRCUMSTANCE AND THAT THE SURCHARGE WILL NOT BE CONSIDERED PART
23 OF THE ENTRANCE FEE IN THE STATUTORY REFUND UNDER § 15 OF THIS SUBTITLE;
24 AND

25 (20) SUCH OTHER MATERIAL INFORMATION CONCERNING THE FACILITY
26 OR THE PROVIDER AS THE OFFICE REQUIRES OR THAT THE PROVIDER WISHES TO
27 INCLUDE.

28 (D) THE DISCLOSURE STATEMENT SHALL CONTAIN A COVER PAGE THAT
29 STATES, IN A PROMINENT LOCATION AND TYPE FACE, THE DATE OF THE
30 DISCLOSURE STATEMENT AND THAT THE ISSUANCE OF A CERTIFICATE OF
31 REGISTRATION DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION, OR
32 ENDORSEMENT OF THE FACILITY BY THE OFFICE, NOR IS IT EVIDENCE OF, OR DOES
33 IT ATTEST TO, THE ACCURACY OR COMPLETENESS OF THE INFORMATION SET OUT
34 IN THE DISCLOSURE STATEMENT.

35 (E) ANY AMENDED DISCLOSURE STATEMENT:

36 (1) SHALL BE FILED WITH THE OFFICE AT THE SAME TIME THAT IT IS
37 DELIVERED TO ANY SUBSCRIBER OR PROSPECTIVE SUBSCRIBER; AND

38 (2) IS SUBJECT TO ALL THE REQUIREMENTS OF THIS SUBTITLE.

39 11D.

40 (A) (1) A PROVIDER THAT HOLDS A CERTIFICATE OF REGISTRATION AND A
41 PERSON WITH AN OWNERSHIP INTEREST IN OR RIGHT TO CONTROL THE PROVIDER

18

1 THROUGH GOVERNING BODY APPOINTMENTS OR CONTRACTUAL OR SIMILAR
2 ARRANGEMENTS MAY NOT SELL OR OTHERWISE TRANSFER, DIRECTLY OR
3 INDIRECTLY, MORE THAN 50% OF THE PROVIDER'S OWNERSHIP OF A FACILITY OR
4 MORE THAN 50% OF THE OWNERSHIP OF, OR RIGHT TO CONTROL, A PERSON THAT
5 OWNS OR CONTROLS A FACILITY, UNLESS THE PROVIDER OR PERSON OBTAINS THE
6 APPROVAL OF THE OFFICE TO THE SALE OR OTHER TRANSFER IN ACCORDANCE
7 WITH THIS SECTION.

8 (2) ANY SERIES OF SUCH SALES OR OTHER TRANSFERS WITHIN A
9 12-MONTH PERIOD SHALL BE AGGREGATED FOR PURPOSES OF THIS SECTION.

10 (3) THIS SECTION DOES NOT APPLY TO A TRANSFER OF OWNERSHIP OF
11 A FACILITY, OR TO A TRANSFER OF OWNERSHIP OR CONTROL OF A PERSON OWNING
12 OR CONTROLLING A FACILITY, IF THE TRANSFER IS PART OF A BUSINESS
13 REORGANIZATION, AND IF THE SAME PARTY OR PARTIES HOLDING A MAJORITY OF
14 OWNERSHIP OR RIGHT TO CONTROL BEFORE THE BUSINESS REORGANIZATION
15 WILL RETAIN, DIRECTLY OR INDIRECTLY, A MAJORITY OF OWNERSHIP OR RIGHT
16 TO CONTROL AFTER THE BUSINESS REORGANIZATION.

17 (4) NOTWITHSTANDING PARAGRAPH (3) OF THIS SUBSECTION, 30 DAYS
18 PRIOR NOTICE SHALL BE GIVEN BY THE PROVIDER TO THE OFFICE AND TO THE
19 FACILITY'S SUBSCRIBERS OF ANY REORGANIZATION MEETING THE STANDARDS OF
20 PARAGRAPH (3) OF THIS SUBSECTION.

21 (B) (1) A PROVIDER SUBJECT TO SUBSECTION (A)(1) OF THIS SECTION
22 SHALL:

23 (I) AT LEAST 90 DAYS BEFORE THE PROPOSED EFFECTIVE DATE
24 OF THE SALE OR OTHER TRANSFER, FILE WITH THE OFFICE A STATEMENT OF
25 INTENT TO TRANSFER OWNERSHIP OR CONTROL; AND

26 (II) AT LEAST 65 DAYS BEFORE THE PROPOSED EFFECTIVE DATE
27 OF THE SALE OR OTHER TRANSFER, GIVE WRITTEN NOTICE OF THE PROPOSED SALE
28 OR OTHER TRANSFER TO THE SUBSCRIBERS OF THE AFFECTED FACILITY AND TO
29 THE OFFICE.

30 (2) THE WRITTEN NOTICE REQUIRED BY PARAGRAPH (1)(II) OF THIS
31 SUBSECTION SHALL SPECIFY THE PLACE AND TIME FOR THE MEETING SPECIFIED IN
32 PARAGRAPH (4) OF THIS SUBSECTION. THE NOTICE TO THE OFFICE SHALL INCLUDE
33 THE FOLLOWING INFORMATION, WHICH ALSO SHALL BE PROVIDED TO ANY
34 SUBSCRIBER OF THE AFFECTED FACILITY ON REQUEST:

35 (I) THE ADDRESS OF THE PROVIDER AND THE OFFICE TO WHICH
36 COMMENTS MAY BE SENT;

37 (II) THE NAME AND ADDRESS OF THE AFFECTED FACILITY AND
38 THE NAME AND ADDRESS OF THE PROVIDER;

39 (III) THE ORGANIZATIONAL STRUCTURE AND MANAGEMENT OF
40 THE PROVIDER AND THE FACILITY AFTER THE PROPOSED SALE OR OTHER
41 TRANSFER IS COMPLETED, INCLUDING:

19

1 A. IF THE PROVIDER IS TO BE A CORPORATION OR LIMITED
2 LIABILITY COMPANY, THE NAME OF THE CORPORATION OR LIMITED LIABILITY
3 COMPANY, THE STATE IN WHICH THE CORPORATION IS INCORPORATED OR THE
4 LIMITED LIABILITY COMPANY IS FORMED, AND THE NAME OF THE CHIEF
5 EXECUTIVE OFFICER;

6 B. IF THE PROVIDER IS TO BE A PARTNERSHIP, THE NAMES
7 OF THE GENERAL PARTNERS, THE STATE GOVERNING THE FORMATION OF THE
8 PARTNERSHIP, AND THE NAME OF THE PRIMARY INDIVIDUAL RESPONSIBLE FOR
9 MANAGING THE PARTNERSHIP;

10 C. IF THE PROVIDER IS TO BE AN UNINCORPORATED
11 ASSOCIATION, THE NAMES OF THE MEMBERS, THE STATE GOVERNING THE
12 UNINCORPORATED ASSOCIATION'S ACTIVITIES, AND THE NAME OF THE PRIMARY
13 INDIVIDUAL RESPONSIBLE FOR MANAGING THE ASSOCIATION;

14 D. IF THE PROVIDER IS TO BE A TRUST, THE NAME OF THE
15 TRUSTEE, THE NAMES OF THE OWNERS OF THE BENEFICIAL INTERESTS IN THE
16 TRUST, THE STATE GOVERNING THE TRUST, AND THE NAME OF THE PRIMARY
17 INDIVIDUAL RESPONSIBLE FOR OVERSEEING THE TRUST'S ACTIVITIES;

18 E. IF THE PROVIDER IS TO BE A PARTNERSHIP HAVING A
19 CORPORATION OR LIMITED LIABILITY COMPANY AS ONE OR MORE OF ITS GENERAL
20 PARTNERS, THE NAME OF THE CORPORATION OR LIMITED LIABILITY COMPANY,
21 THE STATE IN WHICH THE CORPORATION IS INCORPORATED OR THE LIMITED
22 LIABILITY COMPANY IS FORMED, AND THE NAME OF THE CHIEF EXECUTIVE
23 OFFICER; AND

24 F. THE NAMES AND OCCUPATIONS OF THE OFFICERS,
25 DIRECTORS, TRUSTEES, GENERAL PARTNERS, PRINCIPALS, AND ANY PERSON OR
26 ENTITY WHO WILL HAVE A 10% OR GREATER EQUITY OR BENEFICIAL INTEREST IN
27 THE PROVIDER OR IN THE ENTITY OWNING OR CONTROLLING THE PROVIDER;

28 (IV) A COPY OF THE CORPORATE CHARTER, PARTNERSHIP
29 AGREEMENT, ARTICLES OF ASSOCIATION, MEMBERSHIP AGREEMENT, OR TRUST
30 AGREEMENT AS IT WILL PERTAIN TO THE LEGAL ORGANIZATION OF THE PROVIDER
31 AFTER THE SALE OR OTHER TRANSFER;

32 (V) A STATEMENT AS TO ANY AFFILIATION WITH A RELIGIOUS,
33 CHARITABLE, OR OTHER NONPROFIT ORGANIZATION THAT WILL EXIST AFTER THE
34 PROPOSED SALE OR OTHER TRANSFER AND THE EXTENT, IF ANY, TO WHICH THE
35 AFFILIATE ORGANIZATION WILL BE RESPONSIBLE FOR THE FINANCIAL AND
36 CONTRACTUAL OBLIGATIONS OF THE PROVIDER;

37 (VI) THE NAME AND ADDRESS OF ANY BUSINESS OR PROFESSIONAL
38 ENTITY OR OPERATION THAT IS LIKELY TO PROVIDE GOODS, PREMISES, OR
39 SERVICES TO THE FACILITY OR PROVIDER, AFTER THE SALE OR OTHER TRANSFER,
40 OF A VALUE OF \$10,000 OR MORE WITHIN ANY YEAR, INCLUDING A DESCRIPTION OF
41 THE GOODS, PREMISES, OR SERVICES IN WHICH ANY OF THE PERSONS IDENTIFIED
42 IN ITEM (III)F OF THIS PARAGRAPH HAS A 10% OR GREATER FINANCIAL INTEREST;

1 (VII) THE NAME OF THE PROPOSED MANAGER OR MANAGEMENT
2 COMPANY THAT WILL MANAGE THE DAY-TO-DAY OPERATIONS OF THE FACILITY
3 AFTER THE SALE OR OTHER TRANSFER, AND A DESCRIPTION OF THE BUSINESS
4 EXPERIENCE OF THE MANAGER OR COMPANY IN THE OPERATION OR
5 MANAGEMENT OF SIMILAR FACILITIES;

6 (VIII) A DESCRIPTION OF ANY MATTER IN WHICH ANY PERSON
7 IDENTIFIED IN ITEM (III)F OF THIS PARAGRAPH:

8 A. HAS BEEN CONVICTED OF A FELONY OR PLEADED NOLO
9 CONTENDERE TO A FELONY CHARGE, IF THE FELONY INVOLVED FRAUD,
10 EMBEZZLEMENT, FRAUDULENT CONVERSION, OR MISAPPROPRIATION OF
11 PROPERTY, OR HAS BEEN HELD LIABLE OR ENJOINED IN A CIVIL ACTION BY FINAL
12 JUDGEMENT IF THE CIVIL ACTION INVOLVED FRAUD, EMBEZZLEMENT,
13 FRAUDULENT CONVERSION, OR MISAPPROPRIATION AS A FIDUCIARY; OR

14 B. WAS SUBJECT TO AN EFFECTIVE INJUNCTIVE OR
15 RESTRICTIVE ORDER OF A COURT OF RECORD OR, WITHIN THE PAST 10 YEARS, HAD
16 ANY STATE OR FEDERAL LICENSE OR PERMIT SUSPENDED OR REVOKED AS A
17 RESULT OF AN ACTION BROUGHT BY A GOVERNMENTAL AGENCY ARISING OUT OF
18 OR RELATING TO BUSINESS ACTIVITY OR HEALTH CARE, INCLUDING ACTIONS
19 AFFECTING A LICENSE TO OPERATE ANY FACILITY OR SERVICE FOR AGING,
20 IMPAIRED, OR DEPENDENT PERSONS;

21 (IX) A FINANCIAL PLAN IN A FORM REASONABLY ACCEPTABLE TO
22 THE OFFICE DEMONSTRATING THE PROJECTED EFFECTS OF THE SALE OR OTHER
23 TRANSFER ON THE FINANCIAL OPERATIONS OF THE PROVIDER AND THE FACILITY,
24 INCLUDING ANY OBLIGATIONS OF THE PROVIDER TO MAKE PAYMENTS IN
25 CONNECTION WITH THE SALE OR OTHER TRANSFER FROM THE FINANCIAL
26 RESOURCES OF THE PROVIDER OR THE FACILITY;

27 (X) A STATEMENT THAT DEMONSTRATES THAT THE SALE OR
28 OTHER TRANSFER IS NOT LIKELY TO HAVE AN ADVERSE IMPACT ON THE FINANCIAL
29 STABILITY OF THE PROVIDER OR ADVERSELY AFFECT THE PROVIDER'S CAPACITY
30 TO PERFORM ITS OBLIGATIONS UNDER THE CONTINUING CARE AGREEMENTS TO
31 WHICH IT IS A PARTY; AND

32 (IX) OTHER REASONABLE AND PERTINENT INFORMATION THAT
33 THE OFFICE REQUIRES.

34 (3) FOR THE FIFTEEN DAYS AFTER GIVING THE NOTICE SPECIFIED IN
35 PARAGRAPH (1)(II) OF THIS SUBSECTION, SUBSCRIBERS MAY SUBMIT TO THE
36 PROVIDER AND TO THE OFFICE WRITTEN QUESTIONS AND COMMENTS ON THE
37 PROPOSED SALE OR OTHER TRANSFER.

38 (4) NOT LATER THAN THE 25TH DAY AFTER THE NOTICE SPECIFIED IN
39 PARAGRAPH (1)(II) OF THIS SUBSECTION, REPRESENTATIVES OF THE PROVIDER
40 SHALL HOLD A MEETING WITH REPRESENTATIVES OF THE SUBSCRIBERS OF THE
41 AFFECTED FACILITY TO DISCUSS THE PROPOSED SALE OR OTHER TRANSFER.
42 REPRESENTATIVES OF THE SUBSCRIBERS SHALL BE CHOSEN BY THE SUBSCRIBERS
43 AND MAY NOT EXCEED 15 IN NUMBER. THE NAMES AND ADDRESSES OF THE

21

1 SUBSCRIBER REPRESENTATIVES SHALL BE GIVEN BY THE REPRESENTATIVES TO
2 THE PROVIDER AND TO THE OFFICE. REPRESENTATIVES OF THE OFFICE MAY
3 ATTEND SUCH MEETING.

4 (5) FOR THE 10 DAYS AFTER THE MEETING SPECIFIED IN PARAGRAPH
5 (4) OF THIS SUBSECTION, SUBSCRIBERS MAY SUBMIT TO THE PROVIDER AND TO THE
6 OFFICE ADDITIONAL WRITTEN COMMENTS ON THE PROPOSED SALE OR OTHER
7 TRANSFER.

8 (C) AFTER REVIEWING THE INFORMATION AS REQUIRED IN SUBSECTION (B)
9 OF THIS SECTION, THE OFFICE SHALL MAKE A DETERMINATION AS TO WHETHER
10 THE SALE OR OTHER TRANSFER SATISFIES THE STANDARD FOR APPROVAL IN
11 SUBSECTION (D) OF THIS SECTION. THE DETERMINATION BY THE OFFICE SHALL BE
12 MADE BY THE 50TH DAY AFTER THE DATE OF THE NOTICE REQUIRED BY
13 SUBSECTION (B)(1)(II) OF THIS SECTION, UNLESS EXTENDED BY THE OFFICE FOR
14 GOOD CAUSE. THE OFFICE SHALL NOTIFY THE PROVIDER AND THE SUBSCRIBER
15 REPRESENTATIVES IN WRITING OF ITS DETERMINATION AND RATIONALE.

16 (D) THE OFFICE SHALL APPROVE A SALE OR OTHER TRANSFER OF
17 OWNERSHIP OR CONTROL UNLESS THE OFFICE DETERMINES THAT THE SALE OR
18 OTHER TRANSFER IS LIKELY TO HAVE AN UNREASONABLY ADVERSE IMPACT ON
19 THE FINANCIAL STABILITY OF THE PROVIDER OR IS LIKELY TO HAVE AN
20 UNREASONABLY ADVERSE AFFECT ON A PROVIDER'S CAPACITY TO PERFORM ITS
21 OBLIGATIONS UNDER THE CONTINUING CARE AGREEMENTS TO WHICH IT IS A
22 PARTY.

23 (E) THE DECISION BY THE OFFICE WITH RESPECT TO THE PROPOSED SALE OR
24 OTHER TRANSFER IS SUBJECT TO APPEAL ONLY BY THE PROVIDER IN ACCORDANCE
25 WITH THE ADMINISTRATIVE PROCEDURES ACT. NO OTHER PERSON SHALL BE
26 DEEMED TO BE A PARTY IN INTEREST TO THE PROCEEDINGS. IF AN APPEAL IS
27 TAKEN BY THE PROVIDER, THE OFFICE SHALL GIVE PROMPT NOTICE OF THE
28 APPEAL TO THE SUBSCRIBER REPRESENTATIVES. THE OFFICE SHALL GIVE
29 SUBSCRIBER REPRESENTATIVES PROMPT NOTICE OF ANY DECISION RENDERED IN
30 THE APPEAL.

31 (F) A SALE OR OTHER TRANSFER OF OWNERSHIP OR CONTROL SUBJECT TO
32 THIS SECTION MAY NOT BE COMPLETED UNTIL AFTER THE 15TH DAY FOLLOWING
33 THE LATER OF:

34 (1) THE DAY ON WHICH THE OFFICE ISSUES THE NOTICE SPECIFIED IN
35 SUBSECTION (C) OF THIS SECTION OF A DETERMINATION TO APPROVE THE SALE OR
36 OTHER TRANSFER; OR

37 (2) THE HEARING OFFICER OR ADMINISTRATIVE LAW JUDGE RENDERS
38 A DECISION PERMITTING THE SALE OR OTHER TRANSFER IF APPEAL IS TAKEN
39 UNDER SUBSECTION (E) OF THIS SECTION.

40 11E.

41 (A) (1) A PROVIDER THAT HOLDS A CERTIFICATE OF REGISTRATION MAY
42 NOT SELL, TRANSFER, OR OTHERWISE DISPOSE OF ASSETS IN ANY 12-MONTH
43 PERIOD IN EXCESS OF 10% OF ITS TOTAL ASSETS BASED ON ITS LATEST CERTIFIED

22

1 FINANCIAL STATEMENTS THAT ARE AVAILABLE AT THE TIME OF THE SALE,
2 TRANSFER, OR OTHER DISPOSITION IS MADE, UNLESS THE PROVIDER OBTAINS THE
3 APPROVAL OF THE OFFICE FOR THE SALE, TRANSFER, OR OTHER DISPOSITION IN
4 ACCORDANCE WITH THIS SECTION.

5 (2) WITH RESPECT TO TRANSFERS THAT ARE EQUAL TO OR LESS THAN
6 10% OF ITS TOTAL ASSETS BASED ON THE LATEST CERTIFIED FINANCIAL
7 STATEMENTS THAT ARE AVAILABLE AT THE TIME THE SALE, TRANSFER, OR OTHER
8 DISPOSITION IS MADE, A PROVIDER MAY NOT SELL, TRANSFER, OR OTHERWISE
9 DISPOSE OF ANY OF ITS ASSETS IF THE SALE, TRANSFER, OR OTHER DISPOSITION IS
10 LIKELY TO HAVE AN UNREASONABLY ADVERSE IMPACT ON THE FINANCIAL
11 STABILITY OF THE PROVIDER OR LIKELY TO HAVE AN UNREASONABLY ADVERSE
12 AFFECT ON THE PROVIDER'S CAPACITY TO PERFORM ITS OBLIGATIONS UNDER
13 CONTINUING CARE AGREEMENTS TO WHICH IT IS A PARTY.

14 (B) THE FOLLOWING TRANSACTIONS ARE NOT CONSIDERED SALES,
15 TRANSFERS, OR OTHER DISPOSITIONS OF ASSETS FOR PURPOSES OF SUBSECTION
16 (A)(1) OF THIS SECTION:

17 (1) THOSE UNDERTAKEN UNDER CONTRACTUAL OBLIGATIONS IN
18 EFFECT ON OCTOBER 1, 1996;

19 (2) THOSE MADE IN THE ORDINARY COURSE OF BUSINESS OF
20 OPERATING THE FACILITY;

21 (3) REFUNDS OF AMOUNTS UNDER CONTRACTS ENTERED INTO IN THE
22 ORDINARY COURSE OF BUSINESS;

23 (4) TRANSFERS OF CASH, SECURITIES, OR OTHER INVESTMENT
24 PROPERTIES IN CONNECTION WITH ORDINARY INVESTMENT TRANSACTIONS;

25 (5) GRANTS OF MORTGAGES, DEEDS OF TRUST, OR SECURITY
26 INTERESTS TO UNRELATED THIRD PARTIES;

27 (6) THOSE INVOLVING EASEMENTS, RIGHTS-OF-WAY, ROAD
28 WIDENINGS, AND SIMILAR CONVEYANCES FOR THE BENEFIT OF PUBLIC BODIES OR
29 UTILITIES;

30 (7) THOSE MADE FOR AN EXPANSION OR RENOVATION; AND

31 (8) ANY OTHER SALES, TRANSFERS, OR OTHER DISPOSITIONS
32 IDENTIFIED BY THE OFFICE IN REGULATIONS AS APPROPRIATE TO FALL WITHIN
33 THIS SUBSECTION.

34 (C) (1) A PROVIDER SUBJECT TO SUBSECTION (A)(1) OF THIS SECTION
35 SHALL, AT LEAST 60 DAYS BEFORE THE SALE, TRANSFER, OR OTHER DISPOSITION,
36 FILE WITH THE OFFICE A STATEMENT OF INTENT TO SELL, TRANSFER, OR
37 OTHERWISE DISPOSE OF ASSETS, AND, AT LEAST 30 DAYS BEFORE THE SALE,
38 TRANSFER, OR OTHER DISPOSITION, GIVE WRITTEN NOTICE OF THE PROPOSED
39 SALE, TRANSFER, OR OTHER DISPOSITION TO THE OFFICE.

40 (2) NOTICE TO THE OFFICE REQUIRED BY PARAGRAPH (1)(I) OF THIS
41 SUBSECTION SHALL INCLUDE THE FOLLOWING INFORMATION:

1 (I) IDENTIFICATION OF THE ASSET OR ASSETS TO BE SOLD,
2 TRANSFERRED, OR OTHERWISE DISPOSED OF;

3 (II) IF THE PROVIDER IS SUBJECT TO SUBSECTION (A) OF THIS
4 SECTION BY REASON OF A SERIES OF SALES, TRANSFERS, OR OTHER DISPOSITIONS
5 THAT HAVE EXCEEDED CUMULATIVELY THE 10% AMOUNT, THEN THE PROVIDER
6 SHALL IDENTIFY ALL OF THE ASSETS THAT HAVE RESULTED CUMULATIVELY IN
7 EXCEEDING THE 10% AMOUNT; AND

8 (III) THE REASON FOR THE SALE, TRANSFER, OR OTHER
9 DISPOSITION IDENTIFIED IN PARAGRAPH (2)(I) OF THIS SUBSECTION.

10 (3) THE NOTICE TO THE OFFICE REQUIRED BY PARAGRAPH (1)(II) OF
11 THIS SUBSECTION SHALL INCLUDE THE FOLLOWING INFORMATION:

12 (I) A STATEMENT THAT DEMONSTRATES THAT THE PROPOSED
13 SALE, TRANSFER, OR OTHER DISPOSITION IS NOT LIKELY TO HAVE AN
14 UNREASONABLY ADVERSE IMPACT ON THE FINANCIAL STABILITY OF THE
15 PROVIDER OR LIKELY OTHERWISE TO HAVE AN UNREASONABLY ADVERSE AFFECT
16 ON THE PROVIDER'S CAPACITY TO PERFORM ITS OBLIGATIONS UNDER THE
17 CONTINUING CARE AGREEMENTS TO WHICH IT IS A PARTY; AND

18 (II) OTHER REASONABLE AND PERTINENT INFORMATION THAT
19 THE OFFICE REQUIRES.

20 (D) AFTER REVIEWING THE INFORMATION REQUIRED BY SUBSECTION (C) OF
21 THIS SECTION, THE OFFICE SHALL MAKE A DETERMINATION AS TO WHETHER THE
22 SALE, TRANSFER, OR OTHER DISPOSITION SATISFIES THE STANDARD OF
23 SUBSECTION (E) OF THIS SECTION. THE DETERMINATION BY THE OFFICE SHALL BE
24 MADE AND COMMUNICATED TO THE PROVIDER IN WRITING BY THE 25TH DAY
25 AFTER THE DATE OF THE NOTICE REQUIRED BY SUBSECTION (C)(II) OF THIS
26 SECTION, UNLESS EXTENDED BY THE OFFICE FOR GOOD CAUSE. IF THE
27 DETERMINATION OF THE OFFICE IS NOT TO APPROVE THE PROPOSED SALE,
28 TRANSFER, OR OTHER DISPOSITION, THE OFFICE SHALL SET FORTH ITS REASONING
29 AS TO ITS DETERMINATION IN THE WRITTEN COMMUNICATION TO THE PROVIDER.

30 (E) THE OFFICE SHALL APPROVE THE SALE, TRANSFER, OR OTHER
31 DISPOSITION OF ASSETS UNLESS IT DETERMINES THAT THE SALE, TRANSFER, OR
32 OTHER DISPOSITION IS LIKELY TO HAVE AN UNREASONABLY ADVERSE IMPACT ON
33 THE FINANCIAL STABILITY OF THE PROVIDER OR IS LIKELY TO HAVE AN
34 UNREASONABLY ADVERSE AFFECT ON THE PROVIDER'S CAPACITY TO PERFORM ITS
35 OBLIGATIONS UNDER THE CONTINUING CARE AGREEMENTS TO WHICH IT IS A
36 PARTY.

37 (F) THE OFFICE SHALL ADOPT REGULATIONS SETTING FORTH REASONABLE
38 OBJECTIVE FINANCIAL STANDARDS FOR PROPOSED SALES, TRANSFERS, OR OTHER
39 DISPOSITIONS OF ASSETS, SATISFACTION OF WHICH WILL RESULT IN APPROVAL.
40 THOSE OBJECTIVE STANDARDS MAY NOT BE THE ONLY BASIS ON WHICH A
41 DETERMINATION CAN BE MADE THAT A PROPOSED SALE, TRANSFER, OR OTHER
42 DISPOSITION SATISFIES THE CONDITION SET FORTH IN SUBSECTION (E) OF THIS
43 SECTION.

24

1 (G) THE DETERMINATION BY THE OFFICE WITH RESPECT TO A PROPOSED
2 SALE, TRANSFER, OR OTHER DISPOSITION OF ASSETS IS SUBJECT TO APPEAL ONLY
3 BY THE PROVIDER IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURES ACT.
4 NO OTHER PERSON SHALL BE DEEMED TO BE A PARTY IN INTEREST TO THE
5 PROCEEDINGS.

6 (H) A TRANSFER OR OTHER DISPOSITION OF ASSETS SUBJECT TO THIS
7 SECTION MAY NOT BE COMPLETED UNTIL AFTER THE 5TH DAY FOLLOWING THE
8 LATER OF:

9 (1) THE DAY ON WHICH THE OFFICE ISSUES THE NOTICE SPECIFIED IN
10 SUBSECTION (D) OF THIS SECTION OF A DETERMINATION TO APPROVE THE SALE OR
11 OTHER TRANSFER; OR

12 (2) THE HEARING OFFICER OR ADMINISTRATIVE LAW JUDGE RENDERS
13 A DECISION PERMITTING SUCH TRANSFER OR OTHER DISPOSITION OF ASSETS IF
14 APPEAL IS TAKEN UNDER SUBSECTION (G) OF THIS SECTION.

15 13.

16 (a) In addition to such other provisions as may be considered properto effectuate
17 the purpose of any continuing care agreement, each agreement executed between a
18 subscriber and a provider shall:

19 (1) Show the total consideration paid by the subscriber for continuing care
20 including the value of all property transferred, donations, entrance fees, subscriptions,
21 monthly fees, and any other fees paid or payable by or on behalf of a subscriber;

22 (2) Specify all services such as food, shelter, medical care, nursing care, or
23 other health services, which are to be provided by the provider to eachsubscriber,
24 including in detail all items which each subscriber will receive, whether the items will be
25 provided for a designated time period or for life;

26 (3) Designate the classes of subscribers according to types of payment plans;

27 (4) Describe the procedures to be followed by the provider whenthe
28 provider temporarily or permanently changes the subscriber's accommodation within the
29 facility or transfers the subscriber to another health [facility. A] FACILITY, BUT A
30 subscriber's accommodations shall be changed only for the protection ofthe health or
31 safety of the subscriber or the general and economic welfare of the residents;

32 (5) Describe the policies that will be implemented in the eventthe
33 subscriber becomes unable to meet the monthly fees;

34 (6) State the policy of the provider with regard to changes in
35 accommodations and the procedure to be followed to implement that policy in the event
36 of an increase or decrease in the number of persons occupying an individual unit;

37 (7) Provide in clear and understandable language, AND IN ALL CAPITAL
38 LETTERS in [print no smaller than] the largest type used in the body of[said] THE
39 agreement, the terms governing the refund of any portion of the entrance fee in the event
40 of discharge by the provider or cancellation by the subscriber;

25

1 (8) State the terms under which an agreement is canceled by the death of
2 the subscriber;

3 (9) Provide in clear and understandable [language] LANGUAGE, AND IN
4 ALL CAPITAL LETTERS in [print no smaller than] the largest type used in [said] THE
5 agreement, whether or not monthly fees, if charged, will be subject to periodic increases;

6 (10) Provide that charges for care paid in advance in 1 lump sum only shall
7 not be increased or changed during the duration of the agreed upon care;

8 (11) State which funeral and burial services, if any, will be provided by the
9 provider;

10 (12) Give a description of the living quarters;

11 (13) State the conditions, if any, under which a unit may be assigned to the
12 use of another by the subscriber;

13 (14) State the religious or charitable affiliations of the provider and the
14 extent, if any, to which the affiliate organization will be responsible for the financial and
15 contractual obligations of the provider;

16 (15) State the subscriber's and provider's respective rights and obligations as
17 to use of the facility and as to real and personal property of the subscriber placed in the
18 custody of the provider;

19 (16) State that the subscribers shall have the right to organize and operate a
20 subscriber association at the facility and to meet privately to conduct business;

21 (17) State what, if any, fee adjustments will be made in the event the
22 subscriber is voluntarily absent from the facility for an extended period of time;

23 (18) Specify the circumstances, if any, under which the subscriber will be
24 required to apply for Medicaid, Medicare, public assistance, or any public benefit
25 program and whether or not the facility is a participant in Medicare or medical assistance;

26 (19) State that the subscriber has received and reviewed the latest certified
27 financial statement and that a copy of the certified financial statement was received at
28 least 2 weeks before signing the agreement;

29 (20) Provide that the facility will make available to the subscriber, upon
30 request, any certified financial statement transmitted to the Office;

31 (21) Where applicable, describe the conditions under which the provider may
32 be issued a certificate of registration, DESCRIBE THE CONDITIONS UNDER WHICH THE
33 PROVIDER may use escrowed deposits, [and,] AND state the amount of the subscriber's
34 deposit that may be used upon issuance of a certificate of registration;

35 (22) State that fees collected by a provider under the terms of a continuing
36 care agreement may not be used for purposes other than those set forth in the agreement;
37 and

38 (23) Contain in ALL capital letters in [print no smaller than] the largest type
39 used in the agreement [and underlined]: "A preliminary certificate of registration or

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1 certificate of registration is not an endorsement or guarantee of this facility by the State
2 of Maryland. The Maryland Office on Aging urges you to consult with an attorney and a
3 suitable financial advisor before signing any documents."

4 (b) [This] A REQUIREMENT OF THIS section shall not apply to any continuing
5 care agreements entered into [prior to July 1, 1980] BEFORE THE EFFECTIVE DATE OF
6 THE REQUIREMENT.

7 14.

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

10 (b) (1) If, prior to the [subscriber occupying a unit] DATE OF OCCUPANCY,
11 the subscriber dies, the provider determines that the subscriber is ineligible for entrance
12 into the facility, or the subscriber elects to terminate the continuing care agreement
13 because of a substantial change in the subscriber's physical, mental or financial condition,
14 the agreement shall be automatically [cancelled] CANCELED, and the subscriber or the
15 subscriber's legal representative shall receive within 30 days thereafter a full refund of all
16 moneys paid to the provider, except:

17 (i) Those special additional costs incurred by the provider due to
18 modifications in the structure or furnishings of the unit specifically requested by the
19 subscriber THAT DO NOT EXCEED THE REASONABLE COSTS OF MODIFICATION OR
20 RESTORATION ACTUALLY INCURRED BY THE PROVIDER and set forth in writing in a
21 separate addendum to the agreement and signed by the subscriber, and

22 (ii) A processing fee approved by the Office.

23 (2) In the event that the subscriber rescinds the continuing care agreement
24 within 30 days after entering into the agreement and prior to [occupying] THE DATE OF
25 OCCUPANCY OF the unit for any reason other than the reasons specified in subsection
26 (b)(1) of this section, the refund provisions shall be the same as those provided for in
27 subsection (b)(1) of this section. If, prior to [occupying] THE DATE OF OCCUPANCY OF
28 a unit, the subscriber rescinds the continuing care agreement after the 30-day period for
29 any reason other than the reasons specified in subsection (b)(1) of this section, [the
30 refund provisions will be the same as those in subsection (b)(1) of this section, except that
31 the provider may withhold the refund until a continuing care agreement is entered into
32 between the provider and another subscriber with respect to the unit, or 80 percent of the
33 units at the facility are contracted for, whichever occurs first] THE PROVIDER MAY
34 REQUIRE THE SUBSCRIBER TO FORFEIT AN AMOUNT UP TO 25% OF THE
35 SUBSCRIBER'S ENTRANCE FEE DEPOSIT.

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

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

27

1 15.

2 No continuing care agreement shall permit dismissal or discharge of the subscriber
3 from the facility providing care prior to the expiration of the agreement without just cause
4 for such removal and without providing advance notice of at least 60 days. If a [facility]
5 PROVIDER terminates a subscriber for just cause, the [facility] PROVIDER shall pay to
6 the subscriber, no later than 60 days after the LATER TO OCCUR OF THE date of
7 dismissal or discharge OR THE DATE THE SUBSCRIBER VACATES THE UNIT, a refund
8 equal to the entrance fee divided by the subscriber's years of expected lifetime at
9 admission multiplied by the subscriber's years of expected lifetime at discharge or
10 dismissal. Years of expected lifetime shall be computed for both purposes on the basis of
11 the [life] APPROPRIATE tables most recently published by the U.S. Department of
12 Health and Human Services at the time of discharge or dismissal.

13 17A.

14 [(a) In this section, "financial difficulty" means current or impending financial
15 conditions which impair or may impair the ability of the facility to meet existing or future
16 obligations.]

17 [(b)] (A) There is a Financial Review Committee.

18 [(c)] (B) (1) The Committee consists of 7 members appointed by the Director
19 of the Office on Aging.

20 (2) Of the 7 members, 2 shall be knowledgeable in the field of continuing
21 care, 2 shall be certified public accountants, 1 shall be from the financial community, and
22 2 shall be consumer members, preferably [residents] SUBSCRIBERS of continuing care
23 facilities.

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

26 (4) A member may serve consecutive terms.

27 (5) The Committee shall elect its chairman.

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

31 (7) Any Financial Review Committee member shall have the immunity from
32 liability described under § 5-340 of the Courts and Judicial Proceedings Article.

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

36 (9) THE DELIBERATIONS OF THE COMMITTEE SHALL BE CONFIDENTIAL.

37 [(d)] (C) (1) After reviewing the provider's application for a renewal certificate,
38 the Office may refer the application and accompanying materials to the Committee for its
39 consideration. The Committee shall review the application and the materials and may
40 request additional information from the Office. Within 45 days of receipt of an

28

1 application, the Committee shall notify the Office in writing whether or not the
2 Committee finds the provider in financial difficulty, stating the reasons for its findings.
3 The Committee may request one 30-day extension from the Director of the Office [on
4 Aging]. The Director may grant the extension.

5 (2) The Office may refer a finding of possible financial difficulty to the
6 Committee for its consideration. The Committee shall review the finding and may request
7 additional information from the Office. Within 45 days of receipt of a finding, the
8 Committee shall notify the Office in writing whether or not the Committee finds the
9 provider in financial difficulty, stating the reasons for its findings. The Committee may
10 request one 30-day extension from the Director of the Office on Aging. The Director may
11 grant the extension.

12 [(e)] (D) Within 25 days of being notified of the Committee's findings, the Office
13 shall consider the findings of the Committee and make a final determination of financial
14 difficulty. If the Office determines that the provider is in financial difficulty it shall
15 immediately notify the provider by certified mail, return receipt requested.

16 [(f)] (E) Any provider notified of financial difficulty by the Office shall prepare
17 and submit to the Office for its approval a 5-year financial plan to correct the causes of
18 the financial difficulty. The financial plan shall be submitted within 60 days of
19 notification. The provider may request one 30-day extension from the Director of the
20 Office. The Director may grant the extension. The Office shall respond to the provider
21 within 60 days of receipt of the proposed plan. The Office may work with the provider to
22 establish the financial plan and may consult with the Financial Review Committee prior
23 to approving the plan. Upon approval the plan shall be implemented.

24 [(g)] (F) The Office may withhold the renewal certificate or withdraw a
25 certificate of registration:

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

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

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

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

31 [(h)] (G) The provider shall submit to the Office [on Aging] an annual progress
32 report for the term of its financial plan and shall revise its financial plan if the Office [on
33 Aging] determines that revisions are necessary.

34 20.

35 (a) Any subscriber injured by a violation of this subtitle, or the Office on behalf of
36 any subscriber, may institute an action for an appropriate temporary restraining order or
37 injunction. Any injured subscriber, or the Office on behalf of any injured subscriber, may
38 petition for the appointment of a receiver:

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

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

29

1 (3) To prohibit the IMPROPER diversion of its assets and records from the
2 facility or the State.

3 (b) The receiver shall have such power to rehabilitate, conserve, or liquidate as is
4 conferred by the order of appointment and by the provisions of Article 48A, §§ 132
5 through 164B relating to rehabilitation and liquidation of insurance companies.

6 21.

7 IF THE PROVIDER FILES FOR BANKRUPTCY OR IS PLACED IN RECEIVERSHIP,
8 THE SUBSCRIBERS AS A CLASS SHALL BE CONSIDERED AS CREDITORS FOR THE
9 PURPOSE OF ANY LEGAL ACTION IN CONJUNCTION WITH THE BANKRUPTCY OR
10 RECEIVERSHIP.

11 22.

12 (a) A feasibility study approval may be denied for cause by the Office and a
13 preliminary certificate of registration, certificate of registration, or renewal certificate
14 may be denied, suspended, or revoked for cause by the Office. Grounds for denial,
15 suspension, or revocation include violation of the provisions of this subtitle, violations of
16 [rules or] regulations issued by the Office pursuant to this subtitle, misrepresentations,
17 or submissions of any false financial statement. For any denial, suspension, or revocation,
18 the Office shall set forth its reasons in writing.

19 (b) The proceedings governing the appeal of a denial, revocation, or suspension
20 shall be conducted in accordance with the Maryland Administrative Procedure Act.

21 23.

22 Any operation subject to the provisions of this subtitle shall not be subject to the
23 provisions of the Health Maintenance Organization Act of the Health - General
24 Article[.]; Article 48A, except § 470N[.]; [or] Title 8 of the Real Property Article of
25 the Maryland Annotated Code[.]; OR ANY COUNTY OR MUNICIPAL
26 LANDLORD-TENANT LAW. IF A PROVIDER CONTRACTUALLY UTILIZES THE
27 SERVICES OF A LICENSED HOME HEALTH AGENCY OR RESIDENTIAL SERVICE
28 AGENCY AND IS NOT ITSELF DIRECTLY PROVIDING THE TYPE OF SERVICES
29 PROVIDED BY A HOME HEALTH OR RESIDENTIAL SERVICE AGENCY, THEN THE
30 PROVIDER SHALL NOT BE SUBJECT TO THE PROVISIONS OF TITLE 19, SUBTITLES 4
31 AND 4A OF THE HEALTH - GENERAL ARTICLE OF THE MARYLAND ANNOTATED
32 CODE. Under § 470N of Article 48A, the liability of the provider to the State Department
33 of Health and Mental Hygiene shall be limited to the amount of money which would be
34 due as a refund if the subscriber were dismissed under § 15 at the time of enrollment in
35 services rendered by, or paid in full or in part by the State Department of Health and
36 Mental Hygiene.

37 SECTION 2. AND BE IT FURTHER ENACTED, That Article 70B, § 11E(a)(2)
38 of the Code as enacted by this Act may not take effect until the Office on Aging adopts
39 regulations that set forth objective standards that are based on industry experience that
40 providers can use to determine independently beforehand that sales, transfers, or
41 dispositions will not violate the applicable standard.

1 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 1996.