
By: **Chairman, Finance Committee (By Request - Departmental - Aging)**

Introduced and read first time: January 16, 2006

Rules suspended

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Department of Aging - Continuing Care Contracts**

3 FOR the purpose of providing for the exemption of certain categories of continuing
4 care providers from a requirement that an actuarial study be included in certain
5 applications for a renewal certificate of registration; identifying the
6 circumstances under which certain information must be disclosed; authorizing
7 the Secretary of Aging to waive certain requirements for a continuing care
8 provider in the process of decertifying; requiring certain disclosures; amending
9 existing requirements related to changes in ownership or control of a continuing
10 care provider or facility; adding requirements regarding grievances; requiring
11 that a continuing care agreement state that the subscriber has received the
12 written rules of the provider; clarifying the requirements related to the
13 designation of a beneficiary of any refundable portion of the entrance fee;
14 clarifying the requirements involving certain continuing care agreement
15 terminations and entrance fee refunds; providing that certain actions related to
16 the imposition of civil money penalties be taken by the Secretary; clarifying
17 certain statutory references to certificates of registration; altering certain
18 definitions; making certain technical and stylistic changes; and generally
19 relating to continuing care retirement communities.

20 BY repealing and reenacting, with amendments,
21 Article 70B - Department of Aging
22 Section 7(v) and (dd), 9(b), 10(d) and (f), 11, 11A(b), 11B, 11C, 11D, 11E(a),
23 11G(b), 13(a) and (b), 15A, 17A(f), 18(a), 18A, and 22(a)
24 Annotated Code of Maryland
25 (2003 Replacement Volume and 2005 Supplement)

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

1 **Article 70B - Department of Aging**

2 7.

3 (v) "Provider" means any person who undertakes to provide continuing care
4 and who is:

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

6 (2) An applicant for or the holder of a PRELIMINARY, INITIAL, OR
7 RENEWAL certificate of registration.8 (dd) "Transfer" means, when used in conjunction with property IN §§ 20A
9 THROUGH 21 OF THIS SUBTITLE:10 (1) The sale or other direct or indirect disposition of property or an
11 interest in property;

12 (2) The fixing of a lien on property or an interest in property; or

13 (3) The retention of a security title to property delivered to a debtor.

14 9.

15 (b) When a provider has more than 1 facility offering continuing care, separate
16 applications for preliminary [and final certificates of registration and renewal
17 certificates], INITIAL, AND RENEWAL CERTIFICATES OF REGISTRATION shall be
18 made for each facility.

19 10.

20 (d) A feasibility study may be approved by the Department when it determines
21 that:22 (1) The number of comprehensive CARE or [domiciliary] ASSISTED
23 LIVING beds in the facility, for which licenses are required by the Department of
24 Health and Mental Hygiene, is not inconsistent with the State health plan;25 (2) A reasonable financial plan has been developed for developing and
26 operating the project;

27 (3) A market for the facility appears to exist;

28 (4) The feasibility study was prepared by a recognized authority;

29 (5) The actuarial forecast supports the projections for the project;

30 (6) The escrow agreement and deposit agreement are approved by the
31 Department; and

1 (7) The approved escrow agreement is executed by the provider and the
2 financial institution.

3 (f) If the provider plans to advertise before having [a] AN INITIAL certificate
4 of registration issued under § 11 of this subtitle, the form and substance of any
5 advertisement or advertising campaign must be submitted to the Department before
6 the advertisement or advertising campaign may be used.

7 11.

8 (a) A provider may not provide continuing care until the issuance of [a] AN
9 INITIAL certificate of registration by the Department. The application shall be filed in
10 a form satisfactory to the Department. The application shall contain at least the
11 following information:

12 (1) For a project other than a conversion, verification that subscribers'
13 continuing care agreements have been executed for at least 65 percent of the
14 independent living units and at least 10 percent of the total entrance fee for each
15 contracted unit has been collected;

16 (2) For a conversion project, verification that at least 80% of the
17 accommodations in the project that are not licensed as assisted living or
18 comprehensive care beds are occupied or reserved in accordance with:

19 (i) Leases;

20 (ii) Continuing care agreements executed with subscribers who
21 have provided a deposit that:

22 1. Is equal to at least 10% of the total entrance fee; and

23 2. Has been deposited by the provider under a proper escrow
24 agreement; or

25 (iii) Other appropriate contractual arrangements.

26 (3) Verification that the provider has received a written commitment for
27 permanent long-term financing, and, when requested by the permanent financing
28 lender, the Department may issue a letter stating that all requirements of paragraph
29 (1) of this subsection have been met; and

30 (4) If construction financing is required, verification that application for
31 construction financing has taken place. When requested by a construction lender, the
32 Department may issue a letter stating that all requirements of paragraphs (1) and (3)
33 of this subsection have been met and on closing of the construction loan the INITIAL
34 certificate of registration shall be issued.

35 (b) (1) [A] AN INITIAL certificate of registration shall be issued by the
36 Department when it determines that:

- 1 (i) The provider has been issued a preliminary certificate of
2 registration;
- 3 (ii) The documents required have been filed;
- 4 (iii) The form and substance of all advertising and other
5 promotional materials filed are not deceptive, misleading, or likely to mislead;
- 6 (iv) For a project other than a conversion, at least 65 percent of the
7 independent living units have been contracted for with a minimum 10 percent of the
8 entrance fee paid as a deposit for each contracted unit;
- 9 (v) For a conversion project, that at least 80% of the
10 accommodations in the project that are not licensed as assisted living or
11 comprehensive care beds are occupied or reserved in accordance with:
- 12 1. Leases;
- 13 2. Continuing care agreements executed with subscribers
14 who have provided a deposit that:
- 15 A. Is equal to at least 10% of the total entrance fee; and
- 16 B. Has been deposited by the provider pursuant to a proper
17 escrow agreement; or
- 18 3. Other appropriate contractual arrangements.
- 19 (vi) If construction financing is required, that closing on the
20 construction financing has taken place; and
- 21 (vii) There is a commitment for permanent long-term financing.
- 22 (2) The initial certificate of registration may be issued for a period of up
23 to 18 months at the discretion of the Department.
- 24 (c) A deposit held in escrow may not be used until [a] AN INITIAL certificate
25 of registration has been issued, construction is completed, the provider has been
26 issued a certificate of occupancy, or the equivalent, by the appropriate local
27 jurisdiction, and the provider has been issued appropriate licenses or certificates by
28 the Department of Health and Mental Hygiene or by the Department.
- 29 (d) If [a] AN INITIAL certificate of registration is not issued within 24 months
30 of the issuance of a preliminary certificate of registration or longer time as is allowed
31 by the Department for good cause shown, the provider shall refund all deposits and
32 cease in its attempts to offer continuing care under that application.
- 33 (e) Annually, within 120 days after the end of the fiscal year, the provider
34 shall file an application for a renewal certificate OF REGISTRATION in a form
35 satisfactory to the Department which shall contain the following information:

- 1 (1) Any additions or changes to the information required by § 10 of this
2 subtitle;
- 3 (2) An audited financial statement for the preceding fiscal year prepared
4 in accordance with an audit guide adopted by the Department;
- 5 (3) An operating budget for the current fiscal year, and a projected
6 operating budget for the next succeeding fiscal year;
- 7 (4) A cash flow projection for the current fiscal year and the next 2 fiscal
8 years;
- 9 (5) A projection of the life expectancy and the number of residents who
10 will require nursing home care;
- 11 (6) An actuarial study reviewed by a qualified actuary and submitted
12 every 3 years, **UNLESS THE PROVIDER IS EXEMPTED FROM THE REQUIREMENT FOR**
13 **AN ACTUARIAL STUDY BY REGULATIONS ADOPTED BY THE DEPARTMENT**
14 **EXEMPTING CATEGORIES OF PROVIDERS THAT THE DEPARTMENT DETERMINES**
15 **HAVE SUBSTANTIALLY LIMITED LONG-TERM CARE LIABILITY EXPOSURE;**
- 16 (7) The form and substance of any advertising campaign or proposed
17 advertisement and other promotional materials not previously filed with the
18 Department; and
- 19 (8) Any further information that the Department requires.
- 20 (f) If the application and accompanying information is not received by the
21 Department within the 120-day period, a late fee may be charged. Failure to file the
22 required information within 90 days of the due date shall be a violation of this
23 subtitle.
- 24 (g) A renewal of a certificate of registration shall be issued by the Department
25 when it determines that:
- 26 (1) The documents required have been filed;
- 27 (2) Any revised continuing care agreements meet the requirements of
28 this subtitle;
- 29 (3) The provider has complied with § 17A of this subtitle if it has been
30 found to be in financial difficulty;
- 31 (4) When appropriate, the facility has been licensed or certified by the
32 Department of Health and Mental Hygiene or the Department; and
- 33 (5) The form and substance of all advertising and other promotional
34 materials filed are not deceptive, misleading, or likely to mislead.
- 35 (h) A provider shall file a request for approval for each renovation in a form
36 satisfactory to the Department. At least 30 days before filing the request, the provider

1 shall submit to the Department a written statement that sets forth the provider's
2 intent to file a renovation approval request. A request for approval shall include:

3 (1) A statement of the purpose of and need for the renovation;

4 (2) A financial plan that demonstrates to the satisfaction of the
5 Department that the renovation will not have an unreasonably adverse effect on the
6 financial ability of the provider to furnish continuing care in accordance with the
7 provider's continuing care agreements and this subtitle at the facility identified in the
8 plan and at each other facility of the provider in the State; and

9 (3) Any other information that the Department requires.

10 (i) The Department shall approve any renovation requested in accordance
11 with this section if the Department determines that the proposed renovation will not
12 have an unreasonably adverse effect on the financial ability of the provider to furnish
13 continuing care in accordance with the provider's continuing care agreements and
14 this subtitle. A provider may not begin construction of the renovation until the
15 provider receives written approval from the Department.

16 (j) A provider shall file a request for approval for each expansion in a form
17 satisfactory to the Department. At least 30 days before filing the request, the provider
18 shall submit to the Department a written statement that sets forth the provider's
19 intent to file an expansion request. The request shall include:

20 (1) A statement of the purpose of and need for the expansion;

21 (2) If the expansion involves living units, a plan that demonstrates to the
22 satisfaction of the Department that a market exists for the additional living units;

23 (3) A financial plan that demonstrates to the satisfaction of the
24 Department that the expansion will not have an unreasonably adverse effect on the
25 financial ability of the provider to furnish continuing care in accordance with the
26 provider's continuing care agreements and this subtitle at the facility identified in the
27 plan and at each other facility of the provider in the State; and

28 (4) Any other information that the Department requires.

29 (k) The Department shall approve any expansion requested in accordance
30 with this section and, if appropriate, issue a new certificate of registration if the
31 Department determines that the proposed expansion will not have an unreasonably
32 adverse effect on the financial ability of the provider to furnish continuing care in
33 accordance with the provider's continuing care agreements and this subtitle. A
34 provider may not begin construction of the expansion until the provider receives
35 written approval from the Department.

36 (l) (1) [It] EXCEPT FOR A FEASIBILITY STUDY FILED UNDER § 10 OF THIS
37 SUBTITLE, WHICH SHALL BE CONFIDENTIAL ONLY UNTIL AN INITIAL CERTIFICATE
38 OF REGISTRATION FOR THE PROJECT IS ISSUED, IT shall be the responsibility of the
39 Department to make the information required to be provided pursuant to this subtitle

1 available to all interested persons. The Department shall publicize the availability of
2 this information.

3 (2) PARAGRAPH (1) OF THIS SUBSECTION DOES NOT APPLY TO
4 INFORMATION REQUIRED TO BE PROVIDED UNDER § 11D(B)(4) OF THIS SUBTITLE,
5 WHICH SHALL BE DISCLOSED ONLY TO THE EXTENT REQUIRED UNDER THE PUBLIC
6 INFORMATION ACT.

7 11A.

8 (b) (1) A provider that has a governing body shall include at least one of the
9 provider's subscribers as a full and regular member of the governing body.

10 (2) If a provider that has a governing body owns or operates more than
11 three facilities in the State, there shall be at least one of the provider's subscribers as
12 a full and regular member of the governing body for every three facilities in the State.

13 (3) (i) Subject to the provisions of subparagraph (ii) of this paragraph,
14 a governing body member selected to meet the requirements of this subsection shall
15 be a subscriber at a facility in the State and be selected according to the same general
16 written standards and criteria used to select other members of the governing body.

17 (ii) The governing body shall confer with the resident association at
18 each facility of the provider before the subscriber officially joins the governing body.

19 (4) THE SECRETARY MAY WAIVE THE REQUIREMENTS OF THIS
20 SUBSECTION FOR A PROVIDER IN THE PROCESS OF DECERTIFYING AS A CONTINUING
21 CARE PROVIDER, IF THE SECRETARY DETERMINES THAT THERE IS GOOD CAUSE.

22 11B.

23 (a) In this section, "net operating expenses" means the provider's total
24 operating expenses at each facility of the provider, less depreciation, amortization,
25 unusual and infrequent expenses, [and] changes in the obligation to provide future
26 services, AND CHANGES IN THE FAIR MARKET VALUE OF INTEREST RATE SWAP
27 AGREEMENTS NOT INVOLVING AN EXCHANGE OF FUNDS. Interest expenses may be
28 excluded from calculation of net operating expenses, if the provider has funded a debt
29 service reserve or other interest reserve under requirements imposed by a financial
30 institution or under applicable financing documents, to the extent and in the amount
31 the fund includes amounts to cover interest for the year in question.

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

37 (c) The provider shall compute operating reserves for each facility as of the
38 end of the facility's most recent fiscal year and, simultaneously with submission of its
39 application for a renewal certificate OF REGISTRATION, shall indicate compliance by

1 setting forth in a letter to the Department from a certified public accountant the
2 amount actually set aside or by disclosing the amount in a certified financial
3 statement.

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

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

12 (f) The provider shall notify the Department in writing [simultaneously
13 withdrawing] IMMEDIATELY ON THE WITHDRAWAL OF any amount from the funds
14 available to satisfy the operating reserve that is required by subsection (b) of this
15 section. Within 30 days of such draw, the provider shall submit to the Department a
16 written plan for restoring the funds in the reserve to the level required by subsection
17 (b) of this section.

18 (g) (1) A provider shall have up to 10 full fiscal years after the later of
19 October 1, 1996 or the date of its initial certificate OF REGISTRATION to meet the
20 requirement of subsection (b) of this section.

21 (2) A provider shall meet the requirement of subsection (b) of this section
22 at a minimum rate of 10% per year as of the end of each fiscal year after the later of
23 October 1, 1996 or the date of its initial certificate OF REGISTRATION, up to a total of
24 100% as of the end of the 10th fiscal year.

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

29 (h) (1) For any facility that has not been the subject of a conversion and in
30 which some residents are not parties to continuing care agreements, the provider
31 shall set aside as its operating reserves an amount equal to at least 15% of the pro
32 rata proportion of the net operating expenses.

33 (2) The pro rata proportion of the net operating expenses shall equal the
34 number of units in the facility certified by the Department divided by the total
35 number of accommodations in the facility multiplied by the net operating expenses for
36 the most recent fiscal year for which a certified financial statement is available.

37 11C.

38 (a) (1) The provider shall furnish without cost to all prospective subscribers,
39 before payment of any part of the entrance fee or, if earlier, the execution of a
40 continuing care agreement, and annually to all subscribers on request, a disclosure

1 statement for each facility of the provider holding a preliminary [certificate of
2 registration or a], INITIAL, OR RENEWAL certificate of registration.

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

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

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

11 (c) The disclosure statement shall include:

12 (1) The name, address, and description of the facility and the [name and
13 address of any parent or subsidiary person] IDENTITY OF THE OWNER OR OWNERS
14 OF THE FACILITY AND THE LAND ON WHICH IT IS LOCATED;

15 (2) THE NAME AND ADDRESS OF THE PROVIDER AND OF ANY PARENT OR
16 SUBSIDIARY PERSON;

17 [(2)] (3) The organizational structure and management of the provider,
18 including:

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

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

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

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

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

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

3 [(3)] (4) A statement regarding any affiliation of the provider with a
4 religious, charitable, or other nonprofit organization, and the extent to which the
5 organization is responsible for the financial and contractual obligations of the
6 provider;

7 [(4)] (5) A description of all basic fees, including entrance fees, fees for
8 health related services, and periodic fees, collected by the provider from subscribers,
9 setting forth the amount and frequency of the fee changes during each of the previous
10 5 years. If the facility has been in operation less than 5 years, then the description
11 shall be for each year that it has been in operation;

12 [(5)] (6) A statement describing provisions that have been or will be
13 made to comply with the operating reserve requirements as described in § 11B of this
14 subtitle, and a general statement regarding the provider's investment policy related
15 to the required reserves, including how often the reserve fund investment is reviewed
16 and by whom;

17 (7) A DESCRIPTION OF THE FINANCIAL ARRANGEMENTS THAT THE
18 PROVIDER HAS MADE, IF ANY, TO ADDRESS THE RENEWAL AND REPLACEMENT OF
19 THE BUILDINGS AND IMPROVEMENTS AT THE FACILITY, SUCH AS THE
20 ESTABLISHMENT OF A RENEWAL AND REPLACEMENT FUND;

21 [(6)] (8) A copy of the most recent certified financial statement
22 obtainable under generally accepted accounting principles;

23 [(7)] (9) A description of the long-term financing for the facility;

24 [(8)] (10) If the facility has not reached 85% occupancy of independent
25 living units, a summary of the feasibility study;

26 [(9)] (11) A cash flow forecast statement for the current and the next 2
27 fiscal years;

28 [(10)] (12) The names and occupations of the officers, directors, trustees,
29 managing or general partners, and any other persons with a 10% or greater equity or
30 beneficial interest in the provider, and a description of the financial interest in or
31 occupation with the provider;

32 [(11)] (13) The name and address of any professional service firm,
33 association, trust, partnership, company, or corporation in which a person identified
34 in item [(10)] 12 of this subsection has a 10% or greater financial interest and which
35 is anticipated to provide goods, premises, or services to the facility or provider of a
36 value of \$10,000 or more within any fiscal year, including a description of the goods,
37 premises, or services and their anticipated cost to the facility or provider. However,
38 the disclosure of salary, wage, or benefit information of employees of the provider is
39 not required;

1 [(12)] (14) The name of the proposed manager or management company if
2 the facility is or will be managed on a day-to-day basis by a person other than an
3 individual directly employed by the provider, and a description of the business
4 experience, if any, of the manager or company in the operation or management of
5 similar facilities;

6 [(13)] (15) A description of any matter in which an individual identified in
7 item [(10)] (12) of this subsection:

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

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

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

20 [(14)] (16) A description of the form of governance of the provider,
21 including the composition of the governing body, and a statement that the provider
22 shall satisfy the requirements of § 11A of this subtitle;

23 [(15)] (17) If applicable, a description of the conditions under which the
24 provider may be issued [a] AN INITIAL certificate of registration and may use
25 escrowed deposits[, and a statement of the amount of the subscriber's deposit that
26 may be used];

27 [(16)] (18) A summary of the basic services provided or proposed to be
28 provided at the facility under the continuing care agreement, including the extent to
29 which health related services are furnished, that clearly states which services are
30 indicated in the agreement as included in the basic fee or fees and which services are
31 or will be made available at or by the facility at an extra charge;

32 [(17)] (19) A statement that the provider shall amend its disclosure
33 statement if, at any time, in the opinion of the provider or the Department, an
34 amendment is necessary to prevent the disclosure statement from containing any
35 material misstatement of fact required by this section to be stated in the disclosure
36 statement or omission of a material fact required by this section to be stated in the
37 disclosure statement;

38 [(18)] (20) A description of any activity involving a renovation, [or an]
39 expansion, OR NEW DEVELOPMENT, whether or not subject to Department review,
40 during the preceding fiscal year or proposed for the current fiscal year;

1 [(19)] (21) A statement if it is the provider's policy to impose a surcharge
2 on some, but not all, subscribers because of some condition or circumstance and that
3 the surcharge will not be considered part of the entrance fee in the statutory refund
4 under § 15 of this subtitle;

5 [(20)] (22) A description of the existence and role of the resident
6 association;

7 [(21)] (23) A description of the internal grievance procedure; and

8 [(22)] (24) Such other material information concerning the facility or the
9 provider as the Department requires or that the provider wishes to include.

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

16 (e) Any amended disclosure statement:

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

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

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

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

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

28 (iii) A description of any special programming, staffing, and training
29 provided by the program for individuals with particular needs or conditions such as
30 cognitive impairment;

31 (iv) Notice of:

32 1. The availability of locks for storage;

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

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

1 retain, directly or indirectly, a majority of ownership or right to control after the
2 business reorganization.

3 (4) Notwithstanding paragraph (3) of this subsection, 30 days prior
4 notice shall be given by the provider to the Department and to the facility's
5 subscribers of any reorganization meeting the standards of paragraph (3) of this
6 subsection.

7 (b) (1) A provider subject to subsection (a)(1) of this section shall[:

8 (i) At] AT least 90 days before the proposed effective date of the
9 sale or other transfer, file with the Department a statement of intent to transfer
10 ownership or control[; and].

11 [(ii) (2) At least 65 days before the proposed effective date of the
12 sale or other transfer, A PROVIDER SUBJECT TO SUBSECTION (A)(1) OF THIS SECTION
13 AND ANY PROPOSED NEW PROVIDER SHALL give written notice of the proposed sale
14 or other transfer to the subscribers of the affected facility and to the Department.

15 [(2) (3) The written notice required by paragraph [(1)(ii)] (2) of this
16 subsection shall specify the place and time for the meeting specified in paragraph
17 [(4)] (6) of this subsection. The notice to the Department shall include the following
18 information, which also shall be provided to any subscriber of the affected facility on
19 request:

20 (i) The address of the EXISTING PROVIDER AND ANY PROPOSED
21 NEW provider and the office OF EACH to which comments may be sent;

22 (ii) The name and address of the affected facility and the name and
23 address of the EXISTING PROVIDER AND ANY PROPOSED NEW provider;

24 (iii) The organizational structure and management of the provider
25 and the facility after the proposed sale or other transfer is completed, including:

26 1. If the provider is to be a corporation or limited liability
27 company, the name of the corporation or limited liability company, the state in which
28 the corporation is incorporated or the limited liability company is formed, and the
29 name of the chief executive officer;

30 2. If the provider is to be a partnership, the names of the
31 general partners, the state governing the formation of the partnership, and the name
32 of the primary individual responsible for managing the partnership;

33 3. If the provider is to be an unincorporated association, the
34 names of the members, the state governing the unincorporated association's
35 activities, and the name of the primary individual responsible for managing the
36 association;

37 4. If the provider is to be a trust, the name of the trustee, the
38 names of the owners of the beneficial interests in the trust, the state governing the

1 (ix) A financial plan PROVIDED BY THE ENTITY THAT WILL BE THE
2 PROVIDER AFTER THE PROPOSED SALE OR OTHER TRANSFER IS COMPLETED in a
3 form reasonably acceptable to the Department demonstrating the projected effects of
4 the sale or other transfer on the financial operations of the provider and the facility,
5 including any obligations of the provider to make payments in connection with the
6 sale or other transfer from the financial resources of the provider or the facility; AND

7 (x) A statement BY THE ENTITY THAT WILL BE THE PROVIDER
8 AFTER THE PROPOSED SALE OR OTHER TRANSFER IS COMPLETED that demonstrates
9 that the sale or other transfer is not likely to have an unreasonably adverse impact on
10 the financial stability of the provider or unreasonably adversely affect the provider's
11 capacity to perform [its obligations under the continuing care agreements to which it
12 is a party; and

13 (xi) Any other information that the Department requires]
14 CONTINUING CARE AGREEMENT OBLIGATIONS TO SUBSCRIBERS.

15 (4) IN ADDITION TO THE INFORMATION REQUIRED TO BE PROVIDED
16 UNDER PARAGRAPH (3) OF THIS SUBSECTION, A PROVIDER SUBJECT TO SUBSECTION
17 (A)(1) OF THIS SECTION AND ANY PROPOSED NEW PROVIDER SHALL PROVIDE TO THE
18 DEPARTMENT ANY OTHER INFORMATION THAT THE DEPARTMENT REQUIRES TO
19 EVALUATE THE PROPOSED TRANSACTION.

20 [(3)] (5) For the first fifteen days after giving the notice specified in
21 paragraph [(1)(ii)] (2) of this subsection, subscribers may submit to the EXISTING
22 PROVIDER, ANY PROPOSED NEW provider, and [to] the Department written questions
23 and comments on the proposed sale or other transfer.

24 [(4)] (6) Not later than the 25th day after the notice specified in
25 paragraph [(1)(ii)] (2) of this subsection, representatives of the EXISTING PROVIDER
26 AND ANY PROPOSED NEW provider shall hold a meeting with representatives of the
27 subscribers of the affected facility to discuss the proposed sale or other transfer.
28 Representatives of the subscribers shall be chosen by the subscribers and may not
29 exceed 15 in number. The names and addresses of the subscriber representatives
30 shall be given by the representatives to the EXISTING PROVIDER, ANY PROPOSED
31 NEW provider, and [to] the Department. Representatives of the Department may
32 attend such meeting.

33 [(5)] (7) For the first 10 days after the meeting specified in paragraph
34 [(4)] (6) of this subsection, subscribers may submit to the EXISTING PROVIDER, ANY
35 PROPOSED NEW provider, and [to] the Department additional written comments on
36 the proposed sale or other transfer.

37 (c) After reviewing the information as required in subsection (b) of this
38 section, the Department shall make a determination as to whether the sale or other
39 transfer satisfies the standard for approval in subsection (d) of this section. The
40 determination by the Department shall be made by the 50th day after the date of the
41 notice required by subsection [(b)(1)(ii)] (B)(2) of this section, unless extended by the
42 Department for good cause. The Department shall notify the EXISTING PROVIDER,

1 ANY PROPOSED NEW provider, and the subscriber representatives in writing of its
2 determination and rationale AND, IF APPLICABLE, THAT IT INTENDS TO TRANSFER
3 THE CERTIFICATE OF REGISTRATION TO THE NEW PROVIDER.

4 (d) The Department shall approve a sale or other transfer of ownership or
5 control unless the Department determines that the sale or other transfer is likely to
6 have an unreasonably adverse impact on the financial stability of the provider or is
7 likely to have an unreasonably adverse effect on a provider's capacity to perform [its
8 obligations under the continuing care agreements to which it is a party] CONTINUING
9 CARE AGREEMENT OBLIGATIONS TO SUBSCRIBERS.

10 (e) The decision by the Department with respect to the proposed sale or other
11 transfer is subject to appeal only by the provider in accordance with the
12 Administrative Procedure Act. No other person shall be deemed to be a party in
13 interest to the proceedings. If an appeal is taken by the provider, the Department
14 shall give prompt notice of the appeal to the subscriber representatives. The
15 Department shall give subscriber representatives prompt notice of any decision
16 rendered in the appeal.

17 (f) A sale or other transfer of ownership or control subject to this section may
18 not be completed until after the 15th day following the later of:

19 (1) The day on which the Department issues the notice specified in
20 subsection (c) of this section of a determination to approve the sale or other transfer;
21 or

22 (2) The hearing officer or administrative law judge renders a decision
23 permitting the sale or other transfer if appeal is taken under subsection (e) of this
24 section.

25 11E.

26 (a) (1) A provider that holds a PRELIMINARY, INITIAL, OR RENEWAL
27 certificate of registration may not sell, transfer, or otherwise dispose of assets in any
28 12-month period in excess of 10% of its total assets based on its latest certified
29 financial statements that are available at the time the sale, transfer, or other
30 disposition is made, unless the provider obtains the approval of the Department for
31 the sale, transfer, or other disposition in accordance with this section.

32 (2) With respect to transfers that are equal to or less than 10% of its total
33 assets based on the latest certified financial statements that are available at the time
34 the sale, transfer, or other disposition is made, a provider may not sell, transfer, or
35 otherwise dispose of any of its assets if the sale, transfer, or other disposition is likely,
36 according to standards set forth in regulation, to:

37 (i) Have an unreasonably adverse impact on the financial stability
38 of the provider; or

39 (ii) Have an unreasonably adverse effect on the provider's capacity
40 to perform its obligations under continuing care agreements to which it is a party.

1 11G.

2 (b) An internal grievance procedure shall provide for:

3 (1) The opportunity for a subscriber to submit a written grievance to the
4 provider; [and]

5 (2) THE PROVIDER TO SEND A WRITTEN ACKNOWLEDGMENT TO THE
6 SUBSCRIBER WITHIN 5 DAYS AFTER RECEIPT OF THE WRITTEN GRIEVANCE;

7 (3) THE RIGHT OF A SUBSCRIBER WHO FILES A WRITTEN GRIEVANCE TO
8 A MEETING WITH MANAGEMENT OF THE PROVIDER WITHIN 45 DAYS AFTER RECEIPT
9 OF THE WRITTEN GRIEVANCE TO AFFORD THE SUBSCRIBER THE OPPORTUNITY TO
10 PRESENT THE SUBSCRIBER'S GRIEVANCE; AND

11 [(2)] (4) A response from the provider within 45 days after receipt of the
12 written grievance as to the investigation and resolution of the subscriber's grievance.
13 13.

14 (a) In addition to such other provisions as may be considered proper to
15 effectuate the purpose of any continuing care agreement, each agreement executed
16 between a subscriber and a provider shall, in a form acceptable to the Department:

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

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

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

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

32 (5) Describe the policies that will be implemented in the event the
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
36 event of an increase or decrease in the number of persons occupying an individual
37 unit;

1 (7) Provide in clear and understandable language, boldface type, and in
2 the largest type used in the body of the agreement, the terms governing the refund of
3 any portion of the entrance fee in the event of discharge by the provider or
4 cancellation by the subscriber;

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

7 (9) STATE THAT THE SUBSCRIBER HAS RECEIVED, AT LEAST 2 WEEKS
8 BEFORE SIGNING THE AGREEMENT, THE CURRENT VERSION OF THE WRITTEN
9 RULES OF THE PROVIDER;

10 [(9)] (10) Provide in clear and understandable language, boldface type,
11 and in the largest type used in the agreement, whether or not monthly fees, if
12 charged, will be subject to periodic increases;

13 [(10)] (11) Provide that charges for care paid in advance in 1 lump sum
14 only shall not be increased or changed during the duration of the agreed upon care;

15 [(11)] (12) State which funeral and burial services, if any, will be provided
16 by the provider;

17 [(12)] (13) Give a description of the living quarters;

18 [(13)] (14) State the conditions, if any, under which a unit may be assigned
19 to the use of another by the subscriber;

20 [(14)] (15) State the religious or charitable affiliations of the provider and
21 the extent, if any, to which the affiliate organization will be responsible for the
22 financial and contractual obligations of the provider;

23 [(15)] (16) State the subscriber's and provider's respective rights and
24 obligations as to use of the facility and as to real and personal property of the
25 subscriber placed in the custody of the provider;

26 [(16)] (17) State that the subscribers shall have the right to organize and
27 operate a subscriber association at the facility and to meet privately to conduct
28 business;

29 [(17)] (18) State that there is an internal grievance procedure to
30 investigate the grievances of subscribers;

31 [(18)] (19) State what, if any, fee adjustments will be made in the event the
32 subscriber is voluntarily absent from the facility for an extended period of time;

33 [(19)] (20) Specify the circumstances, if any, under which the subscriber
34 will be required to apply for Medicaid, Medicare, public assistance, or any public
35 benefit program and whether or not the facility is a participant in Medicare or
36 medical assistance;

1 [(20)] (21) State that the subscriber has received and reviewed the latest
2 certified financial statement and that a copy of the certified financial statement was
3 received at least 2 weeks before signing the agreement;

4 [(21)] (22) Provide that the facility will make available to the subscriber,
5 upon request, any certified financial statement transmitted to the Department;

6 [(22)] (23) Where applicable, describe the conditions under which the
7 provider may be issued [a] AN INITIAL certificate of registration, describe the
8 conditions under which the provider may use escrowed deposits, and state the
9 amount of the subscriber's deposit [that may be used upon issuance of a certificate of
10 registration];

11 [(23)] (24) State that fees collected by a provider under the terms of a
12 continuing care agreement may not be used for purposes other than those set forth in
13 the agreement;

14 [(24)] (25) Allow a subscriber to designate a beneficiary for receipt of
15 any refundable portion of the entrance fee **THAT IS OWED DUE TO THE DEATH OF THE**
16 **SUBSCRIBER ON OR AFTER THE DATE OF OCCUPANCY**, if:

17 (i) The designation is in writing;

18 (ii) The designation is witnessed by two or more competent
19 witnesses;

20 (iii) The designation is noncontingent; and

21 (iv) The designation is specified in percentages and accounts for 100
22 percent of the refund due; and

23 [(25)] (26) Contain the following statement in boldface type, and in the
24 largest type used in the agreement: "A preliminary certificate of registration or
25 certificate of registration is not an endorsement or guarantee of this facility by the
26 State of Maryland. The Maryland Department of Aging urges you to consult with an
27 attorney and a suitable financial advisor before signing any documents."

28 (b) Except as provided in subsection [(a)(24)] (A)(25) of this section, a
29 requirement of this section shall not apply to any continuing care agreements entered
30 into before the effective date of the requirement.

31 15A.

32 (A) A CONTINUING CARE AGREEMENT SHALL ALLOW A SUBSCRIBER TO
33 ELECT TO TERMINATE THE AGREEMENT BY GIVING A WRITTEN TERMINATION
34 NOTICE TO THE PROVIDER.

35 [(a)] (B) If a continuing care agreement is terminated by the subscriber's
36 election or death within the first 90 days of occupancy, the provider shall pay any
37 contractual entrance fee refund within 30 days of the earlier to occur of:

1 (1) The recontracting for the unit of that subscriber BY ANOTHER
2 SUBSCRIBER FOR WHOM AN ENTRANCE FEE HAS BEEN PAID, OR BY ANOTHER PARTY
3 NOT A SUBSCRIBER; or

4 (2) The later to occur of:

5 (i) The 90th day after the date [of termination] THE WRITTEN
6 TERMINATION NOTICE IS GIVEN OR OF DEATH; or

7 (ii) The day the independent living units at the facility have
8 operated at 95% of capacity for the previous 6 months.

9 [(b)] (C) [A] IF A CONTINUING CARE AGREEMENT IS TERMINATED BY THE
10 SUBSCRIBER'S ELECTION OR DEATH AFTER THE FIRST 90 DAYS OF OCCUPANCY, THE
11 provider shall pay any contractual entrance fee refund [due under a continuing care
12 agreement to which it is a party] within 60 days of the [agreement being terminated
13 by a subscriber's election or death, if on the termination date] SUBSCRIBER'S DEATH
14 OR THE EFFECTIVE DATE OF TERMINATION, IF ON THE DATE OF DEATH OR AT ANY
15 TIME BETWEEN THE DATE THE WRITTEN TERMINATION NOTICE IS GIVEN AND THE
16 EFFECTIVE DATE OF TERMINATION the following conditions exist:

17 (1) The subscriber no longer resides in a unit at the level of care in which
18 the subscriber resided upon initially entering the facility;

19 (2) The subscriber resides in a unit at a higher level of care than the
20 level of care in which the subscriber resided upon initially entering the facility; and

21 (3) The last unit in which the subscriber resided at the level of care in
22 which the subscriber resided upon initially entering the facility has been occupied by
23 or reserved for another subscriber who has paid an entrance fee.

24 (D) THIS SECTION DOES NOT PRECLUDE A PROVIDER FROM REQUIRING THAT
25 A SUBSCRIBER'S UNIT BE VACATED BEFORE ANY CONTRACTUAL ENTRANCE FEE
26 REFUND IS PAID AS A RESULT OF THE SUBSCRIBER'S ELECTION TO TERMINATE A
27 CONTINUING CARE AGREEMENT.

28 17A.

29 (f) The Department may withhold the renewal certificate OF REGISTRATION
30 or withdraw a PRELIMINARY, INITIAL, OR RENEWAL certificate of registration:

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

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

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

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

1 18.

2 (a) No person, association, or corporation may maintain or operate a facility
3 offering continuing care without having obtained [a] AN INITIAL OR RENEWAL
4 certificate of registration.

5 18A.

6 (a) The [Department] SECRETARY may impose a civil money penalty against
7 a provider for action or inaction that violates this subtitle or any regulation adopted
8 by the Department under this subtitle.

9 (b) (1) Before imposing a civil money penalty under subsection (a) of this
10 section, the Department shall issue a notice of violation to the provider.

11 (2) The notice shall provide:

12 (i) The time in which a plan of correction that is acceptable to the
13 Department is to be submitted;

14 (ii) The time in which an identified violation must be substantially
15 corrected, which time may not be less than 30 days; and

16 (iii) That failure to submit an acceptable plan of correction as
17 required by item (1) of this subsection or to correct the identified violation may result
18 in an order imposing a civil money penalty under subsection (d) of this section.

19 (c) If at the expiration of the time set forth in subsection (b)(2) of this section
20 the Department determines a violation has not been corrected, the [Department]
21 SECRETARY may:

22 (1) Extend the time frame in which the violation must be corrected; or

23 (2) Impose a civil money penalty under subsection (d) of this section.

24 (d) (1) The [Department] SECRETARY may impose a civil money penalty
25 not to exceed \$5,000 for each violation.

26 (2) In setting the amount of a civil money penalty under this section, the
27 Department shall consider the following factors:

28 (i) The number, nature, and seriousness of the violations;

29 (ii) The degree of risk to the health, life, or physical or financial
30 safety of the subscribers caused by the violations;

31 (iii) The efforts made by the provider to correct the violations;

32 (iv) Whether the amount of the proposed civil money penalty will
33 jeopardize the financial ability of the provider to continue operating; and

1 (v) Other factors as justice may require.

2 (3) If a civil money penalty is imposed under this section, the
3 Department shall issue an order stating:

4 (i) The basis on which the order is made;

5 (ii) Each regulation or statute violated;

6 (iii) Each penalty imposed and the total amount of the civil money
7 penalty imposed; and

8 (iv) The manner in which the amount of the civil money penalty was
9 calculated.

10 (4) (i) The Department shall provide written notice to a provider of the
11 imposition of a civil money penalty.

12 (ii) The notice shall be served on the provider by certified mail and
13 shall include the order and a statement on how to file an administrative appeal.

14 (5) If a civil money penalty is imposed under this section, the provider
15 shall have the right to appeal from the order in accordance with Title 10, Subtitle 2
16 (Administrative Procedure Act) of the State Government Article.

17 (e) (1) A provider shall pay all penalties to the Department within 10 days
18 after the provider receives a final order imposing a civil money penalty.

19 (2) An order imposing a civil money penalty is final when the provider
20 has exhausted all opportunities to contest the penalty in accordance with the
21 Administrative Procedure Act.

22 (3) If a provider does not comply with this section, the Department may
23 file a civil action to recover the penalty.

24 (4) The Department shall deposit all penalties collected under this
25 section into the General Fund.

26 22.

27 (a) A feasibility study approval may be denied for cause by the Department
28 and a [preliminary certificate of registration, certificate of registration, or renewal
29 certificate] **PRELIMINARY, INITIAL, OR RENEWAL CERTIFICATE OF REGISTRATION**
30 may be denied, suspended, or revoked for cause by the Department. Grounds for
31 denial, suspension, or revocation include violation of the provisions of this subtitle,
32 violations of regulations issued by the Department pursuant to this subtitle,
33 misrepresentations, or submissions of any false financial statement. For any denial,
34 suspension, or revocation, the Department shall set forth its reasons in writing.

35 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
36 effect October 1, 2006.

