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

Introduced and read first time: January 16, 2006

Rules suspended

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 21, 2006

CHAPTER _____

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)

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

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

4 7.

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

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

8 (2) An applicant for or the holder of a PRELIMINARY, INITIAL, OR
9 RENEWAL certificate of registration.

10 (dd) "Transfer" means, when used in conjunction with property IN §§ 20A
11 THROUGH 21 OF THIS SUBTITLE:

12 (1) The sale or other direct or indirect disposition of property or an
13 interest in property;

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

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

16 9.

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

21 10.

22 (d) A feasibility study may be approved by the Department when it determines
23 that:

24 (1) The number of comprehensive CARE or [domiciliary] ASSISTED
25 LIVING beds in the facility, for which licenses are required by the Department of
26 Health and Mental Hygiene, is not inconsistent with the State health plan;

27 (2) A reasonable financial plan has been developed for developing and
28 operating the project;

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

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

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

1 (6) The escrow agreement and deposit agreement are approved by the
2 Department; and

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

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

9 11.

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

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

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

21 (i) Leases;

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

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

25 2. Has been deposited by the provider under a proper escrow
26 agreement; or

27 (iii) Other appropriate contractual arrangements.

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

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

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

3 (i) The provider has been issued a preliminary certificate of
4 registration;

5 (ii) The documents required have been filed;

6 (iii) The form and substance of all advertising and other
7 promotional materials filed are not deceptive, misleading, or likely to mislead;

8 (iv) For a project other than a conversion, at least 65 percent of the
9 independent living units have been contracted for with a minimum 10 percent of the
10 entrance fee paid as a deposit for each contracted unit;

11 (v) For a conversion project, that at least 80% of the
12 accommodations in the project that are not licensed as assisted living or
13 comprehensive care beds are occupied or reserved in accordance with:

14 1. Leases;

15 2. Continuing care agreements executed with subscribers
16 who have provided a deposit that:

17 A. Is equal to at least 10% of the total entrance fee; and

18 B. Has been deposited by the provider pursuant to a proper
19 escrow agreement; or

20 3. Other appropriate contractual arrangements.

21 (vi) If construction financing is required, that closing on the
22 construction financing has taken place; and

23 (vii) There is a commitment for permanent long-term financing.

24 (2) The initial certificate of registration may be issued for a period of up
25 to 18 months at the discretion of the Department.

26 (c) A deposit held in escrow may not be used until [a] AN INITIAL certificate
27 of registration has been issued, construction is completed, the provider has been
28 issued a certificate of occupancy, or the equivalent, by the appropriate local
29 jurisdiction, and the provider has been issued appropriate licenses or certificates by
30 the Department of Health and Mental Hygiene or by the Department.

31 (d) If [a] AN INITIAL certificate of registration is not issued within 24 months
32 of the issuance of a preliminary certificate of registration or longer time as is allowed
33 by the Department for good cause shown, the provider shall refund all deposits and
34 cease in its attempts to offer continuing care under that application.

1 (e) Annually, within 120 days after the end of the fiscal year, the provider
2 shall file an application for a renewal certificate OF REGISTRATION in a form
3 satisfactory to the Department which shall contain the following information:

4 (1) Any additions or changes to the information required by § 10 of this
5 subtitle;

6 (2) An audited financial statement for the preceding fiscal year prepared
7 in accordance with an audit guide adopted by the Department;

8 (3) An operating budget for the current fiscal year, and a projected
9 operating budget for the next succeeding fiscal year;

10 (4) A cash flow projection for the current fiscal year and the next 2 fiscal
11 years;

12 (5) A projection of the life expectancy and the number of residents who
13 will require nursing home care;

14 (6) An actuarial study reviewed by a qualified actuary and submitted
15 every 3 years, UNLESS THE PROVIDER IS EXEMPTED FROM THE REQUIREMENT FOR
16 AN ACTUARIAL STUDY BY REGULATIONS ADOPTED BY THE DEPARTMENT
17 EXEMPTING CATEGORIES OF PROVIDERS THAT THE DEPARTMENT DETERMINES
18 HAVE SUBSTANTIALLY LIMITED LONG-TERM CARE LIABILITY EXPOSURE;

19 (7) The form and substance of any advertising campaign or proposed
20 advertisement and other promotional materials not previously filed with the
21 Department; and

22 (8) Any further information that the Department requires.

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

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

29 (1) The documents required have been filed;

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

32 (3) The provider has complied with § 17A of this subtitle if it has been
33 found to be in financial difficulty;

34 (4) When appropriate, the facility has been licensed or certified by the
35 Department of Health and Mental Hygiene or the Department; and

1 (5) The form and substance of all advertising and other promotional
2 materials filed are not deceptive, misleading, or likely to mislead.

3 (h) A provider shall file a request for approval for each renovation in a form
4 satisfactory to the Department. At least 30 days before filing the request, the provider
5 shall submit to the Department a written statement that sets forth the provider's
6 intent to file a renovation approval request. A request for approval shall include:

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

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

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

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

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

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

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

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

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

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

1 (1) (1) [It] EXCEPT FOR A FEASIBILITY STUDY FILED UNDER § 10 OF THIS
2 SUBTITLE, WHICH SHALL BE CONFIDENTIAL ONLY UNTIL AN INITIAL CERTIFICATE
3 OF REGISTRATION FOR THE PROJECT IS ISSUED, IT shall be the responsibility of the
4 Department to make the information required to be provided pursuant to this subtitle
5 available to all interested persons. The Department shall publicize the availability of
6 this information.

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

11 11A.

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

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

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

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

23 (4) THE SECRETARY MAY WAIVE THE REQUIREMENTS OF THIS
24 SUBSECTION FOR A PROVIDER IN THE PROCESS OF DECERTIFYING AS A CONTINUING
25 CARE PROVIDER, IF THE SECRETARY DETERMINES THAT THERE ~~IS GOOD CAUSE~~ ARE
26 NO SUBSCRIBERS WILLING AND ABLE TO SERVE ON THE GOVERNING BODY.

27 11B.

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

37 (b) Except as otherwise provided in this section, the provider shall set aside
38 for each facility subject to this subtitle operating reserves that equal 15% of the
39 facility's net operating expenses for the most recent fiscal year for which a certified

1 financial statement is available. The reserves shall be maintained in reasonably
2 liquid form in the judgment of the provider.

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

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

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

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

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

26 (2) A provider shall meet the requirement of subsection (b) of this section
27 at a minimum rate of 10% per year as of the end of each fiscal year after the later of
28 October 1, 1996 or the date of its initial certificate OF REGISTRATION, up to a total of
29 100% as of the end of the 10th fiscal year.

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

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

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

1 11C.

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

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

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

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

15 (c) The disclosure statement shall include:

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

19 (2) THE NAME AND ADDRESS OF THE PROVIDER AND OF ANY PARENT OR
20 SUBSIDIARY PERSON;

21 [(2)] (3) The organizational structure and management of the provider,
22 including:

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

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

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

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

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

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

7 [(3)] (4) A statement regarding any affiliation of the provider with a
8 religious, charitable, or other nonprofit organization, and the extent to which the
9 organization is responsible for the financial and contractual obligations of the
10 provider;

11 [(4)] (5) A description of all basic fees, including entrance fees, fees for
12 health related services, and periodic fees, collected by the provider from subscribers,
13 setting forth the amount and frequency of the fee changes during each of the previous
14 5 years. If the facility has been in operation less than 5 years, then the description
15 shall be for each year that it has been in operation;

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

21 (7) A DESCRIPTION OF THE FINANCIAL ARRANGEMENTS THAT THE
22 PROVIDER HAS MADE, IF ANY, TO ADDRESS THE RENEWAL AND REPLACEMENT OF
23 THE BUILDINGS AND IMPROVEMENTS AT THE FACILITY, SUCH AS THE
24 ESTABLISHMENT OF A RENEWAL AND REPLACEMENT FUND;

25 [(6)] (8) A copy of the most recent certified financial statement
26 obtainable under generally accepted accounting principles;

27 [(7)] (9) A description of the long-term financing for the facility;

28 [(8)] (10) If the facility has not reached 85% occupancy of independent
29 living units, a summary of the feasibility study;

30 [(9)] (11) A cash flow forecast statement for the current and the next 2
31 fiscal years;

32 [(10)] (12) The names and occupations of the officers, directors, trustees,
33 managing or general partners, and any other persons with a 10% or greater equity or
34 beneficial interest in the provider, and a description of the financial interest in or
35 occupation with the provider;

36 [(11)] (13) The name and address of any professional service firm,
37 association, trust, partnership, company, or corporation in which a person identified
38 in item [(10)] 12 of this subsection has a 10% or greater financial interest and which
39 is anticipated to provide goods, premises, or services to the facility or provider of a

1 value of \$10,000 or more within any fiscal year, including a description of the goods,
2 premises, or services and their anticipated cost to the facility or provider. However,
3 the disclosure of salary, wage, or benefit information of employees of the provider is
4 not required;

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

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

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

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

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

24 [(14)] (16) A description of the form of governance of the provider,
25 including the composition of the governing body, and a statement that the provider
26 shall satisfy the requirements of § 11A of this subtitle;

27 [(15)] (17) If applicable, a description of the conditions under which the
28 provider may be issued [a] AN INITIAL certificate of registration and may use
29 escrowed deposits[, and a statement of the amount of the subscriber's deposit that
30 may be used];

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

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

1 [(18)] (20) A description of any activity involving a renovation, [or an]
2 expansion, OR NEW DEVELOPMENT, whether or not subject to Department review,
3 during the preceding fiscal year or proposed for the current fiscal year;

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

8 [(20)] (22) A description of the existence and role of the resident
9 association;

10 [(21)] (23) A description of the internal grievance procedure; and

11 [(22)] (24) Such other material information concerning the facility or the
12 provider as the Department requires or that the provider wishes to include.

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

19 (e) Any amended disclosure statement:

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

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

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

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

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

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

34 (iv) Notice of:

35 1. The availability of locks for storage;

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

- 1 3. The security procedures which the provider shall
2 implement to protect the subscriber and the subscriber's property; and
- 3 4. The provider's right, if any, to enter a subscriber's room;
- 4 (v) A statement of the obligations of the provider, the subscriber, or
5 the subscriber's agent as to:
- 6 1. Arranging for or overseeing medical care;
- 7 2. Monitoring the health status of the subscriber;
- 8 3. Purchasing or renting essential or desired equipment and
9 supplies; and
- 10 4. Ascertaining the cost of and purchasing durable medical
11 equipment;
- 12 (vi) An explanation of the assisted living program's complaint or
13 grievance procedure; and
- 14 (vii) Notice of any material changes in the assisted living program.
- 15 (2) The provider shall:
- 16 (i) Furnish annually without cost to each subscriber revisions to
17 the disclosure statement provisions under paragraph (1) of this subsection;
- 18 (ii) Ensure that each subscriber, or the subscriber's agent, initials
19 the revised disclosure statement to indicate acknowledgment of the revisions; and
- 20 (iii) Make available a copy of each initialed disclosure statement for
21 inspection by the Department of Health and Mental Hygiene under Title 19, Subtitle
22 18, of the Health - General Article.
- 23 11D.
- 24 (a) (1) A provider that holds a PRELIMINARY, INITIAL, OR RENEWAL
25 certificate of registration and a person with an ownership interest in or right to
26 control the provider through governing body appointments or contractual or similar
27 arrangements may not sell or otherwise transfer, directly or indirectly, more than 50%
28 of the provider's ownership of a facility or more than 50% of the ownership of, or right
29 to control, a person that owns or controls a facility, unless the provider or person
30 obtains the approval of the Department to the sale or other transfer in accordance
31 with this section.
- 32 (2) Any series of such sales or other transfers within a 12-month period
33 shall be aggregated for purposes of this section.
- 34 (3) This section does not apply to a transfer of ownership of a facility, or
35 to a transfer of ownership or control of a person owning or controlling a facility, if the

1 transfer is part of a business reorganization, and if the same party or parties holding
2 a majority of ownership or right to control before the business reorganization will
3 retain, directly or indirectly, a majority of ownership or right to control after the
4 business reorganization.

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

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

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

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

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

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

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

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

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

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

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

1 4. If the provider is to be a trust, the name of the trustee, the
2 names of the owners of the beneficial interests in the trust, the state governing the
3 trust, and the name of the primary individual responsible for overseeing the trust's
4 activities;

5 5. If the provider is to be a partnership having a corporation
6 or limited liability company as one or more of its general partners, the name of the
7 corporation or limited liability company, the state in which the corporation is
8 incorporated or the limited liability company is formed, and the name of the chief
9 executive officer; and

10 6. The names and occupations of the officers, directors,
11 trustees, general partners, principals, and any person or entity who will have a 10%
12 or greater equity or beneficial interest in the provider or in the entity owning or
13 controlling the provider;

14 (iv) A copy of the corporate charter, partnership agreement, articles
15 of association, membership agreement, or trust agreement as it will pertain to the
16 legal organization of the provider after the sale or other transfer;

17 (v) A statement as to any affiliation with a religious, charitable, or
18 other nonprofit organization that will exist after the proposed sale or other transfer
19 and the extent, if any, to which the affiliate organization will be responsible for the
20 financial and contractual obligations of the provider;

21 (vi) The name and address of any business or professional entity or
22 operation that is likely to provide goods, premises, or services to the facility or
23 provider, after the sale or other transfer, of a value of \$10,000 or more within any
24 year, including a description of the goods, premises, or services in which any of the
25 persons identified in item (iii)6 of this paragraph has a 10% or greater financial
26 interest;

27 (vii) The name of the proposed manager or management company
28 that will manage the day-to-day operations of the facility after the sale or other
29 transfer, and a description of the business experience of the manager or company in
30 the operation or management of similar facilities;

31 (viii) A description of any matter in which any person identified in
32 item (iii)6 of this paragraph:

33 A. Has been convicted of a felony or pleaded nolo contendere
34 to a felony charge, if the felony involved fraud, embezzlement, fraudulent conversion,
35 or misappropriation of property, or has been held liable or enjoined in a civil action by
36 final judgment if the civil action involved fraud, embezzlement, fraudulent
37 conversion, or misappropriation as a fiduciary; or

38 B. Was subject to an effective injunctive or restrictive order of
39 a court of record or, within the past 10 years, had any state or federal license or
40 permit suspended or revoked as a result of an action brought by a governmental
41 agency arising out of or relating to business activity or health care, including actions

1 affecting a license to operate any facility or service for aging, impaired, or dependent
2 persons;

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

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

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

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

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

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

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

39 (c) After reviewing the information as required in subsection (b) of this
40 section, the Department shall make a determination as to whether the sale or other
41 transfer satisfies the standard for approval in subsection (d) of this section. The
42 determination by the Department shall be made by the 50th day after the date of the

1 notice required by subsection [(b)(1)(ii)] (B)(2) of this section, unless extended by the
2 Department for good cause. The Department shall notify the EXISTING PROVIDER,
3 ANY PROPOSED NEW provider, and the subscriber representatives in writing of its
4 determination and rationale AND, IF APPLICABLE, THAT IT INTENDS TO TRANSFER
5 THE CERTIFICATE OF REGISTRATION TO THE NEW PROVIDER.

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

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

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

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

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

27 11E.

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

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

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

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

3 11G.

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

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

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

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

13 [(2)] (4) A response from the provider within 45 days after receipt of the
14 written grievance as to the investigation and resolution of the subscriber's grievance.
15 13.

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

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

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

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

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

34 (5) Describe the policies that will be implemented in the event the
35 subscriber becomes unable to meet the monthly fees;

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

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

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

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

14 [(9)] (10) Provide in clear and understandable language, boldface type,
15 and in the largest type used in the agreement, whether or not monthly fees, if
16 charged, will be subject to periodic increases;

17 [(10)] (11) Provide that charges for care paid in advance in 1 lump sum
18 only shall not be increased or changed during the duration of the agreed upon care;

19 [(11)] (12) State which funeral and burial services, if any, will be provided
20 by the provider;

21 [(12)] (13) Give a description of the living quarters;

22 [(13)] (14) State the conditions, if any, under which a unit may be assigned
23 to the use of another by the subscriber;

24 [(14)] (15) State the religious or charitable affiliations of the provider and
25 the extent, if any, to which the affiliate organization will be responsible for the
26 financial and contractual obligations of the provider;

27 [(15)] (16) State the subscriber's and provider's respective rights and
28 obligations as to use of the facility and as to real and personal property of the
29 subscriber placed in the custody of the provider;

30 [(16)] (17) State that the subscribers shall have the right to organize and
31 operate a subscriber association at the facility and to meet privately to conduct
32 business;

33 [(17)] (18) State that there is an internal grievance procedure to
34 investigate the grievances of subscribers;

35 [(18)] (19) State what, if any, fee adjustments will be made in the event the
36 subscriber is voluntarily absent from the facility for an extended period of time;

1 [(19)] (20) Specify the circumstances, if any, under which the subscriber
2 will be required to apply for Medicaid, Medicare, public assistance, or any public
3 benefit program and whether or not the facility is a participant in Medicare or
4 medical assistance;

5 [(20)] (21) State that the subscriber has received and reviewed the latest
6 certified financial statement and that a copy of the certified financial statement was
7 received at least 2 weeks before signing the agreement;

8 [(21)] (22) Provide that the facility will make available to the subscriber,
9 upon request, any certified financial statement transmitted to the Department;

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

15 [(23)] (24) State that fees collected by a provider under the terms of a
16 continuing care agreement may not be used for purposes other than those set forth in
17 the agreement;

18 [(24)] (25) Allow a subscriber to designate a beneficiary for receipt of
19 any refundable portion of the entrance fee **THAT IS OWED DUE TO THE DEATH OF THE**
20 **SUBSCRIBER ON OR AFTER THE DATE OF OCCUPANCY**, if:

21 (i) The designation is in writing;

22 (ii) The designation is witnessed by two or more competent
23 witnesses;

24 (iii) The designation is noncontingent; and

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

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

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

1 15A.

2 (A) A CONTINUING CARE AGREEMENT SHALL ALLOW A SUBSCRIBER TO
3 ELECT TO TERMINATE THE AGREEMENT BY GIVING A WRITTEN TERMINATION
4 NOTICE TO THE PROVIDER.

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

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

11 (2) The later to occur of:

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

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

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

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

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

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

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

35 17A.

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

- 1 (1) If the provider does not prepare a financial plan;
- 2 (2) If the provider is unwilling or unable to prepare a financial plan;
- 3 (3) If the financial plan is inadequate to correct the current or impending
4 financial condition which necessitated the financial plan; or
- 5 (4) If the provider fails to implement the plan.

6 18.

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

10 18A.

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

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

16 (2) The notice shall provide:

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

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

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

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

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

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

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

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

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

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

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

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

6 (v) Other factors as justice may require.

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

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

10 (ii) Each regulation or statute violated;

11 (iii) Each penalty imposed and the total amount of the civil money
12 penalty imposed; and

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

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

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

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

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

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

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

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

31 22.

32 (a) A feasibility study approval may be denied for cause by the Department
33 and a [preliminary certificate of registration, certificate of registration, or renewal
34 certificate] PRELIMINARY, INITIAL, OR RENEWAL CERTIFICATE OF REGISTRATION

1 may be denied, suspended, or revoked for cause by the Department. Grounds for
2 denial, suspension, or revocation include violation of the provisions of this subtitle,
3 violations of regulations issued by the Department pursuant to this subtitle,
4 misrepresentations, or submissions of any false financial statement. For any denial,
5 suspension, or revocation, the Department shall set forth its reasons in writing.

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