

SENATE BILL 778

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9lr2055
CF 9lr1772

By: **Senator Della**

Introduced and read first time: February 6, 2009

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Continuing Care - Department of Aging and Maryland Insurance**
3 **Administration - Transfer of Oversight**

4 FOR the purpose of transferring oversight of continuing care from the Department of
5 Aging to the Maryland Insurance Administration; requiring the Administration,
6 in consultation with certain groups, to conduct a certain review and to provide a
7 certain report to the General Assembly on or before a certain date; making
8 certain stylistic and technical changes; requiring the publisher of the Annotated
9 Code of Maryland to make certain corrective changes; providing for the effective
10 date of certain provisions of this Act; providing for the termination of certain
11 provisions of this Act; and generally relating to the oversight of continuing care.

12 BY transferring

13 Article - Human Services

14 Section 10-401 through 10-405 and the part "Part I. Definitions; General
15 Provisions"; 10-407 through 10-416 and the part "Part II. Continuing
16 Care in a Retirement Community - Certificates of Registration"; 10-419
17 through 10-429 and the part "Part III. Providers"; 10-432 through
18 10-441 and the part "Part IV. Facilities and Assets"; 10-444 through
19 10-450 and the part "Part V. Continuing Care Agreements"; 10-453
20 through 10-460 and the part "Part VI. Continuing Care at Home";
21 10-463 through 10-469 and the part "Part VII. Financial Review";
22 10-472 through 10-493 and the part "Part VIII. Delinquency
23 Proceedings"; and 10-496 through 10-499 and the part "Part IX.
24 Prohibited Acts; Penalties; Remedies", and the subtitle "Subtitle 4.
25 Continuing Care", respectively

26 Annotated Code of Maryland

27 (2007 Volume and 2008 Supplement)

28 to be

29 Article - Insurance

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 30-101 through 30-105 and the subtitle "Subtitle 1. Definitions;
 2 General Provisions"; 30-201 through 30-210 and the subtitle "Subtitle 2.
 3 Continuing Care in a Retirement Community – Certificates of
 4 Registration"; 30-301 through 30-311 and the subtitle "Subtitle 3.
 5 Providers"; 30-401 through 30-410 and the subtitle "Subtitle 4. Facilities
 6 and Assets"; 30-501 through 30-507 and the subtitle "Subtitle 5.
 7 Continuing Care Agreements"; 30-601 through 30-608 and the subtitle
 8 "Subtitle 6. Continuing Care at Home"; 30-701 through 30-707 and the
 9 subtitle "Subtitle 7. Financial Review"; 30-801 through 30-822 and the
 10 subtitle "Subtitle 8. Delinquency Proceedings"; and 30-901 through
 11 30-904 and the "Subtitle 9. Prohibited Acts; Penalties; Remedies", and
 12 the title "Title 30. Continuing Care", respectively

13 Annotated Code of Maryland

14 (2006 Replacement Volume and 2008 Supplement)

15 BY repealing and reenacting, with amendments,

16 Article – Insurance

17 Section 30-101, 30-102, 30-103, 30-105, 30-201, 30-202, 30-203, 30-204,
 18 30-205, 30-206, 30-207, 30-208, 30-209, 30-210, 30-302, 30-303,
 19 30-304, 30-305, 30-306, 30-307, 30-309, 30-311, 30-401, 30-402,
 20 30-403, 30-404, 30-405, 30-406, 30-407, 30-409, 30-410, 30-501,
 21 30-502, 30-503, 30-601, 30-602, 30-603, 30-604, 30-605, 30-606,
 22 30-607, 30-608, 30-701, 30-702, 30-703, 30-704, 30-705, 30-706,
 23 30-707, 30-801, 30-802, 30-803, 30-804, 30-805, 30-806, 30-807,
 24 30-808, 30-809, 30-810, 30-813, 30-814, 30-816, 30-817, 30-818,
 25 30-819, 30-820, 30-821, 30-822, 30-901, 30-902, 30-903, and 30-904

26 Annotated Code of Maryland

27 (2006 Replacement Volume and 2008 Supplement)

28 (As enacted by Section 1 of this Act)

29 BY repealing and reenacting, with amendments,

30 Article – Insurance

31 Section 30-102

32 Annotated Code of Maryland

33 (2006 Replacement Volume and 2008 Supplement)

34 (As enacted by Chapter 503 of the Acts of the General Assembly of 2007
 35 and Section 1 of this Act)

36 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 37 MARYLAND, That Section(s) 10-401 through 10-405 and the part "Part I.
 38 Definitions; General Provisions"; 10-407 through 10-416 and the part "Part II.
 39 Continuing Care in a Retirement Community – Certificates of Registration"; 10-419
 40 through 10-429 and the part "Part III. Providers"; 10-432 through 10-441 and the
 41 part "Part IV. Facilities and Assets"; 10-444 through 10-450 and the part "Part V.
 42 Continuing Care Agreements"; 10-453 through 10-460 and the part "Part VI.
 43 Continuing Care at Home"; 10-463 through 10-469 and the part "Part VII. Financial
 44 Review"; 10-472 through 10-493 and the part "Part VIII. Delinquency Proceedings";
 45 and 10-496 through 10-499 and the part "Part IX. Prohibited Acts; Penalties;

1 Remedies”, and the subtitle “Subtitle 4. Continuing Care”, respectively, of Article –
 2 Human Services of the Annotated Code of Maryland be transferred to be Section(s)
 3 30–101 through 30–105 and the subtitle “Subtitle 1. Definitions; General Provisions”;
 4 30–201 through 30–210 and the subtitle “Subtitle 2. Continuing Care in a Retirement
 5 Community – Certificates of Registration”; 30–301 through 30–311 and the subtitle
 6 “Subtitle 3. Providers”; 30–401 through 30–410 and the subtitle “Subtitle 4. Facilities
 7 and Assets”; 30–501 through 30–507 and the subtitle “Subtitle 5. Continuing Care
 8 Agreements”; 30–601 through 30–608 and the subtitle “Subtitle 6. Continuing Care at
 9 Home”; 30–701 through 30–707 and the subtitle “Subtitle 7. Financial Review”;
 10 30–801 through 30–822 and the subtitle “Subtitle 8. Delinquency Proceedings”; 30–901
 11 through 30–904 and the subtitle “Subtitle 9. Prohibited Acts; Penalties; Remedies”,
 12 and the title “Title 30. Continuing Care”, respectively, of Article – Insurance of the
 13 Annotated Code of Maryland.

14 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
 15 read as follows:

16 **Article – Insurance**

17 30–101.

18 (a) In this [subtitle] **TITLE** the following words have the meanings indicated.

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

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

23 (d) “Continuing care” means:

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

25 (2) continuing care at home.

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

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

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

32 (ii) for the life of the individual or for a period exceeding 1 year;

33 and

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

3 (2) “Continuing care at home” includes providing assistance with the
4 physical maintenance of the individual’s dwelling.

5 (g) “Continuing care in a retirement community” means providing shelter
6 and providing either medical and nursing or other health related services or making
7 the services readily accessible through the provider or an affiliate of the provider,
8 whether or not the services are specifically offered in the written agreement for
9 shelter:

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

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

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

15 (h) (1) “Contractual entrance fee refund” means a repayment of all or part
16 of a subscriber’s entrance fee to the subscriber or the subscriber’s estate or designated
17 beneficiary, as required by the terms of the continuing care agreement.

18 (2) “Contractual entrance fee refund” does not include a payment
19 required under [§ 10–446 or § 10–448] § **30–503 OR § 30–505** of this [subtitle] **TITLE**.

20 (i) “Conversion” means converting a physical plant that provides housing or
21 shelter into a facility if:

22 (1) the residential accommodations exist before a statement of intent
23 is filed under [§ 10–409(b)] § **30–203(B)** of this [subtitle] **TITLE**; and

24 (2) at least 60% of the available residential accommodations of the
25 facility owner were occupied during the [two] **2** fiscal years prior to the filing of a
26 statement of intent.

27 (j) “Deposit” means a portion of an entrance fee.

28 (k) (1) “Entrance fee” means a sum of money or other consideration paid
29 initially or in deferred payments, that:

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

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

1 (2) “Entrance fee” includes a fee of similar form and application,
2 regardless of title.

3 (3) “Entrance fee” does not include a surcharge.

4 (1) (1) “Expansion” means any single new capital addition to an existing
5 facility that meets either of the following criteria:

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

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

11 1. 10% of the total operating expenses, less depreciation,
12 amortization, and interest expense of the facility as shown on the certified financial
13 statement for the most recent fiscal year for which a certified financial statement is
14 available; and

15 2. the amount of the existing reserves properly allocable
16 to, and allocated for, the expansion.

17 (2) “Expansion” does not include renovation and normal repair and
18 maintenance.

19 (m) “Facility” means a physical plant in which continuing care in a
20 retirement community is provided in accordance with this subtitle.

21 (n) “Financial difficulty” means current or impending financial conditions
22 that impair or may impair the ability of a provider to meet existing or future
23 obligations.

24 (o) “Governing body” means a board of directors, board of trustees, or similar
25 group that ultimately directs the affairs of a provider, but whose members are not
26 required to have an equity interest in the provider.

27 (p) (1) “Health related services” means services that are needed by a
28 subscriber to maintain the subscriber’s health.

29 (2) “Health related services” includes:

30 (i) priority admission to a nursing home or assisted living
31 program; or

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

1 (q) "Person" includes a governmental entity or unit.

2 (r) "Processing fee" means a fee imposed by a provider for determining the
3 financial, mental, and physical eligibility of an applicant for entrance into a facility.

4 (s) "Provider" means a person who:

5 (1) undertakes to provide continuing care; and

6 (2) is:

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

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

10 (t) "Records" means information maintained by a provider for the proper
11 operation of a facility under this subtitle.

12 (u) (1) "Renovation" means any single capital improvement to, or
13 replacement of, all or part of an existing facility that will not increase the number of
14 independent or assisted living units and for which the total projected cost exceeds the
15 sum of:

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

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

22 (2) "Renovation" does not include normal repair or maintenance.

23 (v) "Subscriber" means an individual for whom a continuing care agreement
24 is purchased.

25 (w) (1) "Surcharge" means a separate and additional charge that:

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

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

29 (2) "Surcharge" does not include a second person entrance fee.

1 (a) The [Department] **ADMINISTRATION** shall:

2 (1) administer this [subtitle] **TITLE**;

3 (2) prepare and furnish all forms necessary or desirable under this
4 [subtitle] **TITLE**;

5 (3) establish and collect reasonable filing fees to carry out this
6 [subtitle] **TITLE**;

7 (4) adopt regulations necessary to enforce this [subtitle] **TITLE**; and

8 (5) prepare and distribute relevant public information and educational
9 materials designed to advise individuals, institutions, and organizations of their rights
10 and responsibilities under this [subtitle] **TITLE**.

11 (b) (1) Except as provided in paragraph (2) of this subsection, the
12 [Department] **ADMINISTRATION** shall make available to interested persons any
13 information required to be provided to the [Department] **ADMINISTRATION** under
14 this [subtitle] **TITLE** and publicize the availability of the information.

15 (2) (i) A feasibility study filed under [§ 10–408] § **30–202** of this
16 [subtitle] **TITLE** may not be disclosed until the [Department] **ADMINISTRATION**
17 issues an initial certificate of registration for the project.

18 (ii) Information required to be provided under [§ 10–434(b)(2)] §
19 **30–403(B)(2)** of this [subtitle] **TITLE** shall be disclosed only to the extent required
20 under the Public Information Act.

21 30–105.

22 (a) In this section, “Fund” means the Continuing Care Fund.

23 (b) There is a Continuing Care Fund.

24 (c) The purpose of the Fund is to defray the costs of administering this
25 [subtitle] **TITLE**.

26 (d) The [Department of Aging] **ADMINISTRATION** shall administer the
27 Fund.

28 (e) (1) The Fund is a special, nonlapsing fund that is not subject to §
29 7–302 of the State Finance and Procurement Article.

1 (2) The State Treasurer shall hold the Fund separately, and the
2 Comptroller shall account for the Fund.

3 (f) The Fund consists of:

4 (1) all fees collected under this [subtitle] **TITLE**;

5 (2) money appropriated in the State budget to the Fund;

6 (3) investment earnings of the Fund; and

7 (4) any other money from any other source accepted for the benefit of
8 the Fund.

9 (g) The Fund may be used only for the purposes specified in this [subtitle]
10 **TITLE**.

11 (h) (1) The State Treasurer shall invest the money of the Fund in the
12 same manner as other State money may be invested.

13 (2) Any investment earnings of the Fund shall be paid into the Fund.

14 (i) Expenditures from the Fund may be made only in accordance with the
15 State budget.

16 (j) Money expended from the Fund for administering this [subtitle] **TITLE** is
17 supplemental to and is not intended to take the place of funding that otherwise would
18 be appropriated for administering this [subtitle] **TITLE**.

19 30–201.

20 This [part] **SUBTITLE** applies only to continuing care in a retirement
21 community operations.

22 30–202.

23 (a) A provider shall comply with the applicable provisions of [§§ 10–409
24 through 10–415] §§ **30–203 THROUGH 30–209** of this subtitle before the provider
25 may:

26 (1) offer continuing care in a retirement community;

27 (2) enter into or renew continuing care agreements;

28 (3) begin construction of a new facility;

1 (4) begin construction of an expansion to or renovation of an existing
2 facility; or

3 (5) collect deposits for continuing care in this State.

4 (b) (1) A new capital addition to a facility that will result in the
5 construction of a number of independent and assisted living units that is greater than
6 25% of the number of existing units is considered new development and is subject to
7 [§§ 10–409 through 10–411] §§ **30–203 THROUGH 30–205** of this subtitle.

8 (2) A new capital addition to a facility that does not involve the
9 construction of independent or assisted living units and that does not meet the
10 standard of [§ 10–401(1)(1)(ii)] § **30–101(L)(1)(II)** of this [subtitle] **TITLE** is not
11 subject to review by the [Department] **ADMINISTRATION** under [§§ 10–409 through
12 10–415] §§ **30–203 THROUGH 30–209** of this subtitle.

13 (3) A capital improvement or replacement that does not meet the
14 standard of [§ 10–401(w)] § **30–101(W)** of this [subtitle] **TITLE** is not subject to
15 review by the [Department] **ADMINISTRATION** under [§§ 10–409 through 10–415] §§
16 **30–203 THROUGH 30–209** of this subtitle.

17 (c) A provider that has more than one facility offering continuing care shall
18 make a separate application for each facility for preliminary, initial, and renewal
19 certificates of registration.

20 30–203.

21 (a) A provider may not collect deposits for continuing care or begin
22 construction of a new facility until the [Department] **ADMINISTRATION** approves a
23 feasibility study.

24 (b) A person who intends to submit a feasibility study under subsection (c) of
25 this section shall file with the [Department] **ADMINISTRATION** a statement of intent
26 to provide continuing care at least 30 days before the person submits the feasibility
27 study to the [Department] **ADMINISTRATION**.

28 (c) A feasibility study shall:

29 (1) be filed in a form satisfactory to the [Department]
30 **ADMINISTRATION**; and

31 (2) include at least the following information:

32 (i) a statement of the purpose of the proposed construction or
33 conversion;

34 (ii) documentation of the financial resources of the provider;

1 (iii) a statement of the capital expenditures necessary to
2 accomplish the project and the plan for acquiring the necessary capital;

3 (iv) a plan demonstrating the financial feasibility of the
4 proposed project, including future funding sources;

5 (v) a study that demonstrates the market for the project;

6 (vi) an actuarial forecast reviewed by a qualified actuary;

7 (vii) a statement of the planned fee structure, including any
8 proposed escalator or other automatic adjustment provision;

9 (viii) a description of the facility proposed to be used or being used
10 for continuing care;

11 (ix) a copy of the proposed escrow and deposit agreements; and

12 (x) the form and substance of any proposed advertisement,
13 advertising campaign, or promotional material for the facility that is available at the
14 time of filing.

15 (d) The [Department] **ADMINISTRATION** may approve a feasibility study if
16 the [Department] **ADMINISTRATION** determines that:

17 (1) the number of comprehensive care or assisted living beds in the
18 facility for which licenses are required by the Department of Health and Mental
19 Hygiene is not inconsistent with the State health plan;

20 (2) a reasonable financial plan has been submitted for developing and
21 operating the project;

22 (3) a market for the facility appears to exist;

23 (4) a recognized authority prepared the feasibility study;

24 (5) the actuarial forecast supports the projections for the project;

25 (6) the [Department] **ADMINISTRATION** has approved the escrow
26 agreement and deposit agreement; and

27 (7) the approved escrow agreement is executed by the provider and the
28 financial institution.

29 30–204.

- 1 (a) A provider may collect deposits from prospective subscribers if:
- 2 (1) the [Department] **ADMINISTRATION** has approved the provider's
3 feasibility study; and
- 4 (2) funds collected are maintained in an escrow account.
- 5 (b) Each deposit agreement shall comply with the requirements of subsection
6 (c) or (d) of this section.
- 7 (c) If a deposit agreement is used for a deposit on a unit for which the
8 provider has not received written approval to withdraw deposits, the deposit
9 agreement shall:
- 10 (1) state that all deposits and entrance fees will be held in escrow
11 until:
- 12 (i) an initial certificate of registration for the unit is issued;
- 13 (ii) construction is completed;
- 14 (iii) a certificate of occupancy, or its equivalent, is issued by the
15 local jurisdiction; and
- 16 (iv) the provider has the appropriate licenses or certificates from
17 the Department of Health and Mental Hygiene, the Maryland Health Care
18 Commission, and the [Department] **ADMINISTRATION**;
- 19 (2) describe the disposition of any interest earned on deposits and
20 entrance fees;
- 21 (3) state the amount of any processing fee and whether it will be
22 refunded if the deposit agreement is canceled; and
- 23 (4) describe the disposition of the deposit if the deposit agreement is
24 canceled before the continuing care agreement is executed.
- 25 (d) If a deposit agreement is used for a deposit on a unit for which the
26 provider has received written approval to withdraw deposits, the deposit agreement
27 shall:
- 28 (1) state that the provider may use all deposits and entrance fees at
29 any time; or
- 30 (2) describe any applicable limitations on the use of deposits and
31 entrance fees.

1 30–205.

2 (a) A provider may not enter into a continuing care agreement until the
3 [Department] **ADMINISTRATION** issues a preliminary certificate of registration.

4 (b) An application for a preliminary certificate of registration shall be filed in
5 a form satisfactory to the [Department] **ADMINISTRATION**.

6 (c) An application shall include at least the following information:

7 (1) the name and address of the facility and the name and address of
8 any affiliate, parent, or subsidiary;

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

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

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

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

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

23 (v) for a trust, the name of the trustee, the names of the owners
24 of beneficial interests in the trust, the state governing it, and the name of the primary
25 individual responsible for overseeing its activities;

26 (vi) the name and occupation of each officer, director, trustee,
27 managing or general partner, and each person with a 10% or greater financial equity
28 or beneficial interest in the provider and a description of the person's financial interest
29 in or occupation with the provider;

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

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

3 (3) a copy of the corporate charter, partnership agreement, articles of
4 association, membership agreement, trust agreement, or similar instrument or
5 agreement governing the legal organization of the provider;

6 (4) (i) a certified financial statement of the provider for as many of
7 the most recent fiscal years, not exceeding 3 years, for which certified financial
8 statements are obtainable under generally accepted accounting principles; and

9 (ii) if the provider's fiscal year ended more than 90 days before
10 the date the application is filed, an income statement, which need not be certified,
11 covering the period between the end of the fiscal year and a date not more than 90
12 days before the date the application is filed;

13 (5) a statement of any affiliation with a religious, charitable, or other
14 nonprofit organization, the extent of the affiliation, and the extent, if any, to which the
15 affiliate organization will be responsible for the provider's financial and contractual
16 obligations;

17 (6) a copy of the proposed continuing care agreement;

18 (7) a copy of any priority admission agreements between the provider
19 and any health care provider for health related services;

20 (8) a statement of the current fee structure, including escalator or
21 other automatic adjustment provisions;

22 (9) a statement of the role of any publicly funded benefit or insurance
23 program in the financing of care;

24 (10) the form and substance of any advertisement, advertising
25 campaign, or other promotional material for the facility that has not been previously
26 submitted to the [Department] **ADMINISTRATION**; and

27 (11) other reasonable and pertinent information that the [Department]
28 **ADMINISTRATION** requires.

29 (d) The [Department] **ADMINISTRATION** shall issue a preliminary
30 certificate of registration to a provider if:

31 (1) the feasibility study has been approved; and

32 (2) the [Department] **ADMINISTRATION** determines that:

1 (i) the proposed continuing care agreement meets the
2 requirements of [§§ 10-444, 10-445, 10-446, and 10-448] §§ **30-501, 30-502,**
3 **30-503, AND 30-505** of this [subtitle] **TITLE**;

4 (ii) all of the financial and organizational materials required to
5 be submitted under subsection (c) of this section have been submitted to the
6 [Department] **ADMINISTRATION**; and

7 (iii) the form and substance of all advertisements, advertising
8 campaigns, and other promotional materials submitted are not deceptive, misleading,
9 or likely to mislead.

10 (e) If a preliminary certificate of registration is not issued within 6 months
11 after the feasibility study is approved, or a longer time allowed by the [Department]
12 **ADMINISTRATION** for good cause shown, the provider shall refund all deposits and
13 stop marketing continuing care under that application.

14 (f) A provider that plans to advertise before an initial certificate of
15 registration is issued under [§ 10-412] § **30-206** of this subtitle shall submit to the
16 [Department] **ADMINISTRATION** the form and substance of any advertisement,
17 advertising campaign, or other promotional material before it may be used.

18 30-206.

19 (a) A provider may not provide continuing care until the [Department]
20 **ADMINISTRATION** issues an initial certificate of registration.

21 (b) An application for an initial certificate of registration shall be filed in a
22 form satisfactory to the [Department] **ADMINISTRATION**.

23 (c) An application shall include at least the following information:

24 (1) for a project other than a conversion, verification that continuing
25 care agreements have been executed with subscribers for at least 65% of the
26 independent living units and **THAT** at least 10% of the total entrance fee for each
27 contracted unit has been collected;

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

31 (i) leases;

32 (ii) continuing care agreements executed with subscribers who
33 have paid a deposit that:

34 1. equals at least 10% of the total entrance fee; and

1 2. has been deposited by the provider under an escrow
2 agreement approved by the [Department] **ADMINISTRATION**; or

3 (iii) other appropriate contractual arrangements;

4 (3) verification that the provider has received a written commitment
5 for permanent long-term financing; and

6 (4) if construction financing is required, verification that the provider
7 has applied for the financing.

8 (d) (1) If requested by the permanent financing lender, the [Department]
9 **ADMINISTRATION** may issue a letter stating that the requirements of subsection
10 (c)(1) of this section have been met.

11 (2) If requested by the construction lender, the [Department]
12 **ADMINISTRATION** may issue a letter stating that:

13 (i) the requirements of subsection (c)(1) and (3) of this section
14 have been met; and

15 (ii) the initial certificate of registration will be issued on the
16 closing of the construction loan.

17 (e) (1) The [Department] **ADMINISTRATION** shall issue an initial
18 certificate of registration to a provider if the [Department] **ADMINISTRATION**
19 determines that:

20 (i) the provider has a preliminary certificate of registration;

21 (ii) the provider has submitted the required documents;

22 (iii) the form and substance of all advertisements, advertising
23 campaigns, and other promotional materials submitted are not deceptive, misleading,
24 or likely to mislead;

25 (iv) for a project other than a conversion, continuing care
26 agreements have been executed with subscribers for at least 65% of the independent
27 living units and at least 10% of the entrance fee has been paid as a deposit for each
28 contracted unit;

29 (v) for a conversion project, at least 80% of the accommodations
30 in the project that are not licensed as assisted living or comprehensive care beds are
31 occupied or reserved in accordance with:

32 1. leases;

1 2. continuing care agreements executed with subscribers
2 who have paid a deposit that:

3 A. equals at least 10% of the total entrance fee; and

4 B. has been deposited by the provider under an escrow
5 agreement approved by the [Department] **ADMINISTRATION**; or

6 3. other appropriate contractual arrangements;

7 (vi) if construction financing is required, closing on the financing
8 has occurred; and

9 (vii) the provider has a commitment for permanent long-term
10 financing.

11 (2) The [Department] **ADMINISTRATION** may issue the initial
12 certificate of registration for a period not exceeding 18 months.

13 (f) A deposit held in escrow may not be used until:

14 (1) an initial certificate of registration has been issued;

15 (2) construction is completed;

16 (3) the provider has a certificate of occupancy or the equivalent from
17 the appropriate local jurisdiction; and

18 (4) the provider has the appropriate licenses or certificates from the
19 Department of Health and Mental Hygiene or the [Department] **ADMINISTRATION**.

20 (g) If an initial certificate of registration is not issued within 24 months after
21 the issuance of a preliminary certificate of registration, or a longer time allowed by the
22 [Department] **ADMINISTRATION** for good cause shown, the provider shall refund all
23 deposits and stop offering continuing care under that application.

24 30–207.

25 (a) (1) Each year, within 120 days after the end of a provider’s fiscal year,
26 the provider shall file an application for a renewal certificate of registration in a form
27 satisfactory to the [Department] **ADMINISTRATION**.

28 (2) A renewal application shall contain:

29 (i) any additions or changes to the information required by [§§
30 10–408 through 10–410] §§ **30–202 THROUGH 30–204** of this subtitle;

1 (ii) an audited financial statement for the preceding fiscal year
2 prepared in accordance with an audit guide that the [Department] **ADMINISTRATION**
3 adopts;

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

6 (iv) a cash flow projection for the current fiscal year and the next
7 [two] **2** fiscal years;

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

10 (vi) an actuarial study reviewed by a qualified actuary and
11 submitted every 3 years, unless the provider is exempted from the requirement for an
12 actuarial study by regulations adopted by the [Department] **ADMINISTRATION**
13 exempting categories of providers that the [Department] **ADMINISTRATION**
14 determines have substantially limited long-term care liability exposure;

15 (vii) the form and substance of any proposed advertisement,
16 advertising campaign, or other promotional material not previously submitted to the
17 [Department] **ADMINISTRATION**; and

18 (viii) any further information that the [Department]
19 **ADMINISTRATION** requires.

20 (b) (1) The [Department] **ADMINISTRATION** may charge a late fee if the
21 application and accompanying information are not received by the [Department]
22 **ADMINISTRATION** within 120 days after the end of the provider's fiscal year.

23 (2) Failure to file the required information within 90 days after the
24 due date is a violation of this [subtitle] **TITLE**.

25 (c) The [Department] **ADMINISTRATION** shall issue a renewal certificate of
26 registration if the [Department] **ADMINISTRATION** determines that:

27 (1) the required documents have been filed;

28 (2) any revised continuing care agreements meet the requirements of
29 this [subtitle] **TITLE**;

30 (3) if the provider has been found to be in financial difficulty, the
31 provider has complied with [Part VII] **SUBTITLE 7** of this [subtitle] **TITLE**;

1 (4) when appropriate, the facility has been licensed or certified by the
2 Department of Health and Mental Hygiene or the [Department] **ADMINISTRATION**;
3 and

4 (5) the form and substance of all advertisements, advertising
5 campaigns, and other promotional materials submitted to the [Department]
6 **ADMINISTRATION** are not deceptive, misleading, or likely to mislead.

7 30–208.

8 (a) A provider may not begin construction of a renovation until the provider
9 receives written approval from the [Department] **ADMINISTRATION**.

10 (b) (1) A provider shall file with the [Department] **ADMINISTRATION** a
11 request for approval for each renovation.

12 (2) At least 30 days before filing the request, the provider shall submit
13 to the [Department] **ADMINISTRATION** a written statement of intent to file a request
14 for approval of a renovation.

15 (3) A request for approval of a renovation shall be in a form
16 satisfactory to the [Department] **ADMINISTRATION**.

17 (4) A request for approval shall include:

18 (i) a statement of the purpose of and need for the renovation;

19 (ii) a financial plan that demonstrates to the satisfaction of the
20 [Department] **ADMINISTRATION** that the renovation will not have an unreasonably
21 adverse effect on the financial ability of the provider to provide continuing care in
22 accordance with its continuing care agreements and this [subtitle] **TITLE** at the
23 facility to be renovated and at the provider's other facilities in the State; and

24 (iii) any other information that the [Department]
25 **ADMINISTRATION** requires.

26 (c) The [Department] **ADMINISTRATION** shall approve a renovation if the
27 [Department] **ADMINISTRATION** determines that the proposed renovation will not
28 have an unreasonably adverse effect on the financial ability of the provider to provide
29 continuing care in accordance with its continuing care agreements and this [subtitle]
30 **TITLE**.

31 30–209.

32 (a) A provider may not begin construction of an expansion until the provider
33 receives written approval from the [Department] **ADMINISTRATION**.

1 (b) (1) A provider shall file with the [Department] **ADMINISTRATION** a
2 request for approval for each expansion.

3 (2) At least 30 days before filing the request, the provider shall submit
4 to the [Department] **ADMINISTRATION** a written statement of intent to file a request
5 for approval of an expansion.

6 (3) A request for approval of an expansion shall be in a form
7 satisfactory to the [Department] **ADMINISTRATION**.

8 (4) A request for approval shall include:

9 (i) a statement of the purpose of and need for the expansion;

10 (ii) if the expansion involves living units, a plan that
11 demonstrates to the satisfaction of the [Department] **ADMINISTRATION** that a
12 market exists for the additional living units;

13 (iii) a financial plan that demonstrates to the satisfaction of the
14 [Department] **ADMINISTRATION** that the expansion will not have an unreasonably
15 adverse effect on the financial ability of the provider to provide continuing care in
16 accordance with its continuing care agreements and this [subtitle] **TITLE** at the
17 facility to be expanded and at the provider's other facilities in the State; and

18 (iv) any other information that the [Department]
19 **ADMINISTRATION** requires.

20 (c) The [Department] **ADMINISTRATION** shall approve an expansion and, if
21 appropriate, issue a new certificate of registration if the [Department]
22 **ADMINISTRATION** determines that the proposed expansion will not have an
23 unreasonably adverse effect on the financial ability of the provider to provide
24 continuing care in accordance with its continuing care agreements and this [subtitle]
25 **TITLE**.

26 30–210.

27 (a) For cause, the [Department] **ADMINISTRATION** may:

28 (1) deny a feasibility study approval; or

29 (2) deny, suspend, or revoke a preliminary, initial, or renewal
30 certificate of registration.

31 (b) (1) Grounds for a denial, suspension, or revocation include:

- 1 (i) violation of this subtitle;
- 2 (ii) violation of a regulation the [Department]
3 **ADMINISTRATION** adopts under this [subtitle] **TITLE**;
- 4 (iii) misrepresentation; or
- 5 (iv) submission of a false financial statement.

6 (2) The [Department] **ADMINISTRATION** shall set forth in writing its
7 reasons for a denial, suspension, or revocation.

8 (c) Title 10, Subtitle 2 of the State Government Article governs the appeal of
9 a denial, revocation, or suspension.

10 30–302.

11 (a) Interest expenses may be excluded from the calculation of net operating
12 expenses for a fiscal year, if the provider funded a debt service reserve or other
13 interest reserve under requirements imposed by a financial institution or under
14 applicable financing documents, to the extent the reserve fund included amounts to
15 cover interest for that fiscal year.

16 (b) (1) Except as otherwise provided in this [part] **SUBTITLE**, a provider
17 shall set aside for each facility subject to this [subtitle] **TITLE** operating reserves
18 equal to 15% of the facility's net operating expenses for the most recent fiscal year for
19 which a certified financial statement is available.

20 (2) The provider shall keep the operating reserves in a reasonably
21 liquid form in the judgment of the provider.

22 (c) (1) A provider shall meet the requirements of subsection (b) of this
23 section within 10 full fiscal years after the date of its initial certificate of registration.

24 (2) A provider shall set aside at least 10% of the reserves required
25 under subsection (b) of this section at the end of each fiscal year after the date of its
26 initial certificate of registration, up to a total of 100% at the end of the 10th fiscal year.

27 (3) The [Department] **ADMINISTRATION** may allow a provider to
28 modify the minimum rate required under paragraph (2) of this subsection or extend
29 the time to meet the requirements of subsection (b) of this section if the modification is
30 necessary to maintain the financial viability of the facility.

31 30–303.

32 (a) (1) A provider shall compute operating reserves for each facility as of
33 the end of the facility's most recent fiscal year.

1 (2) When a provider files an application for a renewal certificate of
2 registration, the provider shall show compliance with operating reserve requirements
3 by including with the application:

4 (i) a letter to the [Department] **ADMINISTRATION** from a
5 certified public accountant that states the amount set aside; or

6 (ii) a certified financial statement that states the amount set
7 aside.

8 (b) A provider may apply toward the operating reserves required by [§
9 10–420(b)] § **30–302(B)** of this subtitle any reserves, except debt service reserves,
10 that are maintained under applicable financing document requirements if the reserves
11 are available to the provider to meet the facility’s operating expenses.

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

16 30–304.

17 (a) A provider shall notify the [Department] **ADMINISTRATION** in writing
18 immediately on the withdrawal of any amount from the funds available to satisfy the
19 operating reserves required by [§ 10–420(b)] § **30–302(B)** of this subtitle.

20 (b) Within 30 days after making a withdrawal described in subsection (a) of
21 this section, the provider shall submit to the [Department] **ADMINISTRATION** a
22 written plan for restoring the reserves to the level required by [§ 10–420(b)] §
23 **30–302(B)** of this subtitle.

24 30–305.

25 (a) For a facility that has not been the subject of a conversion and that has
26 residents who are not parties to continuing care agreements, the provider shall set
27 aside operating reserves equal to at least 15% of the pro rata proportion of the net
28 operating expenses calculated under subsection (b) of this section.

29 (b) The pro rata proportion of the net operating expenses equals the number
30 of units in the facility for which the [Department] **ADMINISTRATION** has issued a
31 certificate of registration divided by the total number of accommodations in the facility
32 multiplied by the net operating expenses for the most recent fiscal year for which a
33 certified financial statement is available.

34 30–306.

1 (a) (1) A provider shall give without cost a disclosure statement for each
2 facility for which the provider holds a preliminary, initial, or renewal certificate of
3 registration:

4 (i) to a prospective subscriber before the earlier of payment of
5 any part of the entrance fee or execution of a continuing care agreement; and

6 (ii) annually to any subscriber who requests a disclosure
7 statement.

8 (2) A provider shall submit its initial disclosure statement to the
9 [Department] **ADMINISTRATION** for review at least 45 days before giving the
10 statement to any prospective subscriber.

11 (b) (1) A provider shall revise the disclosure statement annually and file
12 it with the [Department] **ADMINISTRATION** within 120 days after the end of the
13 provider's fiscal year.

14 (2) The [Department] **ADMINISTRATION** shall review the disclosure
15 statement solely to ensure compliance with [§ 10-425] § **30-307** of this subtitle.

16 (c) (1) An amended disclosure statement is subject to each requirement of
17 this [subtitle] **TITLE**.

18 (2) A provider shall file an amended disclosure statement with the
19 [Department] **ADMINISTRATION** when it is delivered to a subscriber or prospective
20 subscriber.

21 30-307.

22 (a) A disclosure statement shall include:

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

25 (2) the name and address of the provider and of any parent or
26 subsidiary;

27 (3) the organizational structure and management of the provider,
28 including:

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

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

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

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

8 (v) for a trust, the name of the trustee, the names of the owners
9 of beneficial interests in the trust, the state governing it, and the name of the primary
10 individual responsible for overseeing its activities; and

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

13 (4) the name and occupation of each officer, director, trustee,
14 managing or general partner, and each person with a 10% or greater equity or
15 beneficial interest in the provider, and a description of the person's financial interest
16 in or occupation with the provider;

17 (5) the name and address of any entity in which a person identified in
18 item (4) of this subsection has a 10% or greater financial interest and that is
19 anticipated to provide goods, premises, or services with a value of \$10,000 or more to
20 the facility or provider in a fiscal year and a description of the goods, premises, or
21 services and their anticipated cost to the facility or provider, which need not include
22 salary, wage, or benefit information of employees of the provider;

23 (6) a description of any matter in which an individual identified in
24 item (4) of this subsection:

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

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

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

35 (iv) in the past 10 years, had a state or federal license or permit
36 suspended or revoked because a governmental unit brought an action that arose out of

1 or related to business activity or health care, including an action that affected a
2 license to operate a facility or service for senior, impaired, or dependent persons;

3 (7) a description of the provider's form of governance and the
4 composition of its governing body, and a statement that the provider will satisfy the
5 requirements of [§§ 10-426 and 10-427] §§ **30-308 AND 30-309** of this subtitle;

6 (8) a statement of any affiliation of the provider with a religious,
7 charitable, or other nonprofit organization, and the extent of the organization's
8 responsibility for the financial and contractual obligations of the provider;

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

13 (10) a copy of the most recent certified financial statement obtainable
14 under generally accepted accounting principles;

15 (11) a description of the long-term financing for the facility;

16 (12) a cash flow forecast for the current and the next [two] **2** fiscal
17 years;

18 (13) a description of any activity related to a renovation, expansion, or
19 new development during the preceding fiscal year or proposed for the current fiscal
20 year;

21 (14) a description of:

22 (i) the steps that have been or will be taken to comply with the
23 operating reserve requirements under [§ 10-420(b)] § **30-302(B)** of this subtitle; and

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

26 (15) a description of the financial arrangements that the provider has
27 made, if any, to address the renewal and replacement of the buildings and
28 improvements at the facility, such as the establishment of a renewal and replacement
29 fund;

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

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

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

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

10 (20) if applicable, a statement that it is the provider's policy to impose a
11 surcharge on some, but not all, subscribers because of a condition or circumstance that
12 applies only to those subscribers and that the surcharge is not part of the entrance fee
13 refund required under [§ 10-448] § **30-505** of this [subtitle] **TITLE**;

14 (21) a description of the role of any resident association;

15 (22) a description of the internal grievance procedure;

16 (23) a statement that the provider will amend its disclosure statement
17 whenever the provider or the [Department] **ADMINISTRATION** considers an
18 amendment necessary to prevent the disclosure statement from containing:

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

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

23 (24) any other material information about the facility or the provider
24 that the [Department] **ADMINISTRATION** requires or that the provider wishes to
25 include.

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

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

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

30 (i) constitute approval, recommendation, or endorsement of the
31 facility by the [Department] **ADMINISTRATION**; or

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

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

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

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

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

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

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

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

14 (iv) notice of:

15 1. the availability of locks for storage;

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

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

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

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

23 1. arranging or overseeing medical care;

24 2. monitoring the subscriber's health status;

25 3. purchasing or renting essential or desired equipment
26 and supplies; and

27 4. ascertaining the cost of and purchasing durable
28 medical equipment;

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

1 (vii) notice of any material changes in the assisted living
2 program.

3 (3) The provider shall:

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

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

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

11 30–309.

12 (a) (1) If a provider has a governing body, at least one of the provider's
13 subscribers shall be a full and regular member of the governing body.

14 (2) If the provider owns or operates more than three facilities in the
15 State, the governing body shall include at least one of the provider's subscribers for
16 every three facilities in the State.

17 (3) Subject to paragraph (4) of this subsection, a member of the
18 governing body who is selected to meet the requirements of this subsection shall be a
19 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 (4) The governing body shall confer with the resident association at
22 each of the provider's facilities before the subscriber officially joins the governing body.

23 (5) The [Secretary] **COMMISSIONER** may waive the requirements of
24 this subsection for a provider in the process of decertifying as a provider, if the
25 [Secretary] **COMMISSIONER** determines that there are no subscribers willing and
26 able to serve on the governing body.

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

32 (2) If a facility does not have a resident association, the committee
33 shall meet with a reasonable number of representatives, not required to exceed
34 [fifteen] **15**, that the subscribers elect.

1 30-311.

2 A provider shall make readily available to its subscribers for review at the
3 facility copies of all materials that the provider submits to the [Department]
4 **ADMINISTRATION** that are required to be disclosed under the Public Information Act.

5 30-401.

6 (a) (1) This section and [§§ 10-433 through 10-435] §§ **30-402**
7 **THROUGH 30-404** of this subtitle do not apply to a transfer of ownership of a facility,
8 or a transfer of ownership or control of a person that owns or controls a facility, if:

9 (i) the transfer is part of a business reorganization; and

10 (ii) the same person or persons holding a majority of ownership
11 or right to control before the business reorganization will retain, directly or indirectly,
12 a majority of ownership or right to control after the business reorganization.

13 (2) The provider shall notify the [Department] **ADMINISTRATION**
14 and the facility's subscribers 30 days before any reorganization described in paragraph
15 (1) of this subsection.

16 (b) Unless the [Department] **ADMINISTRATION** approves the sale or
17 transfer in accordance with [§§ 10-433 through 10-435] §§ **30-402 THROUGH**
18 **30-404** of this subtitle, a provider that holds a preliminary, initial, or renewal
19 certificate of registration or a person with an ownership interest in or a right to control
20 the provider, through governing body appointments or contractual or similar
21 arrangements, may not sell or otherwise transfer, directly or indirectly:

22 (1) more than 50% of the provider's ownership of a facility; or

23 (2) more than 50% of the ownership of or right to control a person that
24 owns or controls a facility.

25 (c) Any series of sales or other transfers described in subsection (b) of this
26 section that occur in a 12-month period shall be aggregated for purposes of this
27 section and [§§ 10-433 through 10-435] §§ **30-402 THROUGH 30-404** of this
28 subtitle.

29 30-402.

30 (a) (1) At least 90 days before the proposed effective date of a sale or other
31 transfer, a provider subject to [§ 10-432(b)] § **30-401(B)** of this subtitle shall file with
32 the [Department] **ADMINISTRATION** a statement of intent to transfer ownership or
33 control.

1 (2) At least 65 days before the proposed effective date of the sale or
2 other transfer, a provider subject to [§ 10–432(b)] § ~~30–401(B)~~ of this subtitle and any
3 proposed new provider shall give written notice of the proposed sale or other transfer,
4 including notice of the place and time of the meeting required by [§ 10–434(b)] §
5 ~~30–403(B)~~ of this subtitle, to the subscribers of the affected facility and the
6 [Department] **ADMINISTRATION**.

7 (b) (1) The written notice to the [Department] **ADMINISTRATION**
8 required under subsection (a)(2) of this section shall include:

9 (i) the name and address of the existing provider and any
10 proposed new provider and the office of each to which comments may be sent under [§
11 10–434] § ~~30–403~~ of this subtitle;

12 (ii) the name and address of the affected facility;

13 (iii) the organizational structure and management of the
14 provider and the facility after the proposed sale or other transfer is completed,
15 including:

16 1. if the provider is to be a corporation or limited
17 liability company, its name, its state of incorporation or formation, and the name of
18 the chief executive officer;

19 2. if the provider is to be a partnership, the names of the
20 general partners, the state governing its formation, and the name of the primary
21 individual responsible for managing it;

22 3. if the provider is to be an unincorporated association,
23 the names of the members, the state governing its activities, and the name of the
24 primary individual responsible for managing it;

25 4. if the provider is to be a trust, the trustee's name, the
26 names of the owners of beneficial interests in the trust, the state that governs it, and
27 the name of the primary individual responsible for overseeing its activities;

28 5. if the provider is to be a partnership that has a
29 corporation or limited liability company as one or more of its general partners, the
30 name of each corporation or limited liability company, its state of incorporation or
31 formation, and the name of its chief executive officer; and

32 6. the name and occupation of each officer, director,
33 trustee, general partner, principal, and each person who will have a 10% or greater
34 equity or beneficial interest in the provider or in a person that owns or controls the
35 provider;

1 (iv) a copy of the corporate charter, partnership agreement,
2 articles of association, membership agreement, or trust agreement that will govern the
3 legal organization of the provider after the sale or transfer;

4 (v) a statement of any affiliation with a religious, charitable, or
5 other nonprofit organization after the proposed sale or transfer and the extent, if any,
6 of the affiliate organization's responsibility for the financial and contractual
7 obligations of the provider;

8 (vi) the name and address of any business or professional entity
9 in which a person identified in item (iii)6 of this paragraph has a 10% or greater
10 financial interest and that is likely to provide goods, premises, or services with a value
11 of \$10,000 or more a year to the facility or provider after the sale or transfer, and a
12 description of the goods, premises, or services;

13 (vii) the name of the proposed manager or management company
14 that will manage the day-to-day operations of the facility after the sale or other
15 transfer, and a description of the business experience of the manager or company in
16 operating or managing similar facilities;

17 (viii) a description of any matter in which a person identified in
18 item (iii)6 of this paragraph:

19 1. has been convicted of a felony or pleaded nolo
20 contendere to a felony charge, if the felony involved fraud, embezzlement, fraudulent
21 conversion, or misappropriation of property;

22 2. has been held liable or enjoined in a civil action by
23 final judgment, if the civil action involved fraud, embezzlement, fraudulent
24 conversion, or misappropriation as a fiduciary;

25 3. was subject to an effective injunctive or restrictive
26 order of a court of record in an action that arose out of or related to business activity or
27 health care, including an action that affected a license to operate a facility or service
28 for senior, impaired, or dependent persons; or

29 4. within the past 10 years, had a state or federal license
30 or permit suspended or revoked because of an action brought by a governmental unit
31 arising out of or relating to business activity or health care, including actions affecting
32 a license to operate a facility or service for senior, impaired, or dependent persons;

33 (ix) a financial plan provided by the entity that will be the
34 provider after the proposed sale or other transfer is completed in a form reasonably
35 acceptable to the [Department] **ADMINISTRATION** that demonstrates the projected
36 effects of the sale or transfer on the financial operations of the provider and the
37 facility, including any obligations of the provider to make payments in connection with
38 the sale or transfer from the financial resources of the provider or the facility; and

1 (x) a statement by the entity that will be the provider after the
2 proposed sale or transfer is completed that demonstrates that the sale or transfer is
3 not likely to have an unreasonably adverse effect on:

- 4 1. the provider's financial stability; or
- 5 2. the provider's capacity to perform its continuing care
6 agreement obligations to subscribers.

7 (2) In addition to the information required to be provided under
8 paragraph (1) of this subsection, a provider subject to [§ 10-432(b)] § **30-401(B)** of
9 this subtitle and any proposed new provider shall provide to the [Department]
10 **ADMINISTRATION** any other information that the [Department] **ADMINISTRATION**
11 requires to evaluate the proposed transaction.

12 (3) On request, the existing provider and any proposed new provider
13 shall give to a subscriber of the affected facility the information included in the
14 written notice to the [Department] **ADMINISTRATION** under paragraph (1) of this
15 subsection.

16 30-403.

17 (a) Within 15 days after the notice required under [§ 10-433(a)(2)] §
18 **30-402(A)(2)** of this subtitle is given, subscribers may submit to the existing
19 provider, any proposed new provider, and the [Department] **ADMINISTRATION**
20 written questions and comments about the proposed sale or transfer.

21 (b) (1) Within 25 days after the notice required under [§ 10-433(a)(2)] §
22 **30-402(A)(2)** of this subtitle is given, representatives of the existing provider and any
23 proposed new provider shall hold a meeting with not more than 15 representatives
24 chosen by the subscribers of the affected facility to discuss the proposed sale or
25 transfer.

26 (2) The subscriber representatives shall give their names and
27 addresses to the existing provider, any proposed new provider, and the [Department]
28 **ADMINISTRATION**.

29 (3) Representatives of the [Department] **ADMINISTRATION** may
30 attend the meeting.

31 (c) Within 10 days after the meeting required under subsection (b) of this
32 section, subscribers may submit to the existing provider, any proposed new provider,
33 and the [Department] **ADMINISTRATION** additional written comments about the
34 proposed sale or transfer.

35 30-404.

1 (a) (1) After reviewing the information required by [§§ 10–433 and
2 10–434] §§ **30–402 AND 30–403** of this subtitle, the [Department]
3 **ADMINISTRATION** shall determine whether the sale or transfer satisfies the standard
4 for approval set forth in subsection (b) of this section.

5 (2) The [Department] **ADMINISTRATION** shall make the
6 determination within 50 days after the date of the notice required under [§
7 10–433(a)(2)] § **30–402(A)(2)** of this subtitle unless extended by the [Department]
8 **ADMINISTRATION** for good cause.

9 (3) The [Department] **ADMINISTRATION** shall notify the existing
10 provider, any proposed new provider, and the subscriber representatives in writing of
11 the determination and the reasons for it and, if applicable, that the [Department]
12 **ADMINISTRATION** intends to transfer the certificate of registration to the new
13 provider.

14 (b) The [Department] **ADMINISTRATION** shall approve a sale or other
15 transfer of ownership or control unless the [Department] **ADMINISTRATION**
16 determines that the sale or transfer is likely to have an unreasonably adverse effect
17 on:

18 (1) the financial stability of the provider; or

19 (2) the capacity of the provider to perform continuing care agreement
20 obligations to subscribers.

21 (c) (1) In accordance with Title 10, Subtitle 2 of the State Government
22 Article, the provider may appeal the [Department's] **ADMINISTRATION'S** decision on
23 the proposed sale or transfer.

24 (2) A person other than the provider may not appeal the
25 [Department's] **ADMINISTRATION'S** decision or be a party in interest to the
26 proceedings.

27 (3) The [Department] **ADMINISTRATION** shall give prompt notice of
28 any appeal and of any decision issued in the appeal to the subscriber representatives.

29 (d) A sale or other transfer of ownership or control subject to this section and
30 [§§ 10–432 through 10–434] §§ **30–401 THROUGH 30–403** of this subtitle may not be
31 completed until 15 days after the later of:

32 (1) the day the [Department] **ADMINISTRATION** issues the notice
33 required under subsection (a)(3) of this section of its decision to approve the sale or
34 transfer; or

1 (2) if an appeal is taken under subsection (c) of this section, the day
2 the administrative law judge issues a decision to allow the sale or transfer.

3 30–405.

4 (a) This section does not apply to:

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

7 (2) a transaction made in the ordinary course of business of operating
8 a facility;

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

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

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

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

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

18 (8) any other sale, transfer, or other disposition exempted by the
19 [Department] **ADMINISTRATION** by regulation.

20 (b) (1) A provider that holds a preliminary, initial, or renewal certificate
21 of registration may not sell, transfer, or otherwise dispose of more than 10% of its total
22 assets in any 12-month period unless the [Department] **ADMINISTRATION** approves
23 the sale, transfer, or disposition in accordance with [§§ 10–437 and 10–438] §§
24 **30–406 AND 30–407** of this subtitle.

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

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

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

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

4 30-406.

5 (a) A provider subject to [§ 10-436(b)(1)] § **30-405(B)(1)** of this subtitle
6 shall:

7 (1) at least 60 days before the sale, transfer, or other disposition, file
8 with the [Department] **ADMINISTRATION** a statement of intent to sell, transfer, or
9 otherwise dispose of assets; and

10 (2) at least 30 days before the sale, transfer, or other disposition, give
11 written notice to the [Department] **ADMINISTRATION** of the proposed sale, transfer,
12 or other disposition of assets.

13 (b) The statement of intent required to be filed with the [Department]
14 **ADMINISTRATION** under subsection (a)(1) of this section shall include:

15 (1) identification of each asset to be sold, transferred, or otherwise
16 disposed of;

17 (2) if the provider is subject to [§ 10-436(b)(1)] § **30-405(B)(1)** of this
18 subtitle because of a series of sales, transfers, or other dispositions that have exceeded
19 cumulatively 10% of its total assets, identification of each asset that has been sold,
20 transferred, or disposed of; and

21 (3) the reason for the sale, transfer, or other disposition identified in
22 item (1) of this subsection.

23 (c) The notice to the [Department] **ADMINISTRATION** required under
24 subsection (a)(2) of this section shall include:

25 (1) a statement that demonstrates that the proposed sale, transfer, or
26 other disposition is not likely to have an unreasonably adverse effect on:

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

28 (ii) the capacity of the provider to perform its obligations under
29 its continuing care agreements; and

30 (2) any other information that the [Department] **ADMINISTRATION**
31 requires.

32 30-407.

1 (a) (1) After reviewing the information required by [§ 10-437] § ~~30-406~~
2 of this subtitle, the [Department] **ADMINISTRATION** shall determine whether the
3 sale, transfer, or other disposition satisfies the standard for approval set forth in
4 subsection (b) of this section.

5 (2) The [Department] **ADMINISTRATION** shall make its
6 determination and notify the provider in writing within 25 days after the date of the
7 notice required by [§ 10-437(a)(2)] § ~~30-406(A)(2)~~ of this subtitle, unless extended by
8 the [Department] **ADMINISTRATION** for good cause.

9 (3) If the [Department] **ADMINISTRATION** does not approve the
10 proposed sale, transfer, or other disposition, the [Department] **ADMINISTRATION**
11 shall include the reasons for its determination in the written notice to the provider.

12 (b) The [Department] **ADMINISTRATION** shall approve the sale, transfer, or
13 other disposition of assets unless it determines that the sale, transfer, or disposition is
14 likely to have an unreasonably adverse effect on:

15 (1) the financial stability of the provider; or

16 (2) the capacity of the provider to perform its obligations under its
17 continuing care agreements.

18 (c) (1) By regulation, the [Department] **ADMINISTRATION** shall adopt
19 reasonable objective financial standards for a proposed sale, transfer, or other
20 disposition of assets.

21 (2) If the [Department] **ADMINISTRATION** determines that the
22 provider has met the objective financial standards, the [Department]
23 **ADMINISTRATION** shall approve the proposed sale, transfer, or other disposition of
24 assets.

25 (3) If the [Department] **ADMINISTRATION** determines that the
26 provider has not met the objective financial standards, the [Department]
27 **ADMINISTRATION** may approve a proposed sale, transfer, or other disposition of
28 assets if it satisfies the requirements set forth in subsection (b) of this section.

29 (d) (1) In accordance with Title 10, Subtitle 2 of the State Government
30 Article, the provider may appeal the [Department's] **ADMINISTRATION'S** decision on
31 the proposed sale, transfer, or other disposition of assets.

32 (2) A person other than the provider may not appeal the
33 [Department's] **ADMINISTRATION'S** decision or be a party in interest to the
34 proceedings.

1 (e) A sale, transfer, or other disposition of assets subject to this [part]
2 **SUBTITLE** may not be completed until 5 days after the later of:

3 (1) the day the [Department] **ADMINISTRATION** issues the notice
4 required under subsection (a)(2) of this section of its decision to approve the sale,
5 transfer, or other disposition;

6 (2) if an appeal is taken under subsection (d) of this section, the day
7 the administrative law judge issues a decision to allow the sale, transfer, or other
8 disposition of assets.

9 30-409.

10 (a) A provider may not remove a record or asset of the provider related to the
11 operation of a facility or the provision of services under a continuing care agreement
12 from the State unless the [Department] **ADMINISTRATION** consents in writing.

13 (b) Consent shall be based on the provider's submission of satisfactory
14 evidence that the removal:

15 (1) will facilitate and make the operations of the provider more
16 economical; and

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

19 30-410.

20 (a) The [Department] **ADMINISTRATION** may:

21 (1) inspect a facility that offers continuing care;

22 (2) examine the facility's books and records; and

23 (3) audit or observe a service provided under a continuing care
24 agreement.

25 (b) If all or part of a facility is subject to licensure by the Department of
26 Health and Mental Hygiene, the [Department] **ADMINISTRATION** shall coordinate its
27 inspections under this section with the Department of Health and Mental Hygiene to
28 avoid duplication.

29 30-501.

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (10) state that the subscriber has received, at least [two] **2** weeks
34 before signing the agreement, the current version of the written rules of the provider;

1 (11) describe the living quarters;

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

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

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

9 (i) use of the facility; and

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

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

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

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

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

21 (19) state that the subscriber received a copy of the latest certified
22 financial statement at least [two] **2** weeks before signing the agreement and that the
23 subscriber has reviewed the statement;

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

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

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

1 (23) allow a subscriber to designate a beneficiary to receive any
2 refundable portion of the entrance fee that is owed due to the death of the subscriber
3 on or after the date of occupancy, if the designation is:

- 4 (i) in writing;
- 5 (ii) witnessed by at least two competent witnesses;
- 6 (iii) not contingent; and
- 7 (iv) specified in percentages and accounts for 100% of the refund
8 due;

9 (24) state the funeral and burial services, if any, that the provider will
10 provide; and

11 (25) contain the following statement in boldface type and in the largest
12 type used in the agreement: “A preliminary certificate of registration or certificate of
13 registration is not an endorsement or guarantee of this facility by the State of
14 Maryland. The Maryland [Department of Aging] **INSURANCE ADMINISTRATION**
15 urges you to consult with an attorney and a suitable financial advisor before signing
16 any documents.”.

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

19 (d) A continuing care agreement may contain, in a form acceptable to the
20 [Department] **ADMINISTRATION**, any other appropriate provision to effectuate the
21 purpose of the agreement.

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

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

25 (ii) the provider does not execute a separate assisted living
26 agreement.

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

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

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

4 (iii) a statement indicating the options available to a subscriber
5 if the subscriber's level of care, after admission to an assisted living program, exceeds
6 the level of care for which the provider is licensed;

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

10 (v) a statement of the obligations of the provider and the
11 subscriber or the subscriber's agent for handling the subscriber's finances;

12 (vi) a statement of the obligations of the provider and the
13 subscriber or the subscriber's agent for disposition of the subscriber's property on the
14 subscriber's discharge or death; and

15 (vii) the applicable rate structure and payment provisions
16 covering:

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

18 A. service packages;

19 B. fee-for-service rates; and

20 C. any other nonservice-related charges;

21 2. criteria to be used for imposing additional charges to
22 provide additional services, if the subscriber's service and care needs change;

23 3. payment arrangements and fees, if known, for
24 third-party services not covered by the continuing care agreement, but arranged for
25 by the subscriber, the subscriber's agent, or the assisted living program;

26 4. identification of the persons responsible to pay all fees
27 and charges and a clear indication of whether the person's responsibility is or is not
28 limited to the extent of the subscriber's funds;

29 5. a provision for notice at least 45 days before any rate
30 increase, except for an increase necessitated by a change in the subscriber's medical
31 condition; and

32 6. fair and reasonable billing and payment policies.

1 (a) (1) If a provider's feasibility study has been approved under [§
2 10-409] § **30-203** of this [subtitle] **TITLE**, the [Department] **ADMINISTRATION** shall
3 decide whether to approve a continuing care agreement within 180 days after receipt
4 of a complete agreement.

5 (2) If the [Department] **ADMINISTRATION** does not act within 180
6 days, the agreement is deemed approved.

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

10 30-503.

11 (a) A subscriber may rescind a continuing care agreement for any reason
12 before the date of occupancy by the subscriber.

13 (b) (1) A continuing care agreement is automatically canceled if, before
14 the date of occupancy:

15 (i) the subscriber dies;

16 (ii) the provider determines that the subscriber is ineligible for
17 admission to the facility; or

18 (iii) the subscriber terminates the continuing care agreement
19 because of a substantial change in the subscriber's physical, mental, or financial
20 condition.

21 (2) Within 30 days after a continuing care agreement is canceled
22 under this subsection, the subscriber or the subscriber's legal representative shall
23 receive a full refund of all money paid to the provider, less:

24 (i) a processing fee approved by the [Department]
25 **ADMINISTRATION**; and

26 (ii) any special additional costs incurred by the provider due to
27 modifications in the structure or furnishings of the unit specifically requested by the
28 subscriber, if:

29 1. the costs do not exceed the costs of modification and
30 the reasonable costs of restoration actually incurred by the provider; and

31 2. the costs were set forth in writing in a separate
32 addendum to the agreement signed by the subscriber.

1 (c) (1) If the subscriber rescinds the continuing care agreement within 90
2 days after entering into the agreement and before the date of occupancy for any reason
3 other than the reasons specified in subsection (b)(1) of this section, the provider shall
4 refund the amount described in subsection (b)(2) of this section to the subscriber or the
5 subscriber's legal representative within 30 days after the date of rescission.

6 (2) If the subscriber rescinds the continuing care agreement more than
7 90 days after entering into the agreement and before the date of occupancy for any
8 reason other than the reasons specified in subsection (b)(1) of this section, the provider
9 may retain up to 25% of the subscriber's entrance fee deposit.

10 (d) (1) A subscriber may rescind a continuing care agreement at any time
11 if a term of the agreement violates this [subtitle] **TITLE** and the subscriber is injured
12 by the violation.

13 (2) The subscriber is entitled to treble damages for extensive injuries
14 arising from a violation.

15 (e) (1) An applicant for admission to a facility who withdraws the
16 application before executing a continuing care agreement shall receive a refund of all
17 money paid to the provider except a processing fee approved by the [Department]
18 **ADMINISTRATION**.

19 (2) The refund shall be paid within 60 days after the applicant
20 withdraws the application.

21 30-601.

22 This [part] **SUBTITLE** applies only to continuing care at home operations.

23 30-602.

24 (a) The [Department] **ADMINISTRATION** shall adopt regulations that:

25 (1) set standards for continuing care at home providers; and

26 (2) provide for the certification of continuing care at home providers
27 and the annual renewal of certificates of registration.

28 (b) In addition to the provisions required under subsection (a) of this section,
29 the regulations adopted by the [Department] **ADMINISTRATION** shall, at a minimum:

30 (1) provide for and encourage the establishment of continuing care at
31 home programs;

1 (2) for an individual who is employed by or under contract with a
2 continuing care at home provider and who will enter a subscriber's home to provide
3 continuing care at home services:

4 (i) set minimum requirements;

5 (ii) require a criminal history records check, if the individual
6 will have routine, direct access to a subscriber; and

7 (iii) require the provider to screen and verify the individual's
8 character references;

9 (3) establish standards for the renewal of certificates of registration;

10 (4) establish standards for entrance fees, deposits, and the number of
11 executed agreements necessary to begin operations;

12 (5) establish conditions for the release of deposits and entrance fees
13 from escrow accounts;

14 (6) establish standards for when and how a subscriber or provider may
15 rescind a continuing care at home agreement before continuing care at home services
16 are provided to the subscriber;

17 (7) allow a subscriber to rescind a continuing care at home agreement
18 at any time if the terms of the agreement violate this subtitle; and

19 (8) establish that a provider may terminate an agreement or discharge
20 a subscriber only for just cause and establish procedures to carry out the termination
21 or discharge.

22 30-603.

23 (a) A provider may not collect deposits to provide continuing care at home
24 services until the [Department] **ADMINISTRATION** approves a feasibility study.

25 (b) A provider that intends to develop a continuing care at home program
26 and provide continuing care at home services shall file a statement of intent with the
27 [Department] **ADMINISTRATION** at least 30 days before submitting the feasibility
28 study required under this section.

29 (c) A feasibility study shall:

30 (1) be filed in a form satisfactory to the [Department]
31 **ADMINISTRATION**; and

32 (2) include at least the following information:

- 1 (i) a statement of the purpose of the program and the need for
2 the proposed services;
- 3 (ii) documentation of the financial resources of the provider;
- 4 (iii) a plan demonstrating the financial feasibility of the
5 proposed program, including future funding sources;
- 6 (iv) an actuarial forecast that has been reviewed by a qualified
7 actuary;
- 8 (v) a study demonstrating the proposed market for the program;
- 9 (vi) the form and substance of any proposed advertisements,
10 advertising campaigns, or other promotional materials for the program that is
11 available at the time of filing;
- 12 (vii) a detailed statement of the covered services; and
- 13 (viii) any other information that the [Department]
14 **ADMINISTRATION** requires.
- 15 (d) The [Department] **ADMINISTRATION** shall approve a feasibility study
16 filed under this section if the [Department] **ADMINISTRATION** determines that:
- 17 (1) the proposed use of new or existing health facilities is not
18 inconsistent with the State health plan;
- 19 (2) a reasonable financial plan has been developed to provide
20 continuing care at home services, including the number of agreements to be executed
21 before beginning operations and the criteria to release funds from escrow;
- 22 (3) a market for the continuing care at home program appears to exist;
- 23 (4) the feasibility study was prepared by a recognized authority;
- 24 (5) the provider has submitted all proposed advertisements,
25 advertising campaigns, and other promotional materials for the program;
- 26 (6) the form and substance of all advertisements, advertising
27 campaigns, and other promotional materials submitted are not deceptive, misleading,
28 or likely to mislead;
- 29 (7) the actuarial forecast supports the market for the program;

1 (8) the approved escrow agreement and deposit agreement state the
2 conditions for the release of deposits and entrance fees from escrow;

3 (9) a copy of the escrow agreement executed by the provider and the
4 financial institution has been filed with the [Department] **ADMINISTRATION**; and

5 (10) any other information requested by the [Department]
6 **ADMINISTRATION** has been submitted and approved.

7 30-604.

8 (a) A provider may collect deposits from prospective subscribers if:

9 (1) the [Department] **ADMINISTRATION** has approved the provider's
10 feasibility study; and

11 (2) the provider maintains the funds collected in an escrow account.

12 (b) Deposits collected under subsection (a) of this section shall be held in
13 escrow until:

14 (1) the provider has been issued a certificate of registration under [§
15 10-458] § **30-606** of this [subtitle] **TITLE**; or

16 (2) a later time that the [Department] **ADMINISTRATION** may set by
17 regulation.

18 30-605.

19 (a) A provider may not enter into an agreement to provide continuing care at
20 home services until the [Department] **ADMINISTRATION** issues a preliminary
21 certificate of registration to the provider.

22 (b) An application for a preliminary certificate of registration shall:

23 (1) be filed in a form satisfactory to the [Department]
24 **ADMINISTRATION**; and

25 (2) include at least the following information:

26 (i) a copy of the proposed continuing care at home agreement,
27 which shall include the following statement set forth in print no smaller than the
28 largest type used in the body of the agreement:

29 "A certificate of registration is not an endorsement or guarantee of this
30 continuing care at home provider by the State of Maryland. The Maryland

1 [Department of Aging] **INSURANCE ADMINISTRATION** urges you to consult an
2 attorney and a suitable financial advisor before signing any documents.”;

3 (ii) the form and substance of any proposed advertisements,
4 advertising campaigns, or other promotional material for the program that is available
5 at the time of filing the application and that has not been filed previously with the
6 [Department] **ADMINISTRATION**; and

7 (iii) any other information that the [Department]
8 **ADMINISTRATION** requires.

9 (c) The [Department] **ADMINISTRATION** shall issue a preliminary
10 certificate of registration to a provider if the [Department] **ADMINISTRATION**
11 determines that:

12 (1) the proposed continuing care at home agreement is satisfactory;

13 (2) the provider has submitted all proposed advertisements,
14 advertising campaigns, and other promotional materials for the program;

15 (3) the form and substance of all advertisements, advertising
16 campaigns, and other promotional materials submitted are not deceptive, misleading,
17 or likely to mislead;

18 (4) the information and documents submitted with the feasibility
19 study under [§ 10-455] § **30-603** of this subtitle are current and accurate or have
20 been updated to make them accurate; and

21 (5) the provider has submitted any other information that the
22 [Department] **ADMINISTRATION** requests.

23 30-606.

24 (a) A provider may not provide continuing care at home services until the
25 [Department] **ADMINISTRATION** issues a certificate of registration to the provider.

26 (b) An application for a certificate of registration shall:

27 (1) be filed in a form satisfactory to the [Department]
28 **ADMINISTRATION**; and

29 (2) include at least the following information:

30 (i) verification that the required number of agreements has
31 been executed and the corresponding deposits collected;

1 (ii) the form and substance of any proposed advertisements,
2 advertising campaigns, or other promotional material for the program that are
3 available at the time of filing and that have not been filed previously with the
4 [Department] **ADMINISTRATION**;

5 (iii) verification that any other license or certificate required by
6 other appropriate State units has been issued to the provider; and

7 (iv) any other information that the [Department]
8 **ADMINISTRATION** requires.

9 (c) The [Department] **ADMINISTRATION** shall issue a certificate of
10 registration to a provider if the [Department] **ADMINISTRATION** determines that:

11 (1) the information and documents submitted with the feasibility
12 study and application for a preliminary certificate of registration are current and
13 accurate or have been updated to make them accurate;

14 (2) the required number of agreements has been executed and the
15 corresponding deposits collected;

16 (3) any other license or certificate required by other appropriate State
17 units has been issued to the provider;

18 (4) the provider has submitted all proposed advertisements,
19 advertising campaigns, and other promotional materials for the program;

20 (5) the form and substance of all advertisements, advertising
21 campaigns, and other promotional materials submitted are not deceptive, misleading,
22 or likely to mislead; and

23 (6) the provider has submitted any other information that the
24 [Department] **ADMINISTRATION** required.

25 (d) If a provider intends to advertise before the [Department]
26 **ADMINISTRATION** issues a certificate of registration under subsection (c) of this
27 section, the provider shall submit to the [Department] **ADMINISTRATION** any
28 advertisement, advertising campaign, or other promotional materials before using it.

29 (e) If a certificate of registration is not issued to a provider within 24 months
30 after the [Department] **ADMINISTRATION** approves a feasibility study, or a longer
31 time allowed by the [Department] **ADMINISTRATION** for good cause shown, the
32 provider shall refund all deposits collected and stop offering continuing care at home
33 services under that application.

34 30-607.

1 (a) (1) Each year, within 120 days after the end of a provider's fiscal year,
2 the provider shall file an application for a renewal certificate of registration with the
3 [Department] **ADMINISTRATION**.

4 (2) An application shall:

5 (i) be filed in a form satisfactory to the [Department]
6 **ADMINISTRATION**; and

7 (ii) contain any reasonable and pertinent information that the
8 [Department] **ADMINISTRATION** requires.

9 (b) The [Department] **ADMINISTRATION** shall issue a renewal certificate of
10 registration if the [Department] **ADMINISTRATION** determines that:

11 (1) all required documents have been filed and are satisfactory;

12 (2) any revised agreements for continuing care at home services meet
13 the [Department's] **ADMINISTRATION'S** requirements;

14 (3) the proposed use of new or existing health facilities is not
15 inconsistent with the State health plan;

16 (4) the provider has submitted all proposed advertisements,
17 advertising campaigns, and other promotional materials for the program; and

18 (5) the form and substance of all advertisements, advertising
19 campaigns, and other promotional materials submitted are not deceptive, misleading,
20 or likely to mislead.

21 30-608.

22 (a) For cause, the [Department] **ADMINISTRATION** may:

23 (1) deny a feasibility study approval; or

24 (2) deny, suspend, or revoke a preliminary, initial, or renewal
25 certificate of registration.

26 (b) (1) Grounds for a denial, suspension, or revocation include:

27 (i) violation of this subtitle;

28 (ii) violation of a regulation the [Department]
29 **ADMINISTRATION** adopts under this subtitle;

30 (iii) misrepresentation; or

1 (iv) submission of a false financial statement.

2 (2) The [Department] **ADMINISTRATION** shall set forth in writing its
3 reasons for a denial, suspension, or revocation.

4 (c) Title 10, Subtitle 2 of the State Government Article governs the appeal of
5 a denial, revocation, or suspension.

6 30-701.

7 In this [part] **SUBTITLE**, "Committee" means the Financial Review Committee
8 established in [§ 10-464] § **30-702** of this subtitle.

9 30-702.

10 There is a Financial Review Committee in the [Department]
11 **ADMINISTRATION**.

12 30-703.

13 (a) (1) The Committee consists of seven members appointed by the
14 [Secretary] **COMMISSIONER**.

15 (2) Of the seven members:

16 (i) two shall be knowledgeable in the field of continuing care;

17 (ii) two shall be certified public accountants;

18 (iii) one shall be from the financial community; and

19 (iv) two shall be consumer members.

20 (3) In appointing the consumer members, the [Secretary]
21 **COMMISSIONER** shall give a preference to subscribers of continuing care facilities.

22 (b) (1) The term of a member is 3 years.

23 (2) The terms of members are staggered as required by the terms
24 provided for members on October 1, 2007.

25 (3) A member may serve consecutive terms.

26 (c) The Committee shall elect its chair.

27 (d) A member:

- 1 (1) may not receive compensation as a member of the Committee; but
- 2 (2) is entitled to reimbursement for expenses under the Standard
3 State Travel Regulations, as provided in the State budget.
- 4 (e) A member is immune from civil liability as provided in § 5–514 of the
5 Courts Article.
- 6 (f) A member may not participate in a review of a provider’s financial
7 condition if that member has an interest, as defined under the Maryland Public Ethics
8 Law in § 15–102 of the State Government Article, in the provider.
- 9 (g) The deliberations of the Committee and communications between the
10 Department and the Committee, including recommendations of the Committee, shall
11 be confidential.
- 12 30–704.
- 13 (a) (1) The [Department] **ADMINISTRATION** may refer to the Committee
14 for its consideration:
- 15 (i) a provider’s application for a renewal certificate of
16 registration after review by the [Department] **ADMINISTRATION**; or
- 17 (ii) a finding of possible financial difficulty, at any time.
- 18 (2) The [Department] **ADMINISTRATION** shall provide to the
19 Committee any materials the [Department] **ADMINISTRATION** considers necessary.
- 20 (b) (1) The Committee shall review the referral from the [Department]
21 **ADMINISTRATION** and may request additional information from the [Department]
22 **ADMINISTRATION**.
- 23 (2) Except as provided in subsection (c) of this section, within 45 days
24 after receipt of a referral, the Committee shall notify the [Department]
25 **ADMINISTRATION** in writing whether the Committee recommends that the
26 [Department] **ADMINISTRATION**:
- 27 (i) find the provider in financial difficulty; and
- 28 (ii) find that the financial difficulty, if any, includes a significant
29 risk of financial failure in accordance with [§ 10–469] § **30–707** of this subtitle.
- 30 (3) In making a recommendation to the [Department]
31 **ADMINISTRATION**, the Committee shall state the reason for the recommendation.

1 (c) (1) The Committee may request from the [Secretary]
2 **COMMISSIONER** one 30-day extension of the deadline under subsection (b)(2) of this
3 section.

4 (2) The [Secretary] **COMMISSIONER** may grant or deny the
5 extension.
6 30-705.

7 (a) Within 25 days after receipt of the Committee's recommendations, the
8 [Department] **ADMINISTRATION** shall consider the recommendations and make a
9 final determination of whether financial difficulty exists and, if so, whether there is a
10 significant risk of financial failure in accordance with [§ 10-469] § **30-707** of this
11 subtitle.

12 (b) If the [Department] **ADMINISTRATION** determines that the provider is
13 in financial difficulty it shall immediately notify the provider by certified mail, return
14 receipt requested, and inform the provider whether the [Department]
15 **ADMINISTRATION** has determined that there is a significant risk of financial failure.

16 (c) The provider shall:

17 (1) advise its subscribers of the [Department's] **ADMINISTRATION'S**
18 determination in a meeting to be held by the provider with representatives of the
19 subscribers;

20 (2) hold the meeting within 10 days after the provider's receipt of
21 notice from the [Department] **ADMINISTRATION**; and

22 (3) advise the [Department] **ADMINISTRATION** of the date, time, and
23 location of the meeting.

24 30-706.

25 (a) (1) A provider notified of financial difficulty by the [Department]
26 **ADMINISTRATION** shall prepare and submit to the [Department] **ADMINISTRATION**
27 for its approval a 5-year financial plan to correct the causes of the financial difficulty.

28 (2) The financial plan shall be submitted within 60 days after receipt
29 of notification.

30 (3) The provider may request one 30-day extension from the
31 [Secretary] **COMMISSIONER**.

32 (4) The [Secretary] **COMMISSIONER** may grant or deny the
33 extension.

1 (b) (1) The [Department] **ADMINISTRATION** shall respond to the
2 provider within 60 days after receipt of the proposed financial plan.

3 (2) The [Department] **ADMINISTRATION** may:

4 (i) work with the provider to establish the financial plan; and

5 (ii) consult with the Committee before approving the financial
6 plan.

7 (c) (1) On approval, the financial plan shall be implemented.

8 (2) The provider shall make available to its subscribers copies of its
9 approved financial plan.

10 (d) The provider shall:

11 (1) submit to the [Department] **ADMINISTRATION** an annual
12 progress report for the term of its financial plan; and

13 (2) revise its financial plan if the [Department] **ADMINISTRATION**
14 determines that revisions are necessary.

15 (e) The [Department] **ADMINISTRATION** may withhold the renewal
16 certificate of registration or withdraw a preliminary, initial, or renewal certificate of
17 registration if:

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

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

20 (3) the financial plan is inadequate to correct the current or
21 impending financial condition that necessitated the financial plan; or

22 (4) the provider fails to implement the financial plan.

23 30-707.

24 The [Department] **ADMINISTRATION** may determine that there exists a
25 significant risk of the financial failure of a provider based on one or more of the
26 following findings or circumstances:

27 (1) the provider has failed to meet loan covenants that give a lender or
28 a bond trustee the option to exercise remedies on its collateral;

1 (2) an actuarial report has been provided to the [Department]
2 **ADMINISTRATION** reflecting significant underfunding of future liabilities that are
3 unlikely to be readily addressed;

4 (3) there is a significant shortfall by the provider in maintaining
5 required reserves for a significant period of time;

6 (4) a significant balloon payment or future loan payment will become
7 due within the next 12 months and the provider is unable to demonstrate that it will
8 obtain a modification from its lender, have the resources to make the payment, or have
9 the ability to refinance;

10 (5) there has been a significant decline in the occupancy rate that is
11 likely to have a material adverse financial impact on the provider;

12 (6) there has been a material adverse change in debt service coverage
13 ratio for an extended period of time that reduces the ratio to less than 1.0;

14 (7) there has been a significant decline in days cash on hand that is
15 unrelated to additions to property, plant, and equipment or other community
16 enhancements and that could result in an inability to pay obligations of the provider
17 as they become due;

18 (8) there has been a significant increase in the operating ratio,
19 adjusted for unrealized gains and losses on investments, that could result in the
20 inability of the provider to meet its obligations; or

21 (9) the refusal or inability of the provider to provide accurate
22 information or data required to be submitted to the [Department] **ADMINISTRATION**
23 under this [subtitle] **TITLE** and related regulations.

24 30–801.

25 (a) In this [part] **SUBTITLE** the following words have the meanings
26 indicated.

27 (b) “Creditor” means a person with a claim against a provider.

28 (c) “Delinquency proceeding” means a proceeding under this subtitle to
29 liquidate, rehabilitate, reorganize, or conserve a provider.

30 (d) “General assets” means:

31 (1) all property that is not specifically mortgaged, pledged, deposited,
32 or otherwise encumbered for the security or benefit of specified persons or a limited
33 class of persons;

1 (2) to the extent that property of a provider is specifically encumbered,
2 the amount of the property or its proceeds that exceeds the amount necessary to
3 discharge the encumbrance; and

4 (3) assets held in trust and assets held on deposit for the security or
5 benefit of all subscribers and creditors in the United States.

6 (e) "Receiver" includes a conservator, rehabilitator, and liquidator.

7 (f) (1) "Secured claim" means a claim that:

8 (i) is secured by mortgage, trust deed, pledge, deposit as
9 security, escrow, or otherwise; or

10 (ii) has become a lien on specific assets through judicial process.

11 (2) "Secured claim" does not include a special deposit claim or a claim
12 against general assets.

13 (g) (1) "Special deposit claim" means a claim secured by a deposit
14 required by law for the security or benefit of a limited class of persons.

15 (2) "Special deposit claim" does not include a claim against general
16 assets.

17 (h) "Transfer" means:

18 (1) the sale or other direct or indirect disposition of property or an
19 interest in property;

20 (2) the fixing of a lien on property or an interest in property; or

21 (3) the retention of a security title to property delivered to a debtor.

22 30-802.

23 Notwithstanding any other provision of law and subject to [§ 10-493] § **30-822**
24 of this subtitle, a delinquency proceeding is the exclusive method of liquidating,
25 rehabilitating, reorganizing, or conserving a provider.

26 30-803.

27 The [Secretary, deputy secretary, special deputy secretary] **COMMISSIONER,**
28 **DEPUTY COMMISSIONER, SPECIAL DEPUTY COMMISSIONER,** or any person acting
29 as receiver in a rehabilitation, liquidation, or conservation of a provider as a result of a
30 court order shall have the same immunity from liability that [the Maryland Insurance
31 Commissioner, deputy commissioner, special deputy commissioner, or] any person

1 acting as receiver in a rehabilitation, liquidation, or conservation of an insurer would
2 have under § 5–410 of the Courts Article.

3 30–804.

4 (a) (1) This subsection applies even if a paper or instrument is not:

5 (i) executed by the [Secretary] **COMMISSIONER** or a deputy,
6 employee, or attorney of record of the [Secretary] **COMMISSIONER**; and

7 (ii) connected with the commencement of an action or
8 proceeding by or against the [Secretary] **COMMISSIONER** or with the subsequent
9 conduct of the action or proceeding.

10 (2) Subject to subsection (b) of this section, the [Secretary]
11 **COMMISSIONER** may not be required to pay to a public officer in the State a fee for
12 filing, recording, or issuing a transcript or certificate or for authenticating a paper or
13 instrument that relates to the exercise by the [Secretary] **COMMISSIONER** of a power
14 or duty of the [Secretary] **COMMISSIONER** under this [subtitle] **TITLE**.

15 (b) (1) The [Secretary or deputy secretary] **COMMISSIONER OR DEPUTY**
16 **COMMISSIONER**, when acting as receiver or ancillary receiver under this [subtitle]
17 **TITLE**, shall pay all court costs out of the assets of the provider before any distribution
18 to creditors or termination of rehabilitation.

19 (2) In all cases, court costs and those specified in subsection (a) of this
20 section shall:

21 (i) be charged in the accounts of the [Secretary]
22 **COMMISSIONER** to the court; or

23 (ii) be paid by the provider as a condition of termination of the
24 action or proceeding.

25 30–805.

26 (a) (1) In a delinquency proceeding in which the [Secretary]
27 **COMMISSIONER** has been appointed receiver, the [Secretary] **COMMISSIONER** may:

28 (i) appoint one or more special deputy [secretaries]
29 **COMMISSIONERS** to act for the [Secretary] **COMMISSIONER**; and

30 (ii) employ counsel, clerks, and assistants.

1 (2) Compensation of the special deputies, counsel, clerks, and
2 assistants and all expenses of taking possession of the provider and of conducting the
3 delinquency proceeding shall be:

4 (i) set by the [Secretary] **COMMISSIONER**, subject to approval
5 by the court; and

6 (ii) paid out of the assets or funds of the provider.

7 (3) Within the limits of duties imposed on a special deputy concerning
8 a delinquency proceeding, the special deputy:

9 (i) has all powers given to the receiver; and

10 (ii) in the exercise of those powers, is subject to all the duties
11 imposed on the receiver concerning the delinquency proceeding.

12 (b) In a civil proceeding filed against a special deputy [secretary]
13 **COMMISSIONER** appointed under this subtitle, the special deputy [secretary]
14 **COMMISSIONER** is entitled to representation by the Attorney General as specified in
15 Title 12, Subtitle 3, Part II of the State Government Article.

16 30–806.

17 (a) The Circuit Court of Baltimore City:

18 (1) has exclusive original jurisdiction over delinquency proceedings;
19 and

20 (2) may issue all necessary and proper orders to carry out this
21 [subtitle] **TITLE**.

22 (b) If service is made in accordance with the Maryland Rules or other
23 applicable law, a court with subject matter jurisdiction over an action brought under
24 this [subtitle] **TITLE** also has jurisdiction over:

25 (1) an officer, director, manager, trustee, organizer, promoter, or
26 attorney in fact of a provider against which a delinquency proceeding has been
27 commenced, in an action resulting from or incidental to the person's relationship with
28 the provider;

29 (2) a person that, at the time of or after commencement of the
30 delinquency proceeding, held or was in control of assets in which the receiver claims
31 an interest on behalf of the provider, in an action concerning the assets of the provider;
32 and

1 (3) a person obligated to the provider in any way, in an action on or
2 incidental to the obligation.

3 (c) The venue of all delinquency proceedings is in Baltimore City.

4 30–807.

5 (a) The [Secretary] **COMMISSIONER** shall commence a delinquency
6 proceeding against a provider by applying to the court for an order that directs the
7 provider to show cause why the court should not grant the relief requested.

8 (b) (1) The court may consider an application for commencement of a
9 delinquency proceeding only if the application is filed by the [Secretary]
10 **COMMISSIONER** in the name of the State.

11 (2) After a hearing under the terms of the show cause order, the court:

12 (i) shall grant or deny the application; and

13 (ii) may order other relief as the nature of the case and the
14 interests of the creditors, stockholders, members, subscribers, or the public may
15 require.

16 30–808.

17 (a) The [Secretary] **COMMISSIONER** may apply to the court for an order
18 that directs the [Secretary] **COMMISSIONER** to conserve or rehabilitate a provider, if
19 the provider:

20 (1) is a provider for which the [Department] **ADMINISTRATION** has
21 made a determination of significant risk of financial failure under [Part VII]
22 **SUBTITLE 7** of this [subtitle] **TITLE**;

23 (2) has refused to submit to the [Secretary] **COMMISSIONER** or a
24 deputy or examiner of the [Secretary] **COMMISSIONER**, for reasonable examination,
25 any of the property, books, records, accounts, or affairs of the provider, or of a
26 subsidiary or related company of the provider within the provider's control;

27 (3) has concealed or removed its assets or records;

28 (4) has willfully violated its charter, articles of incorporation, a State
29 law, or an order of the [Secretary] **COMMISSIONER**;

30 (5) after reasonable notice, has failed promptly and effectively to
31 terminate the employment, status, and influence over the management of the provider
32 of a person that has executive authority in fact over the provider and has refused to be
33 examined under oath about the affairs of the provider in the State or elsewhere;

1 (6) has been or is the subject of an application for appointment of a
2 receiver, trustee, custodian, sequestrator, or similar fiduciary of the provider or its
3 property in an action that was not filed under this [subtitle] **TITLE**, regardless of
4 whether the appointment:

5 (i) has been made;

6 (ii) may deny the courts of the State jurisdiction; or

7 (iii) may prejudice an orderly delinquency proceeding under this
8 subtitle;

9 (7) has consented to the order for conservation or rehabilitation
10 through a majority of its directors, stockholders, members, or subscribers;

11 (8) has failed to pay a final judgment rendered against it in the State
12 on a continuing care agreement issued or assumed by the provider, within 60 days
13 after the latest of:

14 (i) the day on which the judgment became final;

15 (ii) the day on which the time for taking an appeal expired; or

16 (iii) the day on which an appeal was dismissed before final
17 termination;

18 (9) after examination by the [Secretary] **COMMISSIONER**, is found to
19 be in a condition in which further transaction of its business will be hazardous to its
20 subscribers, bondholders, creditors, or the public;

21 (10) has failed to remove a person that has executive authority in fact
22 over the provider after the [Secretary] **COMMISSIONER** has found that person to be
23 dishonest or untrustworthy in a manner that may affect the business of the provider;

24 (11) has reasonable cause to know, or should have known, that there
25 has been:

26 (i) embezzlement of funds from the provider;

27 (ii) wrongful sequestration or diversion of assets of the provider;

28 (iii) forgery or fraud that affects the provider; or

29 (iv) other illegal conduct in, by, or with respect to the provider;

1 (12) is controlled directly or indirectly by a person that the [Secretary]
2 **COMMISSIONER** finds to be untrustworthy; or

3 (13) has failed to file a financial report required by law within the time
4 allowed by law and, after written demand by the [Secretary] **COMMISSIONER**, has
5 failed to give an immediate and adequate explanation.

6 (b) (1) If the appointment of the [Secretary] **COMMISSIONER** as receiver
7 is not then in effect, and even if no previous order has directed the [Secretary]
8 **COMMISSIONER** to rehabilitate a provider, the [Secretary] **COMMISSIONER** may
9 apply to the court for an order that appoints the [Secretary] **COMMISSIONER** as
10 receiver and that directs the [Secretary] **COMMISSIONER** to liquidate the provider if
11 the provider:

12 (i) has not done business for at least 1 year;

13 (ii) is a provider determined to have a significant risk of
14 financial failure under [Part VII] **SUBTITLE 7** of this [subtitle] **TITLE** and has
15 commenced voluntary liquidation or dissolution, or attempts to commence or prosecute
16 an action or proceeding to liquidate its business or affairs, to dissolve its corporate
17 charter, or to procure the appointment of a receiver, trustee, custodian, or sequestrator
18 under any law except this title;

19 (iii) is doing business in a fraudulent manner; or

20 (iv) is in a condition in which further rehabilitation efforts on
21 any grounds specified in subsection (a) of this section appear to be useless.

22 (2) If at any time during a rehabilitation proceeding the [Secretary]
23 **COMMISSIONER** determines that further efforts to rehabilitate the provider would be
24 useless, the [Secretary] **COMMISSIONER** may apply to the court for an order of
25 liquidation.

26 30–809.

27 (a) (1) An order to rehabilitate a provider shall:

28 (i) appoint the [Secretary] **COMMISSIONER** as rehabilitator;

29 (ii) direct the [Secretary] **COMMISSIONER**:

30 1. to take possession of the property of the provider and
31 conduct the business of the provider under the general supervision of the court; and

32 2. to take action the court directs to remove the causes
33 and conditions that have made rehabilitation necessary;

1 (iii) vest title to all property of the provider in the rehabilitator;
2 and

3 (iv) require the rehabilitator to make accountings to the court
4 that:

5 1. are at intervals as the court specifies in its order, but
6 not less frequently than two times each year; and

7 2. include the opinion of the rehabilitator about the
8 likelihood of success of the rehabilitation.

9 (2) Issuance of an order of rehabilitation:

10 (i) does not constitute an anticipatory breach of any contract of
11 the provider; and

12 (ii) is not grounds for retroactive revocation or retroactive
13 cancellation of a contract of the provider, unless the rehabilitator revokes or cancels
14 the contract.

15 (b) (1) Subject to paragraph (2) of this subsection, the [Secretary]
16 **COMMISSIONER**, or an interested person on due notice to the [Secretary]
17 **COMMISSIONER**, may apply to the court at any time for an order that:

18 (i) terminates a rehabilitation proceeding; and

19 (ii) allows the provider to resume possession of its property and
20 the conduct of its business.

21 (2) An order under this subsection may not be issued unless, after a
22 hearing, the court determines that the purposes of the rehabilitation proceeding have
23 been fully accomplished.

24 (c) (1) An order to liquidate the business of a provider shall direct the
25 [Secretary] **COMMISSIONER** promptly to:

26 (i) take possession of the property of the provider;

27 (ii) liquidate the business of the provider;

28 (iii) deal with the property and business of the provider in the
29 name of the [Secretary] **COMMISSIONER** or in the name of the provider, as the court
30 directs; and

1 (iv) notify each creditor that may have a claim against the
2 provider to present the creditor's claim.

3 (2) The [Secretary] **COMMISSIONER** may apply for, and the court
4 may issue, an order to dissolve the corporate existence of a provider:

5 (i) on application of the [Secretary] **COMMISSIONER** for an
6 order to liquidate the provider; or

7 (ii) at any time after the court has granted the order of
8 liquidation.

9 (d) An order to conserve the assets of a provider shall require the [Secretary]
10 **COMMISSIONER** promptly to take possession of and conserve the property of the
11 provider in the State, subject to further direction by the court.

12 30–810.

13 (a) In this section, “appointed receiver” means a person, other than the
14 [Secretary] **COMMISSIONER**, that the court appoints as a conservator, rehabilitator,
15 or receiver under this section.

16 (b) (1) On motion of the court or the [Secretary] **COMMISSIONER**, the
17 court may issue an order that appoints or substitutes a person other than the
18 [Secretary] **COMMISSIONER** as conservator, rehabilitator, or receiver:

19 (i) on initial application by the [Secretary] **COMMISSIONER**
20 for an order to appoint the [Secretary] **COMMISSIONER** as conservator, rehabilitator,
21 or receiver under this [subtitle] **TITLE**; or

22 (ii) at any time during the course of a conservatorship,
23 rehabilitation, or receivership under this [subtitle] **TITLE**.

24 (2) An appointed receiver has the same powers and duties that the
25 [Secretary] **COMMISSIONER** has under this [subtitle] **TITLE** as conservator,
26 rehabilitator, or receiver.

27 (c) (1) In addition to any other report required by the court, the court
28 shall require an appointed receiver at least quarterly to file with the [Secretary]
29 **COMMISSIONER** and court a report about:

30 (i) the status of the conservatorship, rehabilitation, or
31 receivership; and

32 (ii) the activities of the appointed receiver since the last report
33 filed under this paragraph.

1 (2) The report required under paragraph (1) of this subsection at a
2 minimum shall include:

3 (i) information of the character required by Title 13 of the
4 Maryland Rules that applies to receivers generally;

5 (ii) any other information necessary to provide a complete
6 report on the financial affairs and condition of the conservatorship, rehabilitation, or
7 receivership;

8 (iii) a complete account of all efforts by the appointed receiver
9 since the last report:

10 1. to sell or dispose of the remaining business or assets
11 of the provider; or

12 2. to otherwise bring to a prompt conclusion the
13 conservatorship, rehabilitation, or receivership; and

14 (iv) copies of any actuarial or other evaluations of the business
15 and assets under the control of the appointed receiver.

16 (3) The report shall be audited unless for good cause the court waives
17 the audit.

18 (d) Subject to any protective order that the court considers appropriate,
19 information filed under seal shall be provided to the [Secretary] **COMMISSIONER**.

20 (e) The appointed receiver shall give the [Secretary] **COMMISSIONER** full
21 access to all documents and records related to the conservatorship, rehabilitation, or
22 receivership that are in the possession of the appointed receiver.

23 (f) The [Secretary] **COMMISSIONER** may be a party to a conservatorship,
24 rehabilitation, or receivership for which there is an appointed receiver.

25 (g) (1) Subject to approval of the court, the [Secretary] **COMMISSIONER**
26 may negotiate for sale of all or part of the assets or business of the provider placed in
27 conservatorship, rehabilitation, or receivership.

28 (2) The appointed receiver:

29 (i) shall cooperate fully in any sales negotiation under
30 paragraph (1) of this subsection; and

31 (ii) may object to the terms of a sale of the assets or business of
32 the provider that results from the negotiation.

1 (3) After notice and an opportunity to be heard, the court may limit
2 the efforts of the [Secretary] **COMMISSIONER** to undertake or continue negotiations
3 for the sale of the assets or business of the provider if the negotiations would impair
4 the ability of the appointed receiver to engage in similar negotiations or discharge
5 other responsibilities.

6 (h) (1) If the [Secretary] **COMMISSIONER** determines that an appointed
7 receiver is not adequately discharging the duties and responsibilities of the position,
8 the [Secretary] **COMMISSIONER** may file with the court an application that seeks to
9 discharge the appointed receiver and to appoint the [Secretary] **COMMISSIONER** as
10 conservator, rehabilitator, or receiver or to appoint another receiver.

11 (2) If the [Secretary] **COMMISSIONER** establishes by a preponderance
12 of the evidence that grounds exist for discharge of an appointed receiver, the court
13 shall grant the application of the [Secretary] **COMMISSIONER** to discharge the
14 appointed receiver and to appoint the [Secretary] **COMMISSIONER** as conservator,
15 rehabilitator, or receiver or to appoint another receiver.

16 30–813.

17 (a) To facilitate the rehabilitation, liquidation, conservation, or dissolution of
18 a provider under this [subtitle] **TITLE**, the [Secretary] **COMMISSIONER**, subject to
19 the approval of the court, may:

20 (1) borrow money;

21 (2) execute, acknowledge, and deliver notes or other evidences of
22 indebtedness for the loan;

23 (3) secure the repayment of the loan by the mortgage, pledge,
24 assignment, or transfer in trust of all or part of the property of the provider; and

25 (4) take any other action necessary and proper to consummate the
26 loan and to provide for its repayment.

27 (b) The [Secretary] **COMMISSIONER** is not obligated personally or in an
28 official capacity to repay a loan made under this section.

29 30–814.

30 (a) Whenever under this [subtitle] **TITLE** a receiver is to be appointed in a
31 delinquency proceeding for a provider, the court shall:

32 (1) appoint the [Secretary] **COMMISSIONER** as receiver; and

1 (2) order the [Secretary] **COMMISSIONER** promptly to take
2 possession of the assets of the provider and to administer the assets under the orders
3 of the court.

4 (b) Beginning on the date of issuance of an order that directs the [Secretary]
5 **COMMISSIONER** to rehabilitate or liquidate a provider, the [Secretary]
6 **COMMISSIONER** as receiver is vested by operation of law with title to and may take
7 possession of all of the property, contracts, rights of action, books, and records of the
8 provider, wherever located.

9 (c) The filing of the order that directs possession to be taken, or a certified
10 copy of the order, in an office where instruments affecting title to property are
11 required to be filed provides the same notice as would be provided by a deed, bill of
12 sale, or other evidence of title that is so filed.

13 (d) (1) The [Secretary] **COMMISSIONER** as receiver shall administer
14 properly all assets that come into the possession or control of the [Secretary]
15 **COMMISSIONER**.

16 (2) If considered desirable to protect the assets, the court at any time
17 may require a bond from the [Secretary] **COMMISSIONER** or deputy [secretary]
18 **COMMISSIONER**.

19 (3) On taking possession of the assets of a provider and subject to the
20 direction of the court, the [Secretary] **COMMISSIONER** immediately shall:

21 (i) conduct the business of the provider; or

22 (ii) take action authorized by this [subtitle] **TITLE** to
23 rehabilitate, liquidate, or conserve the affairs or assets of the provider.

24 30–816.

25 (a) A transfer of or lien on the property of a provider is voidable if the
26 transfer or lien is:

27 (1) made or created within 4 months before the issuance of a show
28 cause order under this [subtitle] **TITLE**;

29 (2) made or created with the intent to give a creditor a preference or to
30 enable the creditor to obtain a greater percentage of the debt than another creditor of
31 the same class; and

32 (3) accepted by the creditor having reasonable cause to believe that
33 the preference will occur.

1 (b) Each director, officer, employee, stockholder, member, subscriber, and
2 any other person acting on behalf of a provider that is concerned in a voidable transfer
3 under subsection (a) of this section and each person that, as a result of the voidable
4 transfer, receives any property of the provider or benefits from the voidable transfer:

5 (1) is personally liable; and

6 (2) shall account to the [Secretary] **COMMISSIONER**.

7 (c) The [Secretary] **COMMISSIONER** as receiver in a delinquency proceeding
8 may:

9 (1) avoid a transfer of or lien on the property of a provider that a
10 creditor, stockholder, subscriber, or member of the provider might have avoided; and

11 (2) recover the transferred property or its value from the person that
12 received it unless that person was a bona fide holder for value before the date of
13 issuance of a show cause order under this [subtitle] **TITLE**.

14 30–817.

15 (a) (1) The [Secretary] **COMMISSIONER** shall deposit moneys collected in
16 a delinquency proceeding in a State or national bank, savings bank, or trust company.

17 (2) Deposits made by the [Secretary] **COMMISSIONER** under
18 paragraph (1) of this subsection have priority of payment equal to any other priority
19 specified by the banking laws of this State if the depository:

20 (i) is an institution organized and supervised under the laws of
21 this State; and

22 (ii) becomes insolvent or liquidates voluntarily or involuntarily.

23 (3) The [Secretary] **COMMISSIONER** may deposit all or part of the
24 moneys collected in a national bank or trust company as a trust fund.

25 (b) To the extent that an investment or account is insured by the Federal
26 Deposit Insurance Corporation, the [Secretary] **COMMISSIONER** may invest in shares
27 of or deposits in a savings and loan association or building and loan association.

28 30–818.

29 (a) (1) If on issuance of an order of liquidation under this [subtitle] **TITLE**
30 or at any time during a liquidation proceeding the provider is not clearly solvent, the
31 court, after notice it considers proper and a hearing, shall issue an order that the
32 provider is an impaired provider.

1 (2) Notwithstanding any previous notice given to creditors, after
2 issuance of an order under paragraph (1) of this subsection, the [Secretary]
3 **COMMISSIONER** shall notify each person that may have a claim against the provider
4 that the claim is forever barred unless the person files the claim with the [Secretary]
5 **COMMISSIONER** at a place and within the time specified in the notice.

6 (3) The time specified in the notice:

7 (i) shall be as set by the court for filing claims; but

8 (ii) may not be less than 6 months after issuance of the order
9 that the provider is an impaired provider.

10 (4) The notice shall be given in the manner and for the reasonable
11 period of time that the court orders.

12 (b) (1) Each claimant shall set forth in reasonable detail:

13 (i) the amount of the claim or the basis on which the amount
14 can be determined;

15 (ii) the facts on which the claim is based; and

16 (iii) any priority asserted by the claimant.

17 (2) Each claim shall:

18 (i) be verified by the affidavit of the claimant or a person
19 authorized to act on behalf of the claimant who has knowledge of the facts; and

20 (ii) be supported by any documents that may be material to the
21 claim.

22 (3) Each claim shall be filed with the receiver in the State on or before
23 the last date specified under this [subtitle] **TITLE** for filing of claims.

24 (c) The receiver shall:

25 (1) report a claim to the court:

26 (i) within 10 days after receiving the claim; or

27 (ii) within an additional period set by the court for good cause
28 shown; and

29 (2) recommend in the report action to be taken on the claim.

- 1 (d) (1) On receipt of the report of the receiver, the court shall:
- 2 (i) set a time for hearing the claim; and
- 3 (ii) direct the claimant or receiver to give notice as the court
4 determines to each person that appears to the court to be interested in the claim.
- 5 (2) The notice given in accordance with this subsection shall:
- 6 (i) specify the time and place of the hearing; and
- 7 (ii) state concisely:
- 8 1. the amount and nature of the claim;
- 9 2. any priority asserted by the claimant; and
- 10 3. the recommendation of the receiver about the claim.
- 11 (e) (1) At the hearing specified under subsection (d) of this section:
- 12 (i) each person with an interest in the claim may appear; and
- 13 (ii) the court shall issue an order in which the court allows in
14 part, or disallows the claim.
- 15 (2) An order under this subsection is a final order subject to appeal.
- 16 30–819.
- 17 (a) In this section, “preferred claim” means a claim that is given priority of
18 payment from the general assets of a provider under the laws of the State or the
19 United States.
- 20 (b) (1) The first \$500 of compensation or wages owed to an officer or
21 employee of a provider for services rendered within 3 months before the
22 commencement of a delinquency proceeding against the provider shall be paid before
23 payment of any other debt or claim.
- 24 (2) Subject to paragraph (3) of this subsection, the [Secretary]
25 **COMMISSIONER** may pay the compensation required to be paid under this subsection
26 as soon as practicable after commencement of the delinquency proceeding.
- 27 (3) At all times, the [Secretary] **COMMISSIONER** shall reserve funds
28 that the [Secretary] **COMMISSIONER** believes are sufficient for expenses of
29 administration.

1 (4) The priority required under this subsection is instead of any other
2 similar priority that may be authorized by law as to wages or compensation.

3 (c) Priority over all other claims in a liquidation proceeding, other than
4 claims for wages specified in subsection (b) of this section, expenses of administration,
5 and taxes, shall be given to claims by subscribers that arise from continuing care
6 agreements with the provider, including claims to the statutory refund required by [§
7 10-448] § **30-505** of this [subtitle] **TITLE**.

8 (d) (1) The owner of a secured claim against a provider for which a
9 receiver has been appointed in this State or another state may:

10 (i) surrender the security and file the claim as a general
11 creditor; or

12 (ii) have the claim discharged by resort to the security.

13 (2) If the owner of a secured claim has the claim discharged by resort
14 to the security, any deficiency shall be treated as a claim against the general assets of
15 the provider on the same basis as the claims of unsecured creditors.

16 (3) The amount of a deficiency is conclusive if adjudicated by a court of
17 competent jurisdiction in a proceeding in which the receiver has been given notice and
18 an opportunity to be heard.

19 (4) If the amount of a deficiency is not conclusive, the amount shall be
20 determined in a delinquency proceeding in the State.

21 30-820.

22 (a) (1) Subject to paragraph (2) of this subsection, contingent and
23 unliquidated claims may not share in a distribution of the assets of a provider that has
24 been adjudicated to be an impaired provider by an order issued under this [subtitle]
25 **TITLE**.

26 (2) If properly presented, a contingent and unliquidated claim shall be
27 considered and may be allowed to share if:

28 (i) the claim becomes absolute against the provider on or before
29 the last day for filing claims against the assets of the provider; or

30 (ii) there is a surplus and the liquidation is subsequently
31 conducted on the basis that the provider is solvent.

32 (b) (1) Except as provided in paragraph (2) of this subsection, a claim of a
33 person that has a secured claim may not be allowed at a sum greater than the
34 difference between:

- 1 (i) the value of the claim without security; and
- 2 (ii) the value of the security itself on:
- 3 1. the date of issuance of the liquidation order; or
- 4 2. another date set by the court for determining rights
- 5 and liabilities as provided in subsection (c) of this section.

6 (2) If the claimant surrenders the security to the [Secretary]

7 **COMMISSIONER**, the claim shall be allowed in the full amount for which it is valued.

8 (c) Subject to the provisions of this [subtitle] **TITLE** on the rights of

9 claimants holding contingent claims, and unless otherwise directed by the court, the

10 rights and liabilities of a provider and creditors, stockholders, members, subscribers,

11 and other persons interested in the estate of the provider are fixed on the date on

12 which the order that directs the liquidation of the provider is filed in the office of the

13 clerk of the court that issued the order.

14 30-821.

15 (a) Except as provided in subsection (b) of this section, in all cases of mutual

16 debts and credits between a provider and another person in connection with a

17 delinquency proceeding, the debts and credits shall be offset and the balance only shall

18 be allowed or paid.

19 (b) An offset may not be allowed in favor of another person if:

20 (1) on the date of issuance of a liquidation order or otherwise, as

21 specified in [§ 10-491(c)] § **30-820(C)** of this subtitle, the obligation of the provider to

22 the person would not entitle the person to share as a claimant in the assets of the

23 provider; or

24 (2) the obligation of the provider to the person was purchased by or

25 transferred to the person for use as an offset.

26 30-822.

27 If a provider is the subject of a bankruptcy or receivership action, the claims of

28 subscribers shall be administered in accordance with [§ 10-490(c)] § **30-819(C)** of this

29 subtitle for the purpose of any legal action in conjunction with the bankruptcy or

30 receivership.

31 30-901.

1 (a) A person may not maintain or operate a facility offering continuing care
2 without having obtained an initial or renewal certificate of registration.

3 (b) A person may not disseminate prohibited advertising or promotional
4 materials.

5 (c) A person may not provide false registration information to the
6 [Department] **ADMINISTRATION**.

7 (d) (1) A person who violates any provision of this [subtitle] **TITLE** is
8 guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 6
9 months or a fine not exceeding \$1,000 or both.

10 (2) Each violation of this subtitle constitutes a separate offense.

11 30–902.

12 (a) The [Secretary] **COMMISSIONER** may impose a civil money penalty
13 against a provider for an action or inaction that violates this [subtitle] **TITLE** or any
14 regulation adopted by the [Department] **ADMINISTRATION** under this [subtitle]
15 **TITLE**.

16 (b) (1) Before imposing a civil money penalty under subsection (a) of this
17 section, the [Department] **ADMINISTRATION** shall issue a notice of violation to the
18 provider.

19 (2) The notice shall state:

20 (i) when the provider must submit a plan of correction that is
21 acceptable to the [Department] **ADMINISTRATION**;

22 (ii) when each identified violation must be substantially
23 corrected, which may not be less than 30 days; and

24 (iii) that failure to submit an acceptable plan of correction as
25 required under item (i) of this paragraph or to correct an identified violation may
26 result in an order imposing a civil money penalty under subsection (d) of this section.

27 (c) If at the expiration of the time set forth in the notice required under
28 subsection (b) of this section the [Department] **ADMINISTRATION** determines a
29 violation has not been corrected, the [Secretary] **COMMISSIONER** may:

30 (1) extend the time in which the violation must be corrected; or

31 (2) impose a civil money penalty under subsection (d) of this section.

1 (d) (1) The [Secretary] **COMMISSIONER** may impose a civil money
2 penalty not exceeding \$5,000 for each violation.

3 (2) In setting the amount of a civil money penalty under this section,
4 the [Secretary] **COMMISSIONER** shall consider the following factors:

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

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

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

9 (iv) whether the amount of the proposed civil money penalty will
10 jeopardize the financial ability of the provider to continue operating; and

11 (v) other factors as justice may require.

12 (3) If a civil money penalty is imposed under this section, the
13 [Department] **ADMINISTRATION** shall issue an order stating:

14 (i) the basis on which the order is made;

15 (ii) each regulation or statute violated;

16 (iii) each civil money penalty imposed and the total amount of
17 the civil money penalty imposed; and

18 (iv) the manner in which the amount of the civil money penalty
19 was calculated.

20 (4) (i) The [Department] **ADMINISTRATION** shall provide written
21 notice to a provider of the imposition of a civil money penalty.

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

24 (5) If a civil money penalty is imposed under this section, the provider
25 has the right to appeal from the order in accordance with Title 10, Subtitle 2 of the
26 State Government Article.

27 (e) (1) A provider shall pay a civil money penalty to the [Department]
28 **ADMINISTRATION** within 10 days after the provider receives a final order imposing
29 the civil money penalty.

1 (2) An order imposing a civil money penalty is final when the provider
2 has exhausted all opportunities to contest the civil penalty in accordance with Title 10,
3 Subtitle 2 of the State Government Article.

4 (3) If a provider does not comply with this section, the [Department]
5 **ADMINISTRATION** may file a civil action to recover the penalty.

6 (4) The [Department] **ADMINISTRATION** shall deposit all civil money
7 penalties collected under this section into the General Fund.

8 30–903.

9 (a) (1) Any subscriber injured by a violation of this [subtitle] **TITLE** may
10 bring an action for equitable relief or an action for damages in any court of general
11 jurisdiction.

12 (2) In an action described in paragraph (1) of this subsection, the court
13 may award reasonable attorney’s fees to a subscriber in whose favor a judgment is
14 entered.

15 (b) The [Department] **ADMINISTRATION** may bring an action for an
16 appropriate temporary restraining order or injunction for a violation of this [subtitle]
17 **TITLE**.

18 30–904.

19 (a) The [Department] **ADMINISTRATION** may use the receivership
20 provisions of [Part VIII of this subtitle] **SUBTITLE 8 OF THIS TITLE** to protect the
21 interests of subscribers in:

22 (1) the substantial advance payments subscribers have made in the
23 form of entrance fees and, when applicable, periodic fees, for future continuing care
24 without necessarily having any ownership in or control of the provider or the facility;

25 (2) the insurance aspects of continuing care agreements, as applicable;
26 and

27 (3) the continued delivery of services committed to under continuing
28 care agreements.

29 (b) The [Department] **ADMINISTRATION** may petition for the appointment
30 of a receiver:

31 (1) if there is a threat of immediate closure of a facility;

32 (2) if the provider is not honoring its contracts with its subscribers;

1 (3) to prohibit the improper diversion of the provider's assets and
2 records from the facility or the State; or

3 (4) if the [Department] **ADMINISTRATION** has made a determination
4 of a significant risk of financial failure in accordance with [§§ 10-467 and 10-469] §§
5 **30-705 AND 30-707** of this [subtitle] **TITLE**.

6 (c) The [Department] **ADMINISTRATION** may petition for the appointment
7 of a receiver before the provider files a plan of correction.

8 (d) The receiver may rehabilitate, conserve, or liquidate as provided by the
9 order of appointment and [Part VIII of this subtitle] **SUBTITLE 8 OF THIS TITLE**.

10 SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland
11 read as follows:

12 **Article – Insurance**

13 30-102.

14 (a) (1) A continuing care at home provider is subject to each provision of
15 this [subtitle] **TITLE** except [Part II] **SUBTITLE 2** and [§§ 10-446 and 10-448] §§
16 **30-503 AND 30-505 OF THIS TITLE**.

17 (2) A continuing care in a retirement community provider is subject to
18 each provision of this [subtitle] **TITLE** except [Part VI] **SUBTITLE 6 OF THIS TITLE**.

19 (b) (1) A continuing care operation that is subject to the provisions of this
20 [subtitle] **TITLE** is not subject to:

21 (i) the Maryland Health Maintenance Organization Act under
22 Title 19, Subtitle 7 of the Health – General Article;

23 (ii) except for § 15-603 of [the Insurance Article, the Insurance
24 Article] **THIS ARTICLE, OTHER PROVISIONS OF THIS ARTICLE**;

25 (iii) Title 8 of the Real Property Article;

26 (iv) any county or municipal landlord-tenant law; or

27 (v) § 19-310.1 of the Health – General Article.

28 (2) If a provider contractually utilizes the services of a licensed home
29 health agency or residential service agency and is not itself directly providing the type
30 of services provided by a home health agency or residential service agency, the
31 provider is not subject to Title 19, Subtitles 4 and 4A of the Health – General Article.

1 (iv) any county or municipal landlord–tenant law.

2 (2) If a provider contractually utilizes the services of a licensed home
3 health agency or residential service agency and is not itself directly providing the type
4 of services provided by a home health agency or residential service agency, the
5 provider is not subject to Title 19, Subtitles 4 and 4A of the Health – General Article.

6 (3) Except as provided in paragraphs (1) and (2) of this subsection, a
7 continuing care at home provider is subject to all other applicable licensing or
8 certification requirements of State law.

9 (c) This [subtitle] **TITLE** does not apply to an agreement that is regulated as
10 insurance under [the Insurance Article] **THIS ARTICLE**.

11 (d) A provider that offers assisted living program services as part of a
12 continuum of care in accordance with a continuing care agreement may:

13 (1) execute a separate assisted living resident agreement and a
14 separate assisted living disclosure statement; or

15 (2) meet the requirements of [§§ 10–425(c) and 10–444(e)] §§
16 **30–307(C) AND 30–501(E)** of this [subtitle] **TITLE**.

17 (e) The liability of a provider to the Department of Health and Mental
18 Hygiene under § 15–603 of [the Insurance Article] **THIS ARTICLE** shall be limited to
19 the amount of the refund that would be due to the subscriber if the subscriber were
20 dismissed under [§ 10–448] § **30–505** of this [subtitle] **TITLE** at the time of
21 enrollment in services provided by or paid wholly or partly by the Department of
22 Health and Mental Hygiene.

23 SECTION 5. AND BE IT FURTHER ENACTED, That the Maryland Insurance
24 Administration, in consultation with LifeSpan Network and the continuing care
25 retirement community, shall conduct a comprehensive review of the statutory and
26 regulatory provisions governing continuing care to determine methods for
27 streamlining and simplifying the continuing care process. On or before January 1,
28 2010, the Administration shall report, in accordance with § 2–1246 of the State
29 Government Article, to the Governor and General Assembly on the review and any
30 changes or actions taken as a result of the review.

31 SECTION 6. AND BE IT FURTHER ENACTED, That the publisher of the
32 Annotated Code of Maryland, in consultation with and subject to the approval of the
33 Department of Legislative Services, shall correct, with no further action required by
34 the General Assembly, cross–references and terminology rendered incorrect by this
35 Act or by any other Act of the General Assembly of 2009 that affects provisions
36 enacted by this Act. The publisher shall adequately describe such correction in an
37 editor’s note following the section affected.

1 SECTION 7. AND BE IT FURTHER ENACTED, That Section 4 of this Act
2 shall take effect on the taking effect of the termination provision specified in Section 6
3 of Chapter 503 of the Acts of the General Assembly of 2007. If that termination
4 provision takes effect, Section 3 of this Act shall be abrogated and of no further force
5 and effect. This Act may not be interpreted to have any effect on that termination
6 provision.

7 SECTION 8. AND BE IT FURTHER ENACTED, That, except as provided in
8 Section 7 of this Act, this Act shall take effect October 1, 2009.