

HOUSE BILL 1286

O2, J3

11r0118

By: **Chair, Health and Government Operations Committee (By Request – Departmental – Aging)**

Introduced and read first time: February 25, 2011

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Department of Aging – Continuing Care in a Retirement**
3 **Community**

4 FOR the purpose of increasing the required operating reserves for certain continuing
5 care providers after a certain date; clarifying that certain continuing care
6 providers shall calculate certain operating reserves in a certain manner;
7 clarifying the differences between certain disclosure statements; altering the
8 information required to be contained in a certain disclosure statement;
9 establishing the use and the timing of the delivery of a standard assisted living
10 disclosure statement by certain providers; requiring certain continuing care
11 providers to make available certain documents to certain persons; altering the
12 requirements for a certain grievance procedure; requiring a certain disclaimer
13 for certain marketing materials; clarifying when a proposed transfer of a facility
14 ownership or ownership control of a person that owns or controls a certain
15 facility is subject to approval by the Department of Aging; altering the
16 requirements for certain continuing care agreements; authorizing the
17 Department to deny approval of a continuing care agreement that contravenes
18 certain laws; establishing that certain separate assisted living and
19 comprehensive care agreements are subject to the review by the Department;
20 establishing that certain separate assisted living and comprehensive care
21 agreements are not subject to the review of the Department; altering the
22 continuing care disclosure statement requirements regarding assisted living
23 agreements; requiring that the Department of Health and Mental Hygiene
24 adopt, in consultation with the Department of Aging, a standard version of a
25 certain disclosure statement; defining certain terms; making stylistic changes;
26 and generally relating to continuing care agreements.

27 BY repealing and reenacting, with amendments,
28 Article – Human Services

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 10–401, 10–420, 10–423, 10–424, 10–425, 10–427, 10–428, 10–432,
2 10–436, 10–444, 10–445, and 10–447
3 Annotated Code of Maryland
4 (2007 Volume and 2010 Supplement)

5 BY repealing and reenacting, without amendments,
6 Article – Human Services
7 Section 10–419, 10–421, 10–422, 10–426, and 10–429
8 Annotated Code of Maryland
9 (2007 Volume and 2010 Supplement)

10 BY adding to
11 Article – Human Services
12 Section 10–425.1, 10–430, and 10–443
13 Annotated Code of Maryland
14 (2007 Volume and 2010 Supplement)

15 BY repealing and reenacting, with amendments,
16 Article – Health – General
17 Section 19–1806 and 19–1808
18 Annotated Code of Maryland
19 (2009 Replacement Volume and 2010 Supplement)

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

22 **Article – Human Services**

23 10–401.

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

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

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

29 (d) “Continuing care” means:

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

31 (2) continuing care at home.

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

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

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

5 (ii) for the life of the individual or for a period exceeding 1 year;
6 and

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

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

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

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

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

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

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

24 (2) “Contractual entrance fee refund” does not include a payment
25 required under § 10–446 or § 10–448 of this subtitle.

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

28 (1) the residential accommodations exist before a statement of intent
29 is filed under § 10–409(b) of this subtitle; and

30 (2) at least 60% of the available residential accommodations of the
31 facility owner were occupied during the two fiscal years prior to the filing of a
32 statement of intent.

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

1 (k) (1) "Entrance fee" means a sum of money or other consideration paid
2 initially or in deferred payments, that:

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

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

7 (2) "Entrance fee" includes a fee of similar form and application,
8 regardless of title.

9 (3) "Entrance fee" does not include a surcharge.

10 (l) (1) "Expansion" means any single new capital addition to an existing
11 facility that meets either of the following criteria:

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

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

17 1. 10% of the total operating expenses, less depreciation,
18 amortization, and interest expense of the facility as shown on the certified financial
19 statement for the most recent fiscal year for which a certified financial statement is
20 available; and

21 2. the amount of the existing reserves properly allocable
22 to, and allocated for, the expansion.

23 (2) "Expansion" does not include renovation and normal repair and
24 maintenance.

25 (M) "EXTENSIVE AGREEMENT" MEANS A CONTINUING CARE
26 AGREEMENT UNDER WHICH THE PROVIDER PROMISES TO PROVIDE
27 RESIDENTIAL FACILITIES, MEALS, AMENITIES, AND LONG-TERM CARE SERVICES
28 IN A LICENSED ASSISTED LIVING PROGRAM OR COMPREHENSIVE CARE
29 PROGRAM:

30 (1) FOR AS LONG AS THE SUBSCRIBER NEEDS THE SERVICES; AND

31 (2) FOR NO SUBSTANTIAL INCREASE IN THE SUBSCRIBER'S
32 ENTRANCE FEE OR PERIODIC FEES, EXCEPT FOR AN ADJUSTMENT TO ACCOUNT
33 FOR INCREASED OPERATING COSTS CAUSED BY INFLATION OR OTHER FACTORS
34 UNRELATED TO THE INDIVIDUAL SUBSCRIBER.

1 **[(m)] (N)** “Facility” means a physical plant in which continuing care in a
2 retirement community is provided in accordance with this subtitle.

3 **(O) “FEE-FOR-SERVICE AGREEMENT” MEANS A CONTINUING CARE**
4 **AGREEMENT THAT IS EITHER:**

5 **(1) AN AGREEMENT:**

6 **(I) UNDER WHICH THE PROVIDER PROMISES TO PROVIDE**
7 **RESIDENTIAL FACILITIES, MEALS, AMENITIES, AND LONG-TERM CARE SERVICES**
8 **IN A LICENSED ASSISTED LIVING PROGRAM OR COMPREHENSIVE CARE**
9 **PROGRAM FOR AS LONG AS THE SUBSCRIBER NEEDS THE SERVICES; AND**

10 **(II) THAT PROVIDES THAT LONG-TERM CARE SERVICES IN A**
11 **LICENSED ASSISTED LIVING PROGRAM OR COMPREHENSIVE CARE PROGRAM**
12 **WILL BE PROVIDED AT A PER DIEM, A FEE-FOR-SERVICE, OR AN OTHER**
13 **AGREED-ON RATE THAT GENERALLY REFLECTS THE MARKET RATES FOR**
14 **ASSISTED LIVING AND COMPREHENSIVE CARE SERVICES; OR**

15 **(2) A CONTINUING CARE AGREEMENT THAT IS NOT AN EXTENSIVE**
16 **AGREEMENT OR A MODIFIED AGREEMENT.**

17 **[(n)] (P)** “Financial difficulty” means current or impending financial
18 conditions that impair or may impair the ability of a provider to meet existing or
19 future obligations.

20 **[(o)] (Q)** “Governing body” means a board of directors, board of trustees, or
21 similar group that ultimately directs the affairs of a provider, but whose members are
22 not required to have an equity interest in the provider.

23 **[(p)] (R)** (1) “Health related services” means services that are needed by
24 a subscriber to maintain the subscriber’s health.

25 (2) “Health related services” includes:

26 (i) priority admission to a nursing home or assisted living
27 program; or

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

30 **(S) “MODIFIED AGREEMENT” MEANS A CONTINUING CARE AGREEMENT:**

1 **(1) UNDER WHICH THE PROVIDER PROMISES TO PROVIDE**
 2 **RESIDENTIAL FACILITIES, MEALS, AMENITIES, AND A LIMITED AMOUNT OF**
 3 **LONG-TERM CARE SERVICES IN A LICENSED ASSISTED LIVING PROGRAM OR**
 4 **COMPREHENSIVE CARE PROGRAM:**

5 **(I) FOR AS LONG AS THE SUBSCRIBER NEEDS THE**
 6 **SERVICES; AND**

7 **(II) FOR NO SUBSTANTIAL INCREASE IN THE SUBSCRIBER'S**
 8 **ENTRANCE FEE OR PERIODIC FEES, EXCEPT FOR AN ADJUSTMENT TO ACCOUNT**
 9 **FOR INCREASED OPERATING COSTS CAUSED BY INFLATION OR OTHER FACTORS**
 10 **UNRELATED TO THE INDIVIDUAL SUBSCRIBER; AND**

11 **(2) THAT PROVIDES THAT LONG-TERM CARE SERVICES IN A**
 12 **LICENSED ASSISTED LIVING PROGRAM OR COMPREHENSIVE CARE PROGRAM**
 13 **BEYOND THE LIMITED AMOUNT OF SERVICES TO BE PROVIDED UNDER**
 14 **PARAGRAPH (1) OF THIS SUBSECTION WILL BE PROVIDED AT A PER DIEM, A**
 15 **FEE-FOR-SERVICE, OR AN OTHER AGREED-ON RATE.**

16 **[(q)] (T)** “Person” includes a governmental entity or unit.

17 **[(r)] (U)** “Processing fee” means a fee imposed by a provider for determining
 18 the financial, mental, and physical eligibility of an applicant for entrance into a
 19 facility.

20 **[(s)] (V)** “Provider” means a person who:

21 (1) undertakes to provide continuing care; and

22 (2) is:

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

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

26 **[(t)] (W)** “Records” means information maintained by a provider for the
 27 proper operation of a facility under this subtitle.

28 **[(u)] (X)** (1) “Renovation” means any single capital improvement to, or
 29 replacement of, all or part of an existing facility that will not increase the number of
 30 independent or assisted living units and for which the total projected cost exceeds the
 31 sum of:

32 (i) 20% of the total operating expenses, less depreciation,
 33 amortization, and interest expense of the facility as shown on the certified financial

1 statement for the most recent fiscal year for which a certified financial statement is
2 available; and

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

5 (2) “Renovation” does not include normal repair or maintenance.

6 [(v)] (Y) “Subscriber” means an individual for whom a continuing care
7 agreement is purchased.

8 [(w)] (Z) (1) “Surcharge” means a separate and additional charge that:

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

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

12 (2) “Surcharge” does not include a second person entrance fee.

13 10–419.

14 In this part, “net operating expenses” means the total operating expenses at
15 each facility of a provider, less depreciation, amortization, unusual and infrequent
16 expenses, changes in the obligation to provide future services, and changes in the fair
17 market value of interest rate swap agreements not involving an exchange of funds.

18 10–420.

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

24 (b) (1) Except as otherwise provided in this part, a provider shall set aside
25 for each facility subject to this subtitle operating reserves **THAT:**

26 (I) **UNTIL JANUARY 1, 2015**, equal [to] 15% of the facility’s
27 net operating expenses for the most recent fiscal year for which a certified financial
28 statement is available; **AND**

29 (II) **AFTER JANUARY 1, 2015, EQUAL 25% OF THE**
30 **FACILITY’S NET OPERATING EXPENSES FOR THE MOST RECENT FISCAL YEAR**
31 **FOR WHICH A CERTIFIED FINANCIAL STATEMENT IS AVAILABLE.**

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

3 **(3) THE ASSETS HELD BY THE PROVIDER AS THE OPERATING**
4 **RESERVES:**

5 **(I) EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS**
6 **SUBSECTION, SHALL BE MET WITH UNRESTRICTED CASH AND INVESTMENTS;**
7 **AND**

8 **(II) MAY NOT BE:**

9 1. **MET WITH A LINE OF CREDIT; OR**

10 2. **EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS**
11 **SUBSECTION, HYPOTHECATED, PLEDGED AS COLLATERAL, OR OTHERWISE**
12 **ENCUMBERED BY THE PROVIDER IN ANY MANNER.**

13 **(4) THE ASSETS HELD BY THE PROVIDER AS THE OPERATING**
14 **RESERVES MAY BE ENCUMBERED IF:**

15 **(I) THE ASSETS ARE ENCUMBERED BY CONTRACTUAL**
16 **OBLIGATIONS UNDERTAKEN BEFORE JULY 1, 2011, THAT HAVE NOT**
17 **MATERIALLY CHANGED SINCE JULY 1, 2011; OR**

18 **(II) THE ASSETS ARE ENCUMBERED AS PART OF A GENERAL**
19 **SECURITY PLEDGE OF ASSETS OR SIMILAR COLLATERALIZATION THAT IS PART**
20 **OF THE PROVIDER'S LONG-TERM CAPITAL DEBT COVENANTS INCLUDED IN THE**
21 **PROVIDER'S LONG-TERM DEBT INDENTURE OR SIMILAR FINANCIAL**
22 **INSTRUMENT BUT WHICH REMAIN AVAILABLE TO THE PROVIDER TO PAY**
23 **OPERATING EXPENSES WITHOUT SUBSTANTIAL RESTRICTIONS OR LIMITATIONS.**

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

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

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

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

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

6 (i) a letter to the Department from a certified public accountant
7 that states the amount set aside; or

8 (ii) a certified financial statement that states the amount set
9 aside.

10 (b) A provider may apply toward the operating reserves required by §
11 10-420(b) of this subtitle any reserves, except debt service reserves, that are
12 maintained under applicable financing document requirements if the reserves are
13 available to the provider to meet the facility's operating expenses.

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

18 10-422.

19 (a) A provider shall notify the Department in writing immediately on the
20 withdrawal of any amount from the funds available to satisfy the operating reserves
21 required by § 10-420(b) of this subtitle.

22 (b) Within 30 days after making a withdrawal described in subsection (a) of
23 this section, the provider shall submit to the Department a written plan for restoring
24 the reserves to the level required by § 10-420(b) of this subtitle.

25 10-423.

26 (a) For a facility that has not been the subject of a conversion and that has
27 residents who are not parties to continuing care agreements, the provider shall [set
28 aside] **CALCULATE THE** operating [reserves equal to at least 15% of] **RESERVE**
29 **REQUIREMENT OF § 10-420 ON** the pro rata proportion of the net operating
30 expenses [calculated] **AS SPECIFIED** under subsection (b) of this section.

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

1 10-424.

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

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

7 (ii) annually to any subscriber who requests a **CONTINUING**
8 **CARE** disclosure statement.

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

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

15 (2) The Department shall review the **CONTINUING CARE** disclosure
16 statement solely to ensure compliance with § 10-425 of this subtitle.

17 (c) (1) An amended **CONTINUING CARE** disclosure statement is subject to
18 each requirement of this subtitle.

19 (2) A provider shall file an amended **CONTINUING CARE** disclosure
20 statement with the Department when it is delivered to a subscriber or prospective
21 subscriber.

22 10-425.

23 (a) A **CONTINUING CARE** disclosure statement shall include:

24 (1) **A TABLE OF CONTENTS;**

25 [(1)] (2) the name, address, and description of the facility and the
26 identity of the owner or owners of the facility and the land on which it is located;

27 [(2)] (3) the name and address of the provider and of any parent or
28 subsidiary;

29 [(3)] (4) the organizational structure and management of the
30 provider, including:

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

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

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

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

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

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

18 **[(4)] (5)** the name and occupation of each officer, director, trustee,
19 managing or general partner, and each person with a 10% or greater equity or
20 beneficial interest in the provider, and a description of the person's financial interest
21 in or occupation with the provider;

22 **[(5)] (6)** the name and address of any entity in which a person
23 identified in item **[(4)] (5)** of this subsection has a 10% or greater financial interest
24 and that is anticipated to provide goods, premises, or services with a value of \$10,000
25 or more to the facility or provider in a fiscal year and a description of the goods,
26 premises, or services and their anticipated cost to the facility or provider, which need
27 not include salary, wage, or benefit information of employees of the provider;

28 **[(6)] (7)** a description of any matter in which an individual identified
29 in item **[(4)] (5)** of this subsection:

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

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

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

5 (iv) in the past 10 years, had a state or federal license or permit
6 suspended or revoked because a governmental unit brought an action that arose out of
7 or related to business activity or health care, including an action that affected a
8 license to operate a facility or service for senior, impaired, or dependent persons;

9 [(7)] (8) a description of the provider's form of governance and the
10 composition of its governing body, and a statement that the provider will satisfy the
11 requirements of §§ 10-426 and 10-427 of this subtitle;

12 [(8)] (9) a statement of any affiliation of the provider with a
13 religious, charitable, or other nonprofit organization, and the extent of the
14 organization's responsibility for the financial and contractual obligations of the
15 provider;

16 [(9)] (10) if the facility will be managed on a day-to-day basis by a
17 person other than an individual who is directly employed by the provider, the name of
18 the proposed manager or management company and a description of the business
19 experience of the manager or company in operating or managing similar facilities;

20 [(10)] (11) a copy of the most recent certified financial statement
21 obtainable under generally accepted accounting principles;

22 [(11)] (12) a description of the long-term financing for the facility;

23 [(12)] (13) a cash flow forecast for the current and the next two fiscal
24 years;

25 [(13)] (14) a description of any activity related to a renovation,
26 expansion, or new development during the preceding fiscal year or proposed for the
27 current fiscal year;

28 [(14)] (15) a description of:

29 (i) the steps that have been or will be taken to comply with the
30 operating reserve requirements under § 10-420(b) of this subtitle; and

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

33 [(15)] (16) a description of the financial arrangements that the provider
34 has made, if any, to address the renewal and replacement of the buildings and

1 improvements at the facility, such as the establishment of a renewal and replacement
2 fund;

3 [(16)] (17) if the facility has not reached 85% occupancy of its
4 independent living units, a summary of the feasibility study;

5 [(17)] (18) if applicable, a description of the conditions under which the
6 provider may be issued an initial certificate of registration and may use escrowed
7 deposits;

8 [(18)] (19) a description of all basic fees, including entrance fees, fees
9 for health related services, and periodic fees that the provider collects from
10 subscribers, and the amount and frequency of any fee changes during the previous 5
11 years or, if the facility has been in operation less than 5 years, for each year of
12 operation;

13 [(19)] (20) a summary of the basic services provided or proposed to be
14 provided at the facility under the continuing care agreement, including the extent to
15 which health related services are provided, that clearly states which services are
16 indicated in the agreement as included in the basic fee and which services are or will
17 be made available at or by the facility at an extra charge;

18 [(20)] (21) if applicable, a statement that it is the provider's policy to
19 impose a surcharge on some, but not all, subscribers because of a condition or
20 circumstance that applies only to those subscribers and that the surcharge is not part
21 of the entrance fee refund required under § 10-448 of this subtitle;

22 [(21)] (22) a description of the role of any resident association;

23 [(22)] (23) a description of the internal grievance procedure;

24 **(24) IF THE PROVIDER OFFERS A CONTINUING CARE AGREEMENT**
25 **THAT PROMISES A CONTRACTUAL ENTRANCE FEE REFUND, A STATEMENT**
26 **WHETHER THE PORTION OF THE ENTRANCE FEE TO BE REFUNDED IS**
27 **EARMARKED AND HELD FOR THE SUBSCRIBER UNTIL THE REFUND IS DUE, AND**
28 **IF SO HELD, A DESCRIPTION OF WHERE AND HOW THE FUNDS ARE HELD;**

29 **(25) IF THE PROVIDER OFFERS A CONTINUING CARE AGREEMENT**
30 **THAT PROMISES A CONTRACTUAL ENTRANCE FEE REFUND BUT DOES NOT**
31 **EARMARK AND HOLD THE PORTION OF THE ENTRANCE FEE TO BE REFUNDED TO**
32 **THE SUBSCRIBER, A DESCRIPTION OF HOW THE FUNDS PAID AS ENTRANCE FEES**
33 **ARE USED BY THE PROVIDER;**

34 **(26) IF THE PROVIDER OFFERS AN EXTENSIVE AGREEMENT, A**
35 **STATEMENT THAT AN ATTORNEY OR A FINANCIAL ADVISER SHOULD REVIEW**
36 **THE CONTINUING CARE AGREEMENT AND ANY LONG-TERM CARE INSURANCE**

1 POLICY THAT COVERS THE PROSPECTIVE SUBSCRIBER TO DETERMINE
2 WHETHER THERE ARE POTENTIAL AREAS OF DUPLICATION OR AREAS WHERE
3 BENEFITS CAN BE COORDINATED;

4 [(23)] (27) a statement that the provider will amend its disclosure
5 statement whenever the provider or the Department considers an amendment
6 necessary to prevent the disclosure statement from containing:

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

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

11 [(24)] (28) any other material information about the facility or the
12 provider that the Department requires or that the provider wishes to include.

13 (b) The CONTINUING CARE disclosure statement shall contain a cover page
14 that states, in a prominent location and type face:

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

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

17 (i) constitute approval, recommendation, or endorsement of the
18 facility by the Department; or

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

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

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

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

25 (2) In addition to any other requirement of this section, the
26 CONTINUING CARE disclosure statement shall contain [the following information
27 about the assisted living program:

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

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

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

4 (iv) notice of:

5 1. the availability of locks for storage;

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

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

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

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

13 1. arranging or overseeing medical care;

14 2. monitoring the subscriber's health status;

15 3. purchasing or renting essential or desired equipment
16 and supplies; and

17 4. ascertaining the cost of and purchasing durable
18 medical equipment;

19 (vi)] an explanation of the assisted living program's complaint or
20 grievance procedure]; and

21 (vii) notice of any material changes in the assisted living
22 program.

23 (3) The provider shall:

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

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

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

1 **(D) A CONTINUING CARE DISCLOSURE STATEMENT ALSO SHALL**
2 **COMPLY WITH § 10-430 OF THIS SUBTITLE.**

3 **10-425.1.**

4 **(A) A PROVIDER THAT OFFERS ASSISTED LIVING SHALL PROVIDE AS**
5 **PART OF ITS GENERAL MARKETING MATERIALS FOR A COMMUNITY A COPY OF**
6 **THE STANDARD ASSISTED LIVING SERVICES DISCLOSURE STATEMENT**
7 **REQUIRED BY § 19-1808 OF THE HEALTH – GENERAL ARTICLE; AND**

8 **(B) A PROVIDER ALSO SHALL PROVIDE A COPY OF THE STANDARD**
9 **ASSISTED LIVING SERVICES DISCLOSURE STATEMENT TO A SUBSCRIBER OR THE**
10 **SUBSCRIBER’S LEGAL REPRESENTATIVE WITHIN THE 30 DAYS PRIOR TO THE**
11 **SUBSCRIBER’S ADMISSION TO THE PROVIDER’S ASSISTED LIVING PROGRAM.**

12 **10-426.**

13 (a) At least once a year, each provider shall hold a meeting open to all of the
14 provider’s subscribers.

15 (b) At the meeting, an authorized officer of the provider shall:

16 (1) summarize the provider’s operations, significant changes from the
17 previous year, and goals and objectives for the next year; and

18 (2) answer subscribers’ questions.

19 **10-427.**

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

22 (2) If the provider owns or operates more than three facilities in the
23 State, the governing body shall include at least one of the provider’s subscribers for
24 every three facilities in the State.

25 (3) Subject to paragraph (4) of this subsection, a member of the
26 governing body who is selected to meet the requirements of this subsection shall be a
27 subscriber at a facility in the State and be selected according to the same general
28 written standards and criteria used to select other members of the governing body.

29 (4) The governing body shall confer with the resident association at
30 each of the provider’s facilities before the subscriber officially joins the governing body.

1 (5) The Secretary may waive the requirements of this subsection for a
2 provider in the process of decertifying as a provider, if the Secretary determines that
3 there are no subscribers willing and able to serve on the governing body.

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

9 (2) If a facility does not have a resident association, the committee
10 shall meet with a reasonable number of representatives, not required to exceed fifteen,
11 that the subscribers elect.

12 (c) (1) **ON REQUEST, A PROVIDER SHALL MAKE AVAILABLE TO ITS**
13 **SUBSCRIBERS A COPY OF THE COMMUNITY'S OPERATING BUDGET AND ANY**
14 **BUDGET AMENDMENT.**

15 (2) **THE OPERATING BUDGET SHALL BE MADE AVAILABLE AT**
16 **LEAST 30 DAYS BEFORE IMPLEMENTATION OF THE BUDGET.**

17 10-428.

18 (a) A provider shall establish an internal grievance procedure to address a
19 subscriber's grievance.

20 (b) The internal grievance procedure shall at least:

21 (1) allow a subscriber or group of subscribers collectively to submit a
22 written grievance to the provider;

23 (2) require the provider to send a written acknowledgment to the
24 subscriber **OR GROUP OF SUBSCRIBERS** within 5 days after receipt of the written
25 grievance;

26 (3) require the provider to assign personnel to investigate the
27 grievance;

28 (4) give a subscriber **OR GROUP OF SUBSCRIBERS** who [files] **FILE** a
29 written grievance the right to meet with management of the provider within 30 days
30 after receipt of the written grievance to present the [subscriber's] grievance; and

31 (5) require the provider to respond **IN WRITING** within 45 days after
32 receipt of the written grievance regarding the investigation and resolution of the
33 grievance.

1 (c) (1) Within 30 days after the conclusion of an internal grievance
2 procedure established under this section, a subscriber, **GROUP OF SUBSCRIBERS**, or
3 provider may seek mediation through one of the Community Mediation Centers in the
4 State or another mediation provider.

5 (2) If a provider [or], subscriber, **OR GROUP OF SUBSCRIBERS** seeks
6 mediation under paragraph (1) of this subsection:

7 (i) the mediation shall be nonbinding; and

8 (ii) the provider and subscriber **OR GROUP OF SUBSCRIBERS**
9 may not be represented by counsel.

10 10-429.

11 A provider shall make readily available to its subscribers for review at the
12 facility copies of all materials that the provider submits to the Department that are
13 required to be disclosed under the Public Information Act.

14 **10-430.**

15 **ALL MARKETING MATERIALS, INCLUDING CONTINUING CARE DISCLOSURE**
16 **STATEMENTS, THAT STATE THAT PART OR ALL OF THE ENTRANCE FEE IS OR**
17 **MAY BE REFUNDABLE SHALL INCLUDE, IN CLOSE PROXIMITY, A DISCLAIMER IN**
18 **THE SAME SIZE FONT THAT STATES AT LEAST THE FOLLOWING: "CAREFULLY**
19 **READ THE CONTINUING CARE AGREEMENT FOR THE CONDITIONS THAT MUST BE**
20 **SATISFIED BEFORE THE PROVIDER IS REQUIRED TO PAY THE ENTRANCE FEE**
21 **REFUND."**

22 10-432.

23 (a) (1) [This section and §§ 10-433 through 10-435 of this subtitle do]
24 **SUBSECTION (B)(2) OF THIS SECTION DOES** not apply to [a transfer of ownership of
25 a facility, or] a transfer of ownership or control of a person that owns or controls a
26 facility, if:

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

28 (ii) the same person or persons holding **THE RIGHT TO**
29 **CONTROL OR HOLDING** a majority of ownership [or right to control] before the
30 business reorganization will retain, directly or indirectly, [a majority of ownership or]
31 **THE** right to control **OR A MAJORITY OF OWNERSHIP, RESPECTIVELY**, after the
32 business reorganization.

1 (2) The provider shall notify the Department and the facility's
2 subscribers 30 days before any reorganization described in paragraph (1) of this
3 subsection.

4 (b) Unless the Department approves the sale or transfer in accordance with
5 §§ 10-433 through 10-435 of this subtitle:

6 **(1) EXCEPT FOR THE GRANT OF A MORTGAGE OR DEED OF TRUST**
7 **TO AN UNRELATED THIRD PARTY**, a provider that holds a preliminary, initial, or
8 renewal certificate of registration [or] **MAY NOT SELL OR OTHERWISE TRANSFER,**
9 **DIRECTLY OR INDIRECTLY, OWNERSHIP OF A FACILITY OR ANY OWNERSHIP**
10 **INTEREST IN A FACILITY; AND**

11 **(2)** a person with an ownership interest in or a right to control the
12 provider, through governing body appointments or contractual or similar
13 arrangements, may not sell or otherwise transfer, directly or indirectly[:],

14 **[(1)] THE RIGHT TO CONTROL OR** more than 50% of the [provider's
15 ownership of a facility; or

16 **(2)** more than 50% of the ownership of or right to control]
17 **OWNERSHIP OF** a person that owns or controls a facility.

18 (c) Any series of sales or other transfers described in subsection (b) of this
19 section that occur in a 12-month period shall be aggregated for purposes of this
20 section and §§ 10-433 through 10-435 of this subtitle.

21 10-436.

22 (a) This section does not apply to:

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

25 (2) a transaction made in the ordinary course of business of operating
26 a facility;

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

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

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

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

3 (7) a transaction made for an expansion or renovation; [or]

4 (8) **A TRANSACTION TO WHICH § 10-432(B) APPLIES; OR**

5 [(8)] (9) any other sale, transfer, or other disposition exempted by
6 the Department by regulation.

7 (b) (1) A provider that holds a preliminary, initial, or renewal certificate
8 of registration may not sell, transfer, or otherwise dispose of more than 10% of its total
9 assets in any 12-month period unless the Department approves the sale, transfer, or
10 disposition in accordance with §§ 10-437 and 10-438 of this subtitle.

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

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

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

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

20 **10-443.**

21 **THE PROVISIONS OF PART IV OF THIS SUBTITLE ARE IN ADDITION TO,**
22 **AND NOT IN LIEU OF, OTHER APPLICABLE LAWS.**

23 10-444.

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

27 (b) In a form acceptable to the Department, each continuing care agreement
28 shall:

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

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

5 (3) designate the classes of subscribers according to types of payment
6 plans;

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

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

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

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

18 (i) the terms governing the refund of any portion of the
19 entrance fee if the provider discharges the subscriber or the subscriber cancels the
20 agreement; and

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

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

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

27 (10) state that the **PROVIDER REPRESENTS THAT THE** subscriber has
28 received, at least two weeks before signing the agreement[,]:

29 **(I) the current version of the written rules of the provider;**

30 **(II) THE CONTINUING CARE AGREEMENT FORM, WITH THE**
31 **ATTACHMENTS, EXHIBITS, AND ADDENDA;**

32 **(III) THE MOST RECENT CONSUMER GUIDE ISSUED BY THE**
33 **DEPARTMENT CONCERNING CONTINUING CARE IN A RETIREMENT COMMUNITY;**

1 **(IV) IF ASSISTED LIVING IS OFFERED BY THE PROVIDER, THE**
2 **CURRENT STANDARD ASSISTED LIVING DISCLOSURE STATEMENT REQUIRED BY**
3 **§ 19-1808 OF THE HEALTH – GENERAL ARTICLE; AND**

4 **(V) THE CURRENT CONTINUING CARE DISCLOSURE**
5 **STATEMENT;**

6 (11) describe the living quarters;

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

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

12 (14) state the subscriber's and provider's respective rights and
13 obligations concerning:

14 (i) use of the facility; and

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

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

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

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

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

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

29 (20) provide that, on request, the provider will make available to the
30 subscriber any certified financial statement submitted to the Department;

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

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

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

6 (i) in writing;

7 (ii) witnessed by at least two competent witnesses;

8 (iii) not contingent; and

9 (iv) specified in percentages and accounts for 100% of the refund
10 due;

11 (24) state the funeral and burial services, if any, that the provider will
12 provide; [and]

13 **(25) CONTAIN A TABLE OF CONTENTS;**

14 **(26) IF THE AGREEMENT PROMISES A CONTRACTUAL ENTRANCE**
15 **FEE REFUND, STATE IN A SEPARATE PARAGRAPH WHETHER THE PORTION OF**
16 **THE ENTRANCE FEE TO BE REFUNDED IS EARMARKED AND HELD FOR THE**
17 **SUBSCRIBER UNTIL THE REFUND IS DUE, AND IF SO HELD, DESCRIBE WHERE**
18 **AND HOW THE FUNDS ARE HELD;**

19 **(27) IF THE AGREEMENT PROMISES A CONTRACTUAL ENTRANCE**
20 **FEE REFUND BUT DOES NOT EARMARK AND HOLD THE PORTION OF THE**
21 **ENTRANCE FEE TO BE REFUNDED TO THE SUBSCRIBER, DESCRIBE HOW THE**
22 **FUNDS CONSTITUTING THE ENTRANCE FEE ARE USED BY THE PROVIDER; AND**

23 **[(25)] (28)** contain the following statement in boldface type and in the
24 largest type used in the agreement: “A preliminary certificate of registration or
25 certificate of registration is not an endorsement or guarantee of this facility by the
26 State of Maryland. The Maryland Department of Aging urges you to consult with an
27 attorney and a suitable financial advisor before signing any documents.”.

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

30 (d) A continuing care agreement may contain, in a form acceptable to the
31 Department, any other appropriate provision to effectuate the purpose of the
32 agreement.

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

2 (i) a provider's continuing care agreement includes a provision
3 to provide assisted living program services; and

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

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

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

11 (ii) a description of the procedures to be followed by the provider
12 for notifying the subscriber of the **INITIAL ASSISTED LIVING** level of care the
13 subscriber needs if the subscriber transfers to an assisted living program;

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

17 [(iv) based on a sample list of assisted living program services
18 that the Department of Health and Mental Hygiene maintains, a statement of which
19 services are provided by the assisted living program and which services are not;]

20 [(v)] **(IV)** a statement of the obligations of the provider and the
21 subscriber or the subscriber's agent for handling the subscriber's finances;

22 [(vi)] **(V)** a statement of the obligations of the provider and the
23 subscriber or the subscriber's agent for disposition of the subscriber's property on the
24 subscriber's discharge or death; and

25 [(vii)] **(VI)** [the applicable] rate structure and payment
26 provisions covering:

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

28 A. service packages;

29 B. fee-for-service rates; and

30 C. any other nonservice-related charges;

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

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

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

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

10 6. fair and reasonable billing and payment policies.

11 10-445.

12 (a) (1) (i) If a provider's feasibility study has been approved under §
13 10-409 of this subtitle, the Department, within 120 days after receipt of a continuing
14 care agreement or any other related agreement submitted by a provider, shall
15 determine whether the agreement complies with the requirements of this subtitle.

16 (ii) At any time during the review process, the Department may
17 submit comments to or request additional information from the provider to determine
18 whether the agreement complies with the requirements of this subtitle **AND OTHER**
19 **APPLICABLE STATUTORY AND COMMON LAW PROVISIONS OR PRINCIPLES.**

20 (iii) If the Department submits comments or a request for
21 additional information under subparagraph (ii) of this paragraph, the 120-day review
22 period under subparagraph (i) of this paragraph is suspended.

23 (iv) On receipt of any requested information or modifications to
24 the agreement necessitated by the Department's comments under subparagraph (iii) of
25 this paragraph, the Department, within the number of days remaining in the 120-day
26 review period, shall:

27 1. complete its review to determine whether the
28 agreement meets the requirements of this subtitle **AND OTHER PROVISIONS OR**
29 **PRINCIPLES RAISED UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH;** and

30 2. approve or disapprove the agreement.

31 (v) 1. If the Department does not approve the agreement,
32 the Department shall notify the provider in writing, including citations to the specific
33 provisions **OR PRINCIPLES** of **STATUTORY AND COMMON** law that the Department
34 determined were not complied with in the agreement.

1 2. A provider may appeal the disapproval of an
2 agreement under subparagraph (iv) of this paragraph under the provisions of Title 10,
3 Subtitle 2 of the State Government Article.

4 (2) If the Department does not act within 120 days, the agreement is
5 deemed approved.

6 (b) The provider shall maintain the continuing care agreement at the facility
7 and make it available for inspection by the Department of Health and Mental Hygiene
8 under Title 19, Subtitle 18, of the Health – General Article and Title 10, Subtitle 3 of
9 the Health – General Article.

10 (c) If a provider is seeking approval for a modification to an approved
11 continuing care agreement or other related agreement, the Department shall limit its
12 review to:

13 (1) the section of the agreement being modified and any sections
14 directly affected by the modification; and

15 (2) any section of the agreement that may have been affected by a
16 change in the law or a regulation that was enacted after the Department approved the
17 agreement.

18 (d) [If the provider executes a separate assisted living agreement or
19 comprehensive care agreement, the provider is not required to submit the assisted
20 living agreement or comprehensive care agreement or any requests for modifications
21 to the Department for approval.] **IF THE CONTINUING CARE AGREEMENT IS NOT
22 AN EXTENSIVE AGREEMENT OR A MODIFIED AGREEMENT AS DEFINED IN §
23 10–401 OF THIS SUBTITLE, AND THE PROVIDER USES A SEPARATE ASSISTED
24 LIVING AGREEMENT:**

25 (1) **THE PROVIDER IS NOT REQUIRED TO SUBMIT THE ASSISTED
26 LIVING AGREEMENT OR ANY REQUESTS FOR MODIFICATIONS TO THE
27 DEPARTMENT FOR APPROVAL; AND**

28 (2) **THE PROVIDER SHALL STATE IN ITS CONTINUING CARE
29 AGREEMENT THAT, IF THE SUBSCRIBER WISHES TO TRANSFER TO ASSISTED
30 LIVING, THE SUBSCRIBER WILL BE REQUIRED TO SIGN AN ADDITIONAL
31 SEPARATE AGREEMENT FOR ASSISTED LIVING SERVICES THAT WILL NOT BE
32 APPROVED BY THE DEPARTMENT FOR COMPLIANCE WITH LEGAL
33 REQUIREMENTS OR COORDINATION WITH THE CONTINUING CARE AGREEMENT.**

34 (e) **IF THE CONTINUING CARE AGREEMENT IS NOT AN EXTENSIVE
35 AGREEMENT OR A MODIFIED AGREEMENT AS DEFINED IN § 10–401 OF THIS
36 SUBTITLE, AND THE PROVIDER USES A SEPARATE COMPREHENSIVE CARE
37 AGREEMENT:**

1 **(1) THE PROVIDER IS NOT REQUIRED TO SUBMIT THE**
2 **COMPREHENSIVE CARE AGREEMENT OR ANY REQUESTS FOR MODIFICATIONS TO**
3 **THE DEPARTMENT FOR APPROVAL; AND**

4 **(2) THE PROVIDER SHALL STATE IN ITS CONTINUING CARE**
5 **AGREEMENT THAT, IF THE SUBSCRIBER WISHES TO TRANSFER TO**
6 **COMPREHENSIVE CARE, THE SUBSCRIBER WILL BE REQUIRED TO SIGN AN**
7 **ADDITIONAL SEPARATE AGREEMENT FOR COMPREHENSIVE CARE SERVICES**
8 **THAT WILL NOT BE APPROVED BY THE DEPARTMENT FOR COMPLIANCE WITH**
9 **LEGAL REQUIREMENTS OR COORDINATION WITH THE CONTINUING CARE**
10 **AGREEMENT.**

11 10-447.

12 **[(a) (1) In this section the following words have the meanings indicated.**

13 **(2) “Extensive agreement” means a continuing care agreement under**
14 **which the provider promises to provide residential facilities, meals, amenities, and**
15 **long-term care services in a licensed assisted living program or comprehensive care**
16 **program:**

17 **(i) for as long as the subscriber needs the services; and**

18 **(ii) for no increase in the subscriber’s entrance fee or periodic**
19 **fees, except for an adjustment to account for increased operating costs caused by**
20 **inflation or other factors unrelated to the individual subscriber.**

21 **(3) “Modified agreement” means a continuing care agreement:**

22 **(i) under which the provider promises to provide residential**
23 **facilities, meals, amenities, and a limited amount of long-term care services in a**
24 **licensed assisted living program or comprehensive care program:**

25 1. for as long as the subscriber needs the services; and

26 2. for no increase in the subscriber’s entrance fee or
27 **periodic fees, except for an adjustment to account for increased operating costs caused**
28 **by inflation or other factors unrelated to the individual subscriber; and**

29 **(ii) that provides that long-term care services in a licensed**
30 **assisted living program or comprehensive care program beyond the limited amount of**
31 **services to be provided under item (i) of this paragraph will be provided at a per diem,**
32 **fee-for-service, or other agreed-upon rate.]**

1 **[(b)] (A)** (1) A provider shall provide the assisted living services a
2 subscriber needs in accordance with paragraph (2) of this subsection if:

3 (i) the subscriber's continuing care agreement is an extensive
4 or modified agreement that promises the provider will provide assisted living services;
5 and

6 (ii) the provider does not have an assisted living bed available
7 at the facility when the subscriber needs the promised care.

8 (2) The provider shall provide assisted living services required under
9 paragraph (1) of this subsection to a subscriber:

10 (i) at the same rate the subscriber would pay if an assisted
11 living bed were available; and

12 (ii) at the provider's option:

13 1. in the subscriber's independent living unit; or

14 2. in a nearby licensed assisted living facility.

15 **[(c)] (B)** (1) A provider shall provide the comprehensive care services a
16 subscriber needs in accordance with paragraph (2) of this subsection if:

17 (i) the subscriber's continuing care agreement is an extensive
18 or modified agreement that promises the provider will provide the subscriber with
19 comprehensive care services if the subscriber needs them; and

20 (ii) the provider does not have a comprehensive care bed
21 available when the subscriber needs the promised care.

22 (2) The provider shall provide the services required under paragraph
23 (1) of this subsection:

24 (i) at the same rate the subscriber would pay if a
25 comprehensive bed were available; and

26 (ii) at the provider's option:

27 1. in the subscriber's independent or assisted living unit;

28 or

29 2. in a nearby licensed comprehensive care facility.

30

1 19-1806.

2 (a) (1) In this section the following words have the meanings indicated.

3 (2) "Continuing care" has the meaning stated in § 10-401 of the
4 Human Services Article.

5 (3) "Continuing care agreement" has the meaning stated in § 10-401
6 of the Human Services Article.

7 (b) This section applies to assisted living programs that offer assisted living
8 program services as part of a continuum of care in accordance with a continuing care
9 agreement that does not require a subscriber to execute a separate assisted living
10 agreement to receive those services.

11 (c) (1) An assisted living program subject to this section that meets the
12 requirements of Title 10, Subtitle 4 of the Human Services Article with regard to
13 assisted living is not required to execute a separate assisted living resident agreement
14 that is in addition to the continuing care agreement.

15 (2) For purposes of paragraph (1) of this subsection, if a separate
16 assisted living resident agreement is not utilized, references to a resident agreement
17 in any regulations adopted under this subtitle shall mean the continuing care
18 agreement.

19 (d) A continuing care agreement that contains a provision to provide assisted
20 living program services and does not require a subscriber to execute a separate
21 assisted living agreement to receive those services is not required to contain general or
22 specific contract provisions, except as required under Title 10, Subtitle 4 of the Human
23 Services Article, that apply to assisted living programs that are not subject to this
24 section.

25 [(e) (1) In addition to subsection (c) of this section, an assisted living
26 program subject to this section is not required to provide a disclosure statement
27 relating to its assisted living program separate from any disclosure statement required
28 by Title 10, Subtitle 4 of the Human Services Article for continuing care.

29 (2) Any disclosure statement required to be provided to a resident
30 under Title 10, Subtitle 4 of the Human Services Article shall include information that
31 is required to be disclosed by an assisted living program in accordance with this
32 subtitle.]

33 [(f) (E) A transfer of a resident from an assisted living program subject to
34 this section to another assisted living or continuing care arrangement governed by the
35 same continuing care agreement may not be considered a relocation or discharge from
36 the assisted living program for purposes of triggering any regulatory requirements

1 adopted under this subtitle for matters relating to notice, financial accounting, or
2 refunds.

3 19–1808.

4 (a) (1) The Department, in consultation with the Maryland Health Care
5 Commission and stakeholders, including advocates, consumers, and providers of
6 assisted living services, shall develop a standard assisted living program services
7 disclosure statement.

8 (2) **THE DEPARTMENT, IN CONSULTATION WITH THE**
9 **DEPARTMENT OF AGING, ALSO SHALL ADOPT A STANDARD VERSION OF THE**
10 **ASSISTED LIVING PROGRAM SERVICES DISCLOSURE STATEMENT FOR USE FOR**
11 **ASSISTED LIVING THAT IS INCLUDED IN CONTINUING CARE, AS DEFINED IN §**
12 **10–401 OF THE HUMAN SERVICES ARTICLE.**

13 (b) The purpose of the assisted living program services disclosure statement
14 is to inform potential consumers about the services provided by an assisted living
15 program in order to assist a consumer in choosing the most appropriate assisted living
16 program.

17 (c) (1) An assisted living program, as part of the application for licensure,
18 shall file with the Office of Health Care Quality the assisted living program services
19 disclosure statement developed by the Department.

20 (2) If an assisted living program changes the services reported on the
21 assisted living program services disclosure statement, the assisted living program
22 shall file with the Office of Health Care Quality an amended assisted living program
23 services disclosure statement within 30 days of the change in services.

24 (d) (1) If an individual requests a copy of an assisted living program's
25 services disclosure statement, the assisted living program shall provide a copy of the
26 services disclosure statement to the individual making the request.

27 (2) An assisted living program shall provide a copy of the services
28 disclosure statement to individuals as part of the program's marketing materials.

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2011.