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Written testimony in Support SB 804 **without** amendment

I am Jeffrey H. Myers. For 26 years, from 1995 up to and including 2021, I was Principal Counsel to the Maryland Department of Aging. I support the passage of SB 804 without amendment.

A potential amendment to SB 804 is afoot that would eliminate that pre-sales requirement from those necessary to obtain an initial certificate to operate as a continuing care at home contractor. Amending HB 972 or SB 804 to eliminate the pre-sales requirement for new continuing care at home providers found in COMAR 32.02.02.09B(2) and (3) would be unwise and expose elderly consumers to unnecessary risk.

The continuing care at home regulations were drafted in 1999 by a group of providers, actuaries, and Department of Aging staff. The various risks to consumer and providers were carefully thought through and balanced. The regulatory schema is rather complex. While regulations should always be examined to see if they need to be updated, one needs to be careful when adjusting a carefully balanced system. Changes made quickly on the fly often have unforeseen and adverse consequences. The issue sought to be addressed by The Wesley can be tackled by regulatory revisions. Sweeping changes to statutory language, which may have unintended consequences, is not necessary.

Under the current regulations, an initial certificate is required in order to begin full operations as a continuing care at home provider. After an applicant obtains a preliminary certificate, it can move to satisfy what is referred to as the pre-sales requirement. The pre-sales requirement is one of several requirements that must be met in order to obtain and initial certificate. The pre-sales requirement found at 32.02.02.09B(2) and (3) is that the applicant has to execute agreements with the greater of either: a) 10 percent of the subscribers needed to reach the breakeven point between expenses and revenue or b) 30 subscribers. In addition, the applicant has to collect a deposit equal to at least 10 percent of the entrance fee from any subscriber to be counted against the pre-sales requirement.

It is important to understand that a continuing care at home contract has a long-term care insurance policy baked into it. The contract takes up front entrance fees and periodic fees in return for promising coverage for long term care services if they are needed in the future. The only reason that continuing care at home contracts are not subject to the rules and regulations of the Insurance

Commissioner is Human Services Section 10-402(b)(1)(ii), which provides an exemption from the Insurance Article to continuing care providers.

This exemption exists for continuing care at home because a continuing care at home provider from Pennsylvania, Friends Life Care, came to the Department of Aging requesting to be covered as continuing care to escape the more onerous requirement of the Insurance Article. I was with the Department at the time. The Department supported this effort and the continuing care at home statute was passed circa 1997. The Department and Friends Life Care, along with actuaries and outside continuing care experts, then developed over the course of several years the regulatory requirements of 32.02.02 "Certificate of Registration for Continuing Care at Home Providers." I participated in the development of those regulations and signed off on them for legal sufficiency.

The pre-sales requirement has been in that regulatory structure since the very beginning in 2000. To legally begin marketing a continuing care at home product to consumers, a provider has to submit to the Department for approval, among other things, an actuarial study (because there is long term insurance type risk), financial projections, a market study, and marketing materials. At this point a provider can obtain a preliminary certificate and start making "pre-sales," i.e., taking deposits and signing contracts. The marketing materials can look great and the finance numbers can all add up correctly, but until you start marketing and trying to sell the product, you do not know for sure if the market in question is going to buy enough policies to make the product financially viable. As they say, "the proof of the pudding is in the eating." This is the rationale for the "pre-sales" requirement in COMAR 32.02.02.09B(2) and (3). Deeds (actual sales) are mightier than flashy brochures and financial projections based on assumptions the accountants disclaim.

Recently a continuing care retirement community proposed for Harford County, Eva Mar at Carsins Run, returned its preliminary certificate because it could not sell enough of its product to be viable. It could not meet the pre-sales requirement. This happened even though its actuarial study and financial projections all balanced correctly and its marketing materials and market study were found to be acceptable.

Fortunately, all the people who put down deposits for Eva Mar at Carsins Run over the years will get all their money back because until the pre-sales requirement is met, all deposits have to be held in escrow. The proposed amendment will eliminate this requirement for continuing care at home providers because an initial certificate will be able to be obtained at the same time as a preliminary certificate, in which case deposits will be able to go directly into revenue and spent on more marketing and other expenses.

Eva Mar at Carsins Run has spent millions of dollars on marketing over the years. If its initial subscribers' deposits had not been held in escrow, but gone into revenue, it is hard to believe that there would have been enough money left to refund all the deposits.

The proponents of the amendment say that the pre-sales requirement is unnecessary because there is a $500,000 capital reserve requirement that all continuing care at home providers must meet before obtaining its initial certificate and beginning the provision of services. However, the group

that developed the continuing care at home regulations did not see things that way at all. While there was debate about what the pre-sales requirement should be—one option considered was 100 contracts—none of the experts involved considered it redundant of the capital reserve requirement. The capital reserve requirement is a minimum base line to even be considered viable as a provider. The Insurance Article's minimum capital requirement in 2000 was $1,000,000. If a new provider took in just 25 $25,000 deposits that would be $625,000. If it turns out that the product is not marketable, i.e., not enough people will buy contracts, where will the money come from to refund those deposits? Twenty-five policy holders is not enough to make a viable book of business.

Eliminating the pre-sales requirement places too much risk on the elderly, initial subscribers. If an applicant cannot get 10% deposits from 10% of the number of people needed to make the enterprise financially viable and has to close down, the risk to those initial subscribers should be on the applicant. Once an applicant gets to 10% and has its initial certificate, the risk shifts to the subscribers. Getting to 10% does not assure financial viability, but that is where the regulatory drafters drew the line for shifting the risk. It can still be risky for seniors buying in early, but at least the initial subscribers are protected until the 10% threshold is reached. Eliminating that minimal protection is unwarranted.

If the General Assembly feels that the continuing care at home regulatory structure should be reviewed and revised, I would be happy to participate in such a work group.