CONTINUING-CARE PROVIDER REGISTRATION AND DISCLOSURE ACT

Act of Jun. 18, 1984, P.L. 391, No. 82 Cl. 40

AN ACT

Regulating continuing-care facilities; imposing duties upon the Insurance Commissioner; requiring certificate of authority; revocation of certificates; regulating disclosure statements; advertisement; regulating financial reserves; requiring escrows; regulating residents' agreements; establishing an advisory council; granting right of organization; regulating liquidation and rehabilitation; imposing civil liability; providing for the right to investigate and subpoena, liens, cross-collateralization, cease and desist orders and audits; imposing fees and regulations; and making criminal penalties.

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The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Continuing-Care Provider Registration and Disclosure Act.

Section 2. Purpose.

The General Assembly recognizes that continuing-care communities have become an important and necessary alternative for the long-term residential, social and health maintenance needs for many of the Commonwealth's elderly citizens.

The General Assembly finds and declares that tragic consequences can result to citizens of the Commonwealth when a provider of services under a continuing-care agreement becomes insolvent or unable to provide responsible care. The General Assembly recognizes the need for full disclosure with respect to the terms of agreements between prospective residents and the provider and the operations

of such providers. Accordingly, the General Assembly has determined that these providers should be regulated in accordance with the provisions of this act. The provisions of this act apply equally to for-profit and not-for-profit provider organizations. The provisions of this act shall be the minimum requirements to be imposed upon any person, association or organization offering or providing continuing care as set forth in this act.

Section 3. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Commissioner." The Insurance Commissioner.

"Continuing care." The furnishing to an individual, other than an individual related by consanguinity or affinity to the person furnishing such care, of board and lodging together with nursing services, medical services or other health-related services, regardless of whether or not the lodging and services are provided at the same location and pursuant to an agreement effective for the life of the individual or for a period in excess of one year, including mutually terminable contracts and in consideration of the payment of an entrance fee with or without other periodic charges.

"Department." The Insurance Department.

"Entrance fee." An initial or deferred transfer to a provider of a sum of money or other property made or promised to be made as full or partial consideration for acceptance of a specified individual as a resident in a facility. A fee which is less than the sum of the regular periodic charges for one year of residency will not be considered to be an entrance fee for the purposes of this act.

"Facility." The place or places in which a person undertakes to provide continuing care to an individual.

"Living unit." A room, apartment, cottage or other area within a facility set aside for the exclusive use or control of one or more identified individuals.

"Manager." A person who operates a facility for the provider.

"Omission of a material fact." The failure to state a material fact required to be stated in any disclosure statement or registration in order to make the statements made therein not misleading in light of the circumstances under which they were made.

"Provider." A person undertaking to provide continuing care in a facility.

"Resident." An individual entitled to receive continuing care in a facility.

"Solicit." All actions of a provider or manager in seeking to have individuals residing in this Commonwealth pay an application fee and enter into a continuing-care agreement by any means such as, but not limited to, personal, telephone or mail communication or any other communication directed to and received by any individual in this Commonwealth and any advertisements in any media distributed or communicated by any means to individuals in this Commonwealth.

Section 4. Certificate of authority.

(a) No providers shall engage in the business of providing continuing care in this Commonwealth without a certificate of authority therefor obtained from the commissioner as provided in this act.

(b) The application for a certificate of authority shall be filed with the department by the provider on forms prescribed by the department and shall include all information required by the department pursuant to regulations adopted by it under this act

including, but not limited to, the disclosure statement meeting the requirements of this act.

(c) Upon receipt of the application for a certificate of authority in proper form, the department shall, within ten business days, issue a notice of filing to the provider-applicant. Within 60 days of the notice of filing, the department shall enter an order issuing the certificate of authority or rejecting the application.

(d) If the commissioner determines that any of the requirements of this act have not been met, the commissioner shall notify the applicant that the application must be corrected within 30 days in such particulars as designated by the commissioner. If the requirements are not met within the time allowed, the commissioner may enter an order rejecting the application which shall include the findings of fact upon which the order is based and which shall not become effective until 20 days after the end of the foregoing 30-day period. During the 20-day period, the applicant may petition for reconsideration and shall be entitled to a hearing.

(e) With respect to a provider who has offered continuing-care agreements to existing or prospective residents in a facility established prior to the effective date of this act, which facility has one or more residents living there pursuant to such agreements entered into prior to the effective date of this act, and if such a provider is unable to comply with section 9 within the time provided, the commissioner may, after the filing of a petition by the provider, issue a temporary certificate of authority to the provider which may then enter into continuing-care agreements in compliance with all other applicable provisions of this act until the permanent certificate of authority has been issued. This temporary certificate may only be issued to those existing providers who will be able to comply with the provisions of section 9 within a period of time agreed to by the commissioner. This period of time shall not exceed two years.

(f) If a provider is not in compliance on, or before, the expiration date of the temporary certificate, they may petition the commissioner for an extension. Providers who may be able to comply with section 9, as determined by the commissioner, may be granted an extension of up to three years.

(g) If an existing provider is granted a permanent certificate of authority, any resident who entered into an agreement before the certificate of authority was granted shall be provided with all amendments to the application for registration and the initial disclosure statement.

(h) If an existing provider is denied a permanent certificate of authority, any resident who entered into a continuing-care agreement before the certificate of authority shall be entitled to all the appropriate remedies as provided in this act.

(i) If a facility is accredited by a process approved by the commissioner as substantially equivalent to the requirements of this section, then the facility shall be deemed to have met the requirements of this section and the commissioner shall issue a certificate of authority to the facility.

Section 5. Revocation of certificate of authority.

(a) The certificate of authority of a provider shall remain in effect until revoked after notice and hearing, upon written findings of fact by the commissioner, that the provider has:

(1) willfully violated any provision of this act or of any rule, regulation or order adopted hereunder;

(2) failed to file an annual disclosure statement or resident agreement as required by this act;

(3) failed to deliver to prospective residents the disclosure statements required by this act;

(4) delivered to prospective residents a disclosure statement which makes an untrue statement or omits a material fact and the provider, at the time of the delivery of the disclosure statement, had actual knowledge of the misstatement or omission; or

(5) failed to comply with the terms of a cease and desist order.

(b) Findings of fact in support of revocation, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(c) If the commissioner finds good cause to believe that the provider has been guilty of a violation for which revocation could be ordered, the commissioner may first issue a cease and desist order. If the cease and desist order is not or cannot be effective in remedying the violation, the commissioner may, after notice and hearing, order that the certificate of authority be revoked and surrendered. Such a cease and desist order may be appealed to the Commonwealth Court.

Section 6. Sale or transfer of ownership.

Any provider desiring to sell or transfer ownership of a continuing-care facility shall notify the department 30 days in advance of the completion of such sale or transfer. The commissioner may revoke, after notice and hearing, upon written findings of fact, the certificate of authority of any provider based upon a substantial change in control or ownership of such provider, which change is found not to be in the best interests of the residents of the facility or facilities owned or controlled by the provider such that the facility or facilities is in the imminent danger of becoming insolvent or that the care of present or prospective residents is threatened thereby.

Section 7. Disclosure statement.

(a) At the time of or prior to the execution of a contract to provide continuing care or at the time of or prior to the transfer of any money or other property to a provider by or on behalf of a prospective resident, whichever shall first occur, the provider shall deliver a disclosure statement to the person with whom the contract is to be entered into, which shall contain all of the following information unless such information is in the contract, a copy of which must be attached to the statement:

(1) The name and business address of the provider and a statement of whether the provider is a partnership, corporation or other type of legal entity.

(2) The names and business addresses of the officers, directors, trustees, managing or general partners, and any person having a 10% or greater equity or beneficial interest in or of the provider and a description of such person's interest in or occupation with the provider.

(3) With respect to:

(i) The provider.

(ii) Any person named in response to paragraph (2).

(iii) The proposed manager, if the facility will be managed on a day-to-day basis by a person other than an individual directly employed by the provider:

(A) A description of the business experience of such person, if any, in the operation or management of similar facilities.

(B) The name and address of any professional service, firm, association, trust, partnership or corporation in which such person has, or which has in such person, a 10% or greater interest and which it is presently intended will or may provide goods, leases or services to the facility of a value of $500 or more, within any year, including:

(I) A description of the goods, leases or services and the probable or anticipated cost thereof to the facility or provider.

(II) The process by which the contract was awarded.

(III) Any additional offers that were received.

The commissioner may request additional information, detailing why a contract was awarded, as may be necessary.

(C) A description of any matter in which such a person:

(I) has been convicted of a felony or pleaded nolo contendere to a felony charge or been held liable or enjoined in a civil action by final judgment if the felony or civil action involved fraud, embezzlement, fraudulent conversion or misappropriation of property; or

(II) is subject to a currently effective injunctive or restrictive order of a court of record, or within the past five years had any State or Federal license or permit suspended or revoked as a result of an action brought by a governmental agency or department, arising out of or relating to business activity or health care, including, without limitation, actions affecting a license to operate a foster care facility, nursing home, retirement home, home for the aged or facility registered under this act or a similar act in another state.

(4) A statement as to:

(i) Whether the provider is or ever has been affiliated with a religious, charitable or other nonprofit organization.

(ii) The nature of the affiliation, if any.

(iii) The extent to which the affiliate organization will be responsible for the financial and contract obligations of the provider.

(iv) The provision of the Federal Internal Revenue Code, if any, under which the provider or affiliate is exempt from the payment of income tax.

(5) The location and description of the physical property or properties of the facility, existing or proposed, and, to the extent proposed, the estimated completion date or dates, whether or not construction has begun and the contingencies subject to which construction may be deferred.

(6) The services provided or proposed to be provided under contracts for continuing care at the facility, including the extent to which medical care is furnished. The disclosure statement shall clearly state which services are included in basic contracts for continuing care and which services are made available at or by the facility at extra charge.

(7) A description of all fees required of residents, including the entrance fee and periodic charges, if any. The description shall include the manner by which the provider may adjust periodic charges or other recurring fees and the limitations on such adjustments, if any. If the facility is already in operation or if the provider or manager operates one or more similar facilities within this Commonwealth, there shall be included tables showing the frequency and average dollar amount of each increase in periodic rates at each such facility for the previous five years or such shorter period as the facility may have been operated by the provider or manager.

(8) The provisions that have been made or will be made, if any, to provide reserve funding or security to enable the provider to fully perform its obligations under contracts to provide continuing care at the facility, including the establishment of escrow accounts, trusts or reserve funds, together with the manner in which such funds will be invested and the names and experience of persons who will make the investment decisions.

(9) Certified financial statements of the provider, including:

(i) A balance sheet as of the end of the two most recent fiscal years.

(ii) Income statements of the provider for the two most recent fiscal years or such shorter period of time as the provider shall have been in existence.

(10) If operation of the facility has not yet commenced, a statement of the anticipated source and application of the funds used or to be used in the purchase or construction of the facility, including:

(i) An estimate of the cost of purchasing or constructing and equipping the facility including such related costs as financing expense, legal expense, land costs, occupancy development costs and all other similar costs which the provider expects to incur or become obligated for prior to the commencement of operations.

(ii) A description of any mortgage loan or other long-term financing intended to be used for the financing of the facility, including the anticipated terms and costs of such financing.

(iii) An estimate of the total entrance fees to be received from or on behalf of residents at or prior to commencement of operation of the facility.

(iv) An estimate of the funds, if any, which are anticipated to be necessary to fund start-up losses and provide reserve funds to assure full performance of the obligations of the provider under contracts for the provision of continuing care.

(v) A projection of estimated income from fees and charges other than entrance fees, showing individual rates presently anticipated to be charged and including a description of the assumptions used for calculating the estimated occupancy rate of the facility and the effect on the income of the facility of government subsidies for health care services, if any, to be provided pursuant to the contracts for continuing care.

(vi) A projection of estimated operating expenses of the facility, including a description of the assumptions used in calculating the expenses and separate allowances, if any, for the replacement of equipment and furnishings and anticipated major structural repairs or additions.

(vii) Identification of any assets pledged as collateral for any purpose.

(viii) An estimate of annual payments of principal and interest required by any mortgage loan or other long-term financing.

(11) Such other material information concerning the facility or the provider as may be required by the department or as the provider wishes to include.

(12) The cover page of the disclosure statement shall state, in a prominent location and type face, the date of the disclosure statement and that the issuance of a certificate of authority does not constitute approval, recommendation or endorsement of the facility by the department, nor is it evidence

of, nor does it attest to, the accuracy or completeness of the information set out in the disclosure statement.

(13) A copy of the standard form or forms of contract for continuing care used by the provider shall be attached as an exhibit to each disclosure statement.

(b) The provider shall file with the commissioner, annually within four months following the end of the provider's fiscal year, an annual disclosure statement which shall contain the information required by this act for the initial disclosure statement. The annual disclosure statement shall also be accompanied by a narrative describing any material differences between:

(1) The pro forma income statements filed pursuant to this act either as part of the application for registration or as part of the most recent annual disclosure statement.

(2) The actual results of operations during the fiscal year.

The annual disclosure statement shall also contain a revised pro forma income statement for the next fiscal year. The commissioner may request additional income statements when it is shown that such are necessary.

(c) From the date an annual disclosure statement is filed until the date the next succeeding annual disclosure statement is filed with the commissioner and prior to the provider's acceptance of part or all of any application fee or part of the entrance fee or the execution of the continuing-care agreement by the resident, whichever first occurs, the provider shall deliver the current annual disclosure statement to the individual or individuals who are current or prospective residents and with whom the continuing-care agreement is or may be entered into.

(d) In addition to filing the annual disclosure statement, the provider may amend its currently filed disclosure statement at any other time if, in the opinion of the provider, an amendment is necessary to prevent the disclosure statement and annual disclosure statement from containing any material misstatement of fact or omission to state a material fact required to be stated therein. Any such amendment or amended disclosure statement must be filed with the commissioner before it is delivered to any resident or prospective resident and is subject to all the requirements, including those as to content and delivery, of this act.

Section 8. False information.

(a) No provider shall make, publish, disseminate, circulate or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement of any sort containing any assertion, representation or statement which is untrue, deceptive or misleading.

(b) No provider shall file with the department or make, publish, disseminate, circulate or deliver to any person or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated or delivered to any person or placed before the public, any financial statement which does not accurately state its true financial condition.

Section 9. Reserves.

Each provider shall establish and maintain liquid reserves in an amount equal to or exceeding the greater of:

(1) the total of all principal and interest payments due during the next 12 months on account of any mortgage loan or other long-term financing of the facility; or

(2) ten percent of the projected annual operating expenses of the facility exclusive of depreciation.

The provider must notify the commissioner in writing at least ten days prior to reducing the funds available to satisfy this requirement and may expend no more than one-twelfth of the required balance each calendar month. In facilities where some residents are not under continuing-care agreements, the reserve shall be computed only on the proportional share of financing or operating expenses that is applicable to residents under continuing-care agreements at the end of the provider's most recent fiscal year. Funds in escrow accounts may be used to satisfy this reserve requirement if such funds are available to make payments when operating funds are insufficient for such purposes.

Section 10. Reserve fund escrow.

The commissioner may require the provider to establish and to maintain on a current basis, in escrow with a bank, trust company or other escrow agent approved by the department, a portion of all entrance fees received by the provider in an aggregate amount not to exceed the total of all principal and interest payments due during the next 12 months on account of any first mortgage loan or other long-term financing of the facility. The funds in such an escrow account may be invested with the earnings thereon payable to the provider. If the provider so requests in writing, the escrow agent shall release up to one-twelfth of the original principal balance of the escrow account. A release of funds shall not be made more than once during any calendar month and then only after the escrow agent has given written notice to the commissioner at least ten days prior to the release. The amount of this escrow fund shall be included in satisfying the reserves required under this act. This section shall only be applicable when the commissioner has cause to believe that additional protection may be necessary to secure the obligations assumed under all resident agreements.

Section 11. Lien on behalf of residents.

Prior to the issuance of a certificate of authority under this act or at such other time as the commissioner may determine it in the best interests of residents of a facility, the commissioner may file a lien on the real and personal property of the provider or facility to secure the obligations of the provider pursuant to existing and future contracts for continuing care. A lien filed under this section shall be effective for a period of ten years following such filing and may be extended by the commissioner upon a finding that such extension is advisable for the protection of residents of the facility. The lien may be foreclosed upon the liquidation of the facility or the insolvency or bankruptcy of the provider, and, in such event, the proceeds thereof shall be used in full or partial satisfaction of obligations of the provider pursuant to contracts for continuing care then in effect. The lien provided for in this section shall be subordinate to the lien of any first mortgage on the real property of the facility and may be subordinated with the written consent of the commissioner to the claims of other persons if the commissioner shall determine such subordination to be advisable for the efficient operation of the facility.

Section 12. Entrance fee escrow.

The commissioner shall require, as a condition of issuing a certificate of authority, that the provider establish an interest-bearing escrow account with a bank, trust company or other escrow agent approved by the commissioner. Any entrance fees or payments that are in excess of 5% of the then existing entrance fee for the unit, received by the provider prior to the date the resident is permitted to occupy the living unit in the facilities, shall be placed in the escrow account subject to release as follows:

(1) If the entrance fee gives the resident the right to occupy a living unit which has been previously occupied, the entrance fee and any income earned thereon shall be released to

the provider at such time as the living unit becomes available for occupancy by the new resident.

(2) If the entrance fee applies to a living unit which has not been previously occupied, the entrance fee shall be released to the provider at such time as the commissioner is satisfied that:

(i) Aggregate entrance fees received or receivable by the provider pursuant to executed continuing-care agreements equal not less than 50% of the sum of the entrance fees due at full occupancy of the portion of the facility under construction. For this paragraph, entrance fees receivable pursuant to an agreement will be counted only if the facility has received a deposit of 35% or more of the entrance fee due from the individual, or individuals, signing the contract.

(ii) The entrance fees received or receivable pursuant to the preceding paragraph plus anticipated proceeds of any first mortgage loan or other long-term financing commitment plus funds from other sources in the actual possession of the provider are equal to not less than 50% of the aggregate cost of constructing or purchasing, equipping and furnishing the facility plus not less than 50% of the funds estimated in the statement of anticipated source and application of funds submitted by the provider as part of its application to be necessary to fund start-up losses of the facility.

(iii) A commitment has been received by the provider for any permanent mortgage loan or other long-term financing described in the statement of anticipated source and application of funds submitted as part of the application for certificate of authority and any conditions of the commitment prior to disbursement of funds thereunder, other than completion of the construction or closing of the purchase of the facility, have been substantially satisfied.

(3) If the funds in an escrow account to which paragraphs (1) and (2) apply and any interest earned thereon are not released within 36 months, or such greater time as may have been specified by the provider with the consent of the commissioner, then such funds shall be returned by the escrow agent to the persons who made the payment to the provider.

(4) Nothing in this section shall require the escrow of any nonrefundable application fee charged to prospective residents.

(5) In lieu of any escrow which is required by the commissioner under this section, a provider shall be entitled to post a letter of credit from a financial institution, negotiable securities or a bond by a surety authorized to do business in this Commonwealth and approved by the commissioner as to form and in an amount not to exceed the amount required by paragraph (2)(i). The bond, letter of credit or negotiable securities shall be executed in favor of the commissioner on behalf of individuals who may be found entitled to a refund of entrance fees from the provider.

(6) An entrance fee held in escrow may be returned by the escrow agent at any time to the person or persons who paid the fee to the provider upon receipt by the escrow agent of notice from the provider that such person is entitled to a refund of the entrance fee.

Section 13. Cross-collateralization limited.

Only the unencumbered assets of a continuing-care facility may be pledged by the provider as collateral for the purpose of securing loans for other continuing-care facilities, whether proposed or existing.

Section 14. Resident's agreement.

(a) In addition to such other provisions as may be considered proper to effectuate the purpose of any continuing-care agreement, each agreement executed on and after the date of the adoption of the rules under this act shall be written in nontechnical language easily understood by a layperson and shall:

(1) Provide for the continuing care of only one resident, or for two or more persons occupying space designed for multiple occupancy, under appropriate procedures established by the provider and shall show the value of all property transferred, including donations, subscriptions, fees and any other amounts paid or payable by, or on behalf of, the resident or residents.

(2) Specify all services which are to be provided by the provider to each resident including, in detail, all items which each resident will receive and whether the items will be provided for a designated time period or for life and the average annual cost to the provider of providing the care. Such items may include, but not be limited to, food, shelter, nursing care, drugs, burial and incidentals.

(3) Describe the health and financial conditions upon which the provider may have the resident relinquish his space in the designated facility.

(4) Describe the health and financial conditions required for a person to continue as a resident.

(5) Describe the circumstances under which the resident will be permitted to remain in the facility in the event of financial difficulties of the resident.

(6) State the fees that will be charged if the resident marries while at the designated facility, the terms concerning the entry of a spouse to the facility and the consequences if the spouse does not meet the requirements for entry.

(7) Provide that the agreement may be canceled upon the giving of notice of cancellation of at least 30 days by the provider or the resident. If an agreement is canceled because there has been a good faith determination in writing, signed by the medical director and the administrator of the facility, that a resident is a danger to himself or others, only such notice as is reasonable under the circumstances shall be required.

(8) Provide in clear and understandable language, in print no smaller than the largest type used in the body of said agreement, the terms governing the refund of any portion of the entrance fee.

(9) State the terms under which an agreement is canceled by the death of the resident. The agreement may contain a provision to the effect that, upon the death of the resident, the moneys paid for the continuing care of such resident shall be considered earned and become the property of the provider.

(10) Provide for advance notice to the resident, of not less than 30 days, before any change in fees or charges or the scope of care or services may be effective, except for changes required by State or Federal assistance programs.

(11) Provide that charges for care paid in one lump sum shall not be increased or changed during the duration of the agreed upon care, except for changes required by State or Federal assistance programs.

(b) A resident shall have the right to rescind a continuing-care agreement, without penalty or forfeiture, within seven days after making an initial deposit or executing the agreement. A resident shall not be required to move into the facility designated in the agreement before the expiration of the seven-day period.

(c) If a resident dies before occupancy date, or through illness, injury or incapacity is precluded from becoming a resident under the terms of the continuing-care agreement, the agreement is automatically rescinded and the resident or his legal representative

shall receive a full refund of all moneys paid to the facility, except those costs specifically incurred by the facility at the request of the resident and set forth in writing in a separate addendum, signed by both parties to the agreement.

(d) No agreement for care shall permit dismissal or discharge of the resident from the facility providing care prior to the expiration of the agreement, without just cause for such a removal. "Just cause" shall include, but not be limited to, a good faith determination in writing, signed by the medical director and the administrator of the facility, that a resident is a danger to himself or others while remaining in the facility. If a facility dismisses a resident for just cause, the facility shall pay to the resident any refund due in the same manner as if the resident's agreement was terminated pursuant to this act.

(e) No act, agreement or statement of any resident, or of an individual purchasing care for a resident under any agreement to furnish care to the resident, shall constitute a valid waiver of any provision of this act intended for the benefit or protection of the resident or the individual purchasing care for the resident.

(f) Those agreements entered into prior to the effective date of this act or prior to the issuance of a certificate of authority to the provider shall be valid and binding upon both parties in accordance with their terms.

Section 15. Right to organization.

(a) Residents living in a facility holding a valid certificate of authority under this act shall have the right of self-organization.

(b) The board of directors, a designated representative or other such governing body of a continuing-care facility shall hold quarterly meetings with the residents of the continuing-care facility for the purpose of free discussion of subjects which may include income, expenditures and financial matters as they apply to the facility and proposed changes in policies, programs and services. Residents shall be entitled to at least seven days' notice of each quarterly meeting.

Section 16. Rehabilitation or liquidation.

(a) If, at any time, the commissioner shall determine, after notice and an opportunity for the provider to be heard, that:

(1) a portion of a reserve fund escrow required under this act has been or is proposed to be released;

(2) a provider has been or will be unable, in such a manner as may endanger the ability of the provider to fully perform its obligations pursuant to contracts for continuing care, to meet the pro forma income or cash flow projections previously filed by the provider;

(3) a provider has failed to maintain the reserves required under this act; or

(4) a provider is bankrupt or insolvent, or in imminent danger of becoming bankrupt or insolvent;

the commissioner may apply to the appropriate court of this Commonwealth or to the Federal bankruptcy court which may have previously taken jurisdiction over the provider or facility for an order directing the commissioner or authorizing the commissioner to appoint a trustee to rehabilitate or to liquidate a facility.

(b) An order to rehabilitate a facility shall direct the commissioner or trustee to take possession of the property of the provider and to conduct the business thereof, including the employment of such managers or agents as the commissioner or trustee may deem necessary and to take such steps as the court may direct toward removal of the causes and conditions which have made rehabilitation necessary.

(c) If, at any time, the court finds, upon petition of the commissioner, trustee or provider, or on its own motion, that the

objectives of an order to rehabilitate a provider have been accomplished and that the facility can be returned to the provider's management without further jeopardy to the residents of the facility, creditors, owners of the facility and the public, the court may, upon a full report and accounting of the conduct of the facility's affairs during the rehabilitation and of the facility's current financial condition, terminate the rehabilitation and, by order, return the facility and its assets and affairs to the provider's management.

(d) If, at any time, the commissioner determines that further efforts to rehabilitate the provider would be useless, the commissioner may apply to the court for an order of liquidation.

(e) An order to liquidate a facility:

(1) May be issued upon application of the commissioner whether or not there has been issued a prior order to rehabilitate the facility.

(2) Shall act as a revocation of the certificate of authority of the facility under this act.

(3) Shall include an order directing the commissioner or a trustee to marshal and liquidate all of the provider's assets located within this Commonwealth.

(f) In applying for an order to rehabilitate or liquidate a facility, the commissioner shall give due consideration in the application to the manner in which the welfare of persons who have previously contracted with the provider for continuing care may be best served. In furtherance of this objective, the proceeds of any lien obtained by the commissioner pursuant to this act may be:

(1) used in full or partial payment of entrance fees;

(2) used on behalf of residents of a facility being liquidated; or

(3) paid to other facilities operated by providers who have registered such facilities under this act.

(g) An order for rehabilitation under this section shall be refused or vacated if the provider posts a bond, by a recognized surety authorized to do business in this Commonwealth and executed in favor of the commissioner on behalf of persons who may be found entitled to a refund of entrance fees from the provider or other damages in the event the provider is unable to fulfill its contracts to provide continuing care at the facility, in an amount determined by the court to be equal to the reserve funding which would otherwise need to be available to fulfill such obligations.

Section 17. Civil liability.

(a) Any person who, as a provider, or on behalf of a provider:

(1) enters into a contract for continuing care at a facility which does not have a certificate of authority under this act;

(2) enters into a contract for continuing care at a facility without having first delivered a disclosure statement meeting the requirements of this act to the person contracting for such continuing care; or

(3) enters into a contract for continuing care at a facility with a person who has relied on a disclosure statement which omits a material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they are made, not misleading;

shall be liable to the person contracting for such continuing care for damages and repayment of all fees paid to the provider, facility or person violating this act, less the reasonable value of care and lodging provided to the resident by or on whose behalf the contract for continuing care was entered into prior to discovery of the violation, misstatement or omission or the time the violation, misstatement or omission should reasonably have been

discovered, together with interest thereon at the legal rate for judgments and court costs and reasonable attorney fees.

(b) Liability under this section shall exist regardless of whether or not the provider or person liable had actual knowledge of the misstatement or omission.

(c) A person may not file or maintain an action under this section if the person, before filing the action, received an offer, approved by the commissioner, to refund all amounts paid the provider, facility or person violating this act together with interest from the date of payment, less the reasonable value of care and lodging provided prior to receipt of the offer and the person failed to accept the offer within 30 days of its receipt. At the time a provider makes a written offer of rescission, the provider shall file a copy with the commissioner. The rescission offer shall recite the provisions of this section.

(d) An action shall not be maintained to enforce a liability created under this act unless brought before the expiration of six years after the execution of the contract for continuing care which gave rise to the violation.

(e) Except as expressly provided in this act, civil liability in favor of a private party shall not arise against a person, by implication, from or as a result of the violation of this act or a rule or order promulgated or issued under this act. This act shall not limit a liability which may exist by virtue of any other statute or under common law if this act were not in effect.

Section 18. Investigations and subpoenas.

(a) The department may make such public or private investigations or examinations within or outside of this Commonwealth as the commissioner deems necessary to determine whether any person has violated or is about to violate any provision of this act or any rule or order hereunder, or to aid in the enforcement of this act or in the prescribing of rules and forms hereunder and may publish information concerning any violation of this act or any rule or order hereunder.

(b) For the purpose of any investigation, examination or proceeding under this act, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the commissioner deems relevant or material to the inquiry, all of which may be enforced in any court of this Commonwealth which has appropriate jurisdiction.

(18 amended Oct. 7, 2010, P.L.478, No.66)

Compiler's Note: Section 2 of Act 66 of 2010, which amended section 18, provided that Act 66 shall apply to examinations instituted on or after the effective date of section 2.

Section 19. Authority, scope and scheduling of examinations.

(a) Every provider subject to examination in accordance with this act must keep all books, records, accounts, papers, documents and any or all computer or other recordings relating to its property, assets, business and affairs in such a manner and for such time periods as the department, in its discretion, may require in order that its authorized representatives may readily verify the financial condition of the company or person and ascertain whether the company or person has complied with the laws of this Commonwealth. A multifacility provider may be required to provide the financial statements of the component parts at the request of the commissioner or his designee. Unless specifically directed otherwise by regulations promulgated by the department, the financial statements need not be certified audited reports.

(b) The department or any of its examiners may conduct an examination of the books and records of each provider offering continuing care in this Commonwealth as often as the commissioner, in the commissioner's sole discretion, deems appropriate, but shall conduct an examination at least once in the first five-year period and once in the second five-year period following a provider's receipt of a certificate of authority under this act.

(c) In scheduling and determining the nature, scope and frequency of examinations under subsection (b), the commissioner shall consider matters including all of the following:

(1) The results of financial statement analyses.

(2) Changes in management or ownership.

(3) Reports of independent certified public accountants.

(4) The volume or nature of complaints by residents.

(5) The length of time a provider or a facility has been furnishing continuing care.

(6) Changes to disclosure statements or resident agreements.

(7) The expansion of existing facilities or addition of new facilities.

(8) Other information or criteria, which in the sole discretion of the commissioner, is relevant to the provider's financial condition or compliance with regulatory requirements.

(d) For purposes of completing an examination of a provider, the department may examine or investigate any person or the business of any person insofar as the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the provider.

(e) Examinations under this section shall be conducted pursuant to the procedures set forth under sections 904, 905, 906, 907 and 908 of the act of May 17, 1921 (P.L.789, No.285) , known as The Insurance Department Act of 1921, and 31 Pa. Code Ch. 12 (relating to cost of insurance department examinations).

(19 amended Oct. 7, 2010, P.L.478, No.66)

Compiler's Note: Section 2 of Act 66 of 2010, which amended section 19, provided that Act 66 shall apply to examinations instituted on or after the effective date of section 2.

Section 20. Consumers guide to continuing-care facilities.

The commissioner shall publish and distribute a consumers guide to continuing-care facilities and an annual directory of continuing-care facilities.

Section 21. Cease and desist orders; injunctions.

Whenever it appears to the commissioner that any person has engaged in, or is about to engage in, any act or practice constituting a violation of any provision of this act or any rule or order hereunder, the commissioner may:

(1) Issue an order directed at any such person requiring such person to cease and desist from engaging in such act or practice.

(2) Bring an action in any court which has appropriate jurisdiction to enjoin the acts or practices and to enforce compliance with this act or any rule or order hereunder. Upon a proper showing, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner shall not be required to post a bond.

Section 22. Criminal penalties.

(a) Any person who willfully and knowingly violates any provision of this act, or any rule or order under this act, shall, upon conviction, be sentenced to pay a fine of not more than $10,000

or to imprisonment for not more than two years, or both, for each violation.

(b) The commissioner may refer such evidence as is available concerning violations of this act or of any rule or order hereunder to the Attorney General or the proper county attorney who may, with or without such a reference, institute the appropriate criminal proceedings under this act.

(c) Nothing in this act limits the power of the State to punish any person for any conduct which constitutes a crime under any other statute.

Section 23. Fees.

(a) Within six months after the effective date of this act, the commissioner shall issue regulations setting forth those transactions which shall require the payment of fees by a provider and the fees which shall be charged.

(b) The commissioner may be reimbursed for any expenses it reasonably incurs itself, or by its agents, in pursuing its investigative and rehabilitation activities under this act.

Section 24. Reasonable time to comply with rules and standards.

Any provider who is offering continuing care may be given a reasonable time, not to exceed one year from the date of publication of any applicable rules or standards adopted pursuant to this act, within which to comply with the rules and standards and to obtain a certificate of authority.

Section 25. Regulations.

The commissioner shall have the authority to adopt, amend or repeal such rules and regulations as are reasonably necessary for the enforcement of the provisions of this act. Any initial rules and regulations necessary to the implementation of this act shall be promulgated or published within six months of the effective date of this act.

Section 26. Effective date.

This act shall take effect six months after passage.