

HOUSE SUBSTITUTE FOR  
SENATE BILL NO. 886

A bill to regulate the offer and sale of life interests and long-term leases in retirement communities that provide certain services and are independent living units, nursing homes, homes for the aged, adult foster care facilities, home care service agencies, hospices, or places that provide care for certain periods; to prohibit fraudulent practices in relation to the offer and sale of those life interests and long-term leases; to provide for the powers and duties of certain state governmental agencies; to provide for penalties and remedies; to prescribe penalties and civil sanctions; and to repeal acts and parts of acts.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. This act shall be known and may be cited as the  
2 "continuing care community disclosure act".

1           Sec. 3. As used in this act:

2           (a) "Administrator" means a person that performs  
3 administrative or operational functions within or in connection  
4 with the continuing care community.

5           (b) "Advertisement or marketing communication" means any  
6 disclosure statement, prospectus, pamphlet, circular, form letter,  
7 written or electronic advertisement, social media or other sales  
8 literature or advertising communication, including a written,  
9 printed, or pictorial communication, or a communication by means of  
10 a recorded telephone message or message spoken on the radio,  
11 television, or similar communications media, intended for  
12 distribution or transmission to prospective members in connection  
13 with an offer or sale of a continuing care agreement.

14           (c) "Amortized component of an entrance fee" means the portion  
15 of an entrance fee that is amortizable to reflect the cost of  
16 continuing care, multiplied by 1.5% for each month from the time of  
17 occupancy to the termination of membership by death or other cause.

18           (d) "Applicant" means a continuing care community applying for  
19 initial registration under section 19, applying for renewal  
20 registration under section 25, or applying to amend a registration  
21 under section 33.

22           (e) "Change in fees" means a change in either the amount or  
23 type of fees for continuing care, including entrance fees and  
24 monthly service fees, except for any change in fees mandated by a  
25 state or federal referral assistance program.

26           (f) "Complete", with reference to an application, means  
27 complete on its face and submitted with any registration fee and

1 any other information, record, approval, or similar item required  
2 by law or rule.

3 (g) "Continuing care" means some or all of the following  
4 services:

5 (i) A living unit.

6 (ii) Meals.

7 (iii) Personal care services.

8 (iv) Skilled nursing.

9 (v) Rehabilitative services.

10 (vi) Medical care.

11 (vii) Social activities.

12 (viii) Supervision.

13 (ix) Program of all-inclusive care for the elderly.

14 (x) Continuing care at home.

15 (h) "Continuing care agreement" means a written agreement,  
16 including a long-term lease or an agreement conferring a life  
17 interest, between a member and a continuing care community for  
18 continuing care upon payment of an entrance fee.

19 (i) "Continuing care at home" means, upon payment of an  
20 entrance fee, providing or arranging for the provision of all of  
21 the following at the member's home:

22 (i) Continuing care.

23 (ii) Access to comprehensive services, including, but not  
24 limited to, care coordination, home assessments, and assistance  
25 with activities of daily living.

26 (iii) Services with a higher level of care when required by the  
27 health condition of the member, as determined by the continuing

1 care community in consultation with the member or the member's  
2 representative.

3 (j) "Continuing care community" or "community" means a  
4 retirement community in which a person undertakes to provide or  
5 arrange for continuing care and which is 1 or more of the  
6 following:

7 (i) An adult foster care facility.

8 (ii) A home for the aged.

9 (iii) An independent living unit.

10 (iv) A nursing home.

11 (v) A home health care services agency.

12 (vi) Hospice.

13 (vii) A place that undertakes to provide care to a member for  
14 more than 1 year.

15 (k) "Continuing care administration fund" means the fund  
16 creation in section 31(3).

17 Sec. 5. As used in this act:

18 (a) "Department" means the department of licensing and  
19 regulatory affairs.

20 (b) "Disclosure statement" means a disclosure statement as  
21 required under section 19(1)(c) or that may be required by the  
22 department under section 25, as applicable.

23 (c) "Entrance fee" means money paid in a lump sum or  
24 installments or property transferred pursuant to a continuing care  
25 agreement before initiation of continuing care for 1 or more  
26 individuals and that confers the right to the continuing care.

27 (d) "Executive officer" means an individual holding executive

1 power in an organization and generally responsible for the day-to-  
2 day operations of the organization, such as a chief executive  
3 officer, chief financial officer, or chief operating officer.

4 (e) "Initiation of continuing care" means the commencement of  
5 a member's right to possess a living unit in a continuing care  
6 community or the commencement of the actual provision of continuing  
7 care, whichever occurs first.

8 (f) "Life interest" means the right, upon payment of an  
9 entrance fee, to receive continuing care for life.

10 (g) "Living unit" means a physical space within a continuing  
11 care community set aside for the exclusive use or control of 1 or  
12 more specific members.

13 (h) "Long-term lease" means an agreement between a member and  
14 a continuing care community whereby the member has the right to  
15 occupy a space for more than 1 year but not for the life of the  
16 member.

17 Sec. 7. As used in this act:

18 (a) "Member" means an individual who enters into a continuing  
19 care agreement with a continuing care community.

20 (b) "Monthly service fee" means a monthly charge to a member  
21 for continuing care and not as rent, or a daily prorated portion  
22 thereof.

23 (c) "Nonrefundable portion of the entrance fee" means the  
24 amortized component of an entrance fee and any other component of  
25 an entrance fee that is not refundable upon termination of the  
26 member under the terms and conditions of a continuing care  
27 agreement.

1 (d) "Offer of a continuing care agreement" includes an attempt  
2 to offer to sell, or a solicitation of an offer to enter into, a  
3 continuing care agreement.

4 (e) "Order" means a consent, authorization, approval,  
5 prohibition, or requirement applicable to a specific case issued by  
6 the department.

7 Sec. 9. As used in this act:

8 (a) "Person" means an individual, partnership, corporation,  
9 association, governmental entity, or other legal entity.

10 (b) "Publish" means to publicly issue or circulate by  
11 newspaper, mail, radio, television, or electronic means or  
12 otherwise to disseminate to the public.

13 (c) "Refundable portion of an entrance fee" means the  
14 component of an entrance fee that is refundable to the member or  
15 his or her estate under the terms and conditions of the continuing  
16 care agreement, but excludes the amortized component of an entrance  
17 fee.

18 (d) "Registrant" means a continuing care community registered  
19 under this act.

20 (e) "Reportable change", subject to subdivision (f), means any  
21 of the following:

22 (i) Any change in the tax status of the continuing care  
23 community.

24 (ii) Termination of the continuing care community's  
25 sponsorship, or a portion thereof, by a religious, nonprofit, or  
26 proprietary organization or group, or the establishment of any new  
27 sponsorship for the community.

1           (iii) Denial, suspension, or revocation of any license,  
2 certification, or registration held by the continuing care  
3 community and required by state or federal law.

4           (iv) The entry of any cease and desist order, other order  
5 similar in nature, or a temporary or permanent injunction by a  
6 court of competent jurisdiction that restricts the continuing care  
7 community from offering continuing care agreements to prospective  
8 members or restricts the community from operating in any material  
9 respect in compliance with the most recent registration.

10           (v) Any substantive amendments or changes in the disclosure  
11 statement, continuing care agreement, or the rules and regulations  
12 of the continuing care community.

13           (vi) Any significant alteration in the care, amenities, or  
14 services indicated in the disclosure statement or continuing care  
15 agreement.

16           (vii) Any change in monthly service fees.

17           (viii) A variation of 10% or more between the actual amount of  
18 any of the following items and the amount forecast in the  
19 continuing care community's pro forma financial plan most recently  
20 filed under this act:

21           (A) Total assets.

22           (B) Total liabilities.

23           (C) Equity.

24           (D) Fund balance or deficit.

25           (E) Long-term debt.

26           (F) Total revenue.

27           (G) Total expenses.

1 (H) Cash flow.

2 (ix) A violation of any debt covenant applicable to the  
3 continuing care community.

4 (f) "Reportable change" does not include a change in the value  
5 of an interest rate swap not related to the termination of the  
6 interest rate swap.

7 Sec. 11. As used in this act:

8 (a) "Sale of a continuing care agreement" means the execution  
9 of a continuing care agreement.

10 (b) "Sell a continuing care agreement" means to secure the  
11 sale of a continuing care agreement.

12 Sec. 13. (1) A continuing care community shall be organized  
13 and operated as either a for-profit or nonprofit entity. The  
14 entity's purposes shall be limited to ownership, organization, and  
15 operation of the continuing care community.

16 (2) Each continuing care community shall elect or appoint at  
17 least 1 member, along with an alternate, to serve in an advisory  
18 capacity to its governing body. The member shall be notified in  
19 advance of and invited to attend all meetings of the governing  
20 body. The member shall not have a vote unless the governing body  
21 grants such voting rights. The continuing care community is  
22 responsible for expenses incurred by the member representative in  
23 fulfilling his or her duties under this section.

24 Sec. 15. (1) Subject to subsections (3) and (4), a person  
25 shall not offer to enter into or enter into a continuing care  
26 agreement unless the person is registered or exempt from  
27 registration under this act.

1           (2) Subject to subsections (3) and (4), this act applies to  
2 all written or oral arrangements between a continuing care  
3 community and a member or prospective member in connection with the  
4 offer or the sale of a continuing care agreement.

5           (3) An offer or sale of a continuing care agreement is subject  
6 to this act if any of the following apply:

7           (a) Subject to subsection (4), the offer is made or accepted  
8 in this state.

9           (b) The continuing care community is or will be operated in  
10 this state.

11           (c) The offer originates from this state and is received at  
12 the place to which the offer is directed.

13           (d) The offer is directed by the offeror to this state and is  
14 received in this state.

15           (4) An offer of a continuing care agreement shall not be  
16 considered to be made in this state solely because of 1 or more of  
17 the following circumstances:

18           (a) Circulation in this state, by or on behalf of a publisher,  
19 of a bona fide newspaper, electronic media, or other publication of  
20 general, regular, and paid circulation that has had more than 2/3  
21 of its circulation outside this state during the past 12 months.

22           (b) Reception in this state of a radio or television program  
23 originating outside this state.

24           Sec. 17. (1) A continuing care community that is licensed in  
25 whole or part under article 17 of the public health code, 1978 PA  
26 368, 333.20101 to 333.22260, or the adult foster care facility  
27 licensing act, 1979 PA 218, MCL 400.701 to 400.737, is exempt from

1 any rules promulgated under article 17 of the public health code,  
2 1978 PA 368, 333.20101 to 333.22260, or the adult foster care  
3 facility licensing act, 1979 PA 218, MCL 400.701 to 400.737, that  
4 would interfere with a resident's access to a common area, subject  
5 to the resident's need for care and supervision.

6 (2) A continuing care community may request a variance from  
7 the application of a rule promulgated under article 17 of the  
8 public health code, 1978 PA 368, MCL 333.20101 to 333.22260, or  
9 promulgated under the adult foster care facility licensing act,  
10 1979 PA 218, MCL 400.701 to 400.737, and applicable to a home for  
11 the aged or adult foster care facility, respectively, that is part  
12 of the continuing care community. The department of human services  
13 shall grant the variance upon a finding of both of the following:

14 (a) That the rule unnecessarily segregates members of the  
15 continuing care community who reside in the home for the aged or  
16 adult foster care facility from other members of the continuing  
17 care community.

18 (b) That the variance will not result in a risk to human  
19 health or safety.

20 (3) An area where room and board together with personal care,  
21 protection and supervision, or supervised personal care are  
22 provided to a member is not a home for the aged as defined in  
23 section 20106 of the public health code, 1978 PA 368, MCL  
24 333.20106, or an adult foster care facility as defined in section 3  
25 of the adult foster care facility licensing act, 1979 PA 218, MCL  
26 400.703, if the services are only provided on a temporary basis  
27 under any of the following circumstances:

1 (a) While the member is recovering from an illness or  
2 accident.

3 (b) Until a living unit in an appropriate licensed area of the  
4 continuing care community becomes available.

5 (4) The relationship between a continuing care community and a  
6 member or prospective member is not subject to laws regulating the  
7 relationship between a landlord and a current or prospective  
8 tenant.

9 Sec. 19. (1) A person seeking initial registration under this  
10 act shall submit the following information to the department:

11 (a) An initial registration application on a form prescribed  
12 by the department, signed and verified by an individual authorized  
13 to act on behalf of the continuing care community.

14 (b) The organizing documents of the applicant, and all  
15 amendments thereto, authorizing the applicant to conduct business  
16 in this state and a copy of the most recent annual report, if  
17 required under state law.

18 (c) A disclosure statement that complies with section 37.

19 (d) A copy of each form of continuing care agreement for the  
20 continuing care community, which shall comply with section 39, and  
21 all exhibits or addenda to each form of continuing care agreement.

22 (e) A copy of any rules, policies, and procedures of the  
23 applicant required for compliance with this act.

24 (f) A statement, on a form prescribed by the department, of  
25 whether any of the following apply to any executive officer,  
26 administrator, or director identified in the application for  
27 registration:

1           (i) Has been convicted of a felony or been held liable or  
2 enjoined in a civil action by final judgment if the felony or civil  
3 action involved fraud, embezzlement, fraudulent conversion, or  
4 misappropriation of property.

5           (ii) Is subject to an injunctive or restrictive order or  
6 federal or state administrative order relating to business activity  
7 or health care as a result of an action brought by a public agency  
8 or department, including, without limitation, actions affecting a  
9 license to operate a continuing care community, foster care  
10 facility, nursing home, retirement home, or home for the aged.  
11 The statement shall, if applicable, specify the court or agency,  
12 any penalty imposed or damages assessed, and the date of conviction  
13 or judgment or the date, nature, and issuer of the order.

14           (g) An executed irrevocable consent to service of process  
15 subject to section 61.

16           (h) Financial statements that comply with section 41.

17           (i) Unless waived by the department, a statement of the use of  
18 proceeds of entrance fees to be collected by the continuing care  
19 community.

20           (j) A pro forma financial plan that complies with section 43.

21           (k) A feasibility study, unless waived in the reasonable  
22 discretion of the department. The feasibility study shall be made  
23 available for review upon the request of a member or prospective  
24 member. The department may require the feasibility study to include  
25 1 or more of the following:

26           (i) A statement of the purpose of the continuing care community  
27 and the need for the proposed services.

1           (ii) Documentation of the financial resources to be made  
2 available for the continuing care community.

3           (iii) A plan demonstrating the financial feasibility of the  
4 proposed continuing care community, including future funding  
5 sources.

6           (iv) An actuarial forecast that has been reviewed by a  
7 qualified actuary.

8           (v) A study demonstrating the proposed market for the  
9 continuing care community.

10          (vi) A detailed statement of the continuing care services to be  
11 offered.

12          (l) For a continuing care community seeking to offer continuing  
13 care at home, both of the following:

14           (i) A detailed business plan on how the needs and requirements  
15 of the members receiving continuing care at home will be met.

16           (ii) Agreements showing how and under what circumstances future  
17 specialized care, including assisted living, dementia care, and  
18 skilled nursing, will be provided when appropriate.

19          (m) Other material information as may reasonably be required  
20 by the department.

21          (n) Other material information as the applicant wishes to  
22 include.

23          (o) The initial registration application fee specified in  
24 section 31.

25          (2) If information required pursuant to subsection (1)(m) is  
26 not furnished by the applicant, or the department considers  
27 information submitted pursuant to subsection (1)(m) to be

1 unreliable or substantially incomplete, the department may  
2 investigate any matters concerning the missing or unreliable  
3 information. The applicant shall pay the actual cost of the  
4 investigation as determined in the reasonable discretion of the  
5 department. The payment shall be deposited in the continuing care  
6 administration fund.

7 (3) An applicant may request and the department may order that  
8 2 or more retirement communities be registered as a single  
9 continuing care community.

10 (4) The department may consider the opinions, appraisals, and  
11 reports of engineers, appraisers, or other experts presented by an  
12 applicant or an interested party on a question of fact concerning  
13 or affecting the continuing care agreements proposed to be offered  
14 and sold.

15 (5) An applicant may electronically transmit an application  
16 and fee for initial registration or renewal of registration to the  
17 department after the department posts notice on its website that it  
18 is prepared to receive those electronic filings.

19 Sec. 21. (1) Effective 60 days after the department receives a  
20 registration application, the application shall be considered to be  
21 complete unless the department proceeds as provided in subsection  
22 (2).

23 (2) If, before the expiration of the 60-day period under  
24 subsection (1), the department notifies the applicant that the  
25 application is not complete, specifying the information necessary  
26 to make the application complete or stating that the fee required  
27 to accompany the application has not been paid and specifying the

1 amount due, the running of the 60-day period under subsection (1)  
2 is tolled until the applicant submits to the department the  
3 specified information or fee amount due.

4 (3) Not more than 180 days after the expiration of the 60-day  
5 period under subsections (1) and (2), the department shall enter an  
6 order registering the continuing care community or denying the  
7 registration and submit a copy of the order to the applicant. An  
8 order approving a registration shall specify the expiration date of  
9 the registration. If the department denies registration, the order  
10 shall specifically describe the deficiencies in the registration  
11 application or instances of noncompliance by the applicant with the  
12 requirements of this act.

13 (4) If an order approving or denying registration is not  
14 timely entered under subsection (3), the registration is  
15 immediately effective unless the applicant has consented in writing  
16 to a waiver or delay of automatic effectiveness.

17 Sec. 23. (1) The fact that an application for registration has  
18 been filed or approved does not constitute any of the following:

19 (a) Approval of or a finding regarding the accuracy of any  
20 information in or accompanying the registration application.

21 (b) A recommendation, approval, or other finding by the  
22 department concerning the merits or qualifications of a person,  
23 life interest, long-term lease, transaction, or continuing care  
24 community.

25 (2) A person shall not make or cause to be made to a  
26 prospective member a representation inconsistent with this section.

27 Sec. 25. (1) Except as otherwise provided in this act, the

1 department shall renew the registration of a registrant that does  
2 all of the following:

3 (a) On or before the expiration date printed on the  
4 registration, submits to the department an application for renewal  
5 of registration on a form provided by the department and  
6 accompanied by such information described in section 19 as may be  
7 required by the department.

8 (b) Pays the fee required under section 31.

9 (2) A reasonable time before a registrant's registration  
10 expires, the department shall send a renewal application form to  
11 the registrant's last postal mailing address or electronic address  
12 on file with the department. The failure of the department to  
13 comply with this subsection does not relieve the registrant of the  
14 responsibility to timely file an application for renewal of  
15 registration.

16 Sec. 27. (1) Subject to subsections (2) and (3), an  
17 application for renewal of registration shall be processed in the  
18 same manner as an initial registration application under section  
19 21.

20 (2) If, within 60 days after receiving notice from the  
21 department under section 21(2), an applicant fails to submit to the  
22 department the specified information or fee amount due, the  
23 department may deny the registration renewal application.

24 (3) If an applicant files an application for renewal of  
25 registration as provided in section 25(1), the current registration  
26 continues in effect until a new registration renewal order is  
27 issued or denied or the department revokes the registration.

1 (4) If a registrant fails to file an application for renewal  
2 of registration as provided in section 25(1), both of the following  
3 apply:

4 (a) The registration lapses effective the day after the  
5 expiration date specified in the order under section 21.

6 (b) The continuing care community shall not enter or offer to  
7 enter a continuing care agreement after the expiration date unless  
8 the community is reregistered pursuant to sections 19 and 21.

9 Sec. 29. (1) The department may extend the term of an existing  
10 registration for a continuing care community for not more than 3  
11 fiscal years if the department determines that all of the following  
12 requirements are met:

13 (a) The continuing care community was registered under this  
14 act during the immediately preceding 5 fiscal years.

15 (b) The continuing care community meets all of the following  
16 financial requirements:

17 (i) Has not committed a material default in the payment of  
18 principal or interest on its indebtedness during the immediately  
19 preceding 3 years.

20 (ii) Has had income or revenues in excess of its expenses in  
21 each of the immediately preceding 3 years.

22 (iii) Has a ratio of current assets to current liabilities of  
23 not less than 1:1.

24 (iv) Has reserves or funds designated for the payment of its  
25 indebtedness in an amount equal to or greater than 1 year's debt  
26 service.

27 (c) The continuing care community or any person with joint and

1 several liability is not the subject of any action under sections  
2 55 to 63.

3 (2) Notwithstanding the grant of an extension of its  
4 registration, a continuing care community shall annually submit to  
5 the department the registration renewal fees specified in section  
6 31 and annual and semiannual financial statements under section 41.  
7 A registered continuing care community shall do all of the  
8 following:

9 (a) Submit the fees specified in section 31.

10 (b) Submit financial statements for that fiscal year that  
11 comply with section 41.

12 Sec. 31. (1) The fee for filing an application for initial  
13 registration of the offer or sale of continuing care agreements or  
14 continuing care at home agreements is \$250.00. If an application  
15 for registration is withdrawn before the effective date of  
16 registration or a stop order is issued before that date, the  
17 department shall retain the following:

18 (a) A fee of \$25.00 if the initial review has not been  
19 commenced.

20 (b) The full application fee if the review has commenced.

21 (2) The fee for filing an application for registration renewal  
22 is \$100.00.

23 (3) The continuing care administration fund is created within  
24 the state treasury. Fees collected by the department under this act  
25 shall be deposited into the fund. The state treasurer may receive  
26 money or other assets from any source for deposit into the fund.  
27 The state treasurer shall direct the investment of the fund. The

1 state treasurer shall credit to the fund interest and earnings from  
2 fund investments. Money in the fund at the close of the fiscal year  
3 shall remain in the fund and shall not lapse to the general fund.  
4 The department shall be the administrator of the fund for auditing  
5 purposes.

6 (4) The department shall expend money from the continuing care  
7 administration fund, upon appropriation, only for the purposes of  
8 administration and enforcement of this act.

9 Sec. 33. (1) A registrant shall notify the department promptly  
10 in writing within 45 days of any reportable change with respect to  
11 the continuing care community measured semiannually.

12 (2) A registrant shall submit to the department an application  
13 to amend a registration to address reportable changes. The  
14 disclosure statement and each form of continuing care agreement for  
15 the continuing care community, including all exhibits or addenda,  
16 shall be in a format that identifies revisions to the last  
17 documents approved by the department. If required by the  
18 department, the application to amend a registration shall include a  
19 pro forma financial plan that complies with section 43. The  
20 department may require the production of other financial  
21 information reasonably necessary for the purposes of this act. The  
22 amended registration shall be signed and verified by the  
23 administrator.

24 (3) Effective 30 days after the department receives an  
25 application to amend a registration, the application shall be  
26 considered to be complete unless the department proceeds as  
27 provided in subsection (4).

## Senate Bill No. 886 (H-2) as amended December 16, 2014

1 (4) If, before the expiration of the 30-day period under  
2 subsection (3), the department notifies the applicant that the  
3 application is not complete, specifying the information necessary  
4 to make the application complete, the running of the 30-day period  
5 under subsection (3) is tolled until the applicant submits to the  
6 department the specified information or fee amount due.

7 (5) Not more than 30 days after the expiration of the 30-day  
8 period under subsections (3) and (4), the department shall enter an  
9 order approving or denying the amendment and submit a copy of the  
10 order to the applicant. If the department denies the amendment, the  
11 order shall specifically describe the deficiencies in the  
12 application or instances of noncompliance by the applicant with the  
13 requirements of this act.

14 (6) If an order approving or denying an amendment is not  
15 timely entered under subsection (5), the amendment is immediately  
16 effective unless the applicant has consented in writing to a waiver  
17 or delay of automatic effectiveness.

18 (7) An amendment to an application filed after the effective  
19 date of the registration and approved by the department under  
20 subsection (5) takes effect on the date determined by the  
21 department, having due regard for the public interest and the  
22 protection of prospective members.

23 Sec. 35. (1) A continuing care community shall deliver to a  
24 prospective member all continuing care agreements pertinent to the  
25 continuing care sought by the prospective member[, the continuing care  
26 community emergency plan in case of power outage,] and the disclosure  
27 statement most recently approved by the department. The delivery  
shall be by a method considered acceptable by the continuing care

1 community and the prospective member and shall occur by the earlier  
2 of the following:

3 (a) The continuing care community's acceptance of a  
4 nonrefundable application fee from the prospective member, unless  
5 all of the following apply:

6 (i) The nonrefundable application fee does not exceed \$500.00.

7 (ii) The availability of a disclosure statement is disclosed in  
8 writing to the prospective member.

9 (iii) A disclosure statement is made available to the  
10 prospective member upon request.

11 (b) The prospective member's payment of at least 10% of the  
12 total entrance fee to reserve a living unit.

13 (2) Upon execution of the continuing care agreement and  
14 payment of the full entrance fee amount, the continuing care  
15 community shall provide the member with a physical copy of both of  
16 the following:

17 (a) The executed continuing care agreement.

18 (b) A physical copy of the disclosure statement, unless a  
19 physical copy has already been provided under subsection (1).

20 (3) A continuing care community shall make the feasibility  
21 study required under section 19 available for review by a member or  
22 prospective member upon request.

23 Sec. 37. (1) Subject to subsection (3), a disclosure statement  
24 shall include at a minimum the following information, unless waived  
25 by the department in the reasonable exercise of discretion:

26 (a) The name and address of the continuing care community and  
27 its affiliated parent or subsidiary business entity or partnership.

1           (b) The organization of the legal entity of the continuing  
2 care community as prescribed by the department.

3           (c) Whether the continuing care community or an affiliate,  
4 parent, or subsidiary is a religious, nonprofit, or proprietary  
5 organization. If the continuing care community uses a name  
6 designating or inferring a religious affiliation, a statement  
7 explaining the relationship with the religious organization or  
8 group or a statement that there is no relationship shall be  
9 included.

10          (d) Information concerning the identity and experience of  
11 persons affiliated with the continuing care community as the  
12 department shall prescribe.

13          (e) Whether the continuing care community participates in  
14 medicare or medicaid programs, or both.

15          (f) If the department has waived the submission of audited  
16 financial statements pursuant to section 41, a statement that an  
17 individual who purchases membership in a continuing care community  
18 during that period is entitled to damages or rescission under the  
19 same terms as provided in section 77 if, upon the availability of  
20 audited financial statements or any other valid basis, the  
21 department finds in the reasonable exercise of its discretion that  
22 material adverse financial conditions existed as of the date of the  
23 financial statements which were not disclosed.

24          (g) A statement that registration does not constitute approval  
25 of or a finding regarding the accuracy of any information in or  
26 accompanying the registration application.

27          (h) The entrance fee, any monthly services fees, and any other

1 fees or charges that may be assessed to a member or prospective  
2 member by the continuing care community.

3 (i) All of the following statements as to the effect of the  
4 death of a member on the continuing care agreement:

5 (i) If, before receiving continuing care from the continuing  
6 care community, a member dies before occupying the continuing care  
7 community, or through illness, injury, or incapacity is precluded  
8 from being a member under the terms of the continuing care  
9 agreement, the continuing care agreement is automatically canceled  
10 and the member or a legal representative of the member shall  
11 receive a full refund of all money paid to the continuing care  
12 community. However, costs incurred by the continuing care community  
13 at the request of the member and set forth in writing in a separate  
14 addendum are not required to be refunded.

15 (ii) If a member dies within the 7-day rescission period under  
16 subdivision (j), the continuing care agreement automatically  
17 terminates, and the continuing care community shall within 30 days  
18 refund any entrance fee or portion of an entrance fee paid.

19 (iii) If a member dies after the 7-day rescission period under  
20 subdivision (j), the continuing care agreement terminates as  
21 follows:

22 (A) As of the date that all possessions of the deceased member  
23 are removed from the living unit if the deceased member was the  
24 sole occupant. The entrance fee shall be refunded within 30 days  
25 after the fulfillment of the conditions for a refund set forth in  
26 the continuing care agreement.

27 (B) Immediately if the deceased member occupied a living unit

1 with another member. Any refundable portion of the deceased  
2 member's entrance fee shall be refunded within 60 days after the  
3 death of that member, but the continuing care agreement shall  
4 remain in effect for the living member.

5 (C) Immediately if the continuing care agreement is for  
6 continuing care at home. The refund shall be paid within 60 days  
7 after death of the member.

8 (j) A statement that a member may rescind without penalty a  
9 continuing care agreement within 7 days after executing the  
10 agreement and that the entrance fee or the portion of the entrance  
11 fee paid by the member shall be held by the continuing care  
12 community for the benefit of the member in a separate escrow  
13 account during that 7-day rescission period. A member shall not be  
14 required to initiate continuing care before the expiration of the  
15 7-day rescission period.

16 (k) A statement that following the 7-day rescission period  
17 under subdivision (j), termination of a continuing care agreement  
18 by the member, other than by the member's death, will result in a  
19 refund of the entrance fee within 30 days after the fulfillment of  
20 the conditions for a refund set forth in the continuing care  
21 agreement. If the continuing care agreement is for continuing care  
22 at home, the refund shall be paid within 60 days after termination.

23 (l) A statement that monthly service fees and other fees  
24 assessed to a member are subject to increase by the continuing care  
25 community based on the reasonable cost of operations including the  
26 provision of care and services, and that the continuing care  
27 community shall give advance notice of not less than 60 days to the

1 member before a new fee or change in a fee becomes effective.

2 (m) A statement that members may be charged assessments and a  
3 statement of the method used to allocate any assessment.

4 (n) A statement that the continuing care agreement is subject  
5 and subordinate to any mortgages on the property or any other  
6 creditors with a preferred status.

7 (o) Whether entrance fees are subject to an escrow under  
8 section 45(2) or an alternative financial arrangement under section  
9 47, including a description of any applicable arrangement.

10 (p) The proposed application of the proceeds of the entrance  
11 fee by the continuing care community.

12 (q) The location and description of any premises that are used  
13 or proposed to be used for the provision of continuing care.

14 (r) A description of the continuing care services provided and  
15 the extent to which medical care is furnished.

16 (s) A description of the health and financial conditions  
17 required for a member to qualify for or to remain in the continuing  
18 care community, including temporary or permanent transfer of the  
19 member from his or her original living unit to a different type of  
20 living unit or different level of care or services, and whether a  
21 temporary or permanent transfer may result in termination of the  
22 continuing care agreement.

23 (t) A statement that the refundable portion of the entrance  
24 fee is equal to the total entrance fee paid less all of the  
25 following:

26 (i) The nonrefundable portion of the entrance fee.

27 (ii) A sales cost in conjunction with the continuing care

1 agreement, not to exceed 8% of the entrance fee.

2 (iii) Any balance owed to the continuing care community for  
3 monthly service fees or other charges under the continuing care  
4 agreement.

5 (iv) A refurbishing fee that is the greater of 4% of the  
6 entrance fee or the actual costs of refurbishing the living unit if  
7 actual costs are known at the time of the refund and if an itemized  
8 list of actual costs is provided to the member.

9 (u) A detailed description of how the entrance fee refund is  
10 affected if a member moves from his or her original living unit to  
11 a different living unit.

12 (v) Whether the continuing care agreement terminates and  
13 whether a refund of the entrance fee is due if a member permanently  
14 or temporarily transfers to a different level of care within the  
15 continuing care community.

16 (w) The conditions upon which a member may reoccupy the  
17 member's living unit after termination of the continuing care  
18 agreement.

19 (x) The fees that will be charged if a member of the  
20 continuing care community marries, the terms and conditions as to  
21 membership in the continuing care community by the new spouse of a  
22 member or in the event of the divorce of a member, and the  
23 consequences if the new spouse does not meet the requirements for  
24 membership.

25 (y) The circumstances under which a person will be permitted  
26 to remain a member of the continuing care community in the event of  
27 possible financial difficulties of the member.

1           (z) Whether, if financial assistance is provided to the member  
2 through a charitable fund, a spend down of the entrance fee  
3 otherwise required for continued membership, or a reduction of  
4 monthly service fees or other fees assessed under the continuing  
5 care agreement or under some other arrangement, the financial  
6 assistance will be subject to either of the following:

7           (i) Be offset from the entrance fee refund due to the member or  
8 the member's estate upon termination of the continuing care  
9 agreement and upon removal of all possessions of the member or  
10 deceased member from the unit.

11           (ii) Vest in the continuing care community in the form of a  
12 claim for repayment of such financial assistance against the member  
13 or the member's estate.

14           (aa) An annual financial statement under section 41 as an  
15 attachment to and integral part of the disclosure statement.

16           (bb) Other material information as required by the department.

17           (cc) Other material information that the applicant wishes to  
18 include.

19           (dd) The following items in the beginning of the disclosure  
20 statement, in all capital letters, and in substantially the  
21 following language:

22           (i) "You may cancel the purchase and receive a full refund less  
23 damages to the living unit within 7 days after either making a  
24 deposit and receiving a copy of the disclosure statement or  
25 executing the continuing care agreement. You are not required to  
26 move into the continuing care community before the expiration of  
27 this 7-day period."

1           (ii) "The purchase of a life interest or long-term lease is an  
2 investment that may involve a major financial commitment, and you  
3 should seek advice from an attorney or other financial advisor who  
4 is independent of the continuing care community."

5           (iii) "This disclosure statement is required by law to contain  
6 all material facts regarding the offering it makes. No person is  
7 authorized to make any promises in connection with this offering  
8 other than those contained in this disclosure statement."

9           (iv) "The department of licensing and regulatory affairs has  
10 not passed upon the accuracy of this disclosure statement or  
11 approved or disapproved of the offering described herein. Any  
12 representation to the contrary is unlawful and should be reported  
13 to the department."

14           (v) "If you enter into a life interest or long-term lease  
15 during the period when financial statements submitted by the  
16 continuing care community to the department of licensing and  
17 regulatory affairs are unaudited, you are entitled to damages or  
18 rescission if the department finds in the reasonable exercise of  
19 its discretion that material adverse conditions existed at the date  
20 of the financial statements and were not disclosed."

21           (vi) "More complete information is on file with the department  
22 of licensing and regulatory affairs and is available free of charge  
23 at the offices of the continuing care community."

24           (2) Subject to subsection (3), a disclosure statement shall be  
25 set forth in not less than 12-point type. The department may  
26 prescribe the format of a disclosure statement and may require an  
27 applicant to set forth any of the following in its disclosure

1 statement in a specified position and type size:

2 (a) Potential adverse information.

3 (b) That registration does not constitute approval,  
4 recommendation, or endorsement by the department.

5 (3) The department shall accept, in place of the disclosure  
6 statement that meets the requirements set forth in subsections (1)  
7 and (2), a disclosure statement form required by a federal  
8 government agency or a government agency of another state that the  
9 department has determined by rule or order to meet the requirements  
10 of this section.

11 Sec. 39. A continuing care agreement shall meet all of the  
12 following requirements:

13 (a) Specify in reasonable detail the rights, privileges,  
14 liabilities, and obligations of each party to the continuing care  
15 agreement with respect to the statements included in the disclosure  
16 statement under section 37(1)(h) to (cc).

17 (b) Specify whether a continuing care agreement may be  
18 terminated due to a material breach by either party and if so, what  
19 constitutes a material breach.

20 (c) Specify that the continuing care community may provide  
21 access to an adequate alternative facility that will provide care  
22 for the member, in place of or in mitigation of any damages.

23 (d) Specify that the continuing care community will not  
24 terminate a member without 30 days' written notice unless the  
25 continuing care community provides access to an adequate  
26 alternative facility.

27 (e) Each continuing care agreement shall be set forth in not

1 less than 12-point type. The department may prescribe the format of  
2 a continuing care agreement or require a continuing care community  
3 to set forth in a continuing care agreement potential adverse  
4 information in designated positions and in a type size specified by  
5 the department.

6 (f) Specify that a continuing care agreement does not confer a  
7 property interest, an individual or partial ownership of a  
8 continuing care community, or voting rights in the operation of a  
9 continuing care community.

10 Sec. 41. (1) Financial statements under section 19, 25, or 29  
11 shall meet all of the following requirements:

12 (a) Be submitted with a statement of any adverse material  
13 changes in the financial condition of the entity from the date of  
14 the financial statement.

15 (b) Subject to subdivision (c), be of form and content  
16 required by the department.

17 (c) Not be consolidated financial statements except under  
18 circumstances prescribed by the department. Requirements imposed by  
19 the department under subdivision (b) or this subdivision shall be  
20 consistent with generally accepted accounting principles or other  
21 nationally recognized accounting standards applicable to the  
22 entity.

23 (d) Be submitted within 120 days after the end of the entity's  
24 fiscal year.

25 (e) Be audited and prepared by a certified public accountant  
26 in accordance with generally accepted auditing standards, subject  
27 to all of the following:

1           (i) The department may waive all or part of this requirement if  
2 it is not necessary for the protection of the public. The  
3 department may impose conditions and restrictions on the waiver  
4 that it considers appropriate.

5           (ii) Unaudited financial statements may be submitted if the  
6 entity has not been in existence for 1 complete fiscal year.

7           (iii) If the audited financial statements are more than 120 days  
8 old, they shall be submitted with current unaudited financial  
9 statements.

10           (iv) Unaudited financial statements authorized under  
11 subparagraph (i), (ii), or (iii) shall be accompanied by the following  
12 written disclosure, or a substantially equivalent statement,  
13 immediately adjacent thereto, in all capital letters and at least  
14 14-point type:

15           "These financial statements are prepared without audit. A  
16 certified public accountant has not examined the financial  
17 statements and accordingly has expressed no opinion on them."

18           (2) Audited financial statements filed with the department  
19 shall include a consent of the certified public accounting firm,  
20 signed and dated at or near the effective date of the audit,  
21 approving the use of its name and its opinion in the continuing  
22 care community's disclosure statements and registration  
23 application. In the case of a substantial delay in effectiveness or  
24 an adverse material change in the filing, the department may  
25 require an updated consent.

26           (3) If the independent certified public accountant engaged as  
27 the principal accountant to audit the continuing care community's

1 financial statements was not the principal accountant for the  
2 continuing care community's most recently filed audited financial  
3 statements, or a legal successor thereto, then all of the following  
4 apply:

5 (a) The continuing care community shall furnish the department  
6 with a statement of the date when the current independent  
7 accounting firm was engaged and whether, in the 18 months preceding  
8 the engagement, there were any disagreements with the former  
9 principal accounting firm in a matter of accounting principles or  
10 practices, financial statement disclosure, or accounting procedure  
11 which, if not resolved to the satisfaction of the former accounting  
12 firm, would have required a reference, in the accounting firm's  
13 opinion, to the subject matter of the disagreement.

14 (b) The continuing care community shall request the former  
15 accounting firm to furnish the continuing care community with a  
16 letter stating whether it agrees with the statement of the  
17 continuing care community under subdivision (a) and, if not,  
18 stating why it does not agree. The letter shall be furnished by the  
19 continuing care community to the department.

20 (4) If an entity owns multiple continuing care communities or  
21 if the organization has 1 or more affiliates, the department may  
22 require additional financial information for each continuing care  
23 community or affiliate but shall not require any audited financial  
24 statements other than the consolidated financial statements of the  
25 entity.

26 (5) Within 30 days after the end of the first half of its  
27 fiscal year, a continuing care community shall submit to the

1 department an unaudited semiannual financial statement that  
2 includes at least all of the following:

- 3 (a) A balance sheet.
- 4 (b) An income statement.
- 5 (c) A statement of cash flows.
- 6 (d) A statement of how entrance fee proceeds are used.
- 7 (e) A management discussion explaining material fluctuations  
8 in the balance sheet and income statement, compared to the prior  
9 period or prior year-to-date.

10 Sec. 43. A pro forma financial plan shall include a financial  
11 forecast for a period of 3 years, presented on the same accounting  
12 basis as the financial statements, including all of the following:

- 13 (a) A balance sheet.
- 14 (b) A statement of changes and activities or statement of  
15 operations.
- 16 (c) A statement of cash flow.
- 17 (d) Expected cash proceeds from sales of continuing care  
18 agreements based on projected occupancy and attrition rates.
- 19 (e) Expected cash proceeds from monthly service fees,  
20 donations, interest, and entrance fees.
- 21 (f) Amount of reserves expected to be provided for capital  
22 replacement, improvements, maintenance, refunds, and other  
23 expenses.
- 24 (g) A statement of assumptions and principles used to make the  
25 forecast.

26 Sec. 45. (1) If a member pays funds to a continuing care  
27 community before occupancy, the funds shall be held in a trust

1 account unless this requirement is waived or modified by the  
2 department. Any interest or other income from the investment of the  
3 funds held in the trust account shall accrue to the benefit of the  
4 member. The department may, by rule or order, determine the  
5 conditions of the trust account. Funds placed with a continuing  
6 care community for continuing care at home are not subject to the  
7 requirements of this subsection.

8 (2) The department may require a deposit with an escrow agent  
9 acceptable to the department of an amount the department considers  
10 necessary for the continuing care community to fulfill its  
11 obligations if both of the following apply:

12 (a) The department finds 1 or more of the following:

13 (i) The financial condition of the continuing care community  
14 may materially jeopardize the care of members.

15 (ii) The continuing care community is insolvent or in jeopardy  
16 of becoming insolvent.

17 (iii) The continuing care community is not meeting its pro forma  
18 financial plan.

19 (b) The department determines the escrow to be necessary and  
20 appropriate to protect prospective members.

21 (3) If subsection (2)(a) and (b) applies, the department may  
22 summarily order the temporary suspension of a continuing care  
23 community's approval to offer continuing care agreements pending a  
24 hearing under section 69(2).

25 (4) The department may direct the escrow agent to return all  
26 the funds escrowed under subsection (2) to the members if any of  
27 the following apply:

1 (a) The department finds that any condition of an escrow  
2 agreement has not been satisfied or that any provision of this act  
3 or rules promulgated under this act has not been complied with.

4 (b) The registration or exemption of the continuing care  
5 community is revoked.

6 (5) An escrow agreement required under this section shall  
7 comply with all of the following:

8 (a) Be executed by the escrow agent and continuing care  
9 community.

10 (b) State that its purpose is to protect the members, that the  
11 escrow is for the benefit of each member in the amount paid by each  
12 member, and that all funds subject to the escrow shall be  
13 deposited, held, or guaranteed under the arrangement to remain the  
14 property of the respective members for whose account the proceeds  
15 were deposited and not subject to any liens or charges by the  
16 escrow agent or to judgments, garnishments, or creditor's claims  
17 against the continuing care community until the funds are released  
18 pursuant to this section.

19 (c) State that the department is authorized to inspect the  
20 records of the escrow agent relating to the escrow account.

21 (d) State that, upon order of the department or a court of  
22 competent jurisdiction, the escrow agent shall release and pay over  
23 the funds, or a portion thereof, to the continuing care community  
24 or member as ordered.

25 (e) Include on its face an acknowledgment executed by the  
26 department indicating approval of the form and content of the  
27 escrow agreement. The acknowledgment does not make the department a

1 party to the escrow agreement.

2 (f) Specify 1 of the following methodologies to be used to  
3 determine the amount of funds that may be released pursuant to a  
4 request under subsection (7):

5 (i) An amount up to 75% of the funds as a result of occupancy  
6 of at least 75% of living units in the continuing care community.  
7 The continuing care community may request release of an additional  
8 5% of the funds in proportion to each 5-percentage-point increase  
9 in occupancy. Upon achieving 90% occupancy of living units, the  
10 continuing care community may request and the department may  
11 authorize release of all the funds. For purposes of this  
12 subparagraph and subparagraph (ii), occupancy shall be measured by  
13 the total number of living units of the entire continuing care  
14 community designated for occupancy under continuing care  
15 agreements.

16 (ii) An amount equal to 1-1/2% per month of the total entrance  
17 fees escrowed, with amortization beginning as of the date of  
18 occupancy of a living unit by the member. Upon achieving 90%  
19 occupancy of living units, the continuing care community may  
20 request and the department may approve release of all funds subject  
21 to the escrow arrangement.

22 (6) An escrow account under this section shall comply with all  
23 of the following:

24 (a) Checks shall be made payable to the depository approved by  
25 the department.

26 (b) The account shall be established with an escrow agent  
27 acceptable to the department and the funds shall be kept and

1 maintained in an account separate and apart from any depository  
2 account of the continuing care community.

3 (c) All proceeds deposited in escrow remain the property of  
4 the respective members for whose account the proceeds were  
5 deposited and are not subject to a lien or charge by the escrow  
6 agent or to a judgment, garnishment, or creditor's claim against  
7 the continuing care community until the funds are released to the  
8 continuing care community as provided in this section.

9 (d) If required by the department, a quarterly statement  
10 indicating the status of the escrow account shall be furnished by  
11 the escrow agent to the department.

12 (7) A request for release of escrow funds under subsection (2)  
13 or for the discontinuance or modification of an escrow arrangement  
14 under subsection (2) shall be submitted by the administrator. The  
15 request shall include the following documentation, unless the  
16 documentation was previously provided in the most recent  
17 registration application or unless waived or modified, in whole or  
18 in part, by the department in the reasonable exercise of its  
19 discretion:

20 (a) The methodology under subsection (5)(f) for calculating  
21 the amount of funds to be released and supporting documentation.

22 (b) A statement by the continuing care community that the  
23 funds were placed in escrow as required by an order of the  
24 department imposing the escrow arrangement and pursuant to the  
25 terms and conditions of the escrow agreement.

26 (c) A statement by the continuing care community that it has  
27 satisfied all obligations for release of funds from escrow.

1 (d) If required by the department, a statement by the escrow  
2 agent, signed by an appropriate officer, setting forth the  
3 aggregate amount of escrowed funds placed with the escrow agent.

4 (e) The name of each member and the amount held in escrow for  
5 the account of the member.

6 (f) A pro forma financial plan that complies with section 43.

7 (g) Documentation evidencing availability of adequate  
8 resources to fund the continuing care community's capital  
9 expenditures, debt service, refund of entrance fees, operating  
10 costs, continuing care community maintenance, and other costs and  
11 expenses projected for not less than 3 years.

12 (h) Audited financial statements for the continuing care  
13 community's most recent 4 fiscal years and financial statements for  
14 any portion of the current fiscal year ending within 120 days after  
15 the date of filing.

16 (i) Commitments for construction and permanent loan financing  
17 together with a copy of an adequate construction bond.

18 (j) Irrevocable lines or letters of credit, other irrevocable  
19 instruments of credit, confirmations of deposits of proceeds of  
20 sales of securities, leases, or evidences of any other valid  
21 commitments or income.

22 (k) Assumptions and the basis of schedules for attrition  
23 rates, occupancy rates, refund of entrance fees, debt service,  
24 operating expenses, and operating income.

25 (l) A commitment to notify the department promptly in writing  
26 of a material change in the information submitted under this  
27 subsection.

1           (8) The amount released shall be based on the methodology  
2 specified in the escrow agreement pursuant to subsection (5)(f),  
3 unless a switch to the alternative methodology specified in  
4 subsection (5)(f) is requested by the continuing care community and  
5 approved by the department.

6           (9) After submission of a request for release of funds  
7 pursuant to subsection (7), the department may approve release to  
8 the continuing care community of funds held in escrow pursuant to  
9 subsection (2). An order issued by the department approving the  
10 release of funds held in escrow under subsection (2), in whole or  
11 in part, or for modification or discontinuance of an escrow  
12 arrangement imposed pursuant to subsection (2), shall include  
13 authorization for the escrow agent to release to the continuing  
14 care community those amounts of the escrowed funds applicable to a  
15 specified member as stated in the order.

16           Sec. 47. (1) In lieu of an escrow arrangement imposed pursuant  
17 to section 45(2), the department may approve an alternative  
18 financial arrangement that separates or secures a designated amount  
19 of funds of the continuing care community for the benefit of  
20 members of the continuing care community or provides for the  
21 payment of funds on behalf of members through a surety bond,  
22 irrevocable letter of credit, trust account, guarantee, or other  
23 acceptable financing method or arrangement approved by the  
24 department. Documentation establishing an alternative financial  
25 arrangement shall be approved by the department and shall name the  
26 department as a party or third party beneficiary of the alternative  
27 financial arrangement to act on behalf of the members of the

1 continuing care community.

2 (2) An alternative financial arrangement approved pursuant to  
3 this section shall comply with all of the following requirements:

4 (a) Be established pursuant to 1 or more written agreements  
5 approved by the department between the continuing care community  
6 and a reputable financial institution, escrow agent, surety,  
7 lender, guarantor, or other entity, which may include an affiliate  
8 of the continuing care community, authorized to transact business  
9 in this state.

10 (b) State that the purpose of the arrangement is to protect  
11 members of the continuing care community from the inability of the  
12 continuing care community to refund entrance fees when due.

13 (c) Be in an amount that is at least equal to the total  
14 entrance fees that would be collected for the continuing care  
15 community and that allows the continuing care community to fulfill  
16 its obligations to members consistent with the purpose for  
17 imposition of the arrangement.

18 (d) Require that all proceeds deposited, held, or guaranteed  
19 under the arrangement remain the property of the respective members  
20 for whose account the proceeds were deposited and are not subject  
21 to any liens or charges by the escrow agent or to judgments,  
22 garnishments, or creditor's claims against the continuing care  
23 community until the proceeds are released pursuant to this section.

24 (e) Provide that, upon order of the department or a court of  
25 competent jurisdiction, the appropriate amount of funds described  
26 in this section shall be released and paid to the continuing care  
27 community or member as ordered.

1           (f) Require that quarterly balance statements be provided to  
2 the department directly from the escrow agent, financial  
3 institution, or other entity with custody of the funds and  
4 authorize the department to inspect the records pertinent to the  
5 arrangement.

6           (g) Comply with such other terms or conditions imposed by the  
7 department by rule or order.

8           (3) The department shall take into consideration the amount of  
9 the entrance fees and other fees to be charged in addition to the  
10 number of continuing care agreements to be offered, granted, or  
11 sold in determining the initial amount of the alternative financial  
12 arrangement and shall amend the amount of the alternative financial  
13 arrangement, as the public interest requires, using the same  
14 factors.

15           (4) If a continuing care community fails to complete its  
16 obligations under a continuing care agreement, the financial  
17 institution that is a party to the alternative financial  
18 arrangement with the continuing care community shall, upon order of  
19 the department, pay funds to the department or its designee for the  
20 benefit of all members.

21           (5) If an instrument comprising an alternative financial  
22 arrangement expires or is canceled and the continuing care  
23 community is still under an obligation to provide certain items  
24 under the continuing care agreement, the continuing care community,  
25 at its option, may either establish a new alternative financial  
26 arrangement under subsection (1) or have the department impose  
27 under section 45(2) an escrow of entrance and other fees. Until an

1 alternative financial arrangement acceptable to the department is  
2 established or escrow is imposed, the continuing care community  
3 shall not enter into any additional continuing care agreements. An  
4 alternative financial arrangement approved under this section may  
5 be released in whole or in part by order of the department, subject  
6 to the requirements for release of escrow funds pursuant to section  
7 45.

8           Sec. 49. (1) A registered continuing care community shall  
9 prepare and maintain for not less than 6 years all of the following  
10 records:

11           (a) Accounts and records of each day's sales of memberships in  
12 the continuing care community, receipts of cash, and other debits  
13 and credits.

14           (b) Copies of contracts, including continuing care agreements  
15 and terminated continuing care agreements, management contracts for  
16 any material component of operations, contracts for construction of  
17 buildings or other structures used to provide continuing care, and  
18 contracts with affiliated persons related to any material component  
19 of operations.

20           (c) Records of compensation paid to persons, directly or  
21 indirectly, in connection with the offer or sale of continuing care  
22 agreements. These records shall include all the following  
23 information:

24           (i) The persons to whom payments are made.

25           (ii) The date and amount of each payment.

26           (iii) The reason for each payment.

27           (iv) The transaction from which each payment arose.

1 (d) Member records of all of the following:

2 (i) Each member's name, address, and age.

3 (ii) The total amount paid to date by each member and the dates  
4 on which the payments were made.

5 (iii) The aggregate amount to be paid by each member.

6 (iv) The terms of payment.

7 (e) Complaint records of all of the following:

8 (i) Each written complaint by a member alleging violations of  
9 this act or rules promulgated under this act.

10 (ii) The date of the complaint.

11 (iii) Any action taken by the continuing care community in  
12 response to the complaint.

13 (2) Not more than 30 days after the end of each fiscal year  
14 quarter, or such later date as may be authorized by the department,  
15 a registered continuing care community shall submit the following  
16 to the department, unless waived by the department:

17 (a) A quarterly sales report setting forth the continuing care  
18 community's sales executed by new members and the proceeds derived  
19 from the collection of entrance fees from such members.

20 (b) A quarterly occupancy report stating the percentage of  
21 occupancy of living units in a continuing care community, the  
22 number of occupants who have continuing care agreements, and the  
23 number of members who have died or moved out of the continuing care  
24 community since the last occupancy report was submitted.

25 (3) If required by the department in the reasonable exercise  
26 of its discretion, a registered continuing care community shall  
27 submit to the department a report that compares any increases in

1 monthly service fees to the annual consumer price index - all urban  
2 consumers, over 5 preceding calendar years. This report shall be  
3 submitted no later than February 1 following the end of each 5-year  
4 period. The first 5-year period begins January 1 after the  
5 effective date of this act.

6       Sec. 51. (1) A person shall not distribute or transmit an  
7 advertisement or marketing communication described in this  
8 subsection unless a true copy of the advertisement or marketing  
9 communication has been submitted to and approved by the department  
10 or unless an advertising waiver has been approved by the  
11 department. This subsection applies only to an advertising or  
12 marketing communication that contains any of the following  
13 information:

- 14       (a) An entrance fee.  
15       (b) A monthly service fee.  
16       (c) A disclosure statement.  
17       (d) A continuing care agreement.

18       (2) The department shall approve or reject in writing any  
19 advertisement or marketing communication submitted under subsection  
20 (1) within 10 days after the date it is received.

21       (3) To obtain an advertising waiver, a continuing care  
22 community shall submit to the department a written request that  
23 includes the reasons why the waiver should be approved. The  
24 department shall grant or deny a waiver request in writing within  
25 30 days after receipt. If the waiver is granted, the waiver shall  
26 specify its expiration date, if any.

27       (4) This act does not impose liability, civil or criminal,

1 upon a person regularly engaged in the business of publishing a  
2 bona fide newspaper or operating a radio or television station, and  
3 acting solely in the person's official capacity, who publishes an  
4 advertisement or marketing communication in good faith and without  
5 knowledge that the advertisement or marketing communication  
6 constitutes a violation of this act.

7 (5) A continuing care community shall maintain advertising or  
8 marketing communications for not less than 3 years in physical copy  
9 or electronic format and make these records available to the  
10 department upon written request.

11 Sec. 55. (1) A person shall not, in connection with the offer  
12 or sale of a continuing care agreement, directly or indirectly do  
13 any of the following:

14 (a) Employ a device, scheme, or artifice to defraud.

15 (b) Engage in an act, practice, or course of business which  
16 operates or would operate as a fraud or deceit.

17 (c) Make an untrue statement of a material fact or fail to  
18 state a material fact necessary in order to make the statements  
19 made not misleading, in the light of the circumstances under which  
20 they are made, including an untrue statement of a material fact or  
21 failure to state a material fact in any application, notice, or  
22 report filed with the department under this act.

23 (d) Fail to notify the department of a reportable change as  
24 required by section 33.

25 (e) Publish any advertisement or marketing communication that  
26 contains false, fraudulent, misleading, or deceptive information.  
27 This subdivision does not apply to a person that publishes an

1 advertisement or marketing communication on behalf of a continuing  
2 care community and is not affiliated with the continuing care  
3 community.

4 (2) Each of the following practices constitutes a false,  
5 fraudulent, misleading, or deceptive advertising or marketing  
6 communication for purposes of subsection (1)(e):

7 (a) A statement or inference that the purchase of a membership  
8 in a continuing care community is a safe investment.

9 (b) A statement or inference that a continuing care community  
10 is affiliated with a religious, nonprofit, or proprietary  
11 organization if it is not so affiliated.

12 (c) A material misrepresentation of services, care, or  
13 amenities, provided or to be provided by a continuing care  
14 community.

15 Sec. 57. If a member becomes mentally or physically  
16 incapacitated and is unable to handle his or her own personal or  
17 financial affairs, the continuing care community may petition a  
18 court of competent jurisdiction to appoint an independent  
19 conservator or guardian. If the court approves the petition as well  
20 as the costs associated with the petition, the continuing care  
21 community may charge these costs to the member.

22 Sec. 59. (1) A dispute, claim, or grievance arising between a  
23 member or a member's estate and a continuing care community shall  
24 upon written consent of the parties be submitted to arbitration.  
25 The arbitrator's decision is final and binding. The arbitration is  
26 subject to the rules of the American arbitration association in  
27 effect at the time of the dispute, claim, or grievance.

1           (2) A condition, stipulation, or provision purporting to bind  
2 a member to waive compliance with any provision of this act or a  
3 rule promulgated or order issued under this act is void.

4           Sec. 61. (1) An applicant for registration under this act,  
5 other than a domestic corporation, shall file with the department,  
6 on a form prescribed by the department, an irrevocable consent  
7 appointing the department to be its attorney to receive service of  
8 lawful process in a noncriminal action or proceeding against it or  
9 its successor, executor, or administrator that arises under this  
10 act or a rule promulgated or order issued under this act after the  
11 consent has been filed. After the filing of the consent, process  
12 received by the department has the same force and validity as if  
13 served personally on the person filing consent.

14           (2) Service under subsection (1) may be made by leaving a copy  
15 of the process in the office of the department but it is not  
16 effective unless all of the following requirements are met:

17           (a) The plaintiff, who may be the department in an action or  
18 proceeding instituted by it, immediately sends notice of the  
19 service and a copy of the process by certified mail to the  
20 defendant or respondent at its last address on file with the  
21 department.

22           (b) The plaintiff's affidavit of compliance with subdivision  
23 (a) is filed in the action, on or before the return day of the  
24 process, if any, or within such further time as the court may  
25 allow.

26           (3) When a person, including a nonresident of this state,  
27 engages in conduct prohibited or made actionable by this act or a

1 rule promulgated or order issued under this act, whether or not a  
2 consent to service of process has been filed and personal  
3 jurisdiction can otherwise be obtained in this state, that conduct  
4 shall be considered equivalent to the appointment of the department  
5 to be the attorney to receive service of a lawful process in a  
6 civil action or proceeding against the person or a successor,  
7 executor, or administrator arising out of that conduct and which is  
8 brought under this act or a rule promulgated or order issued under  
9 this act, with the same force and validity as if served on the  
10 person personally.

11 (4) Service under subsection (3) may be made by leaving a copy  
12 of the process in the office of the department, but it is not  
13 effective unless all of the following requirements are met:

14 (a) The plaintiff, which may be the department in an action or  
15 proceeding instituted by it, immediately sends notice of the  
16 service and a copy of the process by certified mail to the  
17 defendant or respondent at its last known address or takes other  
18 steps that are reasonably calculated to give actual notice.

19 (b) The plaintiff's affidavit of compliance with this section  
20 is filed in the case on or before the return day of the process, if  
21 any, or within such further time as the court allows.

22 Sec. 63. (1) The department may conduct investigations within  
23 or outside this state to determine if any of the following apply:

24 (a) An offering of a continuing care agreement under this act  
25 poses or may pose an unreasonable risk as described in subsection  
26 (3).

27 (b) A person has violated or is about to violate this act or a

1 rule promulgated or order issued under this act.

2 (2) The department may require or permit a person to file a  
3 written statement under oath or otherwise as to all the facts and  
4 circumstances concerning the matter to be investigated under  
5 subsection (1). If the person fails to reply with all required  
6 information to a written request from the department within 15 days  
7 after receipt of the letter, the department may issue a cease and  
8 desist order.

9 (3) The department may determine that an offering creates an  
10 unreasonable risk to members under this act if any of the following  
11 apply:

12 (a) Monthly service fees or assessments are not used for the  
13 purpose designated.

14 (b) With respect to an offering by a continuing care community  
15 seeking registration or exemption, the offering fails to provide  
16 for adequate reserves or other adequate revenue sources for  
17 operations, repairs, and renovations. The department may utilize an  
18 industry representative or accounting representative to determine  
19 the adequacy of revenue sources.

20 (c) With respect to a continuing care community making an  
21 offering, the continuing care community has been in operation less  
22 than 1 year or is in the development stage at the time of  
23 registration and has failed to achieve reservations for 75% of the  
24 living units at the date of first occupancy, unless the department  
25 finds that the financial condition of the continuing care community  
26 or the escrow arrangements established in connection with the  
27 offering are such as to outweigh any special risk.

1           (4) For the purpose of an investigation or proceeding under  
2 this act, the department may administer oaths and affirmations and  
3 receive evidence. To subpoena witnesses or require the production  
4 of books, papers, or other documents or records, the department  
5 must obtain an order of the circuit court by a showing that there  
6 is good cause to believe that a violation has taken place or is  
7 about to take place. However, in a contested case, the department  
8 itself may issue subpoenas and is subject to section 73 of the  
9 administrative procedures act of 1969, 1969 PA 306, MCL 24.273.

10           Sec. 65. (1) The department shall review all documents  
11 submitted to the department under this act for compliance with this  
12 act. The department may require the submission of supplemental  
13 documents if the department considers the additional information  
14 necessary for the purposes of this act.

15           (2) The records of a continuing care community are subject to  
16 reasonable audit by a representative of the department, inside or  
17 outside of this state, that the department considers necessary or  
18 appropriate in the public interest and for the protection of  
19 members or prospective members. The department may copy records the  
20 department reasonably considers necessary to conduct the audit.

21           (3) A routine audit shall be conducted during normal business  
22 hours and with reasonable advance notice. An audit in response to a  
23 complaint or other special audit may be conducted at any time and  
24 without advance notice.

25           Sec. 67. (1) A court or the department may by order authorize  
26 a registrant to suspend repayment of an entrance fee for not more  
27 than 180 days, upon a showing by the registrant that payment would

1 jeopardize the care of members in the continuing care community.  
2 The order may be extended upon a showing of substantial progress in  
3 resolving the financial difficulties of the continuing care  
4 community.

5 (2) To obtain an order from the department allowing the  
6 temporary suspension of repayment of an entrance fee pursuant to  
7 subsection (1), a continuing care community shall submit to the  
8 department a letter requesting a temporary suspension order. The  
9 letter shall contain all of the following information:

10 (a) The name of the facility involved and its affiliates, if  
11 any.

12 (b) The particular facts relied upon as a basis for the  
13 suspension request.

14 (c) The time during which the facility desires the suspension  
15 to be effective.

16 (d) Financial statements dated not more than 45 days before  
17 the date of the request.

18 (e) Other information required by the department.

19 (3) The department may hold a public hearing to determine  
20 whether the suspension should be granted.

21 Sec. 69. (1) The department may issue an order denying,  
22 suspending, or revoking a registration if it finds that the order  
23 is in the public interest and finds 1 or more of the following:

24 (a) The application for registration or the registration  
25 statement in effect is not complete in a material respect or  
26 contains a statement that was, in the light of the circumstances  
27 under which it was made, false or misleading with respect to a

1 material fact.

2 (b) The registrant or applicant, or its agent or employee, has  
3 violated this act or a rule promulgated or order issued under this  
4 act.

5 (c) The offer and sale of a continuing care agreement is not  
6 fair, just, and equitable or has worked or tended to work a fraud  
7 or imposition or would so operate, or the terms of the offering  
8 would create an unreasonable risk to members as defined by rules.

9 (d) The registrant's or applicant's method of business  
10 includes or would include activities that are illegal where  
11 performed.

12 (e) A person identified in the application is described in  
13 section 19(1)(f)(i) or (ii) as a result of an act or omission  
14 involving the illegal offering of a continuing care agreement,  
15 franchise, or security and the department determines that the  
16 involvement of the person in the sale of leases or management of  
17 the continuing care community creates an unreasonable risk to  
18 members.

19 (f) The registrant or applicant is the subject of a permanent  
20 or temporary injunction entered under a federal or state act, and  
21 the injunction is applicable to the offer and sale of a continuing  
22 care agreement.

23 (g) The registrant or applicant has failed to pay the proper  
24 fee required by, or fine imposed under, this act.

25 (h) The registrant has failed to submit an application for  
26 renewal of a registration as required under section 25.

27 (2) Before issuing an order under subsection (1) or section

1 45(3), the department shall notify the registrant or applicant by  
2 registered or certified mail. The notice shall include the proposed  
3 order, the reasons for the proposed order, and a statement that, if  
4 a hearing is requested in writing within 15 days after issuance of  
5 the notice of intent, a hearing will be conducted on the matter  
6 within 45 days after the receipt of the request, unless the  
7 registrant or applicant consents to a later date. If a hearing is  
8 not timely requested by the continuing care community and is not  
9 ordered by the department, the department shall issue an order  
10 under subsection (1). The order shall remain in effect until it is  
11 modified or vacated by the department. If a hearing is timely  
12 requested or ordered, the department, after notice and an  
13 evidentiary hearing pursuant to the administrative procedures act  
14 of 1969, 1969 PA 306, MCL 24.201 to 24.328, may enter an order  
15 under subsection (1), or find that a violation or other condition  
16 under which entry of an order is authorized has not occurred.

17 (3) The department may vacate or modify an order under this  
18 section if it finds that the conditions on which it was based have  
19 changed or that it is otherwise in the public interest to do so.

20 Sec. 71. (1) Subject to subsection (2), if the department  
21 determines that a person has engaged, is engaging, or is about to  
22 engage in an act, practice, or course of business constituting a  
23 violation of this act or a rule promulgated or order issued under  
24 this act, or that a person has materially aided, is materially  
25 aiding, or is about to materially aid an act, practice, or course  
26 of business constituting such a violation, the department may issue  
27 an order directing the person to cease and desist from engaging in

1 the act, practice, or course of business or to take other action  
2 necessary to comply with this act.

3 (2) Before issuing an order under subsection (1), the  
4 department shall notify the person. The notice shall include the  
5 proposed order, the reasons for the proposed order, and a statement  
6 that, if a hearing is requested in writing within 15 days after  
7 issuance of the notice of intent, a hearing will be conducted on  
8 the matter within 45 days after receipt of the request, unless the  
9 person consents to a later date. If a hearing is not timely  
10 requested, the department shall issue an order under subsection  
11 (1). If a hearing is timely requested, the department, after notice  
12 and an evidentiary hearing pursuant to the administrative  
13 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, may  
14 enter a cease and desist order or find that a violation has not  
15 occurred.

16 (3) A person that knowingly authorizes, directs, or aids in  
17 violation of a final cease and desist order, or who knowingly fails  
18 to comply with the terms of a final cease and desist order, may be  
19 fined not more than \$10,000.00.

20 Sec. 73. If it appears to the department that a person has  
21 engaged or is about to engage in an act or practice constituting a  
22 violation of this act or a rule promulgated or order issued under  
23 this act, the attorney general may bring an action in the name of  
24 the people in the circuit court to enjoin the acts or practices or  
25 to enforce compliance with this act or the rule or order. Upon a  
26 proper showing, a preliminary or permanent injunction, restraining  
27 order, or writ of mandamus shall be granted and a receiver or

1 conservator may be appointed for the defendant or the defendant's  
2 assets. The court shall not require the department to post a bond.

3       Sec. 75. (1) If the director of the department finds that a  
4 person violated this act or a rule promulgated or order issued  
5 under this act, after an opportunity for an evidentiary hearing  
6 under the administrative procedures act of 1969, 1969 PA 306, MCL  
7 24.201 to 24.328, the director may order the person to pay a civil  
8 fine of not less than \$1,000.00 or more than \$50,000.00. The  
9 director may also order the respondent to pay the costs of the  
10 investigation.

11       (2) After providing an opportunity for a contested case  
12 hearing under the administrative procedures act of 1969, 1969 PA  
13 306, MCL 24.201 to 24.328, the department may impose any of the  
14 following sanctions on a person that violates this act or a rule  
15 promulgated or order issued under this act:

16       (a) If the person is registered under this act, an  
17 administrative fine of not more than \$10,000.00 for each violation.

18       (b) A requirement that restitution be made. The registration  
19 of the person required to make the restitution may be suspended  
20 until the restitution is made.

21       (3) If a continuing care agreement does not comply with the  
22 requirements of this act, the continuing care agreement is  
23 voidable. If the agreement is voided, the continuing care community  
24 shall refund to the member the amount that the member paid when the  
25 continuing care agreement was entered into.

26       Sec. 77. (1) A person that offers or sells a continuing care  
27 agreement in violation of section 15 or 55 or an order issued under

1 section 69 is liable to the person executing the continuing care  
2 agreement for all of the following:

3 (a) Damages.

4 (b) Repayment of all fees paid to the continuing care  
5 community or entity purporting to operate as a continuing care  
6 community under this act less, in the case of a continuing care  
7 community, the reasonable cost of continuing care provided by the  
8 continuing care community until discovery or until the violation  
9 should reasonably have been discovered.

10 (c) 6% interest on the amounts under subdivisions (a) and (b).

11 (d) Reasonable attorney fees.

12 (e) Court costs.

13 (2) A person may not file or maintain an action under this  
14 section if, before filing the action, the person received an offer  
15 of rescission approved by the department to refund the entrance fee  
16 together with interest at 6% per year from the date of purchase  
17 less the reasonable cost of continuing care provided until  
18 discovery, and the member failed to accept the offer within 30 days  
19 after its receipt. When a continuing care community makes written  
20 offer of rescission, the continuing care community shall file a  
21 copy with the department. The rescission offer shall recite the  
22 provisions of this section.

23 Sec. 79. Except as explicitly provided in this act, civil  
24 liability in favor of a private party does not arise against a  
25 person by implication from or as a result of the violation of this  
26 act or a rule promulgated or order issued under this act. This act  
27 does not limit liability that may exist under any other statute or

1 under common law.

2       Sec. 81. A person that directly controls a person that  
3 violates this act, a partner in a firm that violates this act, a  
4 principal executive officer or paid director or trustee of a  
5 corporation that violates this act, a person occupying a similar  
6 status as an executive officer or director performing similar  
7 functions, or an employee of a person that violates this act who  
8 materially aids in the act or transaction constituting the  
9 violation is also liable jointly and severally with and to the same  
10 extent as the person that violates this act, unless the person did  
11 not have knowledge of or reasonable grounds to believe in the  
12 existence of the facts constituting the violation.

13       Sec. 83. An action shall not be maintained to enforce a  
14 liability created under this act unless brought before the  
15 expiration of 3 years after the date of the act or transaction  
16 constituting the violation.

17       Sec. 85. (1) A person that knowingly violates this act is  
18 guilty of a felony punishable by imprisonment for not more than 7  
19 years or a fine of not more than \$10,000.00, or both.

20       (2) The proceeds, the substituted proceeds, or an  
21 instrumentality of a crime described in subsection (1) are subject  
22 to seizure and forfeiture in the manner provided in chapter 47 of  
23 the revised judicature act of 1961, 1961 PA 236, MCL 600.4701 to  
24 600.4709.

25       Sec. 87. Pursuant to the administrative procedures act of  
26 1969, 1969 PA 306, MCL 24.201 to 24.328, the department may  
27 promulgate rules to implement this act.

1           Sec. 89. (1) Applications, reports, and other papers and  
2 documents filed by applicants or registrants or experts or  
3 appraisers with the department under this act are subject to  
4 disclosure under the freedom of information act, 1976 PA 442, MCL  
5 15.231 to 15.246. However, pro forma financial statements,  
6 marketing plans, feasibility studies, and social security numbers  
7 are exempt from disclosure. In addition, a continuing care  
8 community may request, and the department may grant, subject to  
9 section 13 of the freedom of information act, 1976 PA 442, MCL  
10 15.243, confidentiality as to any other document received under  
11 this act.

12           (2) Subject to subsection (1) the department or its examiners,  
13 investigators, assistance, clerks, or deputies shall not disclose  
14 information filed with or obtained by them under this act except  
15 among themselves or when necessary or appropriate in a proceeding  
16 or investigation under this act or to other federal or state  
17 regulatory agencies. However, to aid in the enforcement of this act  
18 or in the prescribing of rules and forms under this act, the  
19 department may publish information concerning a violation of this  
20 act or a rule promulgated or order issued under this act.

21           (3) The department shall take reasonable steps to protect the  
22 confidentiality of social security numbers provided to the  
23 department under this act.

24           Sec. 91. A life interest or long-term lease agreement entered  
25 into under the former 1976 PA 440 is not invalidated by the repeal  
26 of that act and the adoption of this act.

27           Sec. 93. A facility or person that was registered or exempt

1 from registration under the former living care disclosure act, 1976  
2 PA 440, immediately before the effective date of this act shall be  
3 considered to be registered or exempt from registration,  
4 respectively, under this act until the registration or exemption  
5 would have expired under the former living care disclosure act,  
6 1976 PA 440, or 30 days after the effective date of this act,  
7 whichever is later.

8 Enacting section 1. The living care disclosure act, 1976 PA  
9 440, MCL 554.801 to 554.844, is repealed.

10 Enacting section 2. This act takes effect 90 days after the  
11 date this act is enacted into law.