

**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".

3 Sec. 3. As used in this act:

1 (a) "Administratively complete" means contains all the
2 information required under this act and rules promulgated under
3 this act.

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

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

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

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

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

1 (g) "Continuing care" means providing or arranging for the
2 provision of some or all of the following services:

3 (i) A living unit.

4 (ii) Meals.

5 (iii) Personal care services.

6 (iv) Skilled nursing.

7 (v) Rehabilitative services.

8 (vi) Medical care.

9 (vii) Social activities.

10 (viii) Supervision.

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

12 (x) Continuing care at home.

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

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

20 (i) Continuing care.

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

24 (iii) Services with a higher level of care when required by the
25 health condition of the member, as determined by the continuing
26 care community in consultation with the member or the member's
27 representative.

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

5 (i) An adult foster care facility.

6 (ii) A home for the aged.

7 (iii) An independent living unit.

8 (iv) A nursing home.

9 (v) A home health care services agency.

10 (vi) Hospice.

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

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

15 Sec. 5. As used in this act:

16 (a) "Department" means the department of licensing and
17 regulatory affairs.

18 (b) "Entrance fee" means money paid in a lump sum or
19 installments or property transferred pursuant to a continuing care
20 agreement before initiation of continuing care for 1 or more
21 individuals and that confers the right to the continuing care.

22 (c) "Executive officer" means an individual holding executive
23 power in an organization and generally responsible for the day-to-
24 day operations of the organization, such as a chief executive
25 officer, chief financial officer, or chief operating officer.

26 (d) "Initiation of continuing care" means the commencement of
27 a member's right to possess a living unit in a continuing care

1 community or the commencement of the actual provision of continuing
2 care, whichever occurs first.

3 (e) "Life interest" means the right, upon payment of an
4 entrance fee, to receive continuing care for life.

5 (f) "Living unit" means a physical space within a continuing
6 care community set aside for the exclusive use or control of 1 or
7 more specific members.

8 (g) "Long-term lease" means an agreement between a member and
9 a continuing care community whereby the member has the right to
10 occupy a space for more than 1 year but not for the life of the
11 member.

12 Sec. 7. As used in this act:

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

15 (b) "Monthly service fee" means a monthly charge to a member
16 for continuing care and not as rent or a daily prorated portion
17 thereof.

18 (c) "Nonrefundable portion of the entrance fee" means the
19 amortized component of an entrance fee and any other component of
20 an entrance fee that is not refundable upon termination of the
21 member under the terms and conditions of a continuing care
22 agreement.

23 (d) "Offer of a continuing care agreement" includes an attempt
24 to offer to sell, or a solicitation of an offer to enter into, a
25 continuing care agreement.

26 (e) "Order" means a consent, authorization, approval,
27 prohibition, or requirement applicable to a specific case issued by

1 the department.

2 Sec. 9. As used in this act:

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

5 (b) "Publish" means to publicly issue or circulate by
6 newspaper, mail, radio, television, or electronic means or
7 otherwise to disseminate to the public.

8 (c) "Refundable portion of an entrance fee" means the
9 component of an entrance fee that is refundable to the member or
10 his or her estate under the terms and conditions of the continuing
11 care agreement, but excludes the amortized component of an entrance
12 fee.

13 (d) "Registrant" means a continuing care community registered
14 under this act.

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

17 (i) Any change in the tax status of the continuing care
18 community.

19 (ii) Termination of the continuing care community's
20 sponsorship, or a portion thereof, by a religious, nonprofit, or
21 proprietary organization or group, or the establishment of any new
22 sponsorship for the community.

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

26 (iv) The entry of any cease and desist order, other order
27 similar in nature, or a temporary or permanent injunction by a

1 court of competent jurisdiction that restricts the continuing care
2 community from offering continuing care agreements to prospective
3 members or restricts the community from operating in any material
4 respect in compliance with the most recent registration.

5 (v) Any substantive amendments or changes in the disclosure
6 statement, continuing care agreement, or the rules and regulations
7 of the continuing care community.

8 (vi) Any significant alteration in the care, amenities, or
9 services indicated in the disclosure statement required under
10 section 19(1)(c) or 25(2)(b) or continuing care agreement.

11 (vii) Any change in monthly service fees.

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

16 (A) Total assets.

17 (B) Total liabilities.

18 (C) Equity.

19 (D) Fund balance or deficit.

20 (E) Long-term debt.

21 (F) Total revenue.

22 (G) Total expenses.

23 (H) Cash flow.

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

26 (f) "Reportable change" does not include a change in the value
27 of an interest rate swap not related to the termination of the

1 interest rate swap.

2 Sec. 11. As used in this act:

3 (a) "Sale of a continuing care agreement" means the execution
4 of a continuing care agreement.

5 (b) "Sales agent" means any individual who represents a
6 continuing care community in effecting or attempting to effect the
7 offer or sale of a continuing care agreement.

8 (c) "Sell a continuing care agreement" means to secure the
9 sale of a continuing care agreement.

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

14 (2) A continuing care community registered or seeking
15 registration under this act shall have and continuously maintain in
16 this state a registered office and a resident agent. If the entity
17 that owns and operates the continuing care community is not a
18 domestic entity, that entity shall procure and continuously
19 maintain a certificate of authority to conduct affairs in this
20 state.

21 (3) Each continuing care community shall elect or appoint at
22 least 1 member, along with an alternate, to serve in an advisory
23 capacity to its governing body. The member shall be notified in
24 advance of and invited to attend all meetings of the governing
25 body. The member shall not have a vote unless the governing body
26 grants such voting rights. The continuing care community is
27 responsible for expenses incurred by the member representative in

1 fulfilling his or her duties under this section.

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

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

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

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

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

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

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

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

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

27 (b) Reception in this state of a radio or television program

1 originating outside this state.

2 Sec. 17. (1) By rule or order, the department may, in whole or
3 in part, exempt a transaction or person from the registration
4 requirements of this act.

5 (2) In determining whether to grant an exemption under
6 subsection (1), the department shall consider all of the following:

7 (a) Whether information that would be required to be disclosed
8 in a registration is material in determining whether the continuing
9 care community has a reasonable chance of success.

10 (b) Whether the exemption is in the public interest.

11 (3) To obtain an exemption from registration, an entity shall
12 submit to the department a letter requesting an exemption, together
13 with accompanying documentation that does all of the following:

14 (a) Demonstrates the entity grants each member the right to
15 cancel a continuing care agreement without cause upon 30 days'
16 notice and to receive a full refund of the entire entrance fee paid
17 with no reduction for sale expenses or for the cost of
18 refurbishing.

19 (b) Demonstrates the entity has no long-term debt, excluding
20 member refund obligations, has adequate reserves for refund and
21 maintenance, and has the ability to meet current obligations and
22 debt service requirements.

23 (c) Addresses each section or subsection of this act and each
24 rule, if any, that is requested to be waived and each transaction
25 or person requested to be exempted.

26 (4) An entity exempted from registration, in whole or in part,
27 shall notify the department, in writing, within 30 days after the

1 occurrence of any reportable change affecting the basis for the
2 exemption.

3 (5) An entity that is exempted from the registration
4 requirements of this act shall submit annual and semiannual
5 financial statements and sales and occupancy reports as required
6 under sections 41 and 49, respectively, for registrants.

7 (6) A continuing care community that is licensed in whole or
8 part under article 17 of the public health code, 1978 PA 368,
9 333.20101 to 333.22260, or the adult foster care facility licensing
10 act, 1979 PA 218, MCL 400.701 to 400.737, is exempt from any rules
11 promulgated under article 17 of the public health code, 1978 PA
12 368, 333.20101 to 333.22260, or the adult foster care facility
13 licensing act, 1979 PA 218, MCL 400.701 to 400.737, that would
14 interfere with a resident's access to a common area, subject to the
15 resident's need for care and supervision.

16 (7) A continuing care community may request a variance from
17 the application of a rule promulgated under article 17 of the
18 public health code, 1978 PA 368, MCL 333.20101 to 333.22260, or
19 promulgated under the adult foster care facility licensing act,
20 1979 PA 218, MCL 400.701 to 400.737, and applicable to a home for
21 the aged or adult foster care facility, respectively, that is part
22 of the continuing care community. The department of human services
23 may grant the variance upon a finding of both of the following:

24 (a) That the rule unnecessarily segregates members of the
25 continuing care community who reside in the home for the aged or
26 adult foster care facility from other members of the continuing
27 care community.

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

3 (8) An area where room and board together with personal care,
4 protection and supervision, or supervised personal care are
5 provided to a member is not a home for the aged as defined in
6 section 20106 of the public health code, 1978 PA 368, MCL
7 333.20106, or an adult foster care facility as defined in section 3
8 of the adult foster care facility licensing act, 1979 PA 218, MCL
9 400.703, if the services are only provided on a temporary basis
10 under any of the following circumstances:

11 (a) While the member is recovering from an illness or
12 accident.

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

15 (9) The relationship between a continuing care community and a
16 member or prospective member is not subject to laws regulating the
17 relationship between a landlord and a current or prospective
18 tenant.

19 Sec. 19. (1) A continuing care community seeking initial
20 registration under this act shall submit the following information
21 to the department:

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

25 (b) The organizing documents of the applicant, and all
26 amendments thereto, authorizing the applicant to conduct business
27 in this state and a copy of the most recent annual report, if

1 required under state law.

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

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

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

8 (f) A statement, on a form prescribed by the department, of
9 whether any of the following apply to any executive officer,
10 administrator, or director identified in the application for
11 registration:

12 (i) Has been convicted of a felony or been held liable or
13 enjoined in a civil action by final judgment if the felony or civil
14 action involved fraud, embezzlement, fraudulent conversion, or
15 misappropriation of property.

16 (ii) Is subject to an injunctive or restrictive order or
17 federal or state administrative order relating to business activity
18 or health care as a result of an action brought by a public agency
19 or department, including, without limitation, actions affecting a
20 license to operate a continuing care community, foster care
21 facility, nursing home, retirement home, or home for the aged.
22 The statement shall, if applicable, specify the court or agency,
23 any penalty imposed or damages assessed, and the date of conviction
24 or judgment or the date, nature, and issuer of the order.

25 (g) An executed irrevocable consent to service of process
26 subject to section 61.

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

1 (i) Unless waived by the department, a statement of the use of
2 proceeds of entrance fees to be collected by the continuing care
3 community.

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

5 (k) A feasibility study, unless waived in the reasonable
6 discretion of the department. The feasibility study shall be made
7 available for review upon the request of a member or prospective
8 member. The department may require the feasibility study to include
9 1 or more of the following:

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

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

14 (iii) A plan demonstrating the financial feasibility of the
15 proposed continuing care community, including future funding
16 sources.

17 (iv) An actuarial forecast that has been reviewed by a
18 qualified actuary.

19 (v) A study demonstrating the proposed market for the
20 continuing care community.

21 (vi) A detailed statement of the continuing care services to be
22 offered.

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

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

27 (ii) Agreements showing how and under what circumstances future

1 specialized care, including assisted living, dementia care, and
2 skilled nursing, will be provided when appropriate.

3 (m) The name and address of the registered office and resident
4 agent required under section 13(2).

5 (n) Other material information as may reasonably be required
6 by the department.

7 (o) Other material information as the applicant wishes to
8 include.

9 (p) The initial registration application fee specified in
10 section 31.

11 (2) An application may request and the department may order
12 that 2 or more retirement communities be registered as a single
13 continuing care community.

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

19 Sec. 21. (1) Effective 60 days after the department receives a
20 registration application, the application shall be considered to be
21 administratively complete unless the department proceeds as
22 provided in subsection (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 administratively complete, specifying the
26 information necessary to make the application administratively
27 complete, or notifies the applicant that the fee required to

1 accompany the application has not been paid, specifying the amount
2 due, the running of the 60-day period under subsection (1) is
3 tolled until the applicant submits to the department the specified
4 information or fee amount due.

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

1 act shall submit an application for registration renewal within 120
2 days after each fiscal year-end unless waived in the reasonable
3 discretion of the department.

4 (2) A registration renewal application shall be in the form
5 and content prescribed by the department, which shall include at a
6 minimum all of the following:

7 (a) A registration renewal application form, as prescribed by
8 the department, which shall be signed and verified by the
9 administrator.

10 (b) The information described in section 19(1)(b), (c), (d),
11 (e), (f), (j), (m), (n), and (o). The disclosure statement and each
12 form of continuing care agreement for the continuing care
13 community, including all exhibits or addenda, shall be in a format
14 that identifies revisions to the last documents approved by the
15 department.

16 (c) Unless waived in the reasonable discretion of the
17 department, a feasibility study that complies with requirements
18 under section 19, if any of the following apply:

19 (i) The applicant proposes the construction of a number of new
20 living units equal to or greater than 25% of the number of existing
21 living units in the continuing care community.

22 (ii) The applicant proposes new or additional long-term debt
23 for the construction of new living units and a feasibility study is
24 required by the lender for the long-term debt issue.

25 (d) The registration renewal application fee specified in
26 section 31.

27 Sec. 27. (1) Subject to subsections (2) and (3), an

1 application for renewal of a registration shall be processed in the
2 same manner as an initial registration application under section
3 21.

4 (2) If, within 60 days after receiving notice from the
5 department under section 21(3), an applicant fails to complete the
6 application or pay the required fee, the department may deny the
7 registration renewal application.

8 (3) If information required pursuant to section 19(1)(n) is
9 not furnished by the applicant, or the department considers
10 information submitted pursuant to section 19(1)(n) to be unreliable
11 or substantially incomplete, the department may investigate any
12 matters concerning the missing or unreliable information. The
13 applicant shall pay the actual cost of the investigation as
14 determined in the reasonable discretion of the department. The
15 payment shall be deposited in the continuing care administration
16 fund.

17 (4) If an applicant files a renewal application under section
18 25, the current registration continues in effect until a new
19 registration renewal order is issued or denied or the department
20 revokes the registration.

21 (5) If an application for registration renewal is not filed
22 120 days after the continuing care community's fiscal year-end and
23 an extension has not been approved by the department, the
24 department may issue an order requiring the continuing care
25 community to submit an application under section 19 or an order
26 under section 69 revoking the continuing care community's
27 registration.

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

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

7 (b) The continuing care community meets all of the following
8 financial requirements:

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

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

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

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

19 (c) The continuing care community or any person with joint and
20 several liability is not the subject of any action under sections
21 55 to 63.

22 (2) Notwithstanding the grant of an extension of its
23 registration, a continuing care community shall annually submit to
24 the department the registration renewal fees specified in section
25 31 and annual and semiannual financial statements under section 41.
26 A registered continuing care community shall do all of the
27 following:

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

2 (b) Submit financial statements for that fiscal year that
3 comply with section 41.

4 Sec. 31. (1) The fee for filing an application for initial
5 registration of the offer or sale of continuing care agreements or
6 continuing care at home agreements is \$250.00. If an application
7 for registration is withdrawn before the effective date of
8 registration or a stop order is issued before that date, the
9 department shall retain the following:

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

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

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

15 (3) The continuing care administration fund is created within
16 the state treasury. Fees collected by the department under this act
17 shall be deposited into the fund. The state treasurer may receive
18 money or other assets from any source for deposit into the fund.
19 The state treasurer shall direct the investment of the fund. The
20 state treasurer shall credit to the fund interest and earnings from
21 fund investments. Money in the fund at the close of the fiscal year
22 shall remain in the fund and shall not lapse to the general fund.
23 The department shall be the administrator of the fund for auditing
24 purposes.

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

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

4 (2) A registrant shall submit to the department an application
5 to amend a registration to address reportable changes or to address
6 any proposed revisions to the disclosure statement required under
7 section 19(1)(c) or 25(2)(b) or any form of continuing care
8 agreement previously approved by the department. The disclosure
9 statement and each form of continuing care agreement for the
10 continuing care community, including all exhibits or addenda, shall
11 be in a format that identifies revisions to the last documents
12 approved by the department. If required by the department, the
13 application to amend a registration shall include a pro forma
14 financial plan that complies with section 43. The department may
15 require the production of other financial information reasonably
16 necessary for the purposes of this act. The amended registration
17 shall be signed and verified by the administrator.

18 (3) Effective 30 days after the department receives an
19 application to amend a registration, the application shall be
20 considered to be administratively complete unless the department
21 proceeds as provided in subsection (4).

22 (4) If, before the expiration of the 30-day period under
23 subsection (3), the department notifies the applicant that the
24 application is not administratively complete, specifying the
25 information necessary to make the application administratively
26 complete, the running of the 30-day period under subsection (3) is
27 tolled until the applicant submits to the department the specified

1 information or fee amount due.

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

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

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

19 Sec. 35. (1) A continuing care community shall deliver to a
20 prospective member all continuing care agreements pertinent to the
21 continuing care sought by the prospective member and the disclosure
22 statement under section 21, 27, or 33 most recently approved by the
23 department. The delivery shall be by a method considered acceptable
24 by the continuing care community and the prospective member and
25 shall occur by the earlier of the following:

26 (a) The continuing care community's acceptance of a
27 nonrefundable application fee from the prospective member, unless

1 all of the following apply:

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

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

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

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

9 (2) Upon execution of the continuing care agreement and
10 payment of the full entrance fee amount, the continuing care
11 community shall provide the member with a physical copy of both of
12 the following:

13 (a) The executed continuing care agreement.

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

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

19 Sec. 37. (1) Subject to subsection (3), a disclosure statement
20 required under this act shall include at a minimum the following
21 information, unless waived by the department in the reasonable
22 exercise of discretion:

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

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

27 (c) Whether the continuing care community or an affiliate,

1 parent, or subsidiary is a religious, nonprofit, or proprietary
2 organization. If the continuing care community uses a name
3 designating or inferring a religious affiliation, a statement
4 explaining the relationship with the religious organization or
5 group or a statement that there is no relationship shall be
6 included.

7 (d) Information concerning the identity and experience of
8 persons affiliated with the continuing care community as the
9 department shall prescribe.

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

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

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

24 (h) The entrance fee, any monthly services fees, and any other
25 fees or charges that may be assessed to a member or prospective
26 member by the continuing care community.

27 (i) All of the following statements as to the effect of the

1 death of a member on the continuing care agreement:

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

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

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

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

24 (B) Immediately if the deceased member occupied a living unit
25 with another member. Any refundable portion of the deceased
26 member's entrance fee shall be refunded within 60 days after the
27 death of that member, but the continuing care agreement shall

1 remain in effect for the living member.

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

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

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

20 (l) A statement that monthly service fees and other fees
21 assessed to a member are subject to increase by the continuing care
22 community based on the reasonable cost of operations including the
23 provision of care and services, and that the continuing care
24 community shall give advance notice of not less than 60 days to the
25 member before a new fee or change in a fee becomes effective.

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

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

4 (o) Whether entrance fees are subject to an escrow under
5 section 45(2) or an alternative financial arrangement under section
6 47, including a description of any applicable arrangement.

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

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

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

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

20 (t) A statement that the refundable portion of the entrance
21 fee is equal to the total entrance fee paid less all of the
22 following:

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

24 (ii) A sales cost in conjunction with the continuing care
25 agreement, not to exceed 8% of the entrance fee.

26 (iii) Any balance owed to the continuing care community for
27 monthly service fees or other charges under the continuing care

1 agreement.

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

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

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

13 (w) The conditions upon which a member may reoccupy the
14 member's living unit after termination of the continuing care
15 agreement.

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

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

25 (z) Whether, if financial assistance is provided to the member
26 through a charitable fund, a spend down of the entrance fee
27 otherwise required for continued membership, or a reduction of

1 monthly service fees or other fees assessed under the continuing
2 care agreement or under some other arrangement, the financial
3 assistance will be subject to either of the following:

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

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

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

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

14 (cc) Other material information that the applicant wishes to
15 include.

16 (dd) The following items in the beginning of the disclosure
17 statement, in all capital letters, and in substantially the
18 following language:

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

25 (ii) "The purchase of a life interest or long-term lease is an
26 investment that may involve a major financial commitment, and you
27 should seek advice from an attorney or other financial advisor who

1 is independent of the continuing care community."

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

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

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

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

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

26 (a) Potential adverse information.

27 (b) That registration does not constitute approval,

1 recommendation, or endorsement by the department.

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

8 Sec. 39. A continuing care agreement shall meet all of the
9 following requirements:

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

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

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

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

24 (e) Each continuing care agreement shall be set forth in not
25 less than 12-point type. The department may prescribe the format of
26 a continuing care agreement or require a continuing care community
27 to set forth in a continuing care agreement potential adverse

1 information in designated positions and in a type size specified by
2 the department.

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

7 Sec. 41. (1) Financial statements under section 17, 19, 25, or
8 29 shall meet all of the following requirements:

9 (a) Be submitted with a statement of any adverse material
10 changes in the financial condition of the entity from the date of
11 the financial statement.

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

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

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

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

25 (i) The department may waive all or part of this requirement if
26 it is not necessary for the protection of the public. The
27 department may impose conditions and restrictions on the waiver

1 that it considers appropriate.

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

4 (iii) If the audited financial statements are more than 120 days
5 old, they shall be submitted with current unaudited financial
6 statements.

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

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

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

23 (3) If the independent certified public accountant engaged as
24 the principal accountant to audit the continuing care community's
25 financial statements was not the principal accountant for the
26 continuing care community's most recently filed audited financial
27 statements, or a legal successor thereto, then all of the following

1 apply:

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

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

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

23 (5) Within 30 days after the end of the first half of its
24 fiscal year, a continuing care community shall submit to the
25 department an unaudited semiannual financial statement that
26 includes at least all of the following:

27 (a) A balance sheet.

1 (b) An income statement.

2 (c) A statement of cash flows.

3 (d) A statement of how entrance fee proceeds are used.

4 (e) A management discussion explaining material fluctuations
5 in the balance sheet and income statement, compared to the prior
6 period or prior year-to-date.

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

10 (a) A balance sheet.

11 (b) A statement of changes and activities or statement of
12 operations.

13 (c) A statement of cash flow.

14 (d) Expected cash proceeds from sales of continuing care
15 agreements based on projected occupancy and attrition rates.

16 (e) Expected cash proceeds from monthly service fees,
17 donations, interest, and entrance fees.

18 (f) Amount of reserves expected to be provided for capital
19 replacement, improvements, maintenance, refunds, and other
20 expenses.

21 (g) A statement of assumptions and principles used to make the
22 forecast.

23 Sec. 45. (1) If a member pays funds to a continuing care
24 community before occupancy, the funds shall be held in a trust
25 account unless this requirement is waived or modified by the
26 department. Any interest or other income from the investment of the
27 funds held in the trust account shall accrue to the benefit of the

1 member. The department may, by rule or order, determine the
2 conditions of the trust account. Funds placed with a continuing
3 care community for continuing care at home are not subject to the
4 requirements of this subsection.

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

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

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

12 (ii) The continuing care community is insolvent or in jeopardy
13 of becoming insolvent.

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

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

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

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

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

1 (b) The registration or exemption of the continuing care
2 community is revoked.

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

5 (a) Be executed by the escrow agent and continuing care
6 community.

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

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

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

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

26 (f) Specify 1 of the following methodologies to be used to
27 determine the amount of funds that may be released pursuant to a

1 request under subsection (7):

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

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

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

21 (a) Checks shall be made payable to the depository approved by
22 the department.

23 (b) The account shall be established with an escrow agent
24 acceptable to the department and the funds shall be kept and
25 maintained in an account separate and apart from any depository
26 account of the continuing care community.

27 (c) All proceeds deposited in escrow remain the property of

1 the respective members for whose account the proceeds were
2 deposited and are not subject to a lien or charge by the escrow
3 agent or to a judgment, garnishment, or creditor's claim against
4 the continuing care community until the funds are released to the
5 continuing care community as provided in this section.

6 (d) If required by the department, a quarterly statement
7 indicating the status of the escrow account shall be furnished by
8 the escrow agent to the department.

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

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

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

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

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

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

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

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

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

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

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

19 (k) Assumptions and the basis of schedules for attrition
20 rates, occupancy rates, refund of entrance fees, debt service,
21 operating expenses, and operating income.

22 (l) A commitment to notify the department promptly in writing
23 of a material change in the information submitted under this
24 subsection.

25 (8) The amount released shall be based on the methodology
26 specified in the escrow agreement pursuant to subsection (5)(f),
27 unless a switch to the alternative methodology specified in

1 subsection (5)(f) is requested by the continuing care community and
2 approved by the department.

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

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

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

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

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

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

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

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

25 (f) Require that quarterly balance statements be provided to
26 the department directly from the escrow agent, financial
27 institution, or other entity with custody of the funds and

1 authorize the department to inspect the records pertinent to the
2 arrangement.

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

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

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

18 (5) If an instrument comprising an alternative financial
19 arrangement expires or is canceled and the continuing care
20 community is still under an obligation to provide certain items
21 under the continuing care agreement, the continuing care community,
22 at its option, may either establish a new alternative financial
23 arrangement under subsection (1) or have the department impose
24 under section 45(2) an escrow of entrance and other fees. Until an
25 alternative financial arrangement acceptable to the department is
26 established or escrow is imposed, the continuing care community
27 shall not enter into any additional continuing care agreements. An

1 alternative financial arrangement approved under this section may
2 be released in whole or in part by order of the department, subject
3 to the requirements for release of escrow funds pursuant to section
4 45.

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

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

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

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

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

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

23 (iii) The reason for each payment.

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

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

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

27 (ii) The total amount paid to date by each member and the dates

1 on which the payments were made.

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

3 (iv) The terms of payment.

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

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

7 (ii) The date of the complaint.

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

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

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

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

22 (3) If required by the department in the reasonable exercise
23 of its discretion, a registered continuing care community shall
24 submit to the department a report that compares any increases in
25 monthly service fees to the annual consumer price index - all urban
26 consumers, over 5 preceding calendar years. This report shall be
27 submitted no later than February 1 following the end of each 5-year

1 period. The first 5-year period begins January 1 after the
2 effective date of this act.

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

11 (a) An entrance fee.

12 (b) A monthly service fee.

13 (c) A disclosure statement as required under section 19(1)(c)
14 or 25(2)(b).

15 (d) A continuing care agreement.

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

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

25 (4) This act does not impose liability, civil or criminal,
26 upon a person regularly engaged in the business of publishing a
27 bona fide newspaper or operating a radio or television station, and

1 acting solely in the person's official capacity, who publishes an
2 advertisement or marketing communication in good faith and without
3 knowledge that the advertisement or marketing communication
4 constitutes a violation of this act.

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

9 Sec. 53. (1) A sales agent shall not do any of the following:

10 (a) Offer or sell a continuing care agreement unless the
11 continuing care community is registered or exempt from registration
12 under this act.

13 (b) Engage in the offer or sale of life interests or long-term
14 leases for more than 1 principal.

15 (c) Execute sales contracts of life interests or long-term
16 leases or collect funds pertaining to such sales contracts unless
17 the sales agent has written authorization from the continuing care
18 community.

19 (2) A person shall not act as a sales agent if the person has
20 done any of the following:

21 (a) Employed, in connection with the purchase or sale of a
22 life interest or long-term lease, a device, scheme, or artifice to
23 defraud.

24 (b) Violated this act or a rule promulgated or order issued
25 under this act.

26 (c) Engaged in unfair, unconscionable, or deceptive business
27 practices. Such practices include recommending the purchase of a

1 life interest or long-term lease without reasonable grounds to
2 believe that the recommendation is suitable for the individual on
3 the basis of information furnished by the individual after such
4 reasonable inquiry as may be necessary under the circumstances.

5 (d) Been convicted of a misdemeanor involving deceit or of any
6 felony.

7 (e) Been the subject of an order of a state, federal, or self-
8 regulatory agency denying, suspending, or revoking registration as
9 a broker-dealer, agent, investment adviser, or franchise agent or
10 any other similar registration.

11 (3) The department may, by order and in the reasonable
12 exercise of its discretion, waive any of the criteria specified in
13 subsection (1) or (2) and allow a person to participate in the
14 offer or sale of a life interest or long-term lease as a sales
15 agent.

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

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

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

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

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

3 (e) Publish any advertisement or marketing communication that
4 contains false, fraudulent, misleading, or deceptive information.
5 This subdivision does not apply to a person that publishes an
6 advertisement or marketing communication on behalf of a continuing
7 care community and is not affiliated with the continuing care
8 community.

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

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

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

17 (c) A material misrepresentation of services, care, or
18 amenities, provided or to be provided by a continuing care
19 community.

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

27 Sec. 59. (1) A dispute, claim, or grievance arising between a

1 member or a member's estate and a continuing care community shall
2 upon written consent of the parties be submitted to arbitration.
3 The arbitrator's decision is final and binding. The arbitration is
4 subject to the rules of the American arbitration association in
5 effect at the time of the dispute, claim, or grievance.

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

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

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

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

27 (b) The plaintiff's affidavit of compliance with subdivision

1 (a) is filed in the action, on or before the return day of the
2 process, if any, or within such further time as the court may
3 allow.

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

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

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

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

27 Sec. 63. (1) The department may conduct investigations within

1 or outside this state to determine if any of the following apply:

2 (a) An offering of a continuing care agreement under this act
3 poses or may pose an unreasonable risk as described in subsection
4 (3).

5 (b) A person has violated or is about to violate this act or a
6 rule promulgated or order issued under this act.

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

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

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

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

25 (c) With respect to a continuing care community making an
26 offering, the continuing care community has been in operation less
27 than 1 year or is in the development stage at the time of

1 registration and has failed to achieve reservations for 75% of the
2 living units at the date of first occupancy, unless the department
3 finds that the financial condition of the continuing care community
4 or the escrow arrangements established in connection with the
5 offering are such as to outweigh any special risk.

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

15 Sec. 65. (1) The department shall review all documents
16 submitted to the department under this act for compliance with this
17 act. The department may require the submission of supplemental
18 documents if the department considers the additional information
19 necessary for the purposes of this act.

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

26 (3) A routine audit shall be conducted during normal business
27 hours and with reasonable advance notice. An audit in response to a

1 complaint or other special audit may be conducted at any time and
2 without advance notice.

3 Sec. 67. (1) A court or the department may by order authorize
4 a registrant to suspend repayment of an entrance fee for not more
5 than 180 days, upon a showing by the registrant that payment would
6 jeopardize the care of members in the continuing care community.
7 The order may be extended upon a showing of substantial progress in
8 resolving the financial difficulties of the continuing care
9 community.

10 (2) To obtain an order from the department allowing the
11 temporary suspension of repayment of an entrance fee pursuant to
12 subsection (1), a continuing care community shall submit to the
13 department a letter requesting a temporary suspension order. The
14 letter shall contain all of the following information:

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

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

19 (c) The time during which the facility desires the suspension
20 to be effective.

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

23 (e) Other information required by the department.

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

26 Sec. 69. (1) The department may issue an order denying,
27 suspending, or revoking a registration if it finds that the order

1 is in the public interest and finds 1 or more of the following:

2 (a) The application for registration or the registration
3 statement in effect is incomplete in a material respect or contains
4 a statement that was, in the light of the circumstances under which
5 it was made, false or misleading with respect to a material fact.

6 (b) The registrant or applicant, or its agent or employee, has
7 violated this act or a rule promulgated or order issued under this
8 act.

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

13 (d) The registrant's or applicant's method of business
14 includes or would include activities that are illegal where
15 performed.

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

23 (f) The registrant or applicant is the subject of a permanent
24 or temporary injunction entered under a federal or state act, and
25 the injunction is applicable to the offer and sale of a continuing
26 care agreement.

27 (g) The registrant or applicant has failed to pay the proper

1 fee required by, or fine imposed under, this act.

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

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

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

24 Sec. 71. (1) Subject to subsection (2), if the department
25 determines that a person has engaged, is engaging, or is about to
26 engage in an act, practice, or course of business constituting a
27 violation of this act or a rule promulgated or order issued under

1 this act, or that a person has materially aided, is materially
2 aiding, or is about to materially aid an act, practice, or course
3 of business constituting such a violation, the department may issue
4 an order directing the person to cease and desist from engaging in
5 the act, practice, or course of business or to take other action
6 necessary to comply with this act.

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

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

24 Sec. 73. If it appears to the department that a person has
25 engaged or is about to engage in an act or practice constituting a
26 violation of this act or a rule promulgated or order issued under
27 this act, the attorney general may bring an action in the name of

1 the people in the circuit court to enjoin the acts or practices or
2 to enforce compliance with this act or the rule or order. Upon a
3 proper showing, a preliminary or permanent injunction, restraining
4 order, or writ of mandamus shall be granted and a receiver or
5 conservator may be appointed for the defendant or the defendant's
6 assets. The court shall not require the department to post a bond.

7 Sec. 75. (1) If the director of the department finds that a
8 person violated this act or a rule promulgated or order issued
9 under this act, after an opportunity for an evidentiary hearing
10 under the administrative procedures act of 1969, 1969 PA 306, MCL
11 24.201 to 24.328, the director may order the person to pay a civil
12 fine of not less than \$1,000.00 or more than \$50,000.00. The
13 director may also order the respondent to pay the costs of the
14 investigation.

15 (2) After providing an opportunity for a contested case
16 hearing under the administrative procedures act of 1969, 1969 PA
17 306, MCL 24.201 to 24.328, the department may impose any of the
18 following sanctions on a person that violates this act or a rule
19 promulgated or order issued under this act:

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

22 (b) A requirement that restitution be made. The registration
23 of the person required to make the restitution may be suspended
24 until the restitution is made.

25 (3) If a continuing care agreement does not comply with the
26 requirements of this act, the continuing care agreement is
27 voidable. If the agreement is voided, the continuing care community

1 shall refund to the member the amount that the member paid when the
2 continuing care agreement was entered into.

3 Sec. 77. (1) A person that offers or sells a continuing care
4 agreement in violation of section 15 or 55 or an order issued under
5 section 69 is liable to the person executing the continuing care
6 agreement for all of the following:

7 (a) Damages.

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

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

15 (d) Reasonable attorney fees.

16 (e) Court costs.

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

27 Sec. 79. Except as explicitly provided in this act, civil

1 liability in favor of a private party does not arise against a
2 person by implication from or as a result of the violation of this
3 act or a rule promulgated or order issued under this act. This act
4 does not limit liability that may exist under any other statute or
5 under common law.

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

17 Sec. 83. An action shall not be maintained to enforce a
18 liability created under this act unless brought before the
19 expiration of 3 years after the date of the act or transaction
20 constituting the violation.

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

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

1 600.4709.

2 Sec. 87. Pursuant to the administrative procedures act of
3 1969, 1969 PA 306, MCL 24.201 to 24.328, the department may
4 promulgate rules to implement this act.

5 Sec. 89. (1) Applications, reports, and other papers and
6 documents filed by applicants or registrants or experts or
7 appraisers with the department under this act are subject to
8 disclosure under the freedom of information act, 1976 PA 442, MCL
9 15.231 to 15.246. However, pro forma financial statements,
10 marketing plans, feasibility studies, and social security numbers
11 are exempt from disclosure. In addition, a continuing care
12 community may request, and the department may grant, subject to
13 section 13 of the freedom of information act, 1976 PA 442, MCL
14 15.243, confidentiality as to any other document received under
15 this act.

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

25 (3) The department shall take reasonable steps to protect the
26 confidentiality of social security numbers provided to the
27 department under this act.

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

4 Enacting section 1. The living care disclosure act, 1976 PA
5 440, MCL 554.801 to 554.844, is repealed.

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