

# SENATE BILL No. 886

March 20, 2014, Introduced by Senators MOOLENAAR, HILDENBRAND, SCHUITMAKER, GREGORY, WARREN, NOFS, MARLEAU, KAHN, MEEKHOF and KOWALL and referred to the Committee on Appropriations.

A bill to regulate the offer and sale of life interests and long-term leases in independent living units, nursing homes, retirement homes, homes for the aged, and adult foster care facilities; 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 civil sanctions; and to repeal acts and parts of acts.

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

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

1           Sec. 3. As used in this act:

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

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

14           (c) "Amortized component of an entrance fee" means that  
15 component of an entrance fee amortized at the rate of 1-1/2% per  
16 month, to reflect the cost of continuing care as provided in an  
17 amortization schedule prepared by the continuing care community,  
18 unless, in case of death, the amortization schedule provides for a  
19 different amortization.

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

24           (e) "Continuing care" means providing or arranging for the  
25 provision of some or all of the following services:

26           (i) A living unit.

27           (ii) Meals.

1 (iii) Assisted living or personal care service.

2 (iv) Skilled nursing.

3 (v) Rehabilitative services.

4 (vi) Medical care.

5 (vii) Social activities.

6 (viii) Supervision.

7 (ix) All-inclusive care for the elderly.

8 (x) Continuing care at home.

9 (f) "Continuing care agreement" means a written agreement,  
10 including a long-term lease or an agreement conferring a life  
11 interest, between a member and a continuing care community for  
12 continuing care upon payment of an entrance fee.

13 (g) "Continuing care at home" means, upon payment of an  
14 entrance fee and subject to the terms and conditions of a  
15 continuing care agreement, providing or arranging for the provision  
16 of all of the following at the member's home other than a living  
17 unit:

18 (i) Continuing care.

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

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

26 (h) "Continuing care community" means a retirement community  
27 in which a person undertakes to provide or arrange for continuing

1 care and which is 1 or more of the following:

2 (i) An adult foster care facility.

3 (ii) A home for the aged.

4 (iii) An independent living unit.

5 (iv) A nursing home.

6 (v) A home care services agency.

7 (vi) A hospice.

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

10 Sec. 5. As used in this act:

11 (a) "Department" means the department of licensing and  
12 regulatory affairs.

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

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

21 (d) "Initiation of continuing care" means the commencement of  
22 a member's right to possess a living unit in a continuing care  
23 community or the commencement of the actual provision of continuing  
24 care, whichever occurs first.

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

27 (f) "Living unit" means a physical space within a continuing

1 care community set aside for the exclusive use or control of 1 or  
2 more specific members.

3 (g) "Long-term lease" means an agreement between a member and  
4 a continuing care community whereby the member upon payment of an  
5 entrance fee has the right to occupy a space for more than 1 year  
6 but not for the life of the member.

7 Sec. 7. As used in this act:

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

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

13 (c) "Nonrefundable portion of the entrance fee" means the  
14 amortized component of an entrance fee and any other component of  
15 an entrance fee that is not refundable upon death of the member  
16 under the terms and conditions of a continuing care agreement.

17 (d) "Offer of a continuing care agreement" includes an attempt  
18 to offer to sell, or a solicitation of an offer to enter into, a  
19 continuing care agreement.

20 (e) "Order" means a consent, authorization, approval,  
21 prohibition, or requirement applicable to a specific case issued by  
22 the department.

23 Sec. 9. As used in this act:

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

26 (b) "Publish" means to publicly issue or circulate by  
27 newspaper, mail, radio, television, or electronic means or

1 otherwise to disseminate to the public.

2 (c) "Refundable portion of an entrance fee" means the  
3 component of an entrance fee that is non-amortized and is  
4 refundable to the member or his or her estate under the terms and  
5 conditions of the continuing care agreement.

6 (d) "Reportable change", subject to subdivision (e), means any  
7 of the following:

8 (i) Any change in the tax status of the registrant.

9 (ii) Termination of the registrant's sponsorship, or a portion  
10 thereof, by a religious, nonprofit, or proprietary organization or  
11 group, or the establishment of any new sponsorship for the  
12 registrant.

13 (iii) Denial, suspension, or revocation of any license,  
14 certification, or registration held by the registrant for that  
15 continuing care community and required by state or federal law.

16 (iv) The entry of any cease and desist order, other order  
17 similar in nature, or a temporary or permanent injunction by a  
18 court of competent jurisdiction that restricts the registrant from  
19 offering continuing care agreements to prospective members or  
20 restricts the registrant from operating in any material respect in  
21 compliance with the most recent registration.

22 (v) Any substantive amendments or changes in the disclosure  
23 statement, continuing care agreement, or the rules and regulations  
24 of the continuing care community.

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

1 (vii) A 10% or greater change in monthly service fees.

2 (viii) A variation of 10% or more between the actual amount of  
3 any of the following items and the amount forecast in the  
4 continuing care community's most recent pro forma financial plan  
5 filed under section 19 or 25:

6 (A) Total assets.

7 (B) Total liabilities.

8 (C) Equity.

9 (D) Fund balance or deficit.

10 (E) Long-term debt.

11 (F) Total revenue.

12 (G) Total expenses.

13 (H) Cash flow.

14 (ix) A violation of any debt covenant applicable to the  
15 applicant or registered continuing care community that is not cured  
16 within 30 days after discovery by the applicant or continuing care  
17 community.

18 (e) "Reportable change" does not include a change in the value  
19 of an interest rate swap not related to the termination of the  
20 interest rate swap.

21 Sec. 11. As used in this act:

22 (a) "Sale of a continuing care agreement" means the execution  
23 of a continuing care agreement.

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

27 (c) "Sell a continuing care agreement" means to secure the

1 sale of a continuing care agreement.

2 (d) "State" means a state of the United States, the District  
3 of Columbia, the Commonwealth of Puerto Rico, the United States  
4 Virgin Islands, or any territory or insular possession subject to  
5 the jurisdiction of the United States.

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

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

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

25 Sec. 15. (1) Subject to subsections (3) and (4), a continuing  
26 care community shall not offer to enter into or enter into a  
27 continuing care agreement unless the continuing care community is

1 registered or exempt from registration under this act.

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

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

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

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

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

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

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

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

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

25 Sec. 17. (1) The department, by rule or order, may exempt from  
26 registration requirements of this act, in whole or in part, a  
27 transaction, person, or industry in accordance with this section.

1 (2) In determining whether an exemption shall be issued, the  
2 department shall consider all of the following:

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

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

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

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

15 (b) Demonstrates the entity has no long-term debt, excluding  
16 member refund obligations, has adequate reserves for refund and  
17 maintenance, and has the ability to meet current obligations and  
18 debt service requirements.

19 (c) Addresses each section or subsection of this act and each  
20 rule, if any, that is requested to be waived and each transaction,  
21 person, or industry requested to be exempted.

22 (4) An entity exempted from registration, in whole or in part,  
23 shall notify the department, in writing, within 30 days after the  
24 occurrence of any reportable change affecting the basis for the  
25 exemption.

26 (5) An entity that is exempted from the registration  
27 requirements of this act remains subject to requirements for

1 financial statements as otherwise required under sections 19 and 25  
2 and sales and occupancy reports as otherwise required under section  
3 49.

4 (6) A continuing care community that is licensed in whole or  
5 part under article 17 of the public health code, 1978 PA 368,  
6 333.20101 to 333.22260, or the adult foster care facility licensing  
7 act, 1979 PA 218, MCL 400.701 to 400.737, is exempt from any rules  
8 promulgated under article 17 of the public health code, 1978 PA  
9 368, 333.20101 to 333.22260, or the adult foster care facility  
10 licensing act, 1979 PA 218, MCL 400.701 to 400.737, that would  
11 interfere with a continuing care community's ongoing delivery of  
12 continuing care to a member or the unencumbered movement of a  
13 member between areas of a continuing care community subject to  
14 different licensure categories.

15 (7) The relationship between a continuing care community and a  
16 current 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 entity, and all  
26 amendments thereto, authorizing the entity to conduct business in  
27 this state and a copy of the most recent annual report, if required

1 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 entity 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 or  
10 director identified in the application for registration:

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

15 (ii) Is subject to an injunctive or restrictive order or  
16 federal or state administrative order relating to business activity  
17 or health care as a result of an action brought by a public agency  
18 or department, including, without limitation, actions affecting a  
19 license to operate a continuing care community, foster care  
20 facility, nursing home, retirement home, or home for the aged.

21 The statement shall, if applicable, specify the court or agency,  
22 any penalty imposed or damages assessed, and the date of conviction  
23 or judgment or the date, nature, and issuer of the order.

24 (g) The social security numbers of the executive officers of  
25 the continuing care community, for purposes of a detailed  
26 background check. The department may obtain a credit report on any  
27 executive officer. Information under this subdivision must be

1 submitted as a physical copy and is exempt from disclosure under  
2 the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

3 (h) An executed irrevocable consent to service of process  
4 consistent with section 61, on a form prescribed by the department,  
5 unless the applicant entity is organized under the laws of this  
6 state.

7 (i) Financial statements that comply with section 41.

8 (j) Unless waived by the department, a statement of the use of  
9 proceeds of entrance fees to be collected by the continuing care  
10 community.

11 (k) A pro forma financial plan that complies with section 43.

12 (l) A feasibility study, unless waived in the reasonable  
13 discretion of the department. The feasibility study shall be made  
14 available for review upon the request of a member or prospective  
15 member. The department may require the feasibility study to include  
16 1 or more of the following:

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

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

21 (iii) A plan demonstrating the financial feasibility of the  
22 proposed continuing care community, including future funding  
23 sources.

24 (iv) An actuarial forecast that has been reviewed by a  
25 qualified actuary.

26 (v) A study demonstrating the proposed market for the  
27 continuing care community.

1 (vi) A detailed statement of the continuing care services to be  
2 offered.

3 (m) For a continuing care community seeking to offer  
4 continuing care at home, both of the following:

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

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

10 (n) The name and address of the registered office and resident  
11 agent required under section 13(2).

12 (o) Other material information as may reasonably be required  
13 by the department.

14 (p) Other material information as the applicant wishes to  
15 include.

16 (q) The initial registration application fee prescribed by  
17 section 31.

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

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

26 Sec. 21. (1) If information required under section 19(1)(o) is  
27 not furnished by the applicant, or the department considers

1 information submitted under section 19(1)(o) to be unreliable or  
2 substantially incomplete, the department may investigate any  
3 matters concerning the missing or unreliable information. The  
4 applicant shall pay the actual cost of the investigation as  
5 determined in the reasonable discretion of the department. The  
6 payment shall be deposited in the state treasury to the credit of  
7 the department.

8 (2) Effective 60 days after the department receives a  
9 registration application, the application shall be considered to be  
10 administratively complete unless the department proceeds as  
11 provided in subsection (3).

12 (3) If, before the expiration of the 60-day period under  
13 subsection (2), the department notifies the applicant that the  
14 application is not administratively complete, specifying the  
15 information necessary to make the application administratively  
16 complete, or notifies the applicant that the fee required to  
17 accompany the application has not been paid, specifying the amount  
18 due, the running of the 60-day period under subsection (2) is  
19 tolled until the applicant submits to the department the specified  
20 information or fee amount due.

21 (4) Not more than 180 days after the expiration of the 60-day  
22 period under subsections (2) and (3), the department shall enter an  
23 order registering the continuing care community or denying the  
24 registration and submit a copy of the order to the applicant. If  
25 the department denies registration, the order shall specifically  
26 describe the deficiencies in the registration application or  
27 instances of noncompliance by the applicant with the requirements

1 of this act.

2 (5) If an order approving or denying registration is not  
3 timely entered under subsection (4), the continuing care community  
4 shall be considered to be registered by order of the department  
5 unless the applicant has consented in writing to a waiver of  
6 automatic registration.

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

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

11 (b) A recommendation, approval, or other finding by the  
12 department concerning the merits or qualifications of a person,  
13 life interest, long-term lease, transaction, or continuing care  
14 community.

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

17 Sec. 25. (1) A continuing care community registered under this  
18 act shall submit an application for registration renewal within 120  
19 days after each fiscal year-end unless waived in the reasonable  
20 discretion of the department.

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

24 (a) A registration renewal application form, as prescribed by  
25 the department, which shall be signed and verified by the  
26 administrator.

27 (b) The materials described in section 19(1)(b), (c), (d),

1 (e), (f), (i), (k), (n), (o), and (p). The disclosure statement and  
2 each form of continuing care agreement for the continuing care  
3 community, including all exhibits or addenda, shall be in a format  
4 that identifies revisions to the last documents approved by the  
5 department.

6 (c) The materials described in section 19(1)(g), but only to  
7 the extent that an executive officer was not previously in that  
8 position when the last application, whether an initial or renewal  
9 application, was filed.

10 (d) Unless waived in the reasonable discretion of the  
11 department, a feasibility study that complies with requirements  
12 under section 19, if any of the following apply:

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

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

19 (e) The registration renewal application fee prescribed by  
20 section 31.

21 Sec. 27. (1) Subject to subsection (2), an application for  
22 renewal of a registration shall be processed in the same manner as  
23 an initial registration application under section 21.

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

1 (3) If an applicant files a renewal application under section  
2 25, the current registration continues in effect until a new  
3 registration renewal order is issued or denied or the department  
4 revokes the registration.

5 (4) If an application for registration renewal is not filed  
6 120 days after the continuing care community's fiscal year-end and  
7 an extension has not been approved by the department, the  
8 department may issue an order requiring the continuing care  
9 community to submit an application under section 19 or an order  
10 under section 67 revoking the continuing care community's  
11 registration.

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

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

18 (b) The continuing care community meets all of the following  
19 financial requirements:

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

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

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

27 (iv) Has reserves or funds designated for the payment of its

1 indebtedness in an amount equal to or greater than 1 year's debt  
2 service.

3 (c) The continuing care community or any person with joint and  
4 several liability is not the subject of any action under sections  
5 55 to 63.

6 (2) Waiver of an application for registration under subsection  
7 (1) does not relieve a registered continuing care community from  
8 the obligation to submit an amended registration if required under  
9 section 27 or the fees required in section 31.

10 (3) Notwithstanding the waiver of an application for  
11 registration renewal under subsection (1), the registrant shall  
12 submit, within 120 days after each fiscal year, financial  
13 statements for that fiscal year that comply with section 41. The  
14 registrant also shall comply with section 49(2).

15 Sec. 31. (1) The department shall charge and collect the fees  
16 required under this act. Fees and charges collected shall be  
17 transmitted to the state treasurer as they are received,  
18 accompanied by a statement of those fees and charges and shall be  
19 credited to the general fund.

20 (2) The fee for filing an application for initial registration  
21 of the offer or sale of continuing care agreements or continuing  
22 care at home agreements is \$250.00. If an application for  
23 registration is withdrawn before the effective date of registration  
24 or a stop order is issued before that date, the department shall  
25 retain the following:

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

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

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

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

7 (2) A registrant shall submit to the department an application  
8 to amend a registration to address reportable changes or to address  
9 any proposed revisions to the disclosure statement required under  
10 section 19(1)(c) or 25(2)(b) or any form of continuing care  
11 agreement previously approved by the department. The disclosure  
12 statement and each form of continuing care agreement for the  
13 continuing care community, including all exhibits or addenda, shall  
14 be in a format that identifies revisions to the last documents  
15 approved by the department. If required by the department, the  
16 application to amend an application shall include a pro forma  
17 financial plan that complies with section 43. The amended  
18 registration shall be signed and verified by the administrator and  
19 is subject to review and approval by the department within 30 days  
20 after its submission. The department may require the production of  
21 other financial information reasonably necessary for the purposes  
22 of this act.

23 (3) An amendment to an application filed after the effective  
24 date of the registration and approved by the department takes  
25 effect on the date determined by the department, having due regard  
26 for the public interest and the protection of prospective members.

27 Sec. 35. (1) A continuing care community shall deliver to a

1 prospective member and all continuing care agreements pertinent to  
2 the continuing care sought by the prospective member and the  
3 disclosure statement most recently approved by the department under  
4 section 21, 27, or 33. The delivery shall be by a method considered  
5 acceptable by the continuing care community and the prospective  
6 member and shall occur by the earlier of the following:

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

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

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

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

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

17 (2) Upon execution of the continuing care agreement and  
18 payment of the full entrance fee amount, the continuing care  
19 community shall provide the member with a physical copy of the  
20 disclosure statement and executed continuing care agreement.

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

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

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

3 (b) Information concerning organization of the legal entity of  
4 the continuing care community as prescribed by the department.

5 (c) A statement of whether or not the continuing care  
6 community or an affiliate, parent, or subsidiary is a religious,  
7 nonprofit, or proprietary organization. If the continuing care  
8 community uses a name designating or inferring a religious  
9 affiliation, a statement explaining the relationship with the  
10 religious organization or group or a statement that there is no  
11 relationship shall be included.

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

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

17 (f) If the department has waived the submission of audited  
18 financial statements pursuant to section 41, a statement that an  
19 individual who purchases membership in a continuing care community  
20 during that period is entitled to damages or rescission under the  
21 same terms as provided in section 81 if, upon the availability of  
22 audited financial statements or any other valid basis, the  
23 department finds in the reasonable exercise of its discretion that  
24 material adverse financial conditions existed as of the date of the  
25 financial statements which were not disclosed.

26 (g) A statement that registration does not constitute approval  
27 of or a finding regarding the accuracy of any information in or

1 accompanying the registration application.

2 (h) A statement of all fees required of members, including a  
3 statement of the entrance fee, any monthly services fees and other  
4 fees or charges that may be assessed to a member or prospective  
5 member by the continuing care community.

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

15 (j) A statement that monthly service fees and other fees  
16 assessed to a member are subject to increase by the continuing care  
17 community based on the reasonable cost of operations including the  
18 provision of care and services, and that the continuing care  
19 community shall give advance notice of not less than 60 days to  
20 each member before a change or increase in fees becomes effective.

21 (k) A statement that members may be charged assessments and a  
22 statement of the method used to allocate any assessment.

23 (l) A statement that the continuing care agreement is subject  
24 and subordinate to any mortgages on the property or any other  
25 creditors with a preferred status.

26 (m) A statement as to whether entrance fees are subject to an  
27 escrow or other arrangement under section 43, including a

1 description of any applicable arrangement.

2 (n) A statement of the proposed application of the proceeds of  
3 the entrance fee by the continuing care community.

4 (o) A statement of the location and description of any  
5 physical property that is essential for and used or proposed to be  
6 used for the provision of continuing care.

7 (p) A statement describing the continuing care services  
8 provided and the extent to which medical care is furnished.

9 (q) A statement describing the health and financial conditions  
10 required for a member to qualify for or to remain in the continuing  
11 care community, including temporary or permanent transfer of the  
12 member from his or her original living unit to a different type of  
13 living unit or different level of care or services, and whether a  
14 temporary or permanent transfer may result in termination of the  
15 continuing care agreement.

16 (r) A statement that a member may rescind without penalty a  
17 continuing care agreement within 7 days after executing the  
18 agreement and that the entrance fee or the portion of the entrance  
19 fee paid by the member shall be held by the continuing care  
20 community for the benefit of the member in a separate escrow  
21 account during that 7-day rescission period. A member shall not be  
22 required to initiate continuing care before the expiration of the  
23 7-day rescission period. Death of a member within the 7-day  
24 rescission period automatically terminates the continuing care  
25 agreement, and the continuing care community shall within 30 days  
26 refund any entrance fee or portion of an entrance fee paid.

27 (s) A statement that following the 7-day rescission period

1 under subdivision (r), termination of a continuing care agreement,  
2 whether by the member or, as provided in subdivision (u), as a  
3 result of a member's death, will result in a refund of the entrance  
4 fee within 30 days after the fulfillment of the conditions for a  
5 refund set forth in the continuing care agreement. If the  
6 continuing care agreement is for continuing care at home, the  
7 refund shall be paid within 60 days after termination.

8 (t) A statement that the refundable portion of the entrance  
9 fee is equal to the total entrance fee paid less all of the  
10 following:

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

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

14 (iii) A refurbishing fee that is the greater of 4% of the  
15 entrance fee or the actual costs of refurbishing the living unit if  
16 actual costs are known at the time of the refund and if an itemized  
17 list of actual costs is provided to the member.

18 (u) A statement that upon the death of a member, the  
19 continuing care agreement shall terminate as follows:

20 (i) As of the date that all possessions of the deceased member  
21 are removed from the unit if the deceased member was the sole  
22 occupant.

23 (ii) Immediately if the deceased member occupied a living unit  
24 with another member. Any refundable portion of the second person's  
25 entrance fee shall be refunded within 60 days after the death of  
26 the first member, but the continuing care agreement shall remain in  
27 effect for the living member.

1 (v) A detailed description of how the entrance fee refund is  
2 affected if a member moves from his or her original living unit to  
3 a different living unit.

4 (w) A statement as to whether the continuing care agreement  
5 terminates so that a refund of the entrance fee is due if a member  
6 permanently or temporarily transfers to a different level of care  
7 within the continuing care community.

8 (x) A statement setting forth the conditions upon which a  
9 member may reoccupy the member's living unit after termination of  
10 the continuing care agreement.

11 (y) A statement of the fees that will be charged if a member  
12 of the continuing care community marries, the terms and conditions  
13 as to membership in the continuing care community by the new spouse  
14 of a member or in the event of the divorce of a member, and the  
15 consequences if the new spouse does not meet the requirements for  
16 membership.

17 (z) A statement describing the circumstances under which a  
18 person will be permitted to remain a member of the continuing care  
19 community in the event of possible financial difficulties of the  
20 member. The disclosure statement shall also specify whether, if  
21 financial assistance is provided to the member either through a  
22 charitable fund, spend down of the entrance fee otherwise required  
23 for continued membership, reduction of monthly service fees or  
24 other fees assessed under the continuing care agreement or under  
25 some other arrangement, the financial assistance will either:

26 (i) Be offset from the entrance fee refund due to the member or  
27 the member's estate upon termination of the continuing care

1 agreement and upon removal of all possessions of the member or  
2 deceased member from the unit.

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

6 (aa) Other material information as required by the department.

7 (bb) Other material information that the applicant or  
8 registrant wishes to include.

9 (cc) The following items must be included in the beginning of  
10 the disclosure statement in all capital letters and in  
11 substantially the following language:

12 (i) "You may cancel the purchase and receive a full refund  
13 within 7 days after either making a deposit and receiving a copy of  
14 the disclosure statement or executing the continuing care  
15 agreement. You are not required to move into the continuing care  
16 community before the expiration of this 7-day period."

17 (ii) "The purchase of a life interest or long-term lease is an  
18 investment that may involve a high degree of risk, and you should  
19 seek advice from an attorney or other financial advisor who is  
20 independent of the continuing care community."

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

25 (iv) "The department of insurance and financial services (DIFS)  
26 has not passed upon the accuracy of this disclosure statement or  
27 approved or disapproved of the offering described herein. Any

1 representation to the contrary is unlawful and should be reported  
2 to the department."

3 (v) "If you enter into a life interest or long-term lease  
4 during the period when financial statements submitted by the  
5 continuing care community to the department of insurance and  
6 financial services are unaudited, you are entitled to damages or  
7 rescission if the department finds in the reasonable exercise of  
8 its discretion that material adverse conditions existed at the date  
9 of the financial statements and were not disclosed."

10 (vi) "More complete information is on file with DIFS and is  
11 available free of charge at the offices of the continuing care  
12 community."

13 (2) Subject to subsection (3), a disclosure statement shall be  
14 set forth in not less than 12-point type. The department may  
15 prescribe the format of a disclosure statement or require a  
16 registrant or applicant to set forth in its disclosure statement  
17 potential adverse information in a position and in a type size  
18 specified by the department.

19 (3) The department may accept, in place of the disclosure  
20 statement that meets the requirements set forth in subsections (1)  
21 and (2), a disclosure statement form required by a federal  
22 government agency or a government agency of another state that the  
23 department has determined by rule or order to meet the requirements  
24 of this section.

25 Sec. 39. A continuing care agreement shall meet all of the  
26 following requirements:

27 (a) Specify in reasonable detail the rights, privileges,

1 liabilities, and obligations of each party to the continuing care  
2 agreement with respect to the statements required in the disclosure  
3 statement under section 37(1)(h) to (bb).

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

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

10 (d) Specify that the continuing care community will not  
11 terminate a member without 30 days' written notice unless the  
12 continuing care community provides access to an adequate  
13 alternative facility.

14 (e) Each continuing care agreement shall be set forth in not  
15 less than 12-point type. The department may prescribe the format of  
16 a continuing care agreement or require a continuing care community  
17 to set forth in a continuing care agreement potential adverse  
18 information in designated positions and in a type size specified by  
19 the department.

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

22 (a) Be submitted with a statement of any adverse material  
23 changes in the financial condition of the entity from the date of  
24 the financial statement.

25 (b) Be an attachment to, and integral part of, the disclosure  
26 statement.

27 (c) Subject to subdivision (d), be of form and content

1 required by the department.

2 (d) Not be consolidated financial statements except under  
3 circumstances prescribed by the department. Requirements imposed by  
4 the department under subdivision (c) or this subdivision shall be  
5 consistent with generally accepted accounting principles or other  
6 nationally recognized accounting standards applicable to the  
7 applicant.

8 (e) Be submitted within 120 days after the fiscal year-end.

9 (f) Be audited and prepared by an independent certified public  
10 accountant in accordance with generally accepted auditing  
11 standards, subject to all of the following:

12 (i) Unaudited financial statements may be submitted if the  
13 applicant has not been in existence for 1 complete fiscal year.

14 (ii) The department may waive this requirement if it is not  
15 necessary for the protection of the public. The department may  
16 impose conditions and restrictions on the waiver that it considers  
17 appropriate.

18 (iii) Unaudited financial statements shall be accompanied by the  
19 following written disclosure, or a substantially equivalent  
20 statement, immediately adjacent thereto, in all capital letters and  
21 at least 14-point type:

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

25 (iv) If the audited financial statements are more than 120 days  
26 old, they shall be submitted with current unaudited financial  
27 statements.

1           (2) Audited financial statements filed with the department  
2 shall include a consent of the certified public accounting firm,  
3 signed and dated at or near the effective date of the registration  
4 order, approving the use of its name and its opinion in the  
5 disclosure statements required under section 19(1)(c) or 25(2)(b)  
6 and registration application. In the case of a substantial delay in  
7 effectiveness or an adverse material change in the filing, the  
8 department may require an updated consent.

9           (3) If the independent certified public accountant engaged as  
10 the principal accountant to audit the continuing care community's  
11 financial statements was not the principal accountant for the  
12 continuing care community's most recently filed audited financial  
13 statements, or a legal successor thereto, then all of the following  
14 apply:

15           (a) The continuing care community shall furnish the department  
16 with a statement of the date when the current independent  
17 accounting firm was engaged and whether, in the 78 weeks preceding  
18 the engagement, there were any disagreements with the former  
19 principal accounting firm in a matter of accounting principles or  
20 practices, financial statement disclosure, or accounting procedure  
21 which, if not resolved to the satisfaction of the former accounting  
22 firm, would have required a reference, in the accounting firm's  
23 opinion, to the subject matter of the disagreement.

24           (b) The continuing care community shall request the former  
25 accounting firm to furnish the continuing care community with a  
26 letter stating whether it agrees with the statement of the  
27 continuing care community under subdivision (a) and, if not,

1 stating why it does not agree. The letter shall be furnished by the  
2 continuing care community to the department.

3 (4) If an entity owns multiple continuing care communities or  
4 if the organization has 1 or more affiliates, the department may  
5 require additional financial information for each continuing care  
6 community or affiliate but shall not require any audited financial  
7 statements other than the consolidated financial statements of the  
8 entity.

9 (5) The department may require a continuing care community to  
10 deposit with an escrow agent acceptable to the department an amount  
11 the department considers necessary for the continuing care  
12 community to fulfill its obligations or may require the continuing  
13 care community to furnish a surety bond or guaranty as approved by  
14 the department if both of the following apply:

15 (a) One or more of the following apply:

16 (i) The department determines in the reasonable exercise of its  
17 discretion that the financial condition of the continuing care  
18 community may materially jeopardize the care of current or  
19 prospective members.

20 (ii) The department determines that the continuing care  
21 community is insolvent.

22 (iii) The department determines that the continuing care  
23 community is in jeopardy of becoming insolvent.

24 (b) That the requirement is necessary and appropriate to  
25 protect current or prospective members.

26 Sec. 43. (1) A pro forma financial plan shall include a  
27 financial forecast for a period of 3 years on the same basis that

1 the financial statements are presented, including the following:

2 (a) A balance sheet.

3 (b) A statement of changes and activities or statement of  
4 operations.

5 (c) A statement of cash flow.

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

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

10 (f) Amount of reserves expected to be provided for capital  
11 replacement, improvements, maintenance, refunds, and other  
12 expenses.

13 (g) A statement of assumptions and principles used to make the  
14 forecast.

15 (2) The department may require a continuing care community to  
16 deposit entrance fees with an escrow agent pursuant to section 45  
17 or to establish an alternative financial arrangement pursuant to  
18 section 47 as approved by the department and as necessary and  
19 appropriate to protect current or prospective members.

20 Sec. 45. (1) If a member pays funds to a continuing care  
21 community before occupancy, the funds shall be held in a trust  
22 account unless this requirement is waived or modified by the  
23 department. Any interest or other income from the investment of the  
24 funds held in the trust account shall accrue to the benefit of the  
25 member. The department may, by rule or order, determine the  
26 conditions of the trust account. Funds placed with a continuing  
27 care community for continuing care at home are not subject to the

1 requirements of this subsection.

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

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

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

9 (ii) The continuing care community is insolvent or in jeopardy  
10 of becoming insolvent.

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

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

15 (3) In addition to an escrow imposed by the department under  
16 subsection (2), the department may summarily order the temporary  
17 suspension of a continuing care community's approval to offer  
18 continuing care agreements pending a hearing under section 67. The  
19 department may direct the escrow agent to return all the escrowed  
20 funds to the members if any of the following apply:

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

24 (b) The registration or exemption of the continuing care  
25 community is revoked.

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

1 (a) Be executed by the escrow agent and continuing care  
2 community.

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

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

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

18 (e) Include on its face an acknowledgment executed by the  
19 department indicating approval of the form and content of the  
20 escrow agreement. The acknowledgment does not make the department a  
21 party to the escrow agreement.

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

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

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

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

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

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

12 (6) After submission of a request for release of funds  
13 pursuant to subsection (7), the department may approve release to  
14 the continuing care community of funds held in escrow pursuant to  
15 subsection (2). However, the continuing care community shall not  
16 change the methodology for calculating a release of funds except as  
17 approved by the department. Funds shall be released in the  
18 following amounts:

19 (a) An amount up to 75% of the funds as a result of occupancy  
20 of at least 75% of living units in the continuing care community.  
21 The continuing care community may request release of an additional  
22 5% of the funds in proportion to each 5-percentage-point increase  
23 in occupancy. Upon achieving 90% occupancy of living units, the  
24 continuing care community may request and the department may  
25 authorize release of all the funds. For purposes of this  
26 subsection, occupancy shall be measured by the total number of  
27 living units of the entire continuing care community designated for

1 occupancy under continuing care agreements.

2 (b) An amount equal to 1-1/2% per month of the total entrance  
3 fees escrowed that are fully amortized and earned by the continuing  
4 care community, with amortization beginning as of the date of  
5 occupancy of a living unit by the member. Upon achieving 90%  
6 occupancy of living units, the continuing care community may  
7 request and the department may approve release of all funds subject  
8 to the escrow arrangement.

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

16 (a) The methodology under subsection (6) for calculating the  
17 amount of funds to be released and supporting documentation.

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

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

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

27 (e) The name of each member and the amount held in escrow for

1 the account of the member.

2 (f) A pro forma financial plan.

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

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

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

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

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

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

24 (8) An order issued by the department approving the release of  
25 escrow funds, in whole or in part, or for modification or  
26 discontinuance of an escrow arrangement imposed pursuant to  
27 subsection (2), shall include authorization for the escrow agent to

1 release to the continuing care community those amounts of the  
2 escrowed funds applicable to a specified member as stated in the  
3 order.

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

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

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

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

1 (c) Be in an amount that is at least equal to the total  
2 entrance fees that would be collected for the continuing care  
3 community and that allows the continuing care community to fulfill  
4 its obligations to members consistent with the purpose for  
5 imposition of the arrangement.

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

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

16 (f) Require that quarterly balance statements be provided to  
17 the department directly from the escrow agent, financial  
18 institution, or other entity with custody of the funds and  
19 authorize the department to inspect the records pertinent to the  
20 arrangement.

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

23 (3) The department shall take into consideration the amount of  
24 the entrance fees and other fees to be charged in addition to the  
25 number of continuing care agreements to be offered, granted, or  
26 sold in determining the initial amount of the alternative financial  
27 arrangement and shall amend the amount of the alternative financial

1 arrangement, as the public interest requires, using the same  
2 factors.

3 (4) If a continuing care community fails to complete its  
4 obligations under a continuing care agreement, the financial  
5 institution that is a party to the alternative financial  
6 arrangement with the continuing care community shall, upon order of  
7 the department, pay funds to the department or its designee for the  
8 benefit of all members.

9 (5) If an instrument comprising an alternative financial  
10 arrangement expires or is canceled and the continuing care  
11 community is still under an obligation to provide certain items  
12 under the continuing care agreement, the continuing care community,  
13 at its option, may either post a surety bond or guaranty or have an  
14 escrow of entrance and other fees imposed by the department. Until  
15 a surety bond or guaranty acceptable to the department is purchased  
16 or escrow is imposed, the continuing care community shall not enter  
17 into any additional continuing care agreements. An alternative  
18 financial arrangement approved under this section may be released  
19 in whole or in part by order of the department, subject to the  
20 requirements for release of escrow funds pursuant to section 45.

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

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

27 (b) Copies of contracts, including continuing care agreements,

1 management contracts for any material component of operations,  
2 contracts for construction of buildings or other structures used to  
3 provide continuing care, and contracts with affiliated persons  
4 related to any material component of operations.

5 (c) Records of compensation paid to persons, directly or  
6 indirectly, in connection with the offer or sale of continuing care  
7 agreements. These records shall include all the following  
8 information:

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

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

11 (iii) The reason for each payment.

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

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

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

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

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

18 (iv) The terms of payment.

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

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

22 (ii) The date of the complaint.

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

25 (2) Not more than 30 days after the end of each fiscal year  
26 quarter, or such later date as may be authorized by the department,  
27 a registered continuing care community shall submit the following

1 to the department, unless waived by the department:

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

5 (b) A quarterly occupancy report stating the percentage of  
6 occupancy of living units in a continuing care community, the  
7 number of occupants who have continuing care agreements, and the  
8 number of members who have died or moved out of the continuing care  
9 community since the last occupancy report was submitted.

10 (3) If required by the department in the reasonable exercise  
11 of its discretion, a registered continuing care community shall  
12 submit to the department a report that compares any increases in  
13 monthly service fees to the annual consumer price index - all urban  
14 consumers, over 5 preceding calendar years. This report shall be  
15 submitted no later than February 1 following the end of each 5-year  
16 period. The first 5-year period begins January 1 after the  
17 effective date of this act.

18 (4) The records required by this section are subject to  
19 reasonable examination by a representative of the department,  
20 within or outside of this state.

21 Sec. 51. (1) A person shall not distribute or transmit an  
22 advertisement or marketing communication unless a true copy of the  
23 advertisement or marketing communication has been submitted to and  
24 approved by the department or unless an advertising waiver has been  
25 approved by the department.

26 (2) The department shall approve or reject in writing any  
27 advertisement or marketing communication proposed to be used by a

1 continuing care community within 10 days after the date it is  
2 received. If a written approval or rejection is not issued by the  
3 department with respect to an advertisement or marketing  
4 communication within 10 days after the date of receipt, the  
5 advertisement or marketing communication shall be considered  
6 approved unless the continuing care community has consented in  
7 writing to a delay or the advertising or marketing communication  
8 contains any of the following information:

9 (a) An entrance fee.

10 (b) A monthly service fee.

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

13 (d) A continuing care agreement.

14 (3) To obtain an advertising waiver, a continuing care  
15 community shall submit to the department a written request that  
16 includes the reasons why the waiver should be approved. The  
17 department shall grant or deny a waiver request in writing within  
18 30 days after receipt. If the waiver is granted, the waiver shall  
19 specify its expiration date, if any.

20 (4) This act does not impose liability, civil or criminal,  
21 upon a person regularly engaged in the business of publishing a  
22 bona fide newspaper or operating a radio or television station, and  
23 acting solely in the person's official capacity, who publishes an  
24 advertisement or marketing communication in good faith and without  
25 knowledge that the advertisement or marketing communication  
26 constitutes a violation of this act.

27 (5) A continuing care community shall maintain advertising or

1 marketing communications for not less than 3 years in physical copy  
2 or electronic format and make these records available to the  
3 department upon written request.

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

5 (a) Offer or sell a continuing care agreement unless the  
6 continuing care community is registered or exempt from registration  
7 under this act.

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

10 (c) Execute sales contracts of life interests or long-term  
11 leases or collect funds pertaining to such sales contracts unless  
12 the sales agent has written authorization from the continuing care  
13 community.

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

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

19 (b) Violated this act or a rule promulgated or order issued  
20 under this act.

21 (c) Engaged in unfair, unconscionable, or deceptive business  
22 practices. Such practices include recommending the purchase of a  
23 life interest or long-term lease without reasonable grounds to  
24 believe that the recommendation is suitable for the individual on  
25 the basis of information furnished by the individual after such  
26 reasonable inquiry as may be necessary under the circumstances.

27 (d) Been convicted of a misdemeanor involving deceit and has

1 not been convicted of any felony.

2 (e) Been the subject of an administrative order of a state or  
3 federal agency relating to, or been permanently or temporarily  
4 enjoined by a court of competent jurisdiction from engaging in or  
5 continuing, any conduct or practice involving any aspect of the  
6 securities, franchise, real estate, banking, or insurance business.

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

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

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

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

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

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

1 effect at the time of the dispute, claim, or grievance.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 rule promulgated or order issued under this act.

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

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

12 (a) The officers or directors of a continuing care community  
13 have received, or will receive, unreasonable compensation. The  
14 following compensation is reasonable:

15 (i) Compensation specifically approved by an appropriate state  
16 or federal agency.

17 (ii) Compensation which corresponds to compensation received by  
18 those performing the same or similar tasks in continuing care  
19 communities of a comparable size or situation and proportionate to  
20 the amount of services provided.

21 (b) Management companies, consultants, or their affiliates  
22 have received, or will receive, unreasonable compensation with  
23 respect to the offering. Compensation is reasonable if specifically  
24 approved by an appropriate state or federal agency, or if the  
25 compensation corresponds to that received by individuals performing  
26 the same or similar services in relation to continuing care  
27 communities of a comparable size or situation. A representation by

1 the continuing care community that the compensation is reasonable  
2 creates a rebuttable presumption that the compensation is  
3 reasonable.

4 (c) The offering provides for compensation to officers,  
5 directors, or persons affiliated with them for goods or services  
6 other than in the normal course of employment with the continuing  
7 care community, unless appropriate steps have been taken by the  
8 continuing care community to ensure that the goods or services are  
9 necessary, that the amount paid for the goods or services does not  
10 exceed that which the continuing care community would have paid to  
11 obtain the goods or services from independent parties, and that the  
12 officers, directors, or persons affiliated with them were  
13 previously engaged in the business of rendering these goods or  
14 services as an ordinary and ongoing business independent of the  
15 continuing care community's business. A representation by the  
16 continuing care community that the compensation paid is reasonable  
17 creates a rebuttable presumption that the compensation is  
18 reasonable.

19 (d) Monthly service fees or assessments are not used for the  
20 purpose designated.

21 (e) With respect to an offering by a continuing care community  
22 seeking registration or exemption, the offering fails to provide  
23 for adequate reserves or other adequate revenue sources for  
24 operations, repairs, and renovations.

25 (f) 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) A court or the department may by order authorize  
16 a registrant to suspend repayment of an entrance fee for not more  
17 than 180 days, upon a showing by the registrant that payment would  
18 jeopardize the care of members in the continuing care community.  
19 The order may be extended upon a showing of substantial progress in  
20 resolving the financial difficulties of the continuing care  
21 community.

22 (2) To obtain an order from the department allowing the  
23 temporary suspension of repayment of an entrance fee pursuant to  
24 subsection (1), a continuing care community shall submit to the  
25 department a letter requesting a temporary suspension order. The  
26 letter shall contain all of the following information:

27 (a) The name of the facility involved and its affiliates, if

1 any.

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

4 (c) The time during which the facility desires the suspension  
5 to be effective.

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

8 (e) Other information required by the department.

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

11 Sec. 67. (1) The department may issue an order denying,  
12 suspending, or revoking a registration if it finds that the order  
13 is in the public interest and finds 1 or more of the following:

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

18 (b) The registrant or applicant, or its agent or employee, has  
19 violated this act or a rule promulgated or order issued under this  
20 act.

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

25 (d) The registrant's or applicant's method of business  
26 includes or would include activities that are illegal where  
27 performed.

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

8 (f) The applicant is the subject of a permanent or temporary  
9 injunction entered under a federal or state act, and the injunction  
10 is applicable to the offer and sale of a continuing care agreement.

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

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

15 (2) Before issuing an order under subsection (1), the  
16 department shall notify the registrant or applicant by registered  
17 or certified mail. The notice shall include the proposed order, the  
18 reasons for the proposed order, and a statement that, if a hearing  
19 is requested in writing within 15 days after issuance of the notice  
20 of intent, a hearing will be conducted on the matter within 45 days  
21 after the receipt of the request, unless the registrant or  
22 applicant consents to a later date. If a hearing is not timely  
23 requested by the continuing care community and is not ordered by  
24 the department, the department shall issue an order under  
25 subsection (1). The order shall remain in effect until it is  
26 modified or vacated by the department. If a hearing is timely  
27 requested or ordered, the department, after notice and an

1 evidentiary hearing pursuant to the administrative procedures act  
2 of 1969, 1969 PA 306, MCL 24.201 to 24.328, may enter an order  
3 under subsection (1), or find that a violation has not occurred.

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

7 Sec. 69. (1) Subject to subsection (2), if the department  
8 determines that a person has engaged, is engaging, or is about to  
9 engage in an act, practice, or course of business constituting a  
10 violation of this act or a rule promulgated or order issued under  
11 this act, or that a person has materially aided, is materially  
12 aiding, or is about to materially aid an act, practice, or course  
13 of business constituting such a violation, the department may issue  
14 an order directing the person to cease and desist from engaging in  
15 the act, practice, or course of business or to take other action  
16 necessary as appropriate to comply with this act.

17 (2) Before issuing an order under subsection (1), the  
18 department shall notify the person. The notice shall include the  
19 proposed order, the reasons for the proposed order, and a statement  
20 that, if a hearing is requested in writing within 15 days after  
21 issuance of the notice of intent, a hearing will be conducted on  
22 the matter within 45 days after receipt of the request, unless the  
23 person consents to a later date. If a hearing is not timely  
24 requested, the department shall issue an order under subsection  
25 (1). If a hearing is timely requested, the department, after notice  
26 and an evidentiary hearing pursuant to the administrative  
27 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, may

1 enter a cease and desist order or find that a violation has not  
2 occurred.

3 (3) A continuing care community, its agent, an entity  
4 purporting to operate as a continuing care community under this act  
5 or its agent who knowingly authorizes, directs, or aids in  
6 violation of a final cease and desist order, or who knowingly fails  
7 to comply with the terms of a final cease and desist order, and may  
8 be fined not more than \$10,000.00. Each violation constitutes a  
9 separate offense.

10 Sec. 71. If it appears to the department that a person has  
11 engaged or is about to engage in an act or practice constituting a  
12 violation of this act or a rule promulgated or order issued under  
13 this act, the attorney general may bring an action in the name of  
14 the people in the circuit court to enjoin the acts or practices or  
15 to enforce compliance with this act or the rule or order. Upon a  
16 proper showing, a preliminary or permanent injunction, restraining  
17 order, or writ of mandamus shall be granted and a receiver or  
18 conservator may be appointed for the defendant or the defendant's  
19 assets. The court shall not require the department to post a bond.

20 Sec. 73. If the director of the department finds that a person  
21 violated this act or a rule promulgated or order issued under this  
22 act, after an opportunity for an evidentiary hearing under the  
23 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
24 24.328, the director may order the person to pay a civil fine of  
25 not less than \$1,000.00 or more than \$50,000.00. The director may  
26 also order the respondent to pay the costs of the investigation.

27 Sec. 75. (1) A person who offers or sells a continuing care

1 agreement in violation of section 15 or 55 or an order issued under  
2 section 67 is liable to the person executing the continuing care  
3 agreement for all of the following:

4 (a) Damages.

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

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

12 (d) Reasonable attorney fees.

13 (e) Court costs.

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

24 Sec. 77. Except as explicitly provided in this act, civil  
25 liability in favor of a private party does not arise against a  
26 person by implication from or as a result of the violation of this  
27 act or a rule promulgated or order issued under this act. This act

1 does not limit liability that may exist under any other statute or  
2 under common law.

3       Sec. 79. A person who directly controls a person who violates  
4 this act, a partner in a firm that violates this act, a principal  
5 executive officer or paid director or trustee of a corporation that  
6 violates this act, a person occupying a similar status as an  
7 executive officer or director performing similar functions, or an  
8 employee of a person who violates this act who materially aids in  
9 the act or transaction constituting the violation is also liable  
10 jointly and severally with and to the same extent as the person who  
11 violates this act, unless the person did not have knowledge of or  
12 reasonable grounds to believe in the existence of the facts  
13 constituting the violation.

14       Sec. 81. An action shall not be maintained to enforce a  
15 liability created under this act unless brought before the  
16 expiration of 3 years after the date of the act or transaction  
17 constituting the violation.

18       Sec. 83. Pursuant to the administrative procedures act of  
19 1969, 1969 PA 306, MCL 24.201 to 24.328, the department may  
20 promulgate rules to implement this act.

21       Sec. 85. (1) Applications, reports, and other papers and  
22 documents filed by applicants or registrants or experts or  
23 appraisers with the department under this act are subject to  
24 disclosure under the freedom of information act, 1976 PA 442, MCL  
25 15.231 to 15.246. However, pro forma financial statements,  
26 marketing plans, feasibility studies, and social security numbers  
27 are exempt from disclosure. In addition, a continuing care

1 community may request, and the department may grant, subject to  
2 section 13 of the freedom of information act, 1976 PA 442, MCL  
3 15.243, confidentiality as to any other document received under  
4 this act.

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

14 (3) The department shall take reasonable steps to protect the  
15 confidentiality of social security numbers provided to the  
16 department under this act.

17 Sec. 87. A life interest or long-term lease agreement entered  
18 into under the former 1976 PA 440 is not invalidated by the repeal  
19 of that act and the adoption of this act.

20 Enacting section 1. The living care disclosure act, 1976 PA  
21 440, MCL 554.801 to 554.844, is repealed.

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