

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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Columbia
Official Code*

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To regulate continuing care retirement communities to include licensing of a continuing care facility by the Department of Insurance, Securities, and Banking, the revocation of any license, the sale or transfer of ownership of a continuing care facility, contracts for continuing care and its specifications, operating reserves for continuing care facilities, the establishment of escrow accounts and the collection of deposits, disclosure requirements, and the rights of residents to organize; and to amend the Insurance Regulatory Trust Fund Act of 1993 to establish an account within the Insurance Regulatory Trust Fund for the purpose of administering this act and for reasonable expenses incurred in promoting the continuing care retirement community industry in the District.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Continuing Care Retirement Communities Act of 2004".

Title I.

Sec. 101. Definitions.

For the purposes of this title, the term:

(1) "Assisted living" means an assisted living residence as defined in section 201(4) of the Assisted Living Residence Regulatory Act of 2000, effective June 24, 2000 (D.C. Law 13-127; D.C. Official Code § 44-102.01(4)).

(2) "Commissioner" means the Commissioner of the Department of Insurance, Securities, and Banking.

(3) "Continuing care facility" means a building, or complex of buildings under one management at one or more sites, if continuing care services are provided.

(4) "Continuing care services" means the continuum of care, ranging from independent living to assisted living to nursing home care, provided pursuant to a contract for the life of the individual purchasing the services or for a period of not less than one year.

(5) "Entrance fee" means a payment that assures a resident a place in a facility for a term of at least a year or for life.

(6) “Hazardous financial condition” means a provider is insolvent or in imminent danger of becoming insolvent.

(7) “Independent living” means an individual residing in a continuing care facility’s living unit with no need for specialized health care services beyond general preventative health care.

(8) “Living unit” means a room, apartment, cottage, or other area within a continuing care facility set aside for the exclusive use or control of one or more identified residents.

(9) “Nursing home” means a nursing home as defined in section 2(3) of the Health-Care and Community Residence Facility Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501(3)).

(10) “Provider” means the promoter, developer, or owner, whether a natural person, partnership, or other unincorporated association, however organized, trust, or corporation, whether operated for profit or not, or any other person, that solicits or undertakes to provide continuing care services.

(11) “Resident” means a purchaser of, a nominee of, or a subscriber to, a continuing care contract.

Sec. 102. License.

(a) No provider shall engage in the business of offering or providing continuing care in the District without a license from the Department of Insurance, Securities, and Banking indicating that the provider meets the financial requirements under this title for engaging in the business of providing continuing care services.

(b) No provider shall be licensed by the Department of Insurance, Securities, and Banking unless the applicant demonstrates to the satisfaction of the Commissioner that it has:

(1) A business plan that reasonably demonstrates that it shall be able financially to provide the services that it contracts to provide;

(2) Sufficient capitalization and predictable cash flow to carry out its business plan; and

(3) Experienced managers and qualified financial experts associated with the organization who are capable of ensuring the proper operation of the facility.

(c) Each provider shall file with the Commissioner an application for a license on forms prescribed by rule and within a period of time prescribed by rule. The application shall include the disclosure statement meeting the requirements of this title and other financial and facility development information required by the rule. The application for a license shall be accompanied by an application fee established by rule.

(d) Upon receipt of the complete application for a license in proper form, the Commissioner shall, within 10 business days, issue a notice of filing to the applicant. Within 90 days of the notice of filing, the Commissioner shall enter an order issuing the license or rejecting

the application. If the Commissioner fails to act within 90 days of the notice of filing, the application shall be deemed denied.

(e) If the Commissioner determines that any of the requirements of this title have not been met, the Commissioner shall notify the applicant of any defects in the application and the applicant shall have 30 days in which to correct the application. If the requirements are not met within the time allowed, the Commissioner may enter an order rejecting the application, which order shall include the findings of fact upon which the order is based and which shall not become effective until 20 days after the end of the 30-day period. During the 20-day period, the applicant may petition for reconsideration of the application and shall be entitled to a hearing.

(f) The provider shall provide to the Commissioner the report of an actuary that:

(1) Estimates the capacity of the provider to meet its contractual obligation to the residents; or

(2) Gives consideration to expected rates of mortality and morbidity, expected refunds, and expected capital expenditures in accordance with standards promulgated by the American Academy of Actuaries, within a 5-year forecast period.

(g) Any license issued pursuant to this section for a provider of continuing care services shall be issued as a Financial Services endorsement to a basic business license under the basic business license system as set forth in subchapter 1-A of Chapter 28 of Title 47 of the District of Columbia Official Code.

(h) Nothing in this title shall require the Commissioner to review the disclosure statement and the issuance of a license under this title shall not constitute an approval of the disclosure statement or of any of the statements therein.

Sec. 103. Revocation of license.

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

- (1) Willfully violated any provision of this title or of any related rule or order;
- (2) Failed to file an annual disclosure statement or standard form as required by

law;

- (3) Failed to deliver to prospective residents the required disclosure statements;

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

- (5) Failed to comply with the terms of a cease and desist order; or

(6) Been or is in imminent danger of being determined to be in a hazardous financial condition.

(b) The Commissioner may suspend the license of a provider, after notice and hearing, for any of the violations in subsection (a) of this section and set forth the conditions necessary to

correct the violations, including whether a provider can enter into new continuing care service contracts while suspended.

(c) The Commissioner may, in lieu of suspension or revocation of the license of a provider issued pursuant to this title, after notice and hearing, order a provider to take corrective action or levy an administrative penalty in an amount not more than \$50,000 per violation.

(d) Upon review of an order of the Commissioner revoking a license, a court may determine whether a factual finding by the Commissioner is clearly erroneous.

(e) If there is good cause to believe that the provider is guilty of a violation for which revocation could be ordered, the Commissioner may first issue a cease and desist order. The cease and desist order shall be subject to notice and hearing within 10 days of the order. If the cease and desist order is not or cannot be effective in remedying the violation, the Commissioner may, after notice and hearing, issue an order that the license be revoked and surrendered. The provider may accept new applicant funds while the revocation order is under appeal provided the funds are escrowed pending results of the appeal.

Sec. 104. Sale or transfer of ownership.

(a) No provider or other owning entity shall sell or transfer ownership of the facility, or enter into a contract with a third-party provider for management of the facility, unless the transfer or contract has been approved by the Commissioner. The Commissioner shall have 90 days from receipt of the transfer documents or contract in which to review and to approve or disapprove the transfer or contract. If the transfer or sales contract or third-party management contract is approved, the new provider or third-party manager shall have 90 days in which to meet the licensing requirements and to obtain a license to operate the facility in their own name. The Commissioner, with the consent of the applicant, may extend this 90-day period for up to an additional 60 days.

(b) Upon receipt of an application for the sale or transfer of ownership of the facility or for execution of a contract with a third-party provider for management of the facility, the Commissioner shall, within 10 business days, issue a notice of filing to the applicant. Within 90 days of the notice of filing, the Commissioner shall enter an order issuing the license or rejecting the application. If the Commissioner fails to act within 90 days of the notice of filing, the application shall be deemed denied.

Sec. 105. Disclosure statement.

(a) At least 30 days prior to the execution of a contract to provide continuing care, or 30 days prior to the transfer of any money or other property to a provider by or on behalf of a prospective resident, whichever occurs first, the provider shall deliver a current disclosure statement to the person with whom the contract is to be entered into. This 30-day period may be waived at the sole request of the prospective resident. The text of the disclosure statement shall contain at least:

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

(2) The names and business addresses of the officers, directors, trustees, managing general partners, any person having a 10% or greater equity or beneficial interest in the provider, and any person who shall be managing the facility on a day-to-day basis, and a description of these persons' interests in or occupations with the provider;

(3) The following information on all persons named in response to paragraph (2) of this subsection:

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

(B) The name and address of any professional service firm, association, trust, partnership, or corporation in which the person has a 10% or greater interest and which it is presently intended shall currently or in the future provide goods, leases, or services to the facility, or to residents of the facility, including a description of the goods, leases, or services; and

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

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

(ii) Is subject to a currently effective injunctive or restrictive court order, or within the past 5 years, had any state or federal license or permit suspended or revoked as a result of an action brought by a governmental agency or department, if the order or action arose out of or related to business activity of health care, including actions affecting a license to operate a foster care facility, nursing home, retirement home, home for aged, or facility subject to this title or a similar law in another state;

(4) A statement as to whether the provider is, or is not, affiliated with a religious, charitable, or other nonprofit organization, the extent of the affiliation, if any; the extent to which the affiliate organization shall be responsible for the financial and contract obligations of the provider; and the provision of the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2085; 26 U.S.C. § 1 *et seq.*), if any, under which the provider or affiliate is exempt from the payment of income tax;

(5) The location and description of the physical property of the facility, existing or proposed, and to the extent proposed, the estimated completion date, whether construction has begun, and the contingencies subject to which construction may be deferred;

(6) The services provided or proposed to be provided pursuant to the contracts for continuing care at the facility, including the extent to which medical care is furnished, and a statement of which services are included for specified basic fees for continuing care and which services are made available at or by the facility at extra charge;

(7) A description of all fees required of residents, including the entrance fee and periodic charges, if any, which description shall include:

(A) A statement of the fees that shall be charged if the resident marries while at the facility, and a statement of the terms concerning the entry of a spouse or non-spouse to the facility and the consequences if the spouse or non-spouse does not meet the requirements for entry;

(B) The circumstances under which the provider may discharge or evict a resident for failure or inability to pay any amount due under the contract or for other violations of the contract;

(C) The terms and conditions under which a contract for continuing care at the facility may be canceled by the provider or by the resident, and the conditions, if any, under which all or any portion of the entrance fee or any other fee shall be refunded if the contract is cancelled by the provider or by the resident or if the resident dies prior to or following occupancy of a living unit;

(D) The conditions under which a living unit occupied by a resident may be made available by the facility to a different or new resident other than on the death of the prior resident; and

(E) The manner by which the provider may adjust periodic charges or other recurring fees and the limitations on these adjustments, if any, if the facility is already in operation, or if the provider or manager operates one or more similar continuing care locations within the District, tables shall be included showing the frequency and average dollar amount of each increase in periodic charges, or other recurring fees at each facility or location for the previous 5 years, or such shorter period as the facility or location may have been operated by the provider or manager);

(8) The health and financial condition required for an individual to be accepted as a resident and to continue as a resident once accepted, including the effect of any change in the health or financial condition of a person between the date of entering into a contract for continuing care and the date of initial occupancy of a living unit by the person;

(9) The provisions that have been made or shall be made to provide reserve funding or security to enable the provider to perform its obligations fully under contracts to provide continuing care at the facility, including the establishment of escrow accounts, trusts, or reserve funds, the manner in which these funds shall be invested, and the names and experience of any individuals in the direct employment or on the board of directors of the provider who shall make the investment decisions;

(10) Financial statements of the provider, certified by an independent certified public accountant as of the end of the most recent fiscal year or such shorter period of time as the provider shall have been in existence; provided, that if the provider's fiscal year ended more than 120 days prior to the date of the disclosure statement, interim financial statements as of a

date not more than 90 days prior to the date of the statement shall be included, but need not be certified by an independent certified public accountant;

(11) If the facility has had an actuarial report prepared within the prior 2 years of the date of the disclosure statement, the summary of a report of an actuary that estimates the capacity of the provider to meet its contractual obligations to the residents;

(12) Financial forecasts for the facility for the next 5 years, including a balance sheet, a statement of operations, a statement of cash flows, and a statement detailing all significant assumptions, compiled by an independent certified public accountant;

(13) The estimated number of residents of the facility to be provided services by the provider pursuant to the contract for continuing care;

(14) Proposed or development stage facilities shall additionally provide:

(A) The summary of the report of an actuary estimating the capacity of the provider to meet its contractual obligation to the residents;

(B) Narrative disclosure detailing all significant assumptions used in the preparation of the forecast financial statements, including:

(i) Details of any long-term financing for the purchase or construction of the facility, including interest rate, repayment terms, loan covenants, and assets pledged;

(ii) Details of any other funding sources, including the provider of the funds and other funding sources, that the provider anticipates using to fund any start-up losses or to provide reserve funds to assure full performance of the obligations of the provider under contracts for the provision of continuing care;

(iii) The total life occupancy fees to be received from or on behalf of, residents at, or prior to, commencement of operations, and anticipated accounting methods used in the recognition of revenues from, and expected refunds of, life occupancy fees;

(iv) A description of any equity capital to be received by the facility;

(v) The cost of the acquisition of the facility or, if the facility is to be constructed, the estimated cost of the acquisition of the land and construction cost of the facility;

(vi) Related costs, such as financing any development costs that the provider expects to incur or become obligated for prior to the commencement of operations;

(vii) The marketing and resident acquisition costs to be incurred prior to commencement of operations;

(viii) A description of the assumptions used for calculating the estimated occupancy rate of the facility and the effect on the income of the facility of government subsidies for health care services; and

(ix) Whether there are any plans anticipated to use any funds or to pledge any assets of this facility in the purchase or construction of any other facility or the

purchase of any property not a part of this facility and for the purposes of the residents of this facility;

(15) Any other material information concerning the facility or the provider necessary to make the disclosed information not misleading; and

(16) In addition to any other requirements of this section, if a provider's continuing care agreement includes a provision to provide assisted living program services or nursing home services, and the provider does not execute a separate assisted living agreement, the disclosure statement shall contain, with regard to the assisted living program:

(A) The name and address and a description of each facility that the provider operates;

(B) A statement regarding the relationship of the provider to other providers or services if the relationship affects the care of the resident;

(C) A description of any special programming, staffing, and training provided by the program for individuals with particular needs or conditions, such as cognitive impairment or confinement to bed;

(D) The security practices and procedures which the provider shall implement to protect the resident and the resident's property;

(E) A statement of the obligations of the provider and the obligations and added charges, if any, to the resident or the resident's agent as to:

(i) Arranging for or overseeing medical care;

(ii) Monitoring the health status of the resident; and

(iii) Purchasing or renting essential or desired equipment and supplies; and

(F) An explanation of the assisted living program's and the nursing home component's complaint or grievance procedure.

(b) The cover page of the disclosure statement shall state, in a prominent location and in boldface type, the date of the disclosure statement, the last date through which that disclosure statement may be delivered if not earlier revised, and that the delivery of the disclosure statement to a contracting party before the execution of a contract for the provision of continuing care is required by this title but that the disclosure statement has not been reviewed or approved by any government agency or representative to ensure accuracy or completeness of the information set forth.

(c) A copy of the standard form of contract for continuing care used by the provider shall be attached to each disclosure statement.

(d) Rules adopted under this title may prescribe a standardized format for the required disclosure statement. The Mayor shall, when promulgating rules for standardized forms under this title, attempt to seek clarity and require that disclosure statements be written in language reasonably designed to be understandable to potential residents.

Sec. 106. Contract for continuing care; specifications.

(a) Each contract for continuing care shall provide that:

(1) The resident may rescind the contract within 30 days following the execution of the contract or the receipt of a disclosure statement that meets the requirements of this title, whichever is later, and the resident to whom the contract pertains shall not be required to move into the facility before the expiration of the 30-day period;

(2) If a resident dies before occupying a living unit in the facility, or if, on account of illness, injury, or incapacity, a resident would be precluded from occupying a living unit in the facility under the terms of the contract for continuing care, the contract shall be automatically canceled; and

(3) Except as provided in paragraph (4) of this subsection, for rescinded or canceled contracts under this title, the resident or the resident's legal representative shall receive a refund of all money or property transferred to the provider, less:

(A) Periodic charges specified in the contract and applicable only to the period a living unit was actually occupied by the resident;

(B) Those nonstandard costs specifically incurred by the provider or facility at the request of the resident and described in the contract or any contract amendment signed by the resident;

(C) Nonrefundable fees, if set forth in the contract; and

(D) A reasonable service charge, if set forth in the contract, not to exceed the greater of \$1,000 or 2% of the entrance fee; and

(4) A provider shall not deduct from a refund due for a rescinded or canceled contract non-refundable fees set forth in the rescinded or canceled contract or any service charge if the contract performance by the resident becomes impossible due to death or morbidity, and the resident did not occupy a living unit in the facility.

(b) Each contract shall include provisions that specify the following:

(1) The total consideration to be paid;

(2) Services to be provided and whether there shall be additional charges for services not included in the monthly fees;

(3) The procedures the provider shall follow to change the resident's accommodation if necessary for the protection of the health or safety of the resident or the general and economic welfare of the residents and the procedures the resident can use to contest the provider's decision to change the resident's accommodations;

(4) The policies to be implemented if the resident cannot pay the periodic fees;

(5) The terms governing the refund of any portion of the entrance fee if there is a discharge by the provider or cancellation by the resident;

(6) The policy regarding increasing the periodic fees;

(7) The description of the living quarters;

(8) Any religious or charitable affiliations of the provider and the extent, if any, to which the affiliate organization shall be responsible for the financial and contractual obligations of the provider;

(9) Any property rights of the resident, including the right, if any, to an equity interest in the property;

(10) The policy, if any, regarding fee adjustments if the resident is voluntarily absent from the facility;

(11) A requirement, if any, that the resident have Medicare, Medicare supplement, or other medical or long-term care insurance apply for Medicaid, public assistance, or any public benefit program;

(12) The policy of ownership of pets;

(13) A requirement, if any, that the resident have Medicare, Medicare supplement, or other medical or long-term care insurance;

(14) The procedures the residents shall follow to file a grievance and the procedures the provider shall follow to resolve the grievance and that the resident shall not be subject to retaliatory action for filing a grievance; and

(15) The right of residents to bring a civil action to recover for injury resulting from violations of this title and its regulations.

(c) If a resident's continuing care agreement provides for assisted living services and, if the provider does not have an assisted living bed available at the facility when the resident needs the promised care, the provider shall provide the assisted living services the resident needs:

(1) At the same rate the resident would have to pay if an assisted living bed was available; and

(2) At the provider's option:

(A) In the resident's independent living unit; or

(B) In a nearby licensed assisted living facility.

(d) If a resident's continuing care agreement promises the provider shall provide the resident with comprehensive nursing care services if the resident needs them and, if the provider does not have a nursing care bed available when the resident needs the promised care, the provider shall provide the nursing care services needed as follows:

(1) At the same rates a resident would have paid if a nursing bed were available; and

(2) At the provider's option:

(A) In the resident's independent or assisted living unit; or

(B) In a nearby licensed comprehensive care facility.

(e) A provider shall pay any contractual entrance fee refund due under a continuing care agreement to which it is a party within 60 days of the agreement being terminated by a resident's election or death if, on the termination date, the unit has been occupied by or reserved for another resident who has paid an entrance fee.

(f) The resident's continuing care contract shall permit the resident to identify the resident's estate or the person or persons to whom payment shall be made if a refund is due by reason of the resident's death.

Sec. 107. Annual disclosure statement revision.

(a) Within 150 days following the end of each fiscal year, the provider shall file with the Commissioner a revised disclosure statement setting forth current information required. The provider shall also make the revised disclosure statement available to all the residents of the facility. The revised disclosure statement shall include a narrative describing any material differences between:

(1)(A) The forecast statements of revenues and expenses and cash flows or other forecast financial data filed pursuant to law as a part of the disclosure statement filed most immediately subsequent to the start of the provider's most recently completed fiscal year; and

(B) The actual results of operations during that fiscal year; and

(2) The revised forecast statements of revenues and expenses and cash flows or other forecast financial data being filed as a part of the revised disclosure statement filed at any other time if, in the opinion of the provider, revision is necessary to prevent an otherwise current disclosure statement from containing a material misstatement of fact or omitting a material fact required to be stated therein.

(b) Only the most recently recorded disclosure statement, with respect to a facility, and in any event, only a disclosure statement dated within one year plus 150 days prior to the date of delivery, shall be considered current for purposes of the law or delivered pursuant to this title.

Sec. 108. Operating reserves.

(a) All continuing care facilities shall maintain, after opening, operating reserves equal to 20% of the total operating costs projected for the 12-month period following the period covered by the most recent annual disclosure statement filed. The forecast statements as required shall serve as the basis for computing the operating reserve. In addition to total operating expenses, total operating costs shall include debt service, consisting of principal and interest payments and taxes and insurance on any mortgage loan or other long-term financing, but shall exclude depreciation, amortized expenses, and extraordinary items as may be approved by regulation. If the debt service portion is accounted for by way of another reserve account, the debt service portion may be excluded. The operating reserves may be funded by cash, invested cash, commercial paper, or by investment grade securities, including bonds, stocks, United States Treasury obligations, or obligations of United States government agencies.

(b) A provider that has begun construction, has permanent financing in place, or is in operation on the effective date of this section has up to 5 years to meet the operating reserve requirements.

(c) The Commissioner may require a provider not meeting its reserve requirements established by subsection (a) of this section to place the reserves in an escrow account with a bank, trust company, or other escrow agent approved by the Commissioner.

(d) The notes to the provider's annual audited financial statements shall state whether or not the reserve requirements have been met.

(e) The Commissioner may allow withdrawal or borrowing from the reserves in an amount not greater than 20% of the provider's total reserves. The withdrawal or borrowing may be approved by the Commissioner only if required for making an emergency repair or replacement of equipment, to cover catastrophic loss that is not able to be covered by insurance, or for debt service in a potential default situation. No withdrawal or borrowing may be made from a reserve without the approval of the Commissioner pursuant to subsection (f) of this section. All funds borrowed shall be repaid to the reserve within 18 months in accordance with a payment plan approved by the Commissioner.

(f) Operating reserves shall only be released upon the submission of a detailed request from the provider or facility and shall be approved by the Commissioner. The request shall be submitted in writing for review by the Commissioner at least 10 business days prior to the date of withdrawal.

Sec. 109. Escrow, collection of deposits.

(a) All continuing care facilities both prior to and after opening shall maintain escrow accounts for the total amount of any entrance fee, or any other fee or deposit that may be applied toward the entrance fee, in the following instances:

(1) The amounts received if an applicant for residence in a continuing care facility or their guardian provide a deposit with their application prior to the applicant taking up residence in the continuing care facility;

(2) If an applicant for residence in a continuing care facility or their guardian provide a deposit with their application prior to the construction or occupancy of the facility; and

(3) If a revocation order for the provider's license as a continuing care facility is under appeal.

(b)(1) If an escrow account is required by this title, a provider shall establish an escrow account with:

(A) A bank;

(B) A trust company; or

(C) Another independent person or entity agreed upon by the provider and the resident, unless such account arrangement is prohibited by law.

(2) The continuing care services contract shall provide that the total amount of any entrance fee, or any other fee or deposit that may be applied toward the entrance fee, received by the provider be placed in the escrow account. A facility may place a letter of credit,

negotiable securities, or a security bond equal to the total amount of any entrance fee or any other fee or deposit in escrow in lieu of any other requirement of this section.

(3) If the funds are collected prior to the construction or occupancy of the facility, the funds shall be released only as follows:

(A) The first 25% of escrowed funds may be released when:

(i) The provider has pre-sold at least 50% of the independent living units, having received a minimum 10% deposit on the pre-sold units;

(ii) The provider has received a commitment for any permanent mortgage loan or other long-term financing, and any conditions of the commitment prior to disbursement of funds thereunder have been substantially satisfied; and

(iii) Aggregate entrance fees received or receivable by the provider pursuant to binding continuing care contracts, plus the anticipated proceeds of any first mortgage loan or other long-term financing commitment, are equal to:

(I) Not less than 90% of the aggregate cost of constructing or purchasing, equipping, and furnishing the facility; and

(II) Not less than 90% of the funds estimated in the statement of cash flows submitted by the provider as that part of the disclosure statement required by this title to be necessary to fund start-up losses and assure full performance of the obligations of the provider pursuant to continuing care contracts.

(B) The remaining 75% of escrowed funds may be released when:

(i)(I) The provider has pre-sold a minimum of 75% of the independent living units, having received a minimum 10% deposit on the pre-sold units, or has maintained an independent living unit occupancy of a minimum of 75% for at least 60 days;

(II) Construction or purchase of the independent living unit has been completed and an occupancy permit, if applicable, has been issued; and

(III) The living unit becomes available for occupancy by the new resident; or

(ii) The provider submits a plan of reorganization that is accepted and approved.

(c) If funds are escrowed under subsection (a)(1) or (3) of this section, upon receipt by the escrow agent of a request by the provider for the release of the funds, the escrow agent shall approve release of the funds within 5 working days unless the escrow agent finds that the requirements of subsection (b) of this section have not been met and notifies the provider of the basis for this finding. The request for release of the escrow funds shall be accompanied by any documentation the fiduciary requires.

(d) Release of any escrowed funds that may be due to the subscriber or resident shall occur upon 5 working days' notice of death, nonacceptance by the facility, or voluntary cancellation. If voluntary cancellation occurs after construction has begun, the refund may be

delayed until a new subscriber is obtained for that specific unit; provided, that the period for refund shall not exceed 2 years.

(e) If the provider fails to meet the requirements for release of funds held in the escrow account within a time period the escrow agent considers reasonable, the funds shall be returned by the escrow agent to the persons who have made payment to the provider. The escrow agent shall notify the provider of the length of this time period when the provider requests release of the funds.

(f) Facilities that currently meet the 75% pre-sales or the 75% occupancy requirements, as set forth in subsection (b)(3)(B) of this section, shall not be required to escrow entrance fees, unless otherwise required by the Commissioner.

(g) During any period exceeding 90 days during a calendar year, that the total value of any letter of credit, negotiable securities, or a security bond deposited in an escrow account by a provider pursuant to subsection (b) of this section is less than 5% of the total amount of any entrance fee or any other fee or deposit that may be applied toward the entrance fee received by the provider, the Commissioner may order the provider to:

(1) Increase the value of any letter of credit, negotiable securities, or a security bond deposited in an escrow account so that the total value of the deposits is equal to all entrance fees or any other fees or deposits that may be applied toward the entrance fee received by the provider;

(2) Provide substitute deposits in order that the total value in the escrow account is equal to all entrance fees or any other fees or deposits that may be applied toward the entrance fee received by the provider; or

(3) Deposit in the escrow account an amount of cash equal to all entrance fees or any other fees or deposits that may be applied toward the entrance fee received by the provider.

Sec. 110. Right to organization.

(a) A resident living in a facility registered under this title has the right of self-organization, the right to be represented by an individual of the resident's own choosing, and the right to engage in concerted activities to keep informed on the operation of the facility in which he or she is a resident or for other mutual aid or protection. Responsible family members and legal guardians of residents in the assisted living and nursing components have the same rights of organization.

(b) The facility shall provide space and other appropriate accommodations, including heat, light, and furnishings, for residents' organizations.

(c) The board of directors or other governing body of a continuing care facility or its designated representative shall hold annual meetings with the residents of the continuing care facility for free discussions of subjects including income, expenditures, and financial trends and problems as they apply to the facility and discussions of proposed changes in policies, programs, and services. Residents and guardians, legal representatives, or designees of residents shall be

entitled to at least 7 days advance notice of each meeting. Residents in the assisted living and nursing components shall receive these notices, which also shall be sent to the legal guardians or responsible family members. An agenda and any materials that shall be distributed by the governing body at the meetings shall remain available upon request to residents and to guardians, legal representatives, or designees of residents.

(d) A provider that has a governing body shall include at least one resident as a full and regular member of the governing body who shall be selected by vote of the residents of the facility.

Sec. 111. Rehabilitation or liquidation.

(a) Application may be made to the Superior Court of the District of Columbia or to the federal bankruptcy court that may have previously taken jurisdiction over the provider or facility for an order directing or authorizing the appointment of a trustee to rehabilitate or to liquidate a facility if, at any time, it is determined, after notice and an opportunity for the provider to be heard, that:

(1) A portion of an entrance fee escrow account required to be maintained under this title has been or is proposed to be released in violation of this title;

(2) A provider has been or shall be unable, in such a manner as may endanger the ability of the provider, to fully perform its obligations pursuant to contracts for continuing care, to meet the financial forecasts previously filed by the provider;

(3) A provider has failed to maintain the escrow account required under this title;

or

(4) A facility is bankrupt or insolvent, or in imminent danger of becoming bankrupt or insolvent.

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

(c) If, at any time, the court finds, upon petition of the trustee or provider, or on its own motion, that the objectives of an order to rehabilitate a facility have been accomplished and that the facility can be returned to the provider's management without further jeopardy to the residents of the facility, the court may, upon a full report and accounting of the conduct of the facility's affairs during the rehabilitation and of the facility's current financial condition, terminate the rehabilitation and, by order, return the facility and its assets and affairs to the provider's management.

(d) If, at any time, it is determined that further efforts to rehabilitate the provider would be useless, application may be made to the court for an order of liquidation.

(e) An order to liquidate a facility:

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

(2) Shall act as a revocation of the license of the facility under this title; and

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

(f) Unless preempted by federal law, the first \$500 of compensation or wages owed to an officer or employee of a continuing care provider for services rendered within 3 months before the commencement of a delinquency proceeding against the continuing care provider shall be paid before payment of any other debt or claim.

(g) Effective at the time a facility is first occupied by any resident, there shall exist a lien on the real and personal property of the provider or facility to secure the obligations of the provider pursuant to existing and future contracts for continuing care. A lien under this section shall be effective for a period of 10 years. The lien may be foreclosed upon the liquidation of the facility or the insolvency or bankruptcy of the provider and in that event the proceeds shall be used in full or partial satisfaction of obligations of the provider.

(h) If a provider is bankrupt or insolvent or has filed for protection from creditors under any federal bankruptcy or insolvency law, any resident or association of residents, or the legal representative of a resident or association of residents, may apply to the federal bankruptcy court for an order directing the appointment of a trustee to rehabilitate or liquidate a facility.

(i) In applying for an order to rehabilitate or liquidate a facility, in addition to the provisions of subsection (h) of this section, due consideration shall be given in the application to the manner in which the welfare of persons who have previously contracted with the provider for continuing care may be best served.

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

Sec. 112. Investigations and subpoenas.

For the purposes of any investigation or proceeding under this title, any person may be required or permitted by the Commissioner to file a statement in writing, under oath or otherwise, as to any of the facts and circumstances concerning the matter to be investigated.

Sec. 113. Examinations; financial statements.

(a) Each provider shall keep and make available to the Commissioner at the provider's place of business any books and records that the Commissioner, by rule or regulation, requires to enable the Commissioner to enforce this title and any rule or regulation adopted under this title.

(b) Each provider shall retain for at least 3 years after final payment is made by a resident copies of any contract or agreement, records of payments received by the provider from a resident or a person on behalf of a resident, and such other papers or records relating to the loan as may be required by rule or regulation.

(c) On approval of the Commissioner, a provider shall not be required to maintain at the provider's place of business any books and records otherwise required by the Commissioner under subsection (a) of this section if the licensee:

(1) Makes the books and records available to the Commissioner at the licensee's place of business within 5 business days of the Commissioner's official request; and

(2) Retains the records for at least 60 months in a storage facility disclosed to the Commissioner.

(d) The Commissioner or his designee may, in the Commissioner's discretion, visit a provider or continuing care facility offering continuing care in the District to examine its books and records. The provider examined shall pay expenses incurred in conducting examinations under this section. These expenses may include the salary of the government employee based on the time spent conducting or supervising the examination, the fees of a third-party auditor, and reasonable and necessary out-of-pocket expenses incurred by the Department or third-party auditor.

Sec. 114. Civil liability.

(a) Any provider, facility, or person who enters into a contract for continuing care at a facility without having first delivered a disclosure statement meeting the requirements of this title to the person contracting for continuing care, or enters into a contract for continuing care at a facility with a person who has relied on a disclosure statement that omits to state, or misstates, a material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they are made, not misleading, shall be liable to the person contracting for continuing care for actual damages and repayment of all fees paid to the provider, facility, or person violating this title, less the reasonable value of care and lodging provided to the resident by or on whose behalf the contract for continuing care was entered into prior to discovery of the violation, misstatement, or omission or the time the violation, misstatement, or omission should reasonably have been discovered, together with interest thereon at the legal rate for judgments, court costs, and reasonable attorneys' fees. The interest shall accrue on the date of entering into a contract or when the resident or their representative knew or should have known of the violation, omission, or misstatement, whichever is later.

(b) Liability under this section shall exist regardless of whether the provider or person liable had actual knowledge of the misstatement or omission.

(c) A person shall not file or maintain an action under this section if the person, before filing the action, received a written offer of a refund of all amounts paid the provider, facility, or person violating this title, together with interest at the legal rate for judgments, less the current contractual value of care and lodging provided prior to receipt of the offer, and if the offer recited the provisions of this section and the recipient of the offer failed to accept it within 30 days of actual receipt. The interest shall begin to accrue on the date of entering into a contract or when the resident or their representative knew or should have known of the violation, omission, or misstatement, whichever is later. Nothing in this subsection shall prohibit the Mayor from bringing an action for a violation of this title.

(d) An action shall not be maintained to enforce a liability created under this title unless brought before the expiration of 3 years after the execution of the contract for continuing care that gave rise to the violation or the date when the resident or his or her representative knew or should have known of the violation, omission, or misstatement, whichever is earlier.

(e) The Mayor may impose civil penalties or take other action appropriate to correct violations of this title. The Mayor may bring an action to enforce this title.

Sec. 115. Criminal penalties.

(a) Any person who violates section 102(a), or makes, or causes to be made, in a document filed with the Commissioner or in any proceeding under this title, a statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect, shall be guilty of a misdemeanor and, upon conviction thereof, shall pay a fine of not more than \$1,000, be imprisoned for not more than one year, or both. All prosecutions under this subsection shall be upon information filed in the Superior Court of the District of Columbia in the name of the District by the Attorney General for the District of Columbia or any of his or her assistants.

(b) A person shall be guilty of fraud in the second degree, as defined in section 121(b) of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-3221(b)), if the person, in connection with the offer, sale, or purchase of continuing care services, knowingly or intentionally:

- (1) Employs a device, scheme, or artifice to defraud;
- (2) Obtains money or property by means of an untrue statement of a material fact or an omission to state a material fact in order to make the statements made, in the light of the circumstances under which they are made, not misleading;
- (3) Engages in a transaction, practice, or course of business which operates, or would operate, as a fraud or deceit upon a person; or
- (4) In a matter within the jurisdiction of the Commissioner, falsifies, conceals, or covers up, by a trick, scheme, or device, a material fact, makes any false, fictitious, or fraudulent statement or representation, or makes or use any false writing or document, knowing the same to contain a false, fictitious, or fraudulent statement or entry.

(c) A person shall be guilty of fraud in the first degree, as defined in section 121(b) of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-3221(a), if the person, by use of a plan, program, or campaign that is conducted using one or more telephones or other electronic means of communication for the purpose of inducing the purchase or sale of continuing care services, knowingly or intentionally :

(1) Employs a device, scheme, or artifice to defraud;

(2) Obtains money or property by means of an untrue statement of a material fact or an omission to state a material fact in order to make the statements made, in the light of the circumstances under which they are made, not misleading;

(3) Engages in a transaction, practice, or course of business which operates, or would operate, as a fraud or deceit upon a person; or

(4) In a matter within the jurisdiction of the Commissioner, falsifies, conceals, or covers up, by a trick, scheme, or device, a material fact, makes any false, fictitious, or fraudulent statement or representation, or makes or use any false writing or document, knowing the same to contain a false, fictitious, or fraudulent statement or entry.

(d) The evidence which is available concerning violation of this title or of any rule or order under this title may be referred to the Attorney General for the District of Columbia who may, with or without such reference, institute the appropriate criminal proceedings under this title.

(e) Nothing in this title shall limit the power of the District to punish a person for conduct constituting a crime under other law.

Sec. 116. Other licensing or regulation.

Nothing in this title affects the authority of any agency otherwise provided by law to license or regulate any health service facility, domiciliary service facility, or food service.

Sec. 117. Rulemaking authority; reasonable time to comply with rules.

(a) The Mayor may promulgate rules to carry out and enforce the provisions of this title.

(b) Any provider who is offering continuing care shall be given a reasonable time, not to exceed one year from the date of publication of any applicable rules promulgated pursuant to this title, within which to comply with the rules and to obtain a license.

Amend § 31-1201

Sec. 118. Continuing Care Retirement Community Regulatory and Supervision Trust Account.

All fees, fines, penalties, and assessments received by the Commissioner under this title shall be deposited in, and credited to, the Continuing Care Retirement Community Regulatory and Supervision Trust Account established by section 3(b-2) of the Insurance Regulatory Trust

Amend § 31-1202

Fund Act of 1993, effective October 21, 1993 (D.C. Law 10-40; to be codified at D.C. Official Code § 31-1202(b-2)), and expended in accordance with section 3(b-2) of the Insurance Regulatory Trust Fund Act of 1993, effective October 21, 1993 (D.C. Law 10-40; to be codified at D.C. Official Code § 31-1202(b-2)).

Title II.

Sec. 201. The Insurance Regulatory Trust Fund Act of 1993, effective October 21, 1993 (D.C. Law 10-40; D.C. Official Code § 31-1201 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 31-1201) is amended by adding a new paragraph (1A-i) to read as follows:

“(1A-i) “Continuing Care Retirement Community Regulatory and Supervision Trust Account” or “Account” means the account established within the Insurance Regulatory Trust Fund for the purpose of administering the Continuing Care Retirement Communities Act of 2004, passed on 2nd reading on December 7, 2004 (Enrolled version of Bill 15-94), and for reasonable expenses incurred in promoting the continuing care retirement community industry in the District.”.

(b) Section 3 (D.C. Official Code § 31-1202) is amended by adding a new subsection (b-2) to read as follows:

“(b-2)(1) There is established a separate account within the Insurance Regulatory Trust Fund for the purpose of administering the Continuing Care Retirement Communities Act of 2004, passed on 2nd reading on December 7, 2004 (Enrolled version of Bill 15-94), and for the reasonable expenses incurred in promoting the continuing care retirement community industry in the District. Continuing care retirement community providers conducting business in the District under the Continuing Care Retirement Communities Act of 2004, passed on 2nd reading on December 7, 2004 (Enrolled version of Bill 15-94), shall be exempt from the assessments imposed on insurers and health maintenance organizations under section 4. All fees, fines, penalties, and assessments received by the Commissioner under the administration of the Continuing Care Retirement Communities Act of 2004, passed on 2nd reading on December 7, 2004 (Enrolled version of Bill 15-94), shall be deposited in, and credited to, the Account.

“(2) Subject to the applicable law relating to the appropriation of District funds, all funds in the Continuing Care Retirement Community Regulatory and Supervision Trust Fund Account shall be disbursed only upon the approval of the Commissioner.

“(c) At the end of each fiscal year, any funds in the Continuing Care Retirement Community Regulatory and Supervision Fund Account shall be applied against the budget for the ensuing year.”.

Title III.

Sec. 301. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 302. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia