

52:27D-330 to 52:27D-360

12/2/86

LEGISLATIVE HISTORY CHECKLIST

NJSA: 52:27D-330 to 52:27D-360

"Continuing Care Retirement Community Regulation and Financial Disclosure Act"

LAWS OF: 1986

CHAPTER 103

BILL NO: A2432/A2102

Sponsor(s): Zimmer and others

Date Introduced: May 8, 1986

Committee: Assembly: Senior Citizens

Senate: -----

Amended during passage: Yes

Committee substitute for A2432/A2102 enacted. Substituted for S2310 (not attached since identical to A2432/A2102)

Date of Passage: Assembly: June 23, 1986

Senate: July 17, 1986

Date of Approval: Sept. 3, 1986

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes

Senate No

Fiscal Note: No

Veto Message: Yes

Message on Signing: Yes

Following were printed:

Reports: No

Hearings: Yes

(over)

LIBRARY

Public hearing on similar bill, A2594/A2613, vetoed by Governor during previous
Legislative session:

97490 New Jersey. Legislature. Assembly. Committee on Aging.
H434 Public hearing on legislation to regulate continuing care communities,
1984h held 11-19-84. Trenton, 1984.

"State tightens rein on continuing care facilities," 9-4-86 Star Ledger

"Graying of New Jersey," 6-14-86 Star Ledger

A2594/A2613 Assembly Committee Substitute--bill and veto--attached

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 2432 and 2102

STATE OF NEW JERSEY

ADOPTED: JUNE 19, 1986

By Assemblymen ZIMMER, PATERNITI and Rafferty

AN ACT regulating continuing care retirement facilities, establishing an advisory council, supplementing Title 52 of the Revised Statutes and making an appropriation therefor.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. This act shall be known and may be cited as the "Continuing
2 Care Retirement Community Regulation and Financial Disclosure
3 Act."

1 2. The Legislature finds and declares that: continuing care re-
2 tirement communities are becoming an important and increasingly
3 preferred alternative for the long-term residential, social and health
4 care needs of New Jersey's senior citizens; because senior citizens
5 often expend a significant portion of their savings in order to pur-
6 chase care in the retirement community and thereby expect to
7 receive care at the retirement community for the rest of their lives,
8 tragic consequences can result to senior citizens when a continuing
9 care provider becomes insolvent or unable to provide responsible
10 care; and there is a need for full disclosure concerning the terms
11 of agreements made between prospective residents and the con-
12 tinuing care provider and the operations of the providers; there-
13 fore, it is the policy of this State that providers of continuing care
14 shall register with and be monitored by the State Department of
15 Community Affairs and that a Continuing Care Advisory Council
16 be established to advise and assist the Commissioner of Community
17 Affairs in the monitoring of these providers and the regulation
18 of continuing care retirement facilities.

1 3. As used in this act:

2 a. "Application fee" means the fee an individual is charged, in

3 addition to an entrance fee or any other fee, to cover the provider's
4 reasonable cost for processing the individual's application to be-
5 come a resident at the facility. A reasonable application fee shall
6 be established pursuant to regulations adopted by the department.

7 b. "Commissioner" means the Commissioner of the Department
8 of Community Affairs.

9 c. "Continuing care" means the provision of lodging and nursing,
10 medical or other health related services at the same or another
11 location to an individual pursuant to an agreement effective for
12 the life of the individual or for a period greater than one year,
13 including mutually terminable contracts, and in consideration of
14 the payment of an entrance fee with or without other periodic
15 charges. An individual who is provided continuing care is not re-
16 lated by consanguinity or affinity to the person who provides the
17 care.

18 d. "Department" means the State Department of Community
19 Affairs.

20 e. "Entrance fee" means a transfer to a provider of a sum of
21 money or other property made or promised to be made as full or
22 partial consideration for acceptance of a specified person as a resi-
23 dent in a facility and includes a fee which is refundable upon the
24 death, departure or option of the resident.

25 A fee which is less than the sum of the regular periodic charges
26 for one year of residency is not considered an entrance fee for the
27 purposes of this act. A transfer of a sum of money or other prop-
28 erty, by or on behalf of a resident, to a trust account which is
29 managed by the facility or an independent trustee for the benefit
30 of the resident is not considered an entrance fee for the purposes
31 of this act if the transfer is not a condition of admission or of
32 continued stay and the principal amount and any interest thereon
33 are the exclusive and sole property of the resident or the individual
34 acting on behalf of the resident.

35 f. "Facility" means the place or places in which a person under-
36 takes to provide continuing care to an individual.

37 g. "Living unit" means a room, apartment, cottage or other area
38 within a facility set aside for the exclusive use or control of one
39 or more persons.

40 h. "Operator or administrator" means a person who operates
41 or manages a facility for the provider.

42 i. "Provider" means a person who undertakes to provide con-
43 tinuing care in a facility.

44 j. "Resident" means a person entitled to receive continuing care
45 in a facility.

1 4. a. A person shall not establish, operate or administer a con-
2 tinuing care facility in this State without obtaining and maintain-
3 ing a certificate of authority pursuant to this act. A certificate of
4 authority granted pursuant to this act is not transferable.

5 b. A person shall file an application for a certificate of authority
6 with the department on forms prescribed by the commissioner.
7 The application shall include a disclosure statement prepared pur-
8 suant to section 7 of this act and other information as required
9 by the commissioner.

10 c. Upon receipt of the application for a certificate of authority,
11 the department shall, within 10 business days, issue a notice of
12 filing to the applicant. Within 90 days of the notice of filing, the
13 commissioner shall issue the certificate of authority or reject the
14 application pursuant to subsection d. of this section.

15 d. If the commissioner determines that any of the requirements
16 of this act has not been met, the commissioner shall notify the
17 applicant in writing and specify those particulars which need to
18 be corrected. The applicant has 30 days from the date of notifica-
19 tion to correct the application as specified by the commissioner.
20 If the requirements are not met within the time allowed, the com-
21 missioner may reject the application and notify the applicant in
22 writing of the reason for the rejection. The rejection shall be
23 effective 20 days after the foregoing 30 day period. During the 20
24 day period, the applicant may request reconsideration of the com-
25 missioner's action and is entitled to a hearing conducted pursuant
26 to the "Administrative Procedure Act," P. L. 1968, c. 410 (C.
27 52:14B-1 et seq.).

28 e. In the case of a provider who has offered continuing care
29 agreements to existing or prospective residents in a facility estab-
30 lished prior to the effective date of this act and which has one or
31 more residents living there pursuant to agreements entered into
32 prior to the effective date of this act, if the provider is unable to
33 comply with section 10 of this act within the time required, the
34 commissioner may, upon the written request of the provider, issue
35 a temporary certificate of authority to the provider. The provider
36 may then enter into continuing care agreements which are in com-
37 pliance with all other applicable provisions of this act until the
38 permanent certificate is issued. The temporary certificates shall be
39 issued only to those existing providers who shall be able to comply
40 with the provisions of section 10 of this act within a period of time
41 determined by the commissioner but which does not exceed two
42 years.

43 If a provider is not in compliance on or before the expiration

44 date of the temporary certificate, the provider may request an
45 extension from the commissioner. The commissioner may grant
46 an extension of up to three years to a provider who shall be able
47 to comply with section 10 of this act in that time period.

48 f. If an existing provider is granted a permanent certificate of
49 authority, the provider shall give a resident who entered into an
50 agreement before the certificate of authority was granted, a copy
51 of the initial disclosure statement and any amendments thereto.

52 g. If a facility is accredited by a process approved by the com-
53 missioner as equivalent to or more stringent than the require-
54 ments of this section, the facility is deemed to have met the require-
55 ments of this section and the commissioner shall issue a certificate
56 of authority to the facility.

57 h. A person who establishes, operates or administers a continu-
58 ing care facility in this State without obtaining or maintaining a
59 certificate of authority pursuant to this act is guilty of a crime of
60 the third degree.

1 5. a. The certificate of authority or temporary certificate of
2 authority of a provider shall remain in effect until revoked, after
3 notice and hearing conducted pursuant to the "Administrative
4 Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.), upon the
5 commissioner's written finding of fact that the provider has:

6 (1) Repeatedly failed to correct violations of this act or any
7 regulation adopted hereunder;

8 (2) Failed to file an annual disclosure statement or resident
9 agreement pursuant to this act;

10 (3) Failed to deliver to a prospective resident the disclosure
11 statement required pursuant to this act;

12 (4) Delivered to a prospective resident a disclosure statement
13 which makes an untrue statement or omits a material fact and the
14 provider at the time of the delivery of the disclosure statement
15 had actual knowledge of the misstatement or omission;

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

18 (6) Committed serious violations of any other State or federal
19 law.

20 b. The commissioner shall include the findings of fact in
21 support of revocation a concise and explicit statement of the under-
22 lying facts supporting the findings.

23 c. If the commissioner has cause to believe that the provider
24 is guilty of a violation for which revocation may be ordered, the
25 commissioner may issue an order directing the provider or operator
26 to cease and desist from engaging in any practice in violation of
27 this act.

28 d. If the cease and desist order is not or may not be effective in
29 remedying the violation, the commissioner, after notice and hearing
30 conducted pursuant to the "Administrative Procedure Act," P. L.
31 1968, c. 410 (C. 52:14B-1 et seq.), may revoke the certificate of
32 authority or temporary certificate of authority an order that it
33 be surrendered to the commissioner.

1 6. a. A person who desires to acquire an ownership interest in
2 a continuing care facility shall so notify the department in writing
3 at least 60 days in advance of the acquisition. The person shall
4 obtain the approval of the commissioner for the acquisition prior
5 to the completion of the sale or transfer of the facility's ownership
6 interest.

7 b. For the purposes of this act, an acquisition of an ownership
8 interest in a continuing care facility shall be deemed to take place
9 if:

10 (1) The facility is a corporation and there is an acquisition by
11 or a transfer of ownership to an individual, partnership or cor-
12 poration through purchase, contract, donation, gift or stock option
13 of 25% or more of the corporation's outstanding stock, either pre-
14 ferred or common, or there is acquisition of the physical assets of
15 the facility by a newly formed or existing corporation;

16 (2) The facility is a partnership and there is an acquisition by
17 or a transfer of ownership to an individual, partnership, or cor-
18 poration of 10% or more of the existing partnership's total capital
19 interest or there is acquisition of the physical assets of the facility
20 by a newly formed or existing partnership; and

21 (3) The facility is individually owned and there is a purchase
22 of the physical assets of the facility.

1 7. The provider shall provide a disclosure statement to a pros-
2 pective resident of a continuing care facility or the person with
3 whom the provider shall enter into a contract to provide continuing
4 care, prior to the execution of the contract or at the time of or prior
5 to the transfer of any money or other property to the provider by
6 or on behalf of the prospective resident, whichever occurs first.
7 The cover page of the disclosure statement shall state in a promi-
8 nent location and type face, the date of the disclosure statement.
9 The disclosure statement shall be written in plain English and in
10 language understandable by a layperson.

11 The provider shall attach a copy of the standard form of con-
12 tract for continuing care used by the provider as an exhibit to each
13 disclosure statement.

14 The disclosure statement shall contain the following information
15 unless the information is contained in the contract:

16 a. The name and business address of the provider and a state-
17 ment of whether the provider is a partnership, corporation or
18 other type of legal entity.

19 b. The names and business addresses of the officers, directors,
20 trustees, managing or general partners and any person having
21 a 10% or greater equity or beneficial interest in the provider and
22 a description of that person's interest in or occupation with the
23 provider.

24 c. With respect to the provider, any person named in response
25 to subsection b. of this section and the proposed operator if the
26 facility is managed on a day-to-day basis by a person other than
27 an individual directly employed by the provider:

28 (1) A description of the person's business experience, if any,
29 in the operation or management of similar facilities;

30 (2) The name and address of any professional service firm,
31 association, trust, partnership or corporation in which the person
32 has a 10% or greater interest and which may provide goods, leases
33 or services to the facility of a value of \$500.00 or more, within
34 any year;

35 (3) A description of the goods, leases or services provided pur-
36 suant to paragraph (2) of this subsection and the probable or
37 anticipated cost thereof to the facility or provider;

38 (4) A description of any matter in which the person has been
39 convicted of a felony or pleaded nolo contendere to a felony charge,
40 or has been held liable or enjoined in a civil action which involved
41 fraud, embezzlement, fraudulent conversion or misappropriation
42 of property; and

43 (5) A description of any matter in which the person is subject
44 to a currently effective injunctive or restrictive court order or,
45 within the past five years, had a State or federal license or permit
46 suspended or revoked as a result of an action brought by a gov-
47 ernmental agency or department, which arose out of or related to
48 business activity or health care, including actions affecting a li-
49 cense to operate a residential health care facility, nursing home,
50 retirement home, home for the aged or facility registered under
51 this act or a similar act in another state.

52 d. A statement whether the provider is or ever has been affiliated
53 with a religious, charitable or other nonprofit organization, the
54 nature of the affiliation, if any, the extent to which the affiliate
55 organization is responsible for the financial and contractual obli-
56 gations of the provider, and the provision of the federal Internal
57 Revenue Code, if any, under which the provider or affiliate is
58 exempt from the payment of income tax.

59 e. The location and description of the physical property of the
60 facility, both existing and proposed, and with respect to proposed
61 property, the estimated completion date, the date construction
62 began or shall begin and the contingencies subject to which con-
63 struction may be deferred.

64 f. The services provided or proposed to be provided under con-
65 tracts for continuing care at the facility, including the extent to
66 which medical care and other services are furnished under the
67 basic contract and which other care or services are available at
68 or by the facility at extra charge.

69 g. A description of all fees required of residents, including the
70 application fee, entrance fee and periodic charges, if any, the
71 manner by which the provider may adjust periodic charges or
72 other recurring fees and the limitation on the adjustments, if any,
73 and if the facility is already in operation or if the provider or
74 operator operates one or more similar facilities within this State,
75 tables showing the frequency and average dollar amount of each
76 increase in periodic rates at each facility for the previous five
77 years or as many years as the facility has been operated by the
78 provider or operator, whichever is less.

79 h. The provisions that have been made or will be made, if any,
80 to provide reserve funding or security which will enable the pro-
81 vider to fully perform its obligations under contracts to provide
82 continuing care at the facility, including the establishment of es-
83 crow accounts, trusts or reserve funds, the manner in which the
84 funds shall be invested and the names and experience of persons
85 who will make the investment decisions.

86 i. Certified financial statements of the provider which include
87 balance sheets and income statements for the two most recent
88 completed fiscal years or for as long as the provider has been in
89 existence, whichever is less.

90 j. If operation of the facility has not yet commenced, a state-
91 ment of the anticipated source and application of the funds used
92 or to be used in the purchase or construction of the facility, in-
93 cluding:

94 (1) An estimate of the cost of purchasing or construction and
95 equipping the facility which includes related costs such as financ-
96 ing expenses, legal expenses, land costs, marketing and develop-
97 ment costs and other similar costs the provider expects to incur
98 or become obligated for prior to the commencement of operations;

99 (2) A description of any mortgage loan or other long-term
100 financing intended to be used for the financing of the facility and
101 the anticipated terms and costs of the financing;

102 (3) An estimate of the total amount of entrance fees to be re-
103 ceived from or on behalf of residents at or prior to commencement
104 of operation of the facility;

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

109 (5) A projection of estimated income from fees and charges
110 other than entrance fees, a description of individual rates antici-
111 pated to be charged, the assumptions used for calculating the esti-
112 mated occupancy rate of the facility and the effect on the income
113 of the facility of government subsidies, if any, for health care
114 services provided pursuant to the contracts for continuing care;

115 (6) A projection of estimated operating expenses of the facility,
116 including a description of the assumptions used in calculating the
117 expenses and separate allowances, if any, the replacement of equip-
118 ment and furnishings and any anticipated major structural re-
119 pairs or additions;

120 (7) Identification of assets pledged as collateral for any pur-
121 pose; and

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

124 k. Other material information concerning the facility or the pro-
125 vider as required by the department or as the provider wishes to
126 include.

127 1. The provider shall designate and make knowledgeable per-
128 sonnel available to prospective residents to answer questions about
129 any information contained in the disclosure statement or contract.
130 The provider shall also advise prospective residents to seek the in-
131 dependent advice of an attorney and financial advisor of their
132 choice concerning the disclosure statement or contract. The dis-
133 closure statement and the contract shall each state on the cover or
134 top of the first page in bold print the following: "This matter in-
135 volves a substantial financial investment and a legally binding
136 contract. In evaluating the disclosure statement and the contract
137 prior to any commitment, it is recommended that you consult with
138 an attorney and financial advisor of your choice, if you so elect,
139 who can review these documents with you."

1 8. a. The provider shall file an annual disclosure statement with
2 the commissioner which contains the information required for the
3 initial disclosure statement pursuant to section 7 of this act. The
4 annual disclosure statement also shall include a narrative describ-
5 ing any material differences between the pro forma income state-

6 ments filed pursuant to this act either as part of the initial appli-
7 cation for a certificate of authority or the most recent annual dis-
8 closure statement and the actual results of operations during the
9 fiscal year. The statement also shall contain a revised pro forma
10 income statement for the next fiscal year. The commissioner may
11 request additional income statements if necessary.

12 The provider shall file the annual disclosure statement within
13 six months following the end of the provider's fiscal year.

14 b. Prior to the provider's acceptance of part or all of any ap-
15 plication or entrance fee or the execution of the continuing care
16 agreement by the resident, whichever occurs first, the provider
17 shall deliver the most current annual disclosure statement to the
18 current or prospective resident and to any other person with whom
19 the continuing care agreement is or may be entered into.

20 c. A provider shall amend its currently filed annual disclosure
21 statement at any time if, in the opinion of the provider or the de-
22 partment, an amendment is necessary to prevent the disclosure
23 statement from containing any material misstatement of fact or
24 omission to state a material fact as required pursuant to this act.
25 The provider shall file an amendment or amended disclosure state-
26 ment with the commissioner before the provider provides it to a
27 resident or prospective resident.

1 9. a. No provider or person acting on behalf of the provider
2 shall make, publish, disseminate, circulate or place before the public,
3 or cause, directly or indirectly, to be made, published, disseminated,
4 circulated or placed before the public in a newspaper or other
5 publication, or in the form of a notice, circular, pamphlet, letter
6 or poster, or over any radio or television station, or in any other
7 way, an advertisement, announcement or statement of any sort
8 containing an assertion, representation or statement which is
9 untrue, deceptive or misleading.

10 b. No provider or person acting on behalf of the provider shall
11 file with the department or make, publish, disseminate, circulate
12 or deliver to any person or place before the public, or cause, di-
13 rectly or indirectly, to be made, published, disseminated, circulated
14 or delivered to any person, or placed before the public, any dis-
15 closure statement, financial statement or continuing care agreement
16 that contains an assertion, representation, or statement which is
17 untrue, deceptive or misleading.

18 c. A person who willfully and knowingly violates the provisions
19 of this section is guilty of a crime of the third degree.

1 10. a. Each provider shall establish and maintain liquid reserves
2 in an amount equal to or exceeding the greater of:

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

6 (2) 15% of the projected annual operating expenses of the fa-
7 cility, exclusive of depreciation.

8 b. A provider shall notify the commissioner in writing at least
9 10 days prior to reducing the amount of funds available to satisfy
10 the applicable liquid reserve requirement. A provider may not
11 expend more than $\frac{1}{12}$ of the required balance each calendar month.

12 c. In a facility where some residents are not under continuing
13 care agreements, the reserve shall be computed only on the pro-
14 portional share of financing or operating expenses that is applicable
15 to residents under continuing care agreements at the end of the
16 provider's most recent fiscal year.

17 d. A provider may use funds in an endowment fund or escrow
18 account, including an escrow account established by or pursuant
19 to a mortgage loan, bond indenture or other long-term financing,
20 to satisfy the reserve requirements of this section if the funds are
21 available to make payments when operating funds are insufficient
22 for these purposes.

1 11. a. The commissioner may require a provider to establish and
2 maintain in escrow, on a current basis with a bank, trust company
3 or other escrow agent approved by the department, a portion of
4 all entrance fees received by the provider in an aggregate amount
5 not to exceed the total of all principal and interest payments due
6 during the next 12 months on account of any first mortgage loan
7 or other long-term financing of the facility. The provider may in-
8 vest the funds in the escrow account, with the earnings thereon
9 payable to the provider. If the provider so requests in writing,
10 the escrow agent shall release up to $\frac{1}{12}$ of the original principal
11 balance of the escrow account. The escrow agent shall not so re-
12 lease funds more than once during any calendar month, and then
13 only after the escrow agent has given written notice to the com-
14 missioner at least 10 days prior to the release. The amount of this
15 escrow fund shall be included in satisfying the reserves required
16 pursuant to section 10 of this act.

17 b. This section is applicable only when the commissioner has
18 cause to believe that additional protection is necessary to secure
19 the provider's performance of the terms of all resident agreements.

1 12. Prior to the issuance of a certificate of authority pursuant
2 to this act, or at any other time the commissioner determines it
3 is in the best interest of residents of a facility, the commissioner
4 may file a lien on the real and personal property of the provider

5 or facility to secure the obligations of the provider pursuant to
6 existing and future contracts for continuing care. A lien filed
7 under this section is effective for a period of 10 days following its
8 filing and may be extended by the commissioner if the commissioner
9 finds that the extension is advisable for the protection of residents
10 of the facility.

11 The commissioner may foreclose on the lien upon the liquidation
12 of the facility or the insolvency or bankruptcy of the provider.
13 In this event, the commissioner shall use the proceeds thereof for
14 full or partial satisfaction of obligations of the provider pursuant
15 to contracts for continuing care in effect at that time.

16 The lien provided for in this section is subordinate to the lien
17 of any first mortgage on the real property of the facility, and if
18 the commissioner determines and so states in writing that it is
19 advisable for the efficient operation of the facility, the lien may be
20 subordinated to the claims of other persons.

1 13. The commissioner shall require a provider to establish an
2 interest bearing escrow account with a bank, trust company or
3 other escrow agent approved by the commissioner, as a condition
4 of issuing a certificate of authority. The provider shall place in
5 the escrow account any entrance fees or payments in excess of 5%
6 of the then existing entrance fee for the living unit that are re-
7 ceived by the provider prior to the date the resident is permitted
8 to occupy the living unit in the facility. The fees or payments are
9 subject to release from the escrow account in the following manner:

10 a. If the entrance fee gives the resident the right to occupy a
11 living unit which has been previously occupied, the entrance fee
12 and any interest earned thereon shall be released to the provider
13 when the living unit becomes available for occupancy by the new
14 resident.

15 b. If the entrance fee applies to a living unit which has not been
16 previously occupied, the entrance fee and any interest earned
17 thereon shall be released to the provider when the commissioner
18 is satisfied that:

19 (1) aggregate entrance fees received or receivable by the pro-
20 vider pursuant to executed continuing care agreements equal at
21 least 50% of the sum of the entrance fees due at full occupancy
22 of the portion of the facility under construction, except that en-
23 trance fees receivable pursuant to an agreement shall be counted
24 only if the facility has received a deposit of 35% or more of the
25 entrance fee due from the individual signing the contract;

26 (2) the aggregate entrance fees received or receivable pursuant
27 to the preceding paragraphs plus anticipated proceeds of any first

28 mortgage loan or other long-term financing commitment and funds
29 from other sources in the actual possession of the provider are
30 equal to at least 50% of the aggregate cost of constructing or
31 purchasing, equipping and furnishing the facility plus at least 50%
32 of the funds necessary to fund start-up losses as estimated by the
33 provider in the statement of anticipated source and application
34 of funds submitted pursuant to subsection j. of section 7 of this
35 act; and

36 (3) the provider has received a preliminary commitment for any
37 permanent mortgage loan or other long-term financing described
38 pursuant to subsection j. of section 7 of this act and any conditions
39 of the commitment prior to disbursement of funds thereunder,
40 other than completion of the construction or closing of the purchase
41 of the facility, are substantially satisfied.

42 c. If the funds in the escrow account established pursuant to
43 this section and any interest earned thereon are not released
44 within 36 months, or a greater time if so specified by the provider
45 with the consent of the commissioner, the escrow agent shall return
46 the funds to the individuals who made payments to the provider.

47 d. Nothing in this section shall require the provider to place
48 any nonrefundable application fees charged to prospective resi-
49 dents in escrow.

50 e. In lieu of any escrow required pursuant to this section, a
51 provider is entitled to post a letter of credit from a financial
52 institution, negotiable securities or a bond by a surety authorized
53 to do business in this State, in a form approved by the commis-
54 sioner and in an amount not to exceed the amount required by
55 paragraph (1) of subsection b. of this section. The provider shall
56 execute the letter of credit, negotiable securities or bond in favor
57 of the commissioner on behalf of individuals who are entitled to
58 a refund of entrance fees from the provider.

59 f. A provider may apply to the commissioner for a waiver of
60 the applicable escrow requirements of this section when a pro-
61 vider constructs additional living units in an amount that does
62 not exceed 10% of the facility's existing living units for continuing
63 care residents.

64 The provider shall apply for the waiver in writing to the com-
65 missioner. The commissioner may grant the waiver which may
66 be effective for a period of one year or longer, at the discretion
67 of the commissioner, if the construction of additional units meets
68 the requirements of this subsection.

69 g. Upon receipt of a notice from the provider that an individual
70 is entitled to a refund of an entrance fee, the escrow agent shall
71 return the funds held in the escrow account to the individual.

1 14. A provider shall pledge only the unencumbered assets of a
2 continuing care facility as collateral for the purpose of securing
3 loans for other continuing care facilities, whether proposed or
4 existing.

1 15. a. A continuing care agreement executed on or after the
2 effective date of this act shall be written in plain English and in
3 language understandable by a layperson and shall include, but not
4 be limited to, the following:

5 (1) A provision for the continuing care of one resident, or two
6 or more residents occupying space designed for multiple occupancy
7 under appropriate procedures established by the provider, and a
8 statement showing the value of all property transferred, including
9 donations, subscriptions, fees and any other amounts payable by,
10 or on behalf of, the resident;

11 (2) A statement on a form provided by the commissioner specify-
12 ing all services which are to be provided to the resident by the pro-
13 vider including, in detail, all items which the resident will receive
14 such as food, shelter, nursing care, pharmaceuticals and burial and
15 whether the items will be provided for a designated period of time
16 or for life;

17 (3) A description of the health and financial conditions upon
18 which the provider may have the resident relinquish his space in
19 the designated facility;

20 (4) A description of the health and financial conditions required
21 for a person to continue as a resident;

22 (5) A description of the circumstances under which the resident
23 shall be permitted to remain in the facility in the event of financial
24 difficulties of the resident. The stated policy may not be less than
25 the terms stated in subsection e. of this section.

26 (6) A statement of the fees that will be charged if the resident
27 marries a person who is not a resident of the facility, the terms
28 concerning the entry of a spouse into the facility and the conse-
29 quences if the spouse does not meet the requirements for entry;

30 (7) A statement providing that the agreement may be canceled
31 upon giving at least 60 days' notice by the provider or the resident,
32 except that if an agreement is cancelled by the provider because
33 there has been a good faith determination in writing, signed by
34 the medical director and the administrator of the facility, that a
35 resident is a danger to himself or others, only notice that is reason-
36 sonable under the circumstances is required;

37 (8) A statement providing in clear and understandable language,
38 in print no smaller than the largest type used in the body of the
39 agreement, the terms governing the refund of any portion of the
40 entrance fee;

41 (9) A statement of the terms under which an agreement is can-
42 celed by the death of the resident, which statement may contain a
43 provision stating that upon the death of the resident the moneys
44 paid for the continuing care of the resident shall be considered
45 earned and become the property of the provider; and

46 (10) A statement providing for at least 30 days' advance notice
47 to the resident before any change in fees or changes in the scope
48 of care or services are effective, except for changes required by
49 State or federal assistance programs.

50 b. A resident has the right to rescind a continuing care agree-
51 ment without penalty or forfeiture, except those costs specifically
52 incurred by the facility at the request of the resident and set forth
53 in writing in a separate addendum signed by both parties to the
54 agreement, within 30 days after making an initial deposit or execut-
55 ing the agreement. A resident shall not be required to move into
56 the facility designated in the agreement before the expiration of
57 the 30 day period.

58 c. If a resident dies before the occupancy date, or through ill-
59 ness, injury or incapacity is precluded from becoming a resident
60 under the terms of the continuing care agreement, the agreement
61 shall be automatically rescinded and the resident or the resident's
62 legal representative shall receive a full refund of all moneys paid
63 to the facility, except those costs specifically incurred by the facil-
64 ity at the request of the resident and set forth in writing in a
65 separate addendum signed by both parties to the agreement.

66 d. No agreement for care shall permit dismissal or discharge
67 of the resident from the facility prior to the expiration of the
68 agreement without just cause for the removal. For the purposes
69 of this act, "just cause" means but is not limited to a good faith
70 determination in writing, signed by the medical director and the
71 administrator of the facility, that a resident is a danger to himself
72 or others while remaining in the facility. The written determina-
73 tion shall state: (1) that the determination is made in good faith;
74 (2) the reasons supporting the determination that the resident is
75 a danger to himself or others; (3) the basis for the conclusion that
76 there is no less restrictive alternative to dismissal, discharge or
77 cancellation, as the case may be, for abating the dangerousness of
78 the resident; and, (4) the basis for the conclusion that the dan-
79 ger is such that a notice period of less than 60 days is appropriate.

80 If a facility dismisses a resident for just cause, the resident shall
81 be entitled to a refund of his unearned entrance fee, if any, in the
82 same manner as provided in subsection e. of this section. A resi-
83 dent may request a hearing to contest a facility's decision to dis-

84 miss or discharge the resident. The hearing shall be held pursuant
85 to the "Administrative Procedure Act," P. L. 1968, c. 410 (C.
86 52:14B-1 et seq.).

87 e. It shall not be deemed just cause if the resident is unable to
88 pay monthly maintenance fees until the entire unearned entrance
89 fee plus, where applicable, any third-party insurance benefits re-
90 ceived, are earned by the facility. For the purpose of this subsec-
91 tion, the unearned portion shall be the difference between the en-
92 trance fee paid by, or on behalf of, the resident and the cost of
93 caring for the resident based upon the per capita cost to the
94 facility. In lieu of calculating the actual per capita cost of caring
95 for a resident, a facility may provide, in the agreement for con-
96 tinuing care, that the per capita cost of caring for the resident shall
97 be calculated as follows:

98 (1) no more than 2% of the entrance fee for each month the resi-
99 dent occupies, or is entitled to occupy, a bed in the residential unit
100 of the facility;

101 (2) no more than 4% of the entrance fee for each month the resi-
102 dent occupies, or is entitled to occupy, a bed in the nursing unit of
103 the facility; and

104 (3) no more than 10% of the entrance fee as a one-time charge
105 for processing and refurbishment.

106 If these entrance fees are exhausted within 90 days of the date
107 of failure to pay, the facility may not require the resident to leave
108 before 90 days from the date of failure to pay, during which time
109 the resident shall continue to pay the facility a reduced fee based
110 upon the resident's current income.

111 f. No act, agreement or statement of a resident or of an indi-
112 vidual purchasing care for a resident under any agreement to fur-
113 nish care to the resident shall constitute a valid waiver of any
114 provision of this act intended for the benefit or protection of the
115 resident or the individual purchasing care for the resident.

116 g. An agreement entered into prior to the effective date of this
117 act or prior to the issuance of a certificate of authority to the pro-
118 vider is valid and binding upon both parties in accordance with
119 the terms of the agreement.

120 h. The provider shall designate and make knowledgeable per-
121 sonnel available to prospective residents to answer questions about
122 any information contained in the agreement for continuing care.
123 The provider shall also advise prospective residents to seek the
124 independent advice of an attorney or financial advisor of their
125 choice concerning the agreement. The agreement shall state on
126 the cover or top of the first page in bold print the following: "This

127 matter involves a substantial financial investment and a legally
128 binding contract. In evaluating the disclosure statement and the
129 contract prior to any commitment, it is recommended that you con-
130 sult with an attorney and financial advisor of your choice, if you
131 so elect, who can review these documents with you.”

1 16. a. Residents living in a facility which holds a certificate of
2 authority issued pursuant to this act have the right of self-organiza-
3 tion. No retaliatory conduct shall be permitted against a resident
4 for organization of membership or participation in a resident’s
5 organization; for the resident’s lawful efforts to secure or enforce
6 his rights under the continuing care agreement, the laws of the
7 State of New Jersey or its governmental subdivisions, or of the
8 United States; or for the resident’s good faith complaint to a
9 governmental authority of the provider’s alleged violation of any
10 health or safety law, regulation, code or ordinance or State law or
11 regulation which has as its objective the regulation of the facility
12 or the delivery of health care services.

13 b. The board of directors, a designated representative, or other
14 governing body of a continuing care facility shall hold quarterly
15 meetings with the residents or their elected representatives of the
16 continuing care facility for the purpose of free discussion of sub-
17 jects which may include income, expenditures and financial matters
18 as they apply to the facility and proposed changes in policies, pro-
19 grams and services. Residents shall be given at least seven days’
20 notice of each quarterly meeting.

21 c. The provider shall designate and make knowledgeable person-
22 nel available to address resident complaints about the operation
23 and management of the facility.

1 17. a. The commissioner may apply to a court of competent
2 jurisdiction or to the federal bankruptcy court, if that court had
3 previously taken jurisdiction over the provider or facility, for an
4 order authorizing the commissioner to appoint a trustee to re-
5 habilitate or to liquidate the facility if, after notice and hearing
6 pursuant to the “Administrative Procedure Act,” P. L. 1968, c. 410
7 (C. 52:14B-1 et seq.), the commissioner determines that:

8 (1) A portion of a provider’s reserve fund escrow as required
9 pursuant to this act has been or is proposed to be released;

10 (2) A provider is or will be unable to meet the pro forma income
11 or cash flow projections filed pursuant to section 7 of this act,
12 except in a manner that may endanger the ability of the provider
13 to fully meet its continuing care contracts obligations;

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

16 (4) A provider is bankrupt or insolvent, or in imminent danger
17 of becoming bankrupt or insolvent.

18 b. An order to rehabilitate a facility shall direct the commissioner
19 or trustee to take possession of the property of the provider and
20 to conduct the business thereof, including the employment of man-
21 agers or agents that the commissioner or trustee deems necessary
22 and to take those steps the court directs toward removal of the
23 causes and conditions which have made rehabilitation necessary.

24 c. If the court finds, upon petition of the commissioner, trustee
25 or provider, or on its own motion, that the objectives of an order
26 to rehabilitate a facility have been accomplished and that the
27 facility may be returned to the provider's management without
28 further jeopardy to the residents, creditors and owners of the
29 facility, and to the public, the court may, upon a full report and
30 accounting of the conduct of the facility's affairs during the re-
31 habilitation and the facility's current financial condition, terminate
32 the rehabilitation and order return of the facility and its assets
33 and affairs to the provider's management.

34 d. If the commissioner determines that further efforts to re-
35 habilitate the provider would be useless, the commissioner may
36 apply to the court for an order of liquidation.

37 e. The court may issue an order of liquidation upon application
38 to the commissioner whether or not a prior order to rehabilitate
39 the facility had been issued. The order shall act as a revocation
40 of the certificate of authority issued to the facility pursuant to
40A this act. The order shall direct the commissioner or a trustee to
41 marshal and liquidate all of the provider's assets located within
42 the State.

43 f. In applying for an order to rehabilitate or liquidate a facility,
44 the commissioner shall give due consideration in the application to
45 the manner in which the welfare of persons who have previously
46 contracted with the provider for continuing care may be best served.

47 In furtherance of this objective, the proceeds of any lien obtained
48 by the commissioner pursuant to this act may be :

- 49 (1) Used in full or partial payment of entrance fees ;
50 (2) Used on behalf of residents of a facility that is being liqui-
51 dated ; or
52 (3) Paid, on behalf of those persons, to other facilities operated
53 by providers who hold a certificate of authority issued pursuant to
54 this act.

55 g. The court shall refuse or vacate an order for rehabilitation if
56 the provider posts a bond by a surety authorized to do business in
57 this State and executed in favor of the commissioner on behalf of
58 persons who may be found entitled to a refund of entrance fees from

59 the provider or other damages in the event the provider is unable
60 to fulfill the terms of its contracts to provide continuing care at the
61 facility. The amount of the bond shall be equal to the reserve fund-
62 ing which would otherwise need to be available to fulfill the pro-
63 vider's obligations, as determined by the court.

64 h. The commissioner or his designee shall attempt to keep resi-
65 dents of the community informed about his actions to rehabilitate or
66 liquidate the facility and, when appropriate, the commissioner or his
67 designee shall meet with residents of the facility.

1 18. a. A provider or person acting on behalf of the provider is
2 liable to the person who contracts for the continuing care for dam-
3 ages including repayment of all fees paid to the provider, facility or
4 person who violates this act plus interest thereon at the legal rate,
5 court costs and reasonable attorney's fees if the provider or person
6 acting on behalf of the provider;

7 (1) Enters into a contract for continuing care at a facility which
8 does not have a certificate of authority issued pursuant to this act;

9 (2) Enters into a contract for continuing care at a facility with-
10 out having first delivered a disclosure statement to a person con-
11 tracting for continuing care pursuant to this act; or

12 (3) Enters into a contract for continuing care at a facility with
13 a person who has relied on a disclosure statement which omits a
14 material fact required to be stated therein pursuant to this act.

15 The reasonable value of care and lodging provided to the resident
16 by or on whose behalf the contract for continuing care was entered
17 into prior to discovery of the violation, misstatement or omission or
18 the time the violation, misstatement or omission should reasonably
19 have been discovered shall be deducted from the amount of repay-
20 ment due the person.

21 b. A provider is liable under this section whether or not the
22 provider has actual knowledge of the violation, misstatement or
23 omission. A person acting on behalf of the provider is liable under
24 this section only if the person has actual knowledge of the viola-
25 tion, misstatement or omission.

26 c. A person may not file or maintain an action under this section
27 if before filing the action, the person received an offer to refund
28 all amounts paid to the provider, facility or person violating this
29 act plus interest from the date of payment, less the reasonable value
30 of care and lodging provided prior to receipt of the offer and the
31 person failed to accept the offer within 30 days of its receipt. At
32 the time a provider makes a written offer of rescission, the provider
33 shall file a copy with the commissioner and obtain the approval of
34 the commissioner for the offer. The offer shall be written in clear

35 and understandable language and shall explain the limitation on
36 court action provided pursuant to this subsection. Subject to the
37 provisions of this subsection, nothing in this act shall prohibit any
38 person from seeking injunctive or other relief from the provider in
39 a court of law or equity in this State.

40 d. A person shall not institute an action to enforce a liability
41 created under this act more than six years after the violation
42 is discovered or could have been discovered in the exercise of due
43 diligence.

44 e. Except as expressly provided in this act, civil liability in favor
45 of a private party shall not arise against a person by implication
46 from or as a result of the violation of this act or an order issued
47 pursuant to this act. This act shall not limit a liability which may
48 exist by virtue of any other law if this act were not in effect.

1 19. a. The commissioner or his designee may, as often as he
2 reasonably deems necessary, conduct an investigation to determine
3 whether any person has violated or is about to violate any provision
4 of this act or to aid in the enforcement of this act or in the prescrib-
5 ing of rules and forms hereunder.

6 b. For the purpose of any investigation or proceeding under this
7 act, the commissioner or his designee may administer oaths and
8 affirmations, subpoena witnesses, compel their attendance, take evi-
9 dence and require the production of any books, papers, correspon-
10 dence, memoranda, agreements or other documents or records which
11 the commissioner deems relevant or material to the inquiry.

1 20. The commissioner or his designee shall visit each facility
2 offering continuing care in this State to examine its books and
3 records at least once every four years.

1 21. a. The commissioner shall prepare and cause to be distributed
2 to the public a consumers guide to continuing care facilities and an
3 annual directory of continuing care facilities in the State.

4 b. The commissioner shall prepare and cause to be distributed to
5 the public a residents' rights booklet that describes the rights of
6 residents and obligations of providers under the act.

1 22. If the commissioner determines or has cause to believe that a
2 person has engaged in any act or practice which constitutes a viola-
3 tion of this act, the commissioner may:

4 a. Issue an order requiring the person to cease and desist from
5 engaging in the act or practice; or

6 b. Bring an action in a court of competent jurisdiction to enjoin
7 the act or practice and to enforce compliance with this act. Upon
8 a proper showing, the court may grant a permanent or temporary
9 injunction, restraining order or writ of mandamus and may appoint

10 a receiver or conservator for the defendant or the defendant's
11 assets. The commissioner shall not be required to post a bond.

1 23. a. The commissioner may refer any available evidence con-
2 cerning criminal violations of this act to the Attorney General or
3 the appropriate county prosecutor.

4 b. The Attorney General or a county prosecutor may institute
5 appropriate criminal proceedings either in response to a referral
6 from the commissioner or on their own initiative.

7 c. Nothing in this act limits the power of the State to punish any
8 person for any conduct which constitutes a crime under any other
9 law.

1 24. The commissioner shall determine reasonable fees for filing
2 an application for a certificate of authority and other required
3 documents pursuant to this act. The commissioner also may assess
4 a provider for reasonable expenses incurred by the department in
5 the investigation or rehabilitation of a provider or facility pursuant
6 to this act.

1 25. A provider who is offering but not providing continuing care
2 on the effective date of this act may be given a reasonable time, not
3 to exceed one year from the date of promulgation of applicable
4 regulations, within which to comply with the requirements of this
5 act and obtain a certificate of authority.

1 26. A facility which has not entered into any agreements for con-
2 tinuing care pursuant to this act since 1965, is not subject to the
3 provisions of this act; but this exclusion shall not apply if that
4 facility enters into one or more agreements for continuing care on
5 or after the effective date of this act.

1 27. A facility which has less than 50 residents who are under
2 continuing care agreements on the date of enactment of this act is
3 not subject to the provisions of this act; but this exclusion shall not
4 apply if that facility increases the number of its residents under
5 continuing care agreements to 50 or more, after the date of enact-
6 ment of this act.

1 28. a. There is created a Continuing Care Advisory Council
2 which consists of 17 members as follows: the Commissioners of the
3 Departments of Community Affairs, Health and Insurance, or their
4 designees, who shall serve ex officio and shall be non-voting mem-
5 bers; 10 public members appointed by the Governor, with the advice
6 and consent of the Senate, who are residents of the State and two
7 of whom are administrators of continuing care facilities in this
8 State, one of whom is a representative of the business community
9 and knowledgeable in the area of management, one of whom is a cer-
10 tified public accountant, one of whom is an attorney licensed to prac-

11 tice in this State, three of whom are residents of continuing care
12 retirement communities in this State, one of whom is a trustee or
13 director of a continuing care retirement community in this State
14 and one of whom is a representative of the New Jersey Association
15 of Non-Profit Homes for the Aging; two members of the Senate
16 appointed by the President thereof; and two members of the Gen-
17 eral Assembly appointed by the Speaker thereof.

18 b. The term of office for each public member is three years, or
19 until the member's successor has been appointed; except that of the
20 public members first appointed, two shall be appointed for a term
21 of one year, two for a term of two years and three for a term of
22 three years. The legislative members shall be appointed for their
23 legislative term of office.

24 A vacancy in the membership of the council shall be filled in the
25 same manner as the original appointment, but for the unexpired
26 term. A member of the council is eligible for reappointment.

27 The members of the council shall serve without compensation,
28 but the council shall reimburse the members for the reasonable
29 expenses incurred in the performance of their duties.

30 c. The council shall hold an organizational meeting within 30 days
31 after the appointment of its members. The members of the council
32 shall elect from among them a chairman who shall be the chief execu-
33 tive officer of the council and the members shall elect a secretary
34 who need not be a member of the council.

35 d. The council shall meet at least four times a year but may
36 meet more frequently at the discretion of the chairman or the com-
37 missioner.

38 e. The council may call to its assistance and avail itself of the
39 services and assistance of any officials and employees of the De-
40 partment of Community Affairs or other State agency and political
41 subdivisions and their departments, boards, bureaus, commissions
42 and agencies as it requires and as is available to it for this pur-
43 pose and may expend any funds that are appropriated or otherwise
44 made available to it pursuant to this act.

45 f. The council shall:

46 (1) Advise and provide information to the commissioner on mat-
47 ters pertaining to the operation and regulation of continuing care
48 retirement facilities, upon request of the commissioner;

49 (2) Review and comment upon, as appropriate, any proposed
50 rules and regulations and legislation pertaining to continuing care
51 retirement facilities;

52 (3) Make recommendations to the commissioner about any

53 needed changes in rules and regulations and State and federal
54 laws pertaining to continuing care retirement facilities; and

55 (4) Assist in the rehabilitation of a continuing care retirement
56 facility, upon request of the commissioner.

57 g. The commissioner shall report annually to the Governor and
58 the Legislature, the commissioner's and the council's findings and
59 recommendations concerning continuing care retirement commu-
60 nities and the implementation of this act.

1 29. The commissioner shall adopt rules and regulations necessary
2 to carry out the provisions of this act pursuant to the "Administra-
3 tive Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.). The
4 commissioner shall adopt the regulations within six months of the
5 effective date of this act.

1 30. Nothing in this act shall be construed to limit the licensing
2 and regulatory authority of the Department of Health, pursuant
3 to P. L. 1971, c. 136 (C. 26:2H-1 et seq.), concerning health care
4 services provided by a facility subject to this act.

1 31. Nothing in this act shall be construed to limit the authority
2 of the Department of Community Affairs to enforce any otherwise
3 applicable statute, code, or regulation in a facility subject to this act.

1 32. There is appropriated \$50,000.00 from the General Fund to
2 the Department of Community Affairs to carry out the purposes of
3 this act.

1 33. This act shall take effect on the 180th day following enact-
2 ment.

SENIOR CITIZENS

"Continuing Care Retirement Community Regulation and Financial
Disclosure Act"; appropriates \$50,000.00.

ASSEMBLY, No. 2432

STATE OF NEW JERSEY

INTRODUCED MAY 8, 1986

By Assemblymen ZIMMER, RAFFERTY, Rooney, Kavanaugh, Felice,
Hendrickson, Colburn, Shinn, Weidel, Singer and Moran.

AN ACT regulating continuing care retirement facilities, establishing an advisory council and supplementing Title 52 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. This act shall be known and may be cited as the "Continuing
2 Care Retirement Community Regulation and Financial Disclosure
3 Act."

1 2. The Legislature finds and declares that: continuing care re-
2 tirement communities are becoming an important and increasingly
3 preferred alternative for the long-term residential, social and health
4 care needs of New Jersey's senior citizens; because senior citizens
5 often expend a significant portion of their savings in order to pur-
6 chase care in the retirement community and thereby expect to
7 receive care at the retirement community for the rest of their lives,
8 tragic consequences can result to senior citizens when a continuing
9 care provided becomes insolvent or unable to provide responsible
10 care; and there is a need for full disclosure concerning the terms
11 of agreements made between prospective residents and the con-
12 tinuing care provider and the operations of the providers; there-
13 fore, it is the policy of this State that providers of continuing care
14 shall register with and be monitored by the State Department of
15 Community Affairs and that a Continuing Care Advisory Council
16 be established to advise and assist the Commissioner of Community
17 Affairs in the monitoring of these providers and the regulation
18 of continuing care retirement facilities.

1 3. As used in this act:

2 a. "Application fee" means the fee an individual is charged, in
3 addition to an entrance fee or any other fee, to cover the provider's
4 reasonable cost for processing the individual's application to be-
5 come a resident at the facility. A reasonable application fee shall
6 be established pursuant to regulations adopted by the department.

7 b. "Commissioner" means the Commissioner of the Department
8 of Community Affairs.

9 c. "Continuing care" means the provision of lodging and nursing,
10 medical or other health related services at the same or another
11 location to an individual pursuant to an agreement effective for
12 the life of the individual or for a period greater than one year,
13 including mutually terminable contracts, and in consideration of
14 the payment of an entrance fee with or without other periodic
15 charges. An individual who is provided continuing care is not re-
16 lated by consanguinity or affinity to the person who provides the
17 care.

18 d. "Department" means the State Department of Community
19 Affairs.

20 e. "Entrance fee" means a transfer to a provider of a sum of
21 money or other property made or promised to be made as full or
22 partial consideration for acceptance of a specified person as a resi-
23 dent in a facility and includes a fee which is refundable upon the
24 death, departure or option of the resident.

25 A fee which is less than the sum of the regular periodic charges
26 for one year of residency is not considered an entrance fee for the
27 purposes of this act. A transfer of a sum of money or other prop-
28 erty, by or on behalf of a resident, to a trust account which is
29 managed by the facility or an independent trustee for the benefit
30 of the resident is not considered an entrance fee for the purposes
31 of this act if the transfer is not a condition of admission or of
32 continued stay and the principal amount and any interest thereon
33 are the exclusive and sole property of the resident or the individual
34 acting on behalf of the resident.

35 f. "Facility" means the place or places in which a person under-
36 takes to provide continuing care to an individual.

37 g. "Living unit" means a room, apartment, cottage or other area
38 within a facility set aside for the exclusive use or control of one
39 or more persons.

40 h. "Operator or administrator" means a person who operates
41 or manages a facility for the provider.

42 i. "Provider" means a person who undertakes to provide con-
43 tinuing care in a facility.

44 i "Resident" means a person entitled to receive continuing care
45 in a facility.

1 4. a. A person shall not establish, operate or administer a con-
2 tinuing care facility in this State without obtaining and maintain-
3 ing a certificate of authority pursuant to this act. A certificate of
4 authority granted pursuant to this act is not transferable.

5 b. A person shall file an application for a certificate of authority
6 with the department on forms prescribed by the commissioner.
7 The application shall include a disclosure statement prepared pur-
8 suant to section 7 of this act and other information as required
9 by the commissioner.

10 c. Upon receipt of the application for a certificate of authority,
11 the department shall, within 10 business days, issue a notice of
12 filing to the applicant. Within 90 days of the notice of filing, the
13 commissioner shall issue the certificate of authority or reject the
14 application pursuant to subsection d. of this section.

15 d. If the commissioner determines that any of the requirements
16 of this act has not been met, the commissioner shall notify the
17 applicant in writing and specify those particulars which need to
18 be corrected. The applicant has 30 days from the date of notifica-
19 tion to correct the application as specified by the commissioner.
20 If the requirements are not met within the time allowed, the com-
21 missioner may reject the application and notify the applicant in
22 writing of the reason for the rejection. The rejection shall be
23 effective 20 days after the foregoing 30 day period. During the 20
24 day period, the applicant may request reconsiderations of the com-
25 missioner's action and is entitled to a hearing conducted pursuant
26 to the "Administrative Procedure Act," P. L. 1968, c. 410 (C.
27 52:14B-1 et seq.).

28 e. In the case of a provider who has offered continuing care
29 agreements to existing or prospective residents in a facility estab-
30 lished prior to the effective date of this act and which has one or
31 more residents living there pursuant to agreements entered into
32 prior to the effective date of this act, if the provider is unable to
33 comply with section 10 of this act within the time required, the
34 commissioner may, upon the written request of the provider, issue
35 a temporary certificate of authority to the provider. The provider
36 may then enter into continuing care agreements which are in com-
37 pliance with all other applicable provisions of this act until the
38 permanent certificate is issued. The temporary certificate shall be
39 issued only to those existing providers who shall be able to comply
40 with the provisions of section 10 of this act within a period of time
41 determined by the commissioner but which does not exceed two
42 years.

43 If a provider is not in compliance on or before the expiration
44 date of the temporary certificate, the provider may request an
45 extension from the commissioner. The commissioner may grant
46 an extension of up to three years to a provider who shall be able
47 to comply with section 10 of this act in that time period.

48 f. If an existing provider is granted a permanent certificate of
49 authority, the provider shall give a resident who entered into an
50 agreement before the certificate of authority was granted, a copy
51 of the initial disclosure statement and any amendments thereto.

52 g. If a facility is accredited by a process approved by the com-
53 missioner as substantially equivalent to the requirements of this
54 section, the facility is deemed to have met the requirements of this
55 section and the commissioner shall issue a certificate of authority
56 to the facility.

57 h. A person who establishes, operates or administers a continu-
58 ing care facility in this State without obtaining or maintaining a
59 certificate of authority pursuant to this act is guilty of a crime of
60 the third degree.

1 5. a. The certificate of authority or temporary certificate of
2 authority of a provider shall remain in effect until revoked, after
3 notice and hearing conducted pursuant to the "Administrative
4 Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.), upon the
5 commissioner's written finding of fact that the provider has:

6 (1) Repeatedly failed to correct violations of this act or any
7 regulation adopted hereunder;

8 (2) Failed to file an annual disclosure statement or resident
9 agreement pursuant to this act;

10 (3) Failed to deliver to a prospective resident the disclosure
11 statement required pursuant to this act;

12 (4) Delivered to a prospective resident a disclosure statement
13 which makes an untrue statement or omits a material fact and the
14 provider at the time of the delivery of the disclosure statement
15 had actual knowledge of the misstatement or omission;

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

17 or

18 (6) Committed serious violations of any other State or federal
19 law.

20 b. The commissioner shall include with the findings of fact in
21 support of revocation a concise and explicit statement of the under-
22 lying facts supporting the findings.

23 c. If the commissioner has cause to believe that the provider
24 is guilty of a violation for which revocation may be ordered, the
25 commissioner may issue an order directing the provider or operator

26 to cease and desist from engaging in any practice in violation of
27 this act.

28 d. If the cease and desist order is not or may not be effective in
29 remedying the violation, the commissioner, after notice and hearing
30 conducted pursuant to the "Administrative Procedure Act," P. L.
31 1968, c. 410 (C. 52:14B-1 et seq.), may revoke the certificate of
32 authority or temporary certificate of authority and order that it
33 be surrendered to the commissioner.

1 6. a. A person who desires to acquire an ownership interest in
2 a continuing care facility shall so notify the department in writing
3 at least 60 days in advance of the acquisition. The person shall
4 obtain the approval of the commissioner for the acquisition prior
5 to the completion of the sale or transfer of the facility's ownership
6 interest.

7 b. For the purposes of this act, an acquisition of an ownership
8 interest in a continuing care facility shall be deemed to take place
9 if:

10 (1) The facility is a corporation and there is an acquisition by
11 or a transfer of ownership to an individual, partnership or cor-
12 poration through purchase, contract, donation, gift or stock option
13 of 25% or more of the corporation's outstanding stock, either pre-
14 ferred or common, or there is acquisition of the physical assets of
15 the facility by a newly formed or existing corporation;

16 (2) The facility is a partnership and there is an acquisition by
17 or a transfer of ownership to an individual, partnership, or cor-
18 poration of 10% or more of the existing partnership's total capital
19 interest or there is acquisition of the physical assets of the facility
20 by a newly formed or existing partnership; and

21 (3) The facility is individually owned and there is a purchase
22 of the physical assets of the facility.

1 7. The provider shall provide a disclosure statement to a pros-
2 pective resident of a continuing care facility or the person with
3 whom the provider shall enter into a contract to provide continuing
4 care, prior to the execution of the contract or at the time of or prior
5 to the transfer of any money or other property to the provider by
6 or on behalf of the prospective resident, whichever occurs first.

7 The cover page of the disclosure statement shall state in a promi-
8 nent location and type face, the date of the disclosure statement.
9 The disclosure statement shall be written in plain English and in
10 language understandable by a layperson.

11 The provider shall attach a copy of the standard form of con-
12 tract for continuing care used by the provider as an exhibit to each
13 disclosure statement.

14 The disclosure statement shall contain the following information
15 unless the information is contained in the contract:

16 a. The name and business address of the provider and a state-
17 ment of whether the provider is a partnership, corporation or
18 other type of legal entity.

19 b. The names and business addresses of the officers, directors,
20 trustees, managing or general partners and any person having
21 a 10% or greater equity or beneficial interest in the provider and
22 a description of that person's interest in or occupation with the
23 provider.

24 c. With respect to the provider, any person named in response
25 to subsection b. of this section and the proposed operator if the
26 facility is managed on a day-to-day basis by a person other than
27 an individual directly employed by the provider:

28 (1) A description of the person's business experience, if any,
29 in the operation or management of similar facilities;

30 (2) The name and address of any professional service, firm,
31 association, trust, partnership or corporation in which the person
32 has a 10% or greater interest and which may provide goods, leases
33 or services to the facility of a value of \$500.00 or more, within
34 any year;

35 (3) A description of the goods, leases or services provided pur-
36 suant to paragraph (2) of this subsection and the probable or
37 anticipated cost thereof to the facility or provider;

38 (4) A description of any matter in which the person has been
39 convicted of a felony or pleaded nolo contendere to a felony charge,
40 or has been held liable or enjoined in a civil action which involved
41 fraud, embezzlement, fraudulent conversion or misappropriation
42 of property; and

43 (5) A description of any matter in which the person is subject
44 to a currently effective injunctive or restrictive court order or,
45 within the past five years, had a State or federal license or permit
46 suspended or revoked as a result of an action brought by a gov-
47 ernmental agency or department, which arose out of or related to
48 business activity or health care, including actions affecting a li-
49 cense to operate a residential health care facility, nursing home,
50 retirement home, home for the aged or facility registered under
51 this act or a similar act in another state.

52 d. A statement whether the provider is or over has been affiliated
53 with a religious, charitable or other nonprofit organization, the
54 nature of the affiliation, if any, the extent to which the affiliate
55 organization is responsible for the financial and contractual obli-
56 gations of the provider, and the provision of the federal Internal

57 Revenue Code, if any, under which the provider or affiliate is
58 exempt from the payment of income tax.

59 e. The location and description of the physical property of the
60 facility, both existing and proposed, and with respect to proposed
61 property, the estimated completion date, the date construction
62 began or shall begin and the contingencies subject to which con-
63 struction may be deferred.

64 f. The services provided or proposed to be provided under con-
65 tracts for continuing care at the facility, including the extent to
66 which medical care and other services are furnished under the
67 basic contract and which other care or services are available at
68 or by the facility at extra charge.

69 g. A description of all fees required of residents, including the
70 application fee, entrance fee and periodic charges, if any, the
71 manner by which the provider may adjust periodic charges or
72 other recurring fees and the limitation on the adjustments, if any,
73 and if the facility is already in operation or if the provider or
74 operator operates one or more similar facilities within this State,
75 tables showing the frequency and average dollar amount of each
76 increase in periodic rates at each facility for the previous five
77 years or as many years as the facility has been operated by the
78 provider or operator, whichever is less.

79 h. The provisions that have been made or will be made, if any,
80 to provide reserve funding or security which will enable the pro-
81 vider to fully perform its obligations under contracts to provide
82 continuing care at the facility, including the establishment of es-
83 crow accounts, trusts or reserve funds, the manner in which the
84 funds shall be invested and the names and experience of persons
85 who will make the investment decisions.

86 i. Certified financial statements of the provider which include
87 balance sheets and income statements for the two most recent
88 completed fiscal years or for as long as the provider has been in
89 existence, whichever is less.

90 j. If operation of the facility has not yet commenced, a state-
91 ment of the anticipated source and application of the funds used
92 or to be used in the purchase or construction of the facility, in-
93 cluding:

- 94 (1) An estimate of the cost of purchasing or construction and
95 equipping the facility which includes related costs such as financ-
96 ing expenses, legal expenses, land costs, marketing and develop-
97 ment costs and other similar costs the provider expects to incur
98 or become obligated for prior to the commencement of operations;
- 99 (2) A description of any mortgage loan or other long-term

100 financing intended to be used for the financing of the facility and
101 the anticipated terms and costs of the financing;

102 (3) An estimate of the total amount of entrance fees to be re-
103 ceived from or on behalf of residents at or prior to commencement
104 of operation of the facility;

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

109 (5) A projection of estimated income from fees and charges
110 other than entrance fees, a description of individual rates antici-
111 pated to be charged, the assumptions used for calculating the esti-
112 mated occupancy rate of the facility and the effect on the income
113 of the facility of government subsidies, if any, for health care
114 services provided pursuant to the contracts for continuing care;

115 (6) A projection of estimated operating expenses of the facility,
116 including a description of the assumptions used in calculating the
117 expenses and separate allowances, if any, the replacement of equip-
118 ment and furnishings and any anticipated major structural re-
119 pairs or additions;

120 (7) Identification of assets pledged as collateral for any pur-
121 pose; and

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

124 k. Other material information concerning the facility or the pro-
125 vider as required by the department or as the provider wishes
126 to include.

127 1. The provider shall designate and make knowledgeable per-
128 sonnel available to prospective residents to answer questions about
129 any information contained in the disclosure statement or contract.
130 The provider shall also advise prospective residents to seek the
131 independent advice of an attorney or financial advisor of their
132 choice concerning the disclosure statement or contract. The dis-
133 closure statement and the contract shall each state on the cover or
134 to of the first page in bold print the following: "This matter in-
135 volves a substantial financial investment and a legally binding con-
136 tract. In evaluating the disclosure statement and the contract prior
137 to any commitment, it is recommended that you consult with an
138 attorney or financial advisor of your choice, if you so elect, who
139 can review these documents with you."

1 8. a. The provider shall file an annual disclosure statement with
2 the commissioner which contains the information required for the
3 initial disclosure statement pursuant to section 7 of this act. The

4 annual disclosure statement also shall include a narrative describ-
5 ing any material differences between the pro forma income state-
6 ments filed pursuant to this act either as part of the initial appli-
7 cation for a certificate of authority or the most recent annual dis-
8 closure statement and the actual results of operations during the
9 fiscal year. The statement also shall contain a revised pro forma
10 income statement for the next fiscal year. The commissioner may
11 request additional income statements if necessary.

12 The provider shall file the annual disclosure statement within
13 six months following the end of the provider's fiscal year.

14 b. Prior to the provider's acceptance of part or all of any ap-
15 plication or entrance fee or the execution of the continuing care
16 agreement by the resident, whichever occurs first, the provider
17 shall deliver the most current annual disclosure statement to the
18 current or prospective resident and to any other person with whom
19 the continuing care agreement is or may be entered into.

20 c. A provider shall amend its currently filed annual disclosure
21 statement at any time if, in the opinion of the provider or the de-
22 partment, an amendment is necessary to prevent the disclosure
23 statement from containing any material misstatement of fact or
24 omission to state a material fact as required pursuant to this act.
25 The provider shall file an amendment or amended disclosure state-
26 ment with the commissioner before the provider provides it to a
27 resident or prospective resident.

1 9. a. No provider or person acting on behalf of the provider
2 shall make, publish, disseminate, circulate or place before the public,
3 or cause, directly or indirectly, to be made, published, disseminated,
4 circulated or placed before the public in a newspaper or other
5 publication, or in the form of a notice, circular, pamphlet, letter
6 or poster, or over any radio or television station, or in any other
7 way, an advertisement, announcement or statement of any sort
8 containing an assertion, representation or statement which is
9 untrue, deceptive or misleading.

10 b. No provider or person acting on behalf of the provider shall
11 file with the department or make, publish, disseminate, circulate
12 or deliver to any person or place before the public, or cause, di-
13 rectly or indirectly, to be made, published, disseminated, circulated
14 or delivered to any person, or placed before the public, any dis-
15 closure statement, financial statement or continuing care agreement
16 that contains an assertion, representation, or statement which is
17 untrue, deceptive or misleading.

18 c. A person who willfully and knowingly violates the provisions
19 of this section is guilty of a crime of the third degree.

1 10. a. For the first five years following the effective date of this
2 act, a provider shall establish and maintain liquid reserves in an
3 amount equal to or exceeding 15% of the projected annual operat-
4 ing expenses of the facility, exclusive of depreciation.

5 b. For subsequent years, beginning six years following the ef-
6 fective date of this act, a provider shall establish and maintain
7 liquid reserves in an amount equal to or exceeding the greater of:

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

11 (2) 15% of the projected annual operating expenses of the fa-
12 cility, exclusive of depreciation.

13 c. A provider shall notify the commissioner in writing at least
14 10 days prior to reducing the amount of funds available to satisfy
15 the applicable liquid reserve requirement. A provider may not
16 expend more than $\frac{1}{12}$ of the required balance each calendar month.

17 d. In a facility where some residents are not under continuing
18 care agreements, the reserve shall be computed only on the pro-
19 portional share of financing or operating expenses that is applicable
20 to residents under continuing care agreements at the end of the
21 provider's most recent fiscal year.

22 e. A provider may use funds in an endowment fund or escrow
23 account, including an escrow account established by or pursuant
24 to a mortgage loan, bond indenture or other long-term financing,
25 to satisfy the reserve requirements of this section if the funds are
26 available to make payments when operating funds are insufficient
27 for these purposes.

1 11. a. The commissioner may require a provider to establish and
2 maintain in escrow, on a current basis with a bank, trust company
3 or other escrow agent approved by the department, a portion of
4 all entrance fees received by the provider in an aggregate amount
5 not to exceed the total of all principal and interest payments due
6 during the next 12 months on account of any first mortgage loan
7 or other long-term financing of the facility. The provider may in-
8 vest the funds in the escrow account, with the earnings thereon
9 payable to the provider. If the provider so requests in writing,
10 the escrow agent shall release up to $\frac{1}{12}$ of the original principal
11 balance of the escrow account. The escrow agent shall not so re-
12 lease funds more than once during any calendar month, and then
13 only after the escrow agent has given written notice to the com-
14 missioner at least 10 days prior to the release. The amount of this
15 escrow fund shall be included in satisfying the reserves required
16 pursuant to section 10 of this act.

17 b. This section is applicable only when the commissioner has
 18 cause to believe that additional protection is necessary to secure
 19 the provider's performance of the terms of all resident agreements.

1 12. Prior to the issuance of a certificate of authority pursuant
 2 to this act, or at any other time the commissioner determines it
 3 is in the best interests of residents of a facility, the commissioner
 4 may file a lien on the real and personal property of the provider
 5 or facility to secure the obligations of the provider pursuant to
 6 existing and future contracts for continuing care. A lien filed
 7 under this section is effective for a period of 10 days following its
 8 filing and may be extended by the commissioner if the commissioner
 9 finds that the extension is advisable for the protection of residents
 10 of the facility.

11 The commissioner may foreclose on the lien upon the liquidation
 12 of the facility or the insolvency or bankruptcy of the provider.
 13 In this event, the commissioner shall use the proceeds thereof for
 14 full or partial satisfaction of obligations of the provider pursuant
 15 to contracts for continuing care in effect at that time.

16 The lien provided for in this section is subordinate to the lien
 17 of any first mortgage on the real property of the facility, and if
 18 the commissioner determines and so states in writing that it is
 19 advisable for the efficient operation of the facility, the lien may be
 20 subordinated to the claims of other persons.

1 13. The commissioner shall require a provider to establish an
 2 interest bearing escrow account with a bank, trust company or
 3 other escrow agent approved by the commissioner, as a condition
 4 of issuing a certificate of authority. The provider shall place in
 5 the escrow account any entrance fees or payments in excess of 5%
 6 of the then existing entrance fee for the living unit that are re-
 7 ceived by the provider prior to the date the resident is permitted
 8 to occupy the living unit in the facility. The fees or payments are
 9 subject to release from the escrow account in the following manner:

10 a. If the entrance fee gives the resident the right to occupy a
 11 living unit which has been previously occupied, the entrance fee
 12 and any interest earned thereon shall be released to the provider
 13 when the living unit becomes available for occupancy by the new
 14 resident.

15 b. If the entrance fee applies to a living unit which has not been
 16 previously occupied, the entrance fee and any interest earned
 17 thereon shall be released to the provider when the commissioner
 18 is satisfied that:

19 (1) aggregate entrance fees received or receivable by the pro-
 20 vider pursuant to executed continuing care agreements equal at

21 least 50% of the sum of the entrance fees due at full occupancy
22 of the portion of the facility under construction, except that en-
23 trance fees receivable pursuant to an agreement shall be counted
24 only if the facility has received a deposit of 35% or more of the
25 entrance fee due from the individual signing the contract;

26 (2) the aggregate entrance fees received or receivable pursuant
27 to the preceding paragraph plus anticipated proceeds of any first
28 mortgage loan or other long-term financing commitment and funds
29 from other sources in the actual possession of the provider are
30 equal to at least 50% of the aggregate cost of constructing or
31 purchasing, equipping and furnishing the facility plus at least 50%
32 of the funds necessary to fund start-up losses as estimated by the
33 provider in the statement of anticipated source and application
34 of funds submitted pursuant to subsection j. of section 7 of this
35 act; and

36 (3) the provider has received a preliminary commitment for any
37 permanent mortgage loan or other long-term financing described
38 pursuant to subsection j. of section 7 of this act and any conditions
39 of the commitment prior to disbursement of funds thereunder,
40 other than completion of the construction or closing of the purchase
41 of the facility, are substantially satisfied.

42 c. If the funds in the escrow account established pursuant to
43 this section and any interest earned thereon are not released
44 within 36 months, or a greater time if so specified by the provider
45 with the consent of the commissioner, the escrow agent shall return
46 the funds to the individuals who made payments to the provider.

47 d. Nothing in this section shall require the provider to place
48 any nonrefundable application fees charged to prospective resi-
49 dents in escrow.

50 e. In lieu of any escrow required pursuant to this section, a
51 provider is entitled to post a letter of credit from a financial
52 institution, negotiable securities or a bond by a surety authorized
53 to do business in this State, in a form approved by the commis-
54 sioner and in an amount not to exceed the amount required by
55 paragraph (1) of subsection b. of this section. The provider shall
56 execute the letter of credit, negotiable securities or bond in favor
57 of the commissioner on behalf of individuals who are entitled to
58 a refund of entrance fees from the provider.

59 f. A provider may apply to the commissioner for a waiver of
60 the applicable escrow requirements of this section when a pro-
61 vider constructs additional living units in an amount that does
62 not exceed 10% of the facility's existing living units for continuing
63 care residents.

64 The provider shall apply for the waiver in writing to the com-
 65 missioner. The commissioner may grant the waiver which may
 66 be effective for a period of one year or longer, at the discretion
 67 of the commissioner, if the construction of additional units meets
 68 the requirements of this subsection.

69 g. Upon receipt of a notice from the provider that an individual
 70 is entitled to a refund of an entrance fee, the escrow agent shall
 71 return the funds held in the escrow account to the individual.

1 14. A provider shall pledge only the unencumbered assets of a
 2 continuing care facility as collateral for the purpose of securing
 3 loans for other continuing care facilities, whether proposed or
 4 existing.

1 15. a. A continuing care agreement executed on or after the effec-
 2 tive date of this act shall be written in plain English and in lan-
 3 guage understandable by a layperson and shall include, but not
 4 be limited to, the following:

5 (1) A provision for the continuing care of one resident, or two
 6 or more residents occupying space designed for multiple occupancy
 7 under appropriate procedures established by the provider, and a
 8 statement showing the value of all property transferred, including
 9 donations, subscriptions, fees and any other amounts payable by,
 10 or on behalf of, the resident;

11 (2) A statement specifying all services which are to be provided
 12 to the resident by the provider including, in detail, all items which
 13 the resident will receive such as food, shelter, nursing care, pharma-
 14 ceuticals and burial and whether the items will be provided for a
 15 designated period of time or for life;

16 (3) A description of the health and financial conditions upon
 17 which the provider may have the resident relinquish his space in
 18 the designated facility;

19 (4) A description of the health and financial conditions required
 20 for a person to continue as a resident;

21 (5) A description of the circumstances under which the resident
 22 shall be permitted to remain in the facility in the event of financial
 23 difficulties of the resident;

24 (6) A statement of the fees that will be charged if the resident
 25 marries a person who is not a resident of the facility, the terms
 26 concerning the entry of a spouse into the facility and the conse-
 27 quences if the spouse does not meet the requirements for entry;

28 (7) A statement providing that the agreement may be canceled
 29 upon giving at least 60 days' notice by the provider or the resident,
 30 except that if an agreement is cancelled by the provider because
 31 there has been a good faith determination in writing, signed by

32 the medical director and the administrator of the facility, that a
33 resident is a danger to himself or others, only notice that is reason-
34 able under the circumstances is required;

35 (8) A statement providing in clear and understandable language,
36 in print no smaller than the largest type used in the body of the
37 agreement, the terms governing the refund of any portion of the
38 entrance fee;

39 (9) A statement of the terms under which an agreement is can-
40 celed by the death of the resident, which statement may contain a
41 provision stating that upon the death of the resident the moneys
42 paid for the continuing care of the resident shall be considered
43 earned and become the property of the provider; and

44 (10) A statement providing for at least 30 days' advance notice
45 to the resident before any change in fees or changes in the scope
46 of care or services are effective, except for changes required by
47 State or federal assistance programs.

48 b. A resident has the right to rescind a continuing care agree-
49 ment without penalty or forfeiture, except those costs specifically
50 incurred by the facility at the request of the resident and set forth
51 in writing in a separate addendum signed by both parties to the
52 agreement, within 30 days after making an initial deposit or execut-
53 ing the agreement. A resident shall not be required to move into
54 the facility designated in the agreement before the expiration of
55 the 30 day period.

56 c. If a resident dies before the occupancy date, or through ill-
57 ness, injury or incapacity is precluded from becoming a resident
58 under the terms of the continuing care agreement, the agreement
59 shall be automatically rescinded and the resident or the resident's
60 legal representative shall receive a full refund of all moneys paid
61 to the facility, except those costs specifically incurred by the facility
62 at the request of the resident and set forth in writing in a separate
63 addendum signed by both parties to the agreement.

64 d. No agreement for care shall permit dismissal or discharge
65 of the resident from the facility prior to the expiration of the
66 agreement without just cause for the removal. For the purposes
67 of this act, "just cause" means but is not limited to a good faith
68 determination in writing, signed by the medical director and the
69 administrator of the facility, that a resident is a danger to himself
70 or others while remaining in the facility. If a facility dismisses a
71 resident for just cause, the facility shall pay the resident any re-
72 fund due in the same manner as if the resident's agreement was
73 terminated pursuant to this act. A resident may request a hearing
74 to contest a facility's decision to dismiss or discharge the resident.

75 The hearing shall be held pursuant to the "Administrative Pro-
76 cedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.).

77 e. It shall not be deemed just cause if the resident is unable to
78 pay monthly maintenance fees until the entire unearned entrance
79 fee plus, where applicable, any third-party insurance benefits re-
80 ceived, are earned by the facility. For the purpose of this subsec-
81 tion, the unearned portion shall be the difference between the en-
82 trance fee paid by, or on behalf of, the resident and the cost of
83 caring for the resident based upon the per capita cost to the facil-
84 ity. A facility may provide, in the agreement for continuing care,
85 that the per capita cost of caring for the resident shall be calcu-
86 lated as follows:

87 (1) no more than 2% of the entrance fee for each month the resi-
88 dent occupies, or is entitled to occupy, a bed in the residential unit
89 of the facility;

90 (2) no more than 4% of the entrance fee for each month the resi-
91 dent occupies, or is entitled to occupy, a bed in the nursing unit
92 of the facility; and

93 (3) no more than 10% of the entrance fee as a one-time charge
94 for processing and refurbishment.

95 f. No act, agreement or statement of a resident or of an indi-
96 vidual purchasing care for a resident under any agreement to fur-
97 nish care to the resident shall constitute a valid waiver of any
98 provision of this act intended for the benefit or protection of the
99 resident or the individual purchasing care for the resident.

100 g. An agreement entered into prior to the effective date of this
101 act or prior to the issuance of a certificate of authority to the pro-
102 vider is valid and binding upon both parties in accordance with
103 the terms of the agreement.

104 h. The provider shall designate and make knowledgeable per-
105 sonnel available to prospective residents to answer questions about
106 any information contained in the agreement for continuing care.
107 The provider shall also advise prospective residents to seek the
108 independent advice of an attorney or financial advisor of their
109 choice concerning the agreement. The agreement shall state on the
110 cover or top of the first page in bold print the following: "This
111 matter involves a substantial financial investment and a legally
112 binding contract. In evaluating the disclosure statement and the
113 contract prior to any commitment, it is recommended that you con-
114 sult with an attorney or financial advisor of your choice, if you so
115 elect, who can review these documents with you."

1 16. a. Residents living in a facility which holds a certificate of
2 authority issued pursuant to this act have the right of self-organi-

3 zation. No retaliatory conduct shall be permitted against any resi-
4 dent for membership or participation in a resident's organization.

5 b. The board of directors, a designated representative, or other
6 governing body of a continuing care facility shall hold quarterly
7 meetings with the residents or their elected representatives of the
8 continuing care facility for the purpose of free discussion of sub-
9 jects which may include income, expenditures and financial matters
10 as they apply to the facility and proposed changes in policies, pro-
11 grams and services. Residents shall be given at least seven days'
12 notice of each quarterly meeting.

13 c. The provider shall designate and make knowledgeable person-
14 nel available to address resident complaints about the operation
15 and management of the facility.

1 17. a. The commissioner may apply to a court of competent
2 jurisdiction or to the federal bankruptcy court, if that court had
3 previously taken jurisdiction over the provider or facility, for an
4 order authorizing the commissioner to appoint a trustee to re-
5 habilitate or to liquidate the facility if, after notice and hearing
6 pursuant to the "Administrative Procedure Act," P. L. 1968, c.
7 410 (C. 52:14B-1 et seq.), the commissioner determines that:

8 (1) A portion of a provider's reserve fund escrow as required
9 pursuant to this act has been or is proposed to be released;

10 (2) A provider is or will be unable to meet the pro forma income
11 or cash flow projections filed pursuant to section 7 of this act,
12 except in a manner that may endanger the ability of the provider
13 to fully meet its continuing care contracts obligations;

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

16 (4) A provider is bankrupt or insolvent, or in imminent danger
17 of becoming bankrupt or insolvent.

18 b. An order to rehabilitate a facility shall direct the commissioner
19 or trustee to take possession of the property of the provider and
20 to conduct the business thereof, including the employment of man-
21 agers or agents that the commissioner or trustee deems necessary
22 and to take those steps the court directs toward removal of the
23 causes and conditions which have made rehabilitation necessary.

24 c. If the court finds, upon petition of the commissioner, trustee
25 or provider, or on its own motion, that the objectives of an order
26 to rehabilitate a facility have been accomplished and that the
27 facility may be returned to the provider's management without
28 further jeopardy to the residents, creditors and owners of the
29 facility, and to the public, the court may, upon a full report and
30 accounting of the conduct of the facility's affairs during the re-

31 habilitation and the facility's current financial condition, terminate
32 the rehabilitation and order return of the facility and its assets
33 and affairs to the provider's management.

34 d. If the commissioner determines that further efforts to re-
35 habilitate the provider would be useless, the commissioner may
36 apply to the court for an order of liquidation.

37 e. The court may issue an order of liquidation upon application
38 to the commissioner whether or not a prior order to rehabilitate
39 the facility had been issued. The order shall act as a revocation
40 of the certificate of authority issued to the facility pursuant to
41 this act. The order shall direct the commissioner or a trustee to
42 marshal and liquidate all of the provider's assets located within
43 the State.

44 f. In applying for an order to rehabilitate or liquidate a facility,
45 the commissioner shall give due consideration in the application
46 to the manner in which the welfare of persons who have previously
47 contracted with the provider for continuing care may be best served.
48 The commissioner or his designee shall attempt to keep residents
49 of the community informed about his actions to rehabilitate or
50 liquidate the facility and, when appropriate, the commissioner or
51 his designee shall meet with residents of the facility. In further-
52 ance of this objective, the proceeds of any lien obtained by the com-
53 missioner pursuant to this act may be:

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

55 (2) Used on behalf of residents of a facility that is being liqui-
56 dated; or

57 (3) Paid, on behalf of those persons, to other facilities operated
58 by providers who hold a certificate of authority issued pursuant
59 to this act.

60 g. The court shall refuse or vacate an order for rehabilitation
61 if the provider posts a bond by a surety authorized to do business
62 in this State and executed in favor of the commissioner on behalf
63 of persons who may be found entitled to a refund of entrance fees
64 from the provider or other damages in the event the provider is
64A unable to fulfill the terms of its contracts to provide continuing
65 care at the facility. The amount of the bond shall be equal to the
66 reserve funding which would otherwise need to be available to
67 fulfill the provider's obligations, as determined by the court.

1 18. a. A provider or person acting on behalf of the provider is
2 liable to the person who contracts for the continuing care for
3 damages including repayment of all fees paid to the provider,
4 facility or person who violates this act plus interest thereon at the
5 legal rate, court costs and reasonable attorney's fees if the pro-
6 vider or person acting on behalf of the provider:

7 (1) Enters into a contract for continuing care at a facility which
8 does not have a certificate of authority issued pursuant to this act;

9 (2) Enters into a contract for continuing care at a facility with-
10 out having first delivered a disclosure statement to a person con-
11 tracting for continuing care pursuant to this act; or

12 (3) Enters into a contract for continuing care at a facility with
13 a person who has relied on a disclosure statement which omits a
14 material fact required to be stated therein pursuant to this act.

15 The reasonable value of care and lodging provided to the resi-
16 dent by or on whose behalf the contract for continuing care was
17 entered into prior to discovery of the violation, misstatement or
18 omission or the time the violation, misstatement or omission should
19 reasonably have been discovered shall be deducted from the amount
20 of repayment due the person.

21 b. A provider is liable under this section whether or not the
22 provider has actual knowledge of the violation, misstatement or
23 omission. A person acting on behalf of the provider is liable under
24 this section only if the person has actual knowledge of the viola-
25 tion, misstatement or omission.

26 c. A person may not file or maintain an action under this section
27 if before filing the action, the person received an offer to refund all
28 amounts paid to the provider, facility or person violating this act
29 plus interest from the date of payment, less the reasonable value of
30 care and lodging provided prior to receipt of the offer and the
31 person failed to accept the offer within 30 days of its receipt. At the
32 time a provider makes a written offer of rescission, the provider
33 shall file a copy with the commissioner and obtain the approval of
34 the commissioner for the offer. The offer shall be written in clear
35 and understandable language and shall explain the limitation on
36 court action provided pursuant to this subsection. Subject to the
37 provisions of this subsection, nothing in this act shall prohibit
38 any person from seeking injunctive or other relief from the pro-
39 vider in a court of law or equity in this State.

40 d. No person shall institute an action to enforce a liability created
41 under this act more than six years after the execution of the con-
42 tract for continuing care which gave rise to the violation.

43 e. Except as expressly provided in this act, civil liability in
44 favor of a private party shall not arise against a person by im-
45 plication from or as a result of the violation of this act or an order
46 issued pursuant to this act. This act shall not limit a liability which
47 may exist by virtue of any other law if this act were not in effect.

1 19. a. The commissioner or his designee may, as often as he
2 reasonably deems necessary, conduct an investigation to determine

3 whether any person has violated or is about to violate any pro-
4 vision of this act or to aid in the enforcement of this act or in the
5 prescribing of rules and forms hereunder.

6 b. For the purpose of any investigation or proceeding under this
7 act, the commissioner or his designee may administer oaths and
8 affirmations, subpoena witnesses, compel their attendance, take
9 evidence and require the production of any books, papers, corre-
10 spondence, memoranda, agreements or other documents or records
11 which the commissioner deems relevant or material to the inquiry.

1 20. The commissioner or his designee shall visit each facility
2 offering continuing care in this State to examine its books and
3 records at least once every four years.

1 21. a. The commissioner shall prepare and cause to be distributed
2 to the public a consumers guide to continuing care facilities and
3 an annual directory of continuing care facilities in the State.

4 b. The commissioner shall prepare and cause to be distributed
5 to the public a residents' rights booklet that describes the rights
6 of residents and obligations of providers under the act.

1 22. If the commissioner determines or has cause to believe that
2 a person has engaged in any act or practice which constitutes a
3 violation of this act, the commissioner may:

4 a. Issue an order requiring the person to cease and desist from
5 engaging in the act or practice; or

6 b. Bring an action in a court of competent jurisdiction to enjoin
7 the act or practice and to enforce compliance with this act. Upon
8 a proper showing, the court may grant a permanent or temporary
9 injunction, restraining order or writ of mandamus and may ap-
10 point a receiver or conservator for the defendant or the defen-
11 dant's assets. The commissioner shall not be required to post a
12 bond.

1 23. a. The commissioner may refer any available evidence con-
2 cerning criminal violations of this act to the Attorney General or
3 the appropriate county prosecutor.

4 b. The Attorney General or a county prosecutor may institute
5 appropriate criminal proceedings either in response to a referral
6 from the commissioner or on their own initiative.

7 c. Nothing in this act limits the power of the State to punish any
8 person for any conduct which constitutes a crime under any other
9 law.

1 24. The commissioner shall determine reasonable fees for filing
2 an application for a certificate of authority and other required
3 documents pursuant to this act. The commissioner also may assess
4 a provider for reasonable expenses incurred by the department in

5 the investigation or rehabilitation of a provider or facility pur-
6 suant to this act.

1 25. A provider who is offering but not providing continuing care
2 on the effective date of this act may be given a reasonable time,
3 not to exceed one year from the date of promulgation of applicable
4-6 regulations, within which to comply with the requirements of this
7 act and obtain a certificate of authority.

1 26. A facility which has not entered into any agreements for
2 continuing care pursuant to this act since 1965, is not subject to
3 the provisions of this act; but this exclusion shall not apply if that
4 facility enters into one or more agreements for continuing care
5 on on after the effective date of this act.

1 27. A facility which has less than 50 residents who are under
2 continuing care agreements on the date of enactment of this act
3 is not subject to the provisions of this act; but this exclusion shall
4 not apply if that facility increases the number of its residents under
5 continuing care agreements to 50 or more, after the date of enact-
6 ment of this act.

1 28. a. There is created a Continuing Care Advisory Council
2 which consists of 17 members as follows: the Commissioners of the
3 Department of Community Affairs and Insurance, or their desig-
4 nees, who shall serve ex officio and shall be non-voting members;
5 11 public members appointed by the Governor, with the advice and
6 consent of the Senate, who are residents of the State and three of
7 whom are administrators of contiuiung care facilities in this State,
8 one of whom is a representative of the business community and
9 knowledgeable in the area of management, one of whom is a certi-
10 fied public accountant, one of whom is an attorney licensed to prac-
11 tice in this State, three of whom are residents of continuing care
12 retirement communities in this State, one of whom is a trustee or
13 director of a continuing care retirement community in this State
14 and one of whom is a representative of the New Jersey Associa-
15 tion of Non-Profit Homes for the Aging; two members of the
16 Senate appointed by the President thereof; and two members of
17 the General Assembly appointed by the Speaker thereof.

18 b. The term of office for each public member is three years, or
19 until the member's successor has been appointed; except that of the
20 public members first appointed, two shall be appointed for a term
21 of one year, two for a term of two years and three for a term of
22 three years. The legislative members shall be appointed for their
23 legislative term of office.

24 A vacancy in the membership of the council shall be filled in the
25 same manner as the original appointment, but for the unexpired

26 term. A member of the council is eligible for reappointment.

27 The members of the council shall serve without compensation, but
28 the council shall reimburse the members for the reasonable ex-
29 penses incurred in the performance of their duties.

30 c. The council shall hold an organizational meeting within 30
31 days after the appointment of its members. The members of the
32 council shall elect from among them a chairman who shall be the
33 chief executive officer of the council and the members shall elect a
34 secretary who need not be a member of the council.

35 d. The council shall meet at least four times a year but may meet
36 more frequently at the discretion of the chairman or the commis-
37 sioner.

38 e. The council may call to its assistance and avail itself of the
39 services and assistance of any officials and employees of the De-
40 partment of Community Affairs or other State agency and political
41 subdivisions and their departments, boards, bureaus, commissions
42 and agencies as it requires and as is available to it for this purpose
43 and may expend any funds that are appropriated or otherwise
44 made available to it pursuant to this act.

45 f. The council shall:

46 (1) Advise and provide information to the commissioner on
47 matters pertaining to the operation and regulation of continuing
48 care retirement facilities, upon request of the commissioner;

49 (2) Review and comment upon, as appropriate, any proposed
50 rules and regulations and legislation pertaining to continuing care
51 retirement facilities;

52 (3) Make recommendations to the commissioner about any
53 needed changes in rules and regulations and State and federal laws
54 pertaining to continuing care retirement facilities; and

55 (4) Assist in the rehabilitation of a continuing care retirement
56 facility, upon request of the commissioner.

57 g. The commissioner shall report annually to the Governor and
58 the Legislature, the commissioner's and the council's findings and
60 recommendations concerning continuing care retirement communi-
61 ties and the implementation of this act.

1 29. The commissioner shall adopt rules and regulations necessary
2 to carry out the provisions of this act pursuant to the "Administra-
3 tive Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.). The
4 commissioner shall adopt the regulations within six months of the
5 effective date of this act.

1 30. This act shall take effect on the 180th day following enact-
2 ment.

STATEMENT

This bill establishes a comprehensive system of regulation of continuing care retirement communities in New Jersey. The purposes of this bill, known as the "Continuing Care Retirement Community Regulation and Financial Disclosure Act," include but are not limited to the following:

- (1) Requiring full disclosure of each facility's financial standing;
- (2) Requiring full disclosure of the contractual obligations and ownership of the facilities;
- (3) Requiring full disclosure of the rights of residents in the facilities and the costs to the residents of residing in the facilities;
- (4) Establishing minimum standards concerning financial status of facilities to ensure their financial solvency; and
- (5) Establishing a Continuing Care Advisory Council to assist the commissioner in establishing and maintaining a regulatory system for continuing care retirement facilities.

This bill further requires that every provider of continuing care in the State apply to the Department of Community Affairs for a certificate of authority before the provider can offer continuing care services. Certain facilities offering continuing care and established prior to the effective date of the bill may continue operating under temporary certificates of authority for a period of up to two years even though they do not meet all the financial requirements of the bill. An additional three year extension may be requested from the department by certain providers in order to gain additional time within which to meet the bill's financial requirements.

In applying for a certificate of authority, the provider must include a sample disclosure statement which is given to a prospective resident of the facility, together with a standard form contract for continuing care attached to the disclosure statement.

The bill also requires that providers maintain minimum liquid reserves for the first five years following the effective date of the bill equal to or greater than 15% of the projected annual operating expenses of the facility, minus depreciation costs. For subsequent years, the facility must maintain liquid reserves either equal to the aggregate amount of all debt services during the next year on account of mortgage payments or other long-term financing, or 15% of the projected annual operating expenses less depreciation for the next year, whichever is greater. The Commissioner of the Department of Community Affairs may require additional reserves, if appropriate.

The Commissioner of Community Affairs is authorized to file a

lien on the assets of a facility whenever such action is determined to be in the best interests of the residents of the facility. The placing of a lien is intended to ensure that residents come before creditors in the event of bankruptcy of the facility.

The commissioner is also authorized to require providers to place entrance fees in escrow until a resident occupies the facility, or until the commissioner is satisfied that certain financing requirements have been met by the facility.

The continuing care contract is required to disclose specific information, including but not limited to the following:

- (1) The value of property transferred to the facility;
- (2) All services to be provided to the resident by the facility;
- (3) A description of the rights of the resident to continue residing at the facility under different circumstances; and
- (4) Procedures for cancellation of a continuing care agreement.

Facilities with 50 or fewer residents under continuing care agreements on the date of enactment of the bill are exempt from its provisions, but such facilities shall not be exempt if they increase the number of their residents under continuing care agreements to 50 or more, after the date of enactment.

The bill requires providers of continuing care to provide knowledgeable persons to answer questions concerning the disclosure statement or contract and requires the Commissioner of the Department of Community Affairs to prepare a residents' rights booklet for the general public. The bill also encourages prospective residents to consult an attorney or financial advisor to review these documents.

Finally, the bill creates a Continuing Care Advisory Council, consisting of 17 members, to advise and provide information to the commissioner regarding the operation and regulation of continuing care retirement facilities, to review and comment upon relevant legislation, to recommend changes in rules and regulations and State and federal law, and to assist in the rehabilitation of facilities.

SENIOR CITIZENS

Establishes the "Continuing Care Retirement Community Regulation and Financial Disclosure Act."

ASSEMBLY, No. 2102
STATE OF NEW JERSEY

INTRODUCED FEBRUARY 27, 1986

By Assemblymen PATERNITI and PELLY

AN ACT regulating continuing care retirement facilities, establishing an advisory council and supplementing Title 26 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. This act shall be known and may be cited as the "Continuing
2 Care Retirement Community Act."

1 2. The Legislature finds and declares that: continuing care re-
2 tirement communities are becoming an important and increasingly
3 preferred alternative for the long-term residential, social and health
4 care needs of New Jersey's senior citizens; because snior citizens
5 often expend a significant portion of their savings in order to pur-
6 chase care in the retirement community and thereby expect to
7 receive care at the retirement community for the rest of their lives,
8 tragic consequences can result to senior citizens when a continuing
9 care provider becomes insolvent or unable to provide responsible
10 care; and there is a need for full disclosure concerning the terms
11 of agreements made between prospective residents and the con-
12 tinuing care provider and the operations of the providers; there-
13 fore, it is the policy of this State that providers of continuing care
14 shall register with and be monitored by the State Department of
15 Health and that a Continuing Care Advisory Council be established
16 to advise and assist the Commissioner of Health in the monitoring
17 of these providers and the regulation of continuing care retirement
18 facilities.

1 3. As used in this act:

2 a. "Application fee" means the fee an individual is charged, in
3 addition to an entrance fee or any other fee, to cover the provider's
4 reasonable cost for processing the individual's application to be-
5 come a resident of the facility. A reasonable application fee shall
6 be established pursuant to regulations adopted by the department.

7 b. "Commissioner" means the Commissioner of the Department
8 of Health.

9 c. "Continuing care" means the provision of lodging and nursing,
10 medical or other health related services at the same or another
11 location to an individual pursuant to an agreement effective for
12 the life of the individual or for a period greater than one year,
13 including mutually terminable contracts, and in consideration of
14 the payment of an entrance fee with or without other periodic
15 charges. An individual who is provided continuing care is not re-
16 lated by consanguinity or affinity to the person who provides the
17 care.

18 d. "Department" means the State Department of Health.

19 e. "Entrance fee" means a transfer to a provider of a sum of
20 money or other property made or promised to be made as full or
21 partial consideration for acceptance of a specified person as a resi-
22 dent in a facility and includes a fee which is refundable upon the
23 death, departure or option of the resident.

24 A fee which is less than the sum of the regular periodic charges
25 for one year of residency is not considered an entrance fee for the
26 purposes of this act. A transfer of a sum of money or other prop-
27 erty, by or on behalf of a resident, to a trust account which is
28 managed by the facility or an independent trustee for the benefit
29 of the resident is not considered an entrance fee for the purposes
30 of this act if the transfer is not a condition of admission or of
31 continued stay and the principal amount and any interest thereon
32 are the exclusive and sole property of the resident or the individual
33 acting on behalf of the resident.

34 f. "Facility" means the place or places in which a person under-
35 takes to provide continuing care to an individual.

36 g. "Living unit" means a room, apartment, cottage or other area
37 within a facility set aside for the exclusive use or control of one
38 or more persons.

39 h. "Operator or administrator" means a person who operates
40 or manages a facility for the provider.

41 i. "Provider" means a person who undertakes to provide con-
42 tinuing care in a facility.

43 j. "Resident" means a person entitled to receive continuing care
44 in a facility.

1 4. a. A person shall not establish, operate or administer a con-
2 tinuing care facility in this State without obtaining and maintain-
3 ing a certificate of authority pursuant to this act. A certificate of
4 authority granted pursuant to this act is not transferable.

5 b. A person shall file an application for a certificate of authority
6 with the department on forms prescribed by the commissioner.
7 The application shall include a disclosure statement prepared pur-
8 suant to section 7 of this act and other information as required
9 by the commissioner.

10 c. Upon receipt of the application for a certificate of authority,
11 the department shall, within 10 business days, issue a notice of
12 filing to the applicant. Within 90 days of the notice of filing, the
13 commissioner shall issue the certificate of authority or reject the
14 application pursuant to subsection d. of this section.

15 d. If the commissioner determines that any of the requirements
16 of this act has not been met, the commissioner shall notify the
17 applicant in writing and specify those particulars which need to
18 be corrected. The applicant has 30 days from the date of notifica-
19 tion to correct the application as specified by the commissioner.
20 If the requirements are not met within the time allowed, the com-
21 missioner may reject the application and notify the applicant in
22 writing of the reason for the rejection. The rejection shall be
23 effective 20 days after the foregoing 30 day period. During the 20
24 day period, the applicant may request reconsideration of the com-
25 missioner's action and is entitled to a hearing conducted pursuant
26 to the "Administrative Procedure Act," P. L. 1968, c. 410 (C.
27 52:14B-1 et seq.).

28 e. In the case of a provider who has offered continuing care
29 agreements to existing or prospective residents in a facility estab-
30 lished prior to the effective date of this act and which has one or
31 more residents living there pursuant to agreements entered into
32 prior to the effective date of this act, if the provider is unable to
33 comply with section 10 of this act within the time required, the
34 commissioner may, upon the written request of the provider, issue
35 a temporary certificate of authority to the provider. The provider
36 may then enter into continuing care agreements which are in com-
37 pliance with all other applicable provisions of this act until the
38 permanent certificate is issued. The temporary certificate shall be
39 issued only to those existing providers who shall be able to comply
40 with the provisions of section 10 of this act within a period of time
41 determined by the commissioner but which does not exceed two
42 years.

43 If a provider is not in compliance on or before the expiration

44 date of the temporary certificate, the provider may request an
45 extension from the commissioner. The commissioner may grant
46 an extension of up to three years to a provider who shall be able
47 to comply with section 10 of this act in that time period.

48 f. If an existing provider is granted a permanent certificate of
49 authority, the provider shall give a resident who entered into an
50 agreement before the certificate of authority was granted, a copy
51 of the initial disclosure statement and any amendments thereto.

52 g. A person who establishes, operates or administers a continu-
53 ing care facility in this State without obtaining or maintaining a
54 certificate of authority pursuant to this act is guilty of a crime of
55 the third degree.

1 5. a. The certificate of authority or temporary certificate of
2 authority of a provider shall remain in effect until revoked, after
3 notice and hearing conducted pursuant to the "Administrative
4 Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.), upon the
5 commissioner's written finding of fact that the provider has:

6 (1) Repeatedly failed to correct violations or violated any pro-
7 vision of this act or any regulation adopted hereunder;

8 (2) Failed to file an annual disclosure statement or resident
9 agreement pursuant to this act;

10 (3) Failed to deliver to a prospective resident the disclosure
11 statement required pursuant to this act;

12 (4) Delivered to a prospective resident a disclosure statement
13 which makes an untrue statement or omits a material fact and the
14 provider at the time of the delivery of the disclosure statement
15 had actual knowledge of the misstatement or omission;

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

17 (6) Committed serious and substantive violations of any other
18 state or federal law.

19 b. The commissioner shall include with the findings of fact in
20 support of revocation a concise and explicit statement of the under-
21 lying facts supporting the findings.

22 c. If the commissioner has cause to believe that the provider
23 is guilty of a violation for which revocation may be ordered, the
24 commissioner may issue an order directing the provider or operator
25 to cease and desist from engaging in any practice in violation of
26 this act.

27 d. If the cease and desist order is not or may not be effective in
28 remedying the violation, the commissioner, after notice and hearing
29 conducted pursuant to the "Administrative Procedure Act," P. L.
30 1968, c. 410 (C. 52:14B-1 et seq.), may revoke the certificate of
31 authority or temporary certificate of authority and order that it
32 be surrendered to the commissioner.

1 6. a. A person who desires to acquire an ownership interest in
2 a continuing care facility shall so notify the department in writing
3 at least 60 days in advance of the acquisition. The person shall
4 follow the disclosure statement requirements of subsections a.
5 through d. of section 7 of this act. The person shall obtain the
6 approval of the commissioner for the acquisition prior to the com-
7 pletion of the sale or transfer of the facility's ownership interest.

8 b. For the purposes of this act, an acquisition of an ownership
9 interest in a continuing care facility shall be deemed to take place
10 if:

11 (1) The facility is a corporation and there is an acquisition by
12 or a transfer of ownership to an individual, partnership or cor-
13 poration through purchase, contract, donation, gift or stock option
14 of 25% or more of the corporation's outstanding stock, either pre-
15 ferred or common, or there is acquisition of the physical assets of
16 the facility by a newly formed or existing corporation;

17 (2) The facility is a partnership and there is an acquisition by
18 or a transfer of ownership to an individual, partnership, or cor-
19 poration of 10% or more of the existing partnership's total capital
20 interest or there is acquisition of the physical assets of the facility
21 by a newly formed or existing partnership; and

22 (3) The facility is individually owned and there is a purchase
23 of the physical assets of the facility.

1 7. The provider shall provide a disclosure statement to a pros-
2 pective resident of a continuing care facility or the person with
3 whom the provider shall enter into a contract to provide continuing
4 care, prior to the execution of the contract or prior to the transfer
5 of any money or other property to the provider by or on behalf
6 of the prospective resident, whichever occurs first. The cover page
7 of the disclosure statement shall state in a prominent location and
8 type-face, the date of the disclosure statement. The disclosure
9 statement shall be written in nontechnical language easily under-
10 stood by a layperson.

11 The provider shall attach a copy of the standard form of con-
12 tract for continuing care used by the provider as an exhibit to each
13 disclosure statement.

14 The disclosure statement shall contain the following information
15 unless the information is contained in the contract:

16 a. The name and business address of the provider and a state-
17 ment of whether the provider is a partnership, corporation or
18 other type of legal entity.

19 b. The names and business addresses of the officers, directors,
20 trustees, managing or general partners and any person having

21 a 10% or greater equity or beneficial interest in the provider and
22 a description of that person's interest in or occupation with the
23 provider.

24 c. With respect to the provider, any person named in response
25 to subsection b. of this section and the proposed operator if the
26 facility is managed on a day-to-day basis by a person other than
27 an individual directly employed by the provider:

28 (1) A description of the person's business experience, if any,
29 in the operation or management of similar facilities;

30 (2) The name and address of any professional service, firm,
31 association, trust, partnership or corporation in which the person
32 has a 10% or greater interest and which may provide goods, leases
33 or services to the facility of a value of \$500.00 or more, within
34 any year;

35 (3) A description of the goods, leases or services provided pur-
36 suant to paragraph (2) of this subsection and the probable or
37 anticipated cost thereof to the facility or provider;

38 (4) A description of any matter in which the person has been
39 convicted of a criminal offense or pleaded nolo contendere to a
40 criminal charge, or has been held liable or enjoined in a civil action
41 which involved fraud, embezzlement, fraudulent conversion or mis-
42 appropriation of property; and

43 (5) A description of any matter in which the person is subject to
44 a currently effective injunctive or restrictive court order or, within
45 the past five years, had a State or federal license or permit sus-
46 pended or revoked as a result of an action brought by a govern-
47 mental agency or department, which arose out of or related to
48 business activity or health care, including actions affecting a license
49 to operate a residential health care facility, nursing home, retire-
50 ment home, home for the aged or facility registered under this act
51 or a similar act in another state.

52 d. A statement whether the provider is or ever has been affiliated
53 with a religious, charitable or other nonprofit organization, the
54 nature of the affiliation, if any, the extent to which the affiliate
55 organization is responsible for the financial and contractual obli-
56 gations of the provider, and the provision of the federal Internal
57 Revenue Code, if any, under which the provider or affiliate is
58 exempt from the payment of income tax.

59 e. The location and description of the physical property of the
60 facility, both existing and proposed, and with respect to proposed
61 property, the estimated completion date, the date construction
62 began or shall begin and the contingencies subject to which con-
63 struction may be deferred.

64 f. The services provided or proposed to be provided under con-
65 tracts for continuing care at the facility, including the extent to
66 which medical care and other services are furnished under the
67 basic contract and which other care or services are available at or
68 by the facility at extra charge. The statement shall state that the
69 facility will guarantee the availability of these services by establish-
70 ing a reserve fund or by the purchase of insurance or an annuity or
71 by other means satisfactory to the commissioner.

72 g. A description of all fees required of residents, including the
73 application fee, entrance fee and periodic charges, if any, the
74 manner by which the provider may adjust periodic charges or
75 other recurring fees and the limitation on the adjustments, if any,
76 and if the facility is already in operation or if the provider or
77 operator operates one or more similar facilities within this State,
78 tables showing the frequency and average dollar amount of each
79 increase in periodic rates at each facility for the previous five
80 years or as many years as the facility has been operated by the
81 provider or operator, whichever is less.

82 h. The provisions that have been made or will be made, if any,
83 to provide reserve funding or security which will enable the pro-
84 vider to fully perform its obligations under contracts to provide
85 continuing care at the facility, including the establishment of es-
86 crow accounts, trusts or reserve funds, the manner in which the
87 funds shall be invested and the names and experience of persons
88 who will make the investment decisions.

89 i. Certified financial statements of the provider which include
90 balance sheets and income statements for the two most recent
91 completed fiscal years or for as long as the provider has been in
92 existence, whichever is less.

93 j. If operation of the facility has not yet commenced, a state-
94 ment of the anticipated source and application of the funds used
95 or to be used in the purchase or construction of the facility, in-
96 cluding:

97 (1) An estimate of the cost of purchasing or construction and
98 equipping the facility which includes related costs such as financ-
99 ing expenses, legal expenses, land costs, marketing and develop-
100 ment costs and other similar costs the provider expects to incur
101 or become obligated for prior to the commencement of operations;

102 (2) A description of any mortgage loan or other long-term
103 financing intended to be used for the financing of the facility and
104 the anticipated terms and costs of the financing;

105 (3) An estimate of the total amount of entrance fees to be re-
106 ceived from or on behalf of residents at or prior to commencement
107 of operation of the facility;

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

112 (5) A projection of estimated income from fees and charges
113 other than entrance fees, a description of individual rates antici-
114 pated to be charged, the assumptions used for calculating the esti-
115 mated occupancy rate of the facility and the effect on the income
116 of the facility of government subsidies, if any, for health care
117 services provided pursuant to the contracts for continuing care;

118 (6) A projection of estimated operating expenses of the facility,
119 including a description of the assumptions used in calculating the
120 expenses and separate allowances, if any, the replacement of equip-
121 ment and furnishings and any anticipated major structural re-
122 pairs or additions;

123 (7) Identification of assets pledged as collateral for any purpose;
124 and

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

127 k. Other material information concerning the facility or the pro-
128 vider as required by the department or as the provider wishes to
129 include.

1 8. a. The provider shall file an annual disclosure statement with
2 the commissioner which contains the information required for the
3 initial disclosure statement pursuant to section 7 of this act. The
4 annual disclosure statement also shall include a narrative describ-
5 ing any material differences between the pro forma income state-
6 ments filed pursuant to this act either as part of the initial appli-
7 cation for a certificate of authority or the most recent annual dis-
8 closure statement and the actual results of operations during the
9 fiscal year. The statement also shall contain a revised pro forma
10 income statement for the next fiscal year. The commissioner may
11 request additional income statements if necessary.

12 The provider shall file the annual disclosure statement within
13 six months following the end of the provider's fiscal year.

14 b. Prior to the provider's acceptance of part or all of any ap-
15 plication or entrance fee or the execution of the continuing care
16 agreement by the resident, whichever occurs first, the provider
17 shall deliver the most current annual disclosure statement to the
18 current or prospective resident and to any other person with whom
19 the continuing care agreement is or may be entered into.

20 c. A provider may amend its currently filed annual disclosure
21 statement at any time if, in the opinion of the provider, an amend-

22 ment is necessary to prevent the disclosure statement from con-
 23 taining any material misstatement of fact or omission to state a
 24 material fact as required pursuant to this act. The provider shall
 25 file an amendment or amended disclosure statement with the com-
 26 missioner before the provider provides it to a resident or pros-
 27 pective resident.

1 9. a. No provider or person acting on behalf of the provider
 2 shall make, publish, disseminate, circulate or place before the public,
 3 or cause, directly or indirectly, to be made, published, disseminated,
 4 circulated or placed before the public in a newspaper or other
 5 publication, or in the form of a notice, circular, pamphlet, letter
 6 or poster, or over any radio or television station, or in any other
 7 way, an advertisement, announcement or statement of any sort
 8 containing an assertion, representation or statement which is
 9 untrue, deceptive or misleading.

10 b. No provider or person acting on behalf of the provider shall
 11 file with the department or make, publish, disseminate, circulate
 12 or deliver to any person or place before the public, or cause, di-
 13 rectly or indirectly, to be made, published, disseminated, circulated
 14 or delivered to any person, or placed before the public, any dis-
 15 closure statement, financial statement or continuing care agreement
 16 that contains an assertion, representation, or statement which is
 17 untrue, deceptive or misleading.

18 c. A person who willfully and knowingly violates the provisions
 19 of this section is guilty of a crime of the third degree.

1 10. a. For the first five years following the effective date of this
 2 act, a provider shall establish and maintain liquid reserves in an
 3 amount equal to or exceeding 10% of the projected annual operat-
 4 ing expenses of the facility, exclusive of depreciation.

5 b. For subsequent years, beginning six years following the ef-
 6 fective date of this act, a provider shall establish and maintain
 7 liquid reserves in an amount equal to or exceeding the greater of:

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

11 (2) 10% of the projected annual operating expenses of the fa-
 12 cility, exclusive of depreciation.

13 c. A provider shall notify the commissioner in writing at least
 14 10 days prior to reducing the amount of funds available to satisfy
 15 the applicable liquid reserve requirement. A provider may not
 16 expend more than $\frac{1}{12}$ of the required balance each calendar month.

17 d. In a facility where some residents are not under continuing
 18 care agreements, the reserve shall be computed only on the pro-

19 portional share of financing or operating expenses that is applicable
20 to residents under continuing care agreements at the end of the
21 provider's most recent fiscal year.

22 e. A provider may use funds in an endowment fund or escrow
23 account, including an escrow account established by or pursuant
24 to a mortgage loan, bond indenture or other long-term financing,
25 to satisfy the reserve requirements of this section if the funds are
26 available to make payments when operating funds are insufficient
27 for these purposes.

1 11. If the continuing care facility provides health care services or
2 nursing facility care, the commissioner shall require the continuing
3 care facility to reserve a portion of its entrance fees for the support
4 of the health care services and nursing facility care. The commis-
5 sioner may require the continuing care facility to take any other
6 appropriate action to ensure that residents of a continuing care
7 facility have access to nursing facility care, if this care is offered,
8 including, but not limited to, the purchase of long-term care in-
9 surance or an annuity for the residents.

1 12. a. The commissioner may require a provider to establish and
2 maintain in escrow, on a current basis with a bank, trust company
3 or other escrow agent approved by the department, a portion of
4 all entrance fees received by the provider in an aggregate amount
5 not to exceed the total of all principal and interest payments due
6 during the next 12 months on account of any first mortgage loan
7 or other long-term financing of the facility. The provider may in-
8 vest the funds in the escrow account, with the earnings thereon
9 payable to the provider. If the provider so requests in writing,
10 the escrow agent shall release up to $\frac{1}{2}$ of the original principal
11 balance of the escrow account. The escrow agent shall not so re-
12 lease funds more than once during any calendar month, and then
13 only after the escrow agent has given written notice to the com-
14 missioner at least 10 days prior to the release. The amount of this
15 escrow fund shall be included in satisfying the reserves required
16 pursuant to section 10 of this act.

1 13. Prior to the issuance of a certificate of authority pursuant
2 to this act, or at any other time the commissioner determines it
3 is in the best interests of residents of a facility, the commissioner
4 may file a lien on the real and personal property of the provider
5 or facility to secure the obligations of the provider pursuant to
6 existing and future contracts for continuing care. A lien filed
7 under this section is effective for a period of 10 days following its
8 filing and may be extended by the commissioner if the commissioner
9 finds that the extension is advisable for the protection of residents
10 of the facility.

11 The commissioner may foreclose on the lien upon the liquidation
12 of the facility or the insolvency or bankruptcy of the provider.
13 In this event, the commissioner shall use the proceeds thereof for
14 full or partial satisfaction of obligations of the provider pursuant
15 to contracts for continuing care in effect at that time.

16 The lien provided for in this section is subordinate to the lien
17 of any first mortgage on the real property of the facility, and if
18 the commissioner determines and so states in writing that it is
19 advisable for the efficient operation of the facility, the lien may be
20 subordinated to the claims of other persons.

1 14. The commissioner shall require a provider to establish an
2 interest bearing escrow account with a bank, trust company or
3 other escrow agent approved by the commissioner, as a condition
4 of issuing a certificate of authority. The provider shall place in
5 the escrow account any entrance fees or payments in excess of 5%
6 of the then existing entrance fee for the living unit that are re-
7 ceived by the provider prior to the date the resident is permitted
8 to occupy the living unit in the facility. The fees or payments are
9 subject to release from the escrow account in the following manner:

10 a. If the entrance fee gives the resident the right to occupy a
11 living unit which has been previously occupied, the entrance fee
12 and any interest earned thereon shall be released to the provider
13 when the living unit becomes available for occupancy by the new
14 resident.

15 b. If the entrance fee applies to a living unit which has not been
16 previously occupied, the entrance fee and any interest earned
17 thereon shall be released to the provider when the commissioner
18 is satisfied that:

19 (1) Aggregate entrance fees received or receivable by the pro-
20 vider pursuant to executed continuing care agreements equal at
21 least 50% of the sum of the entrance fees due at full occupancy
22 of the portion of the facility under construction, except that en-
23 trance fees receivable pursuant to an agreement shall be counted
24 only if the facility has received a deposit of 35% or more of the
25 entrance fee due from the individual signing the contract;

26 (2) The aggregate entrance fees received or receivable pursuant
27 to the preceding paragraph plus anticipated proceeds of any first
28 mortgage loan or other long-term financing commitment and funds
29 from other sources in the actual possession of the provider are
30 equal to at least 50% of the aggregate cost of constructing or
31 purchasing, equipping and furnishing the facility plus at least 50%
32 of the funds necessary to fund start-up losses as estimated by the
33 provider in the statement of anticipated source and application

34 of funds submitted pursuant to subsection j. of section 7 of this
35 act; and

36 (3) The provider has received a preliminary commitment for any
37 permanent mortgage loan or other long-term financing described
38 pursuant to subsection j. of section 7 of this act and any conditions
39 of the commitment prior to disbursement of funds thereunder,
40 other than completion of the construction or closing of the purchase
41 of the facility, are substantially satisfied.

42 c. If the funds in the escrow account established pursuant to
43 this section and any interest earned thereon are not released
44 within 36 months, or a greater time if so specified by the provider
45 with the consent of the commissioner, the escrow agent shall return
46 the funds to the individuals who made payments to the provider.

47 d. Nothing in this section shall require the provider to place
48 any nonrefundable application fees charged to prospective resi-
49 dents in escrow.

50 e. In lieu of any escrow required pursuant to this section, a
51 provider is entitled to post a letter of credit from a financial
52 institution, negotiable securities or a bond by a surety authorized
53 to do business in this State, in a form approved by the commis-
54 sioner and in an amount not to exceed the amount required by
55 paragraph (1) of subsection b. of this section. The provider shall
56 execute the letter of credit, negotiable securities or bond in favor
57 of the commissioner on behalf of individuals who are entitled to
58 a refund of entrance fees from the provider.

59 f. A provider may apply to the commissioner for a waiver of
60 the applicable escrow requirements of this section when a pro-
61 vider constructs additional living units in an amount that does
62 not exceed 10% of the facility's existing living units for continuing
63 care residents.

64 The provider shall apply for the waiver in writing to the com-
65 missioner. The commissioner may grant the waiver which may
66 be effective for a period of one year or longer, at the discretion
67 of the commissioner, if the construction of additional units meets
68 the requirements of this subsection.

69 g. Upon receipt of a notice from the provider that an individual
70 is entitled to a refund of an entrance fee, the escrow agent shall
71 return the funds held in the escrow account to the individual.

1 15. A provider shall pledge only the unencumbered assets of a
2 continuing care facility as collateral for the purpose of securing
3 loans for other continuing care facilities, whether proposed or
4 existing.

1 16. a. A continuing care agreement executed on or after the

2 effective date of this act shall be written in nontechnical language
3 easily understood by a layperson and shall include but not be
4 limited to the following:

5 (1) A provision for the continuing care of one resident, or two
6 or more residents occupying space designed for multiple occupancy
7 under appropriate procedures established by the provider, and a
8 statement showing the value of all property transferred, including
9 donations, subscriptions, fees and any other amounts payable by,
10 or on behalf of, the resident;

11 (2) A statement specifying all services which are to be provided
12 to the resident by the provider including, in detail, all items which
13 the resident will receive such as food, shelter, nursing care, pharma-
14 ceuticals and burial and whether the items will be provided for a
15 designated period of time or for life;

16 (3) A description of the health and financial conditions upon
17 which the provider may have the resident relinquish his space in
18 the designated facility;

19 (4) A description of the health and financial conditions required
20 for a person to continue as a resident;

21 (5) A description of the circumstances under which the resident
22 shall be permitted to remain in the facility in the event of financial
23 difficulties of the resident;

24 (6) A statement of the fees that will be charged if the resident
25 marries a person who is not a resident of the facility, the terms
26 concerning the entry of a spouse into the facility and the conse-
27 quences if the spouse does not meet the requirements for entry;

28 (7) A statement providing that the agreement may be canceled
29 upon giving at least 60 days' notice by the provider or the resident,
30 except that if an agreement is canceled by the provider because
31 there has been a good faith determination in writing, signed by
32 the medical director and the administrator of the facility, that a
33 resident is a danger to himself or others, only notice that is reason-
34 able under the circumstances is required;

35 (8) A statement providing in clear and understandable language,
36 in print no smaller than the largest type used in the body of the
37 agreement, the terms governing the refund of any portion of the
38 entrance fee;

39 (9) A statement of the terms under which an agreement is can-
40 celed by the death of the resident, which statement may contain a
41 provision stating that upon the death of the resident the moneys
42 paid for the continuing care of the resident shall be considered
43 earned and become the property of the provider; and

44 (10) A statement providing for at least 30 days' advance notice

45 to the resident before any change in fees or changes in the scope
46 of care or services are effective, except for changes required by
47 State or federal assistance programs.

48 b. A resident has the right to rescind a continuing care agree-
49 ment without penalty or forfeiture within 30 days after making an
50 initial deposit or executing the agreement. A resident is not re-
51 quired to move into the facility designated in the agreement before
52 the expiration of the 30 day period.

53 c. If a resident dies before the occupancy date, or through ill-
54 ness, injury or incapacity is precluded from becoming a resident
55 under the terms of the continuing care agreement, the agreement
56 is automatically rescinded and the resident or the resident's legal
57 representative shall receive a full refund of all moneys paid to the
58 facility, except those costs specifically incurred by the facility at
59 the request of the resident and set forth in writing in a separate
60 addendum signed by both parties to the agreement.

61 d. No agreement for care shall permit dismissal or discharge of
62 the resident from the facility prior to the expiration of the agree-
63 ment without just cause for the removal. No agreement for care shall
64 permit cancellation thereof without 60 days notice by the provider
65 unless there is just cause for the cancellation. For the purposes of
66 this act, "just cause" means, but is not limited to, a good faith
67 determination in writing, signed by the medical director and the
68 administrator of the facility, that a resident is a danger to himself
69 or others while remaining in the facility. The written determina-
70 tion shall state: (1) that the determination was made in good faith;
71 (2) the reasons supporting the determination that the resident is a
72 danger to himself or others; (3) the basis for the conclusion that
73 there is no less restrictive alternative to dismissal, discharge or
74 cancellation, as the case may be, for abating the alleged danger-
75 ousness of the resident; and, in the case of cancellation, (4) the basis
76 for concluding that the danger is such that a notice period of less
77 than 60 days is appropriate.

78 If a facility dismisses or discharges a resident for just cause, the
79 facility shall pay the resident any refund due in the same manner
80 as if the resident's agreement was terminated pursuant to this act.
81 A resident may request a hearing to contest a facility's decision to
82 dismiss or discharge the resident. The hearing shall be held pur-
83 suant to the "Administrative Procedure Act," P. L. 1968, c. 410
84 (C. 52:14B-1 et seq.).

85 e. No act, agreement or statement of a resident or of an indi-
86 vidual purchasing care for a resident under any agreement to fur-
87 nish care to the resident shall constitute a valid waiver of any

88 provision of this act intended for the benefit or protection of the
89 resident or the individual purchasing care for the resident.

90 f. An agreement entered into prior to the effective date of this
91 act or prior to the issuance of a certificate of authority to the pro-
92 vider is valid and binding upon both parties in accordance with
93 the terms of the agreement.

94 g. The department shall review any changes in fees or services
95 and is authorized to deny these increases or changes when they are
96 not justified or appropriate.

97 h. A resident who is unable to pay the monthly maintenance fee
98 and is required to leave the continuing care facility shall receive an
99 equitable percentage of his original entrance fee. This percentage
100 shall be established by the commissioner, and shall include, but not
101 be limited to, consideration of the resale value or increase in
102 entrance fee cost of the unit.

103 If a resident chooses to remain at the continuing care facility not-
104 withstanding the resident's inability to pay the monthly mainte-
105 nance fee, the continuing care facility shall use the entrance fee and
106 annuity along with other benefits, if appropriate, such as Medicare
107 and private insurance to cover a resident's costs.

108 i. The provider shall designate and make knowledgeable per-
109 sonnel available to residents and prospective residents to explain
110 and answer questions about the terms and conditions of the agree-
111 ment and shall inform those individuals of their right to inde-
112 pendent review of the agreement by an attorney of their choice, if
113 they elect, prior to signing the agreement. The agreement shall state
114 on the cover or top of the first page in bold print the following :

115 THIS MATTER INVOLVES A SUBSTANTIAL FINANCIAL
116 INVESTMENT AND A LEGALLY BINDING CONTRACT. IN
117 EVALUATING THE DISCLOSURE STATEMENT AND THE
118 AGREEMENT PRIOR TO ANY COMMITMENT, IT IS RECOM-
119 MENDED THAT YOU CONSULT AN ATTORNEY OF YOUR
120 CHOICE, IF YOU SO ELECT, WHO CAN REVIEW THESE
121 DOCUMENTS WITH YOU.

122 j. The provider shall designate personnel at the continuing care
123 facility to address resident complaints and concerns about the
124 operation and management of the facility.

1 17. a. Residents living in a facility which holds a certificate of
2 authority issued pursuant to this act have the right of self-organiza-
3 tion.

4 b. The board of directors, a designated representative, or other
5 governing body of a continuing care facility shall hold quarterly
6 meetings with the residents or their elected representatives of the

7 continuing care facility for the purpose of free discussion of
 8 subjects which may include income, expenditures and financial
 9 matters as they apply to the facility and proposed changes in poli-
 10 cies, programs and services. Residents shall be given at least seven
 11 days notice of each quarterly meeting.

12 c. A provider shall not take actions against a resident:

13 (1) As a reprisal for the resident's efforts to secure or enforce
 14 any rights under the agreement, or under the laws of the State of
 15 New Jersey or its governmental subdivisions, or of the United
 16 States;

17 (2) As a reprisal for the resident's good faith complaint to a
 18 governmental authority of the provider's alleged violation of any
 19 health or safety law, regulation, code or ordinance, or State law
 20 or regulation which has as its objective the regulation of premises
 21 or the delivery of health care services;

22 (3) As a reprisal for the resident's being an organizer of, a
 23 member of, or involved in any activities of, any lawful organization;
 24 or

25 (4) On account of the resident's failure or refusal to comply
 26 with the terms of the agreement as altered by the provider, if the
 27 provider shall have altered substantially the terms of the agreement
 28 as a reprisal for any actions of the resident. Substantial alteration
 29 shall include the refusal to renew a contract.

30 Under paragraph (2) of this subsection the resident shall origi-
 31 nally bring his good faith complaint to the attention of the provider
 32 or his agent and give the provider reasonable time to correct the
 33 violation before complaining to a governmental authority, except in
 34 an emergency situation.

35 A provider is subject to a civil action by the resident for damages
 36 and other appropriate relief, including injunctive and other equi-
 37 table remedies, as may be determined by a court of competent
 38 jurisdiction, in every case in which the provider has violated the
 39 provisions of this subsection.

1 18. a. The commissioner may apply to a court of competent
 2 jurisdiction or to the federal bankruptcy court, if that court had
 3 previously taken jurisdiction over the provider or facility, for an
 4 order authorizing the commissioner to appoint a receiver or trustee
 5 to rehabilitate or to liquidate the facility if, after notice and hearing
 6 pursuant to the "Administrative Procedure Act," P. L. 1968, c. 410
 7 (C. 52:14B-1 et seq.), the commissioner determines that:

8 (1) A portion of a provider's reserve fund escrow as required
 9 pursuant to this act has been or is proposed to be released;

10 (2) A provider is or will be unable to meet the pro forma income

11 or cash flow projections filed pursuant to section 7 of this act,
12 except in a manner that may endanger the ability of the provider
13 to fully meet its continuing care contracts obligations;

14 (3) A provider has failed to maintain the reserves required
15 under this act;

16 (4) A provider is bankrupt or insolvent, or in imminent danger of
17 becoming bankrupt or insolvent; or

18 (5) A provider is grossly mismanaging the facility as evidenced
19 by the failure to provide safe, sanitary and habitable facilities or
20 by the violation of regulations in the delivery of health care services.

21 b. An order to rehabilitate a facility shall direct the commissioner
22 or trustee to take possession of the property of the provider and
23 to conduct the business thereof, including the employment of man-
24 agers or agents that the commissioner or trustee deems necessary
25 and to take those steps the court directs toward removal of the
26 causes and conditions which have made rehabilitation necessary.

27 c. If the court finds, upon petition of the commissioner, trustee
28 or provider, or on its own motion, that the objectives of an order
29 to rehabilitate a facility have been accomplished and that the
30 facility may be returned to the provider's management without
31 further jeopardy to the residents, creditors and owners of the
32 facility, and to the public, the court may, upon a full report and
33 accounting of the conduct of the facility's affairs during the re-
34 habilitation and the facility's current financial condition, terminate
35 the rehabilitation and order return of the facility and its assets
36 and affairs to the provider's management.

37 If, however, the court finds, upon petition of the commissioner,
38 that the provider is not capable of operating the rehabilitated
39 facility, the court may give the commissioner the right to sell the
40 facility at fair market value to another provider who has demon-
41 strated appropriate managerial capability.

42 d. If the commissioner determines that further efforts to re-
43 habilitate the provider would be useless, the commissioner may
44 apply to the court for an order of liquidation.

45 e. The court may issue an order of liquidation upon application
46 to the commissioner whether or not a prior order to rehabilitate
47 the facility had been issued. The order shall act as a revocation
48 of the certificate of authority issued to the facility pursuant to
49 this act. The order shall direct the commissioner or a trustee to
50 marshal and liquidate all of the provider's assets located within
51 the State.

52 f. In applying for an order to rehabilitate or liquidate a facility,
53 the commissioner shall give due consideration in the application

54 to the manner in which the welfare of persons who have previously
 55 contracted with the provider for continuing care may be best served.
 56 In addition, the commissioner or his designee shall make reasonable
 57 efforts to keep the residents informed concerning his actions to
 58 address the situation. Where appropriate, the commissioner or his
 59 designee shall meet with the residents.

60 In furtherance of this objective, the proceeds of any lien obtained
 61 by the commissioner pursuant to this act may be:

- 62 (1) Used in full or partial payment of entrance fees;
- 63 (2) Used on behalf of residents of a facility that is being liqui-
 64 dated; or
- 65 (3) Paid, on behalf of those persons, to other facilities operated
 66 by providers who hold a certificate of authority issued pursuant to
 67 this act.

68 g. The court shall refuse or vacate an order for rehabilitation if
 69 the provider posts a bond by a surety authorized to do business in
 70 this State and executed in favor of the commissioner on behalf of
 71 persons who may be found entitled to a refund of entrance fees
 72 from the provider or other damages in the event the provider is
 73 unable to fulfill the terms of its contracts to provide continuing
 74 care at the facility. The amount of the bond shall be equal to the
 75 reserve funding which would otherwise need to be available to
 76 fulfill the provider's obligations, as determined by the court.

1 19. a. A provider or person acting on behalf of the provider is
 2 liable to the person who contracts for the continuing care for
 3 damages including repayment of all fees paid to the provider,
 4 facility or person who violates this act plus interest thereon at the
 5 legal rate, court costs and reasonable attorney's fees if the pro-
 6 vider or person acting on behalf of the provider:

- 7 (1) Enters into a contract for continuing care at a facility which
 8 does not have a certificate of authority issued pursuant to this act;
- 9 (2) Enters into a contract for continuing care at a facility with-
 10 out having first delivered a disclosure statement to a person con-
 11 tracting for continuing care pursuant to this act; or
- 12 (3) Enters into a contract for continuing care at a facility with
 13 a person who has relied on a disclosure statement which omits a
 14 material fact required to be stated therein pursuant to this act.

15 The reasonable value of care and lodging provided to the resi-
 16 dent by or on whose behalf the contract for continuing care was
 17 entered into prior to discovery of the violation, misstatement or
 18 omission or the time the violation, misstatement or omission should
 19 reasonably have been discovered shall be deducted from the amount
 20 of repayment due the person, if the provider can demonstrate that

21 he was in full compliance with the provisions of this act during that
22 time.

23 b. A provider is liable under this section whether or not the
24 provider has actual knowledge of the violation, misstatement or
25 omission. A person acting on behalf of the provider is liable under
26 this section only if the person has actual knowledge of the viola-
27 tion, misstatement or omission.

28 c. A person may not file or maintain an action under this section
29 if before filing the action, the person received an offer to refund all
30 amounts paid to the provider, facility or person violating this act
31 plus interest from the date of payment, less the reasonable value of
32 care and lodging provided prior to receipt of the offer and the
33 person failed to accept the offer within 30 days of its receipt. At the
34 time a provider makes a written offer of rescission, the provider
35 shall file a copy with the commissioner and obtain the approval of
36 the commissioner for the offer. The offer shall be written in clear
37 and understandable language and shall explain the limitation on
38 court action provided pursuant to this subsection.

39 d. A person shall not institute an action to enforce a liability
40 created under this act more than six years after discovery of the
41 violation.

42 e. Nothing in this act shall prohibit any person from seeking in-
43 junctive or other relief from the provider or persons acting on
44 behalf of the provider in a court of competent jurisdiction.

1 20. a. The commissioner or his designee may, as often as he
2 reasonably deems necessary, conduct an investigation to determine
3 whether any person has violated or is about to violate any provision
4 of this act or to aid in the enforcement of this act or in the pre-
5 scribing of rules and forms hereunder.

6 b. For the purpose of any investigation or proceeding under this
7 act, the commissioner or his designee may administer oaths and
8 affirmations, subpoena witnesses, compel their attendance, take
9 evidence and require the production of any books, papers, corre-
10 spondence, memoranda, agreements or other documents or records
11 which the commissioner deems relevant or material to the inquiry.

1 21. The commissioner or his designee shall visit each facility
2 offering continuing care in this State to examine its books and
3 records at least once every four years.

1 22. The commissioner shall prepare and cause to be distributed
2 to the public a consumers guide to continuing care facilities and an
3 annual directory of continuing care facilities in the State.

4 The commissioner shall prepare and cause to be distributed to the
5 public a residents' rights booklet that describes the rights of resi-
6 dents and obligations of providers under this act.

1 23. If the commissioner determines or has cause to believe that
2 a person has engaged in any act or practice which constitutes a
3 violation of this act, the commissioner may:

4 a. Issue an order requiring the person to cease and desist from
5 engaging in the act or practice; or

6 b. Bring an action in a court of competent jurisdiction to enjoin
7 the act or practice and to enforce compliance with this act. Upon
8 a proper showing, the court may grant a permanent or temporary
9 injunction, restraining order or writ of mandamus and may appoint
10 a receiver or conservator for the defendant or the defendant's
11 assets. The commissioner shall not be required to post a bond.

12 c. Assess appropriate fines against that person according to a
13 fine schedule established by regulation. The cost of any fine under
14 this section shall not be passed on to the resident or prospective
15 residents of the continuing care facility through additional fees
16 or charges.

1 24. a. The commissioner may refer any available evidence con-
2 cerning criminal violations of this act to the Attorney General or
3 the appropriate county prosecutor.

4 b. The Attorney General or a county prosecutor may institute
5 appropriate criminal proceedings either in response to a referral
6 from the commissioner or on their own initiative.

7 c. Nothing in this act limits the power of the State to punish any
8 person for any conduct which constitutes a crime under any other
9 law.

1 25. The commissioner shall determine reasonable fees for filing
2 an application for a certificate of authority and other required
3 documents pursuant to this act. The commissioner also may assess
4 a provider for reasonable expenses incurred by the department in
5 the investigation or rehabilitation of a provider or facility pur-
6 suant to this act.

1 26. A provider who is offering but not providing continuing care
2 may be given a reasonable time, not to exceed one year from the
3 date of promulgation of applicable regulations, within which to
4 comply with the requirements of this act and obtain a certificate of
5 authority.

1 27. A facility which has not entered into any agreements for
2 continuing care pursuant to this act since 1965, is not subject to
3 the provisions of this act; but this exclusion shall not apply if that
4 facility enters into one or more agreements for continuing care
5 on or after the effective date of this act.

1 28. A facility which has less than 50 residents who are under
2 continuing care agreements on the date of enactment of this act

3 is not subject to the provisions of this act; but this exclusion shall
4 not apply if that facility increases the number of its residents under
5 continuing care agreements to 50 or more, after the date of enact-
6 ment of this act.

1 29. a. There is created a Continuing Care Advisory Council
2 which consists of 16 members as follows: the Commissioner of
3 Health or the commissioner's designee, who shall serve ex officio
4 and shall be a non-voting member; 11 public members appointed
5 by the Governor, with the advice and consent of the Senate, who
6 are residents of the State and three of whom are administrators of
7 continuing care facilities in this State, one of whom is a representa-
8 tive of the business community and knowledgeable in the area of
9 management, one of whom is a certified public accountant, one of
10 whom is an attorney licensed to practice in this State, three of whom
11 are residents of a continuing care retirement facility in this State
12 and two of whom are representatives of senior citizen interests;
13 two members of the Senate appointed by the President thereof; and
14 two members of the General Assembly appointed by the Speaker
15 thereof.

16 b. The term of office for each public member is three years, or
17 until the member's successor has been appointed; except that of
18 the public members first appointed, three shall be appointed for a
19 term of one year, three for a term of two years and five for a term
20 of three years. The legislative members shall be appointed for
21 their legislative term of office.

22 A vacancy in the membership of the council shall be filled in the
23 same manner as the original appointment, but for the unexpired
24 term. A member of the council is eligible for reappointment.

25 The members of the council shall serve without compensation, but
26 the council shall reimburse the members for the reasonable ex-
27 penses incurred in the performance of their duties.

28 c. The council shall hold an organizational meeting within 30
29 days after the appointment of its members. The members of the
30 council shall elect from among them a chairman who shall be the
31 chief executive officer of the council and the members shall elect a
32 secretary who need not be a member of the council.

33 d. The council shall meet at least four times a year but may meet
34 more frequently at the discretion of the chairman or the commis-
35 sioner.

36 e. The council may call to its assistance and avail itself of the
37 services and assistance of any officials and employees of the De-
38 partment of Health or other State agency and political subdivisions
39 and their departments, boards, bureaus, commissions and agencies

40 as it requires and as is available to it for this purpose and may
 41 expend any funds that are appropriated or otherwise made avail-
 42 able to it pursuant to this act.

43 f. The council shall:

44 (1) Advise and provide information to the commissioner on
 45 matters pertaining to the operation and regulation of continuing
 46 care retirement facilities, upon request of the commissioner;

47 (2) Review and comment upon, as appropriate, any proposed
 48 rules and regulations and legislation pertaining to continuing care
 49 retirement facilities;

50 (3) Make recommendations to the commissioner about any
 51 needed changes in rules and regulations and State and federal laws
 52 pertaining to continuing care retirement facilities; and

53 (4) Assist in the rehabilitation of a continuing care retirement
 54 facility, upon request of the commissioner.

1 30. The commissioner shall report annually to the Governor and
 2 the Legislature on the implementation of this act, the status of
 3 continuing care facilities in the State and the activities of the
 4 Continuing Care Advisory Council.

1 31. The commissioner shall adopt rules and regulations necessary
 2 to carry out the provisions of this act pursuant to the "Administra-
 3 tive Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.). The
 4 commissioner shall adopt the regulations within six months of the
 5 effective date of this act.

1 32. This act shall take effect on the 180th day following enact-
 2 ment.

STATEMENT

This bill establishes a comprehensive system of regulation of continuing care retirement communities in New Jersey. The purposes of this bill, known as the "Continuing Care Retirement Community Act," include but are not limited to the following:

- (1) Requiring full disclosure of each facility's financial standing;
- (2) Requiring full disclosure of the contractual obligations and ownership of the facilities;
- (3) Requiring full disclosure of the rights of residents in the facilities and the costs to the residents of residing in the facilities;
- (4) Establishing minimum standards concerning financial status of facilities to ensure their financial solvency; and
- (5) Establishing a Continuing Care Advisory Council to assist the commissioner in establishing and maintaining a regulatory system for continuing care retirement facilities.

This bill further requires that every provider of continuing care in the State apply to the Department of Health for a certificate of authority before the provider can offer continuing care services. Certain facilities offering continuing care and established prior to the effective date of the bill may continue operating under temporary certificates of authority for a period of up to two years even though they do not meet all the financial requirements of the bill. An additional three year extension may be requested from the department by certain providers in order to gain additional time within which to meet the bill's financial requirements.

In applying for a certificate of authority, the provider must include a sample disclosure statement which is given to a prospective resident of the facility, together with a standard form contract for continuing care attached to the disclosure statement. A prospective owner of a continuing care facility must also file a disclosure statement and obtain the approval of the commissioner prior to acquisition.

The bill also requires that providers maintain minimum liquid reserves for the first five years following the effective date of the bill equal to or greater than 10% of the projected annual operating expenses of the facility, minus depreciation costs. For subsequent years, the facility must maintain liquid reserves either equal to the aggregate amount of all debt services during the next year on account of mortgage payments or other long-term financing, or 10% of the projected annual operating expenses less depreciation for the next year, whichever is greater. The Commissioner of the Department of Health may require additional reserves, if appropriate.

The providers are required to guarantee the availability of health care services when it is offered to residents, by establishing a reserve fund, by purchasing insurance or an annuity or by other means deemed satisfactory to the commissioner.

The Commissioner of Health is authorized to file a lien on the assets of a facility whenever such action is determined to be in the best interests of the residents of the facility. The placing of a lien is intended to ensure that residents come before creditors in the event of bankruptcy of the facility.

The commissioner is also authorized to require providers to place entrance fees in escrow until a resident occupies the facility, or until the commissioner is satisfied that certain financing requirements have been met by the facility.

The continuing care agreement is required to disclose specific information, including but not limited to, the following:

- (1) The value of property transferred to the facility;

- (2) All services to be provided to the resident by the facility;
- (3) A description of the rights of the resident to continue residing at the facility under different circumstances; and
- (4) Procedures for cancellation of a continuing care agreement.

Facilities with 50 or fewer residents under continuing care agreements on the date of enactment of the bill are exempt from its provisions, but such facilities shall not be exempt if they increase the number of their residents under continuing care agreements to 50 or more, after the date of enactment.

Finally, the bill creates a Continuing Care Advisory Council, consisting of 16 members, to advise and provide information to the commissioner regarding the operation and regulation of continuing care retirement facilities, to review and comment upon relevant legislation, to recommend changes in rules and regulations and State and federal law, and to assist in the rehabilitation of facilities.

SENIOR CITIZENS

Establishes the "Continuing Care Retirement Community Act."

ASSEMBLY SENIOR CITIZENS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, Nos. 2432 and 2102

STATE OF NEW JERSEY

DATED: JUNE 19, 1986

The Assembly Senior Citizens Committee reports favorably an Assembly Committee Substitute for Assembly Bill Nos. 2432 and 2102.

This substitute establishes a comprehensive system of regulation of continuing care retirement communities in New Jersey. The purposes of this substitute, known as the "Continuing Care Retirement Community Regulation and Financial Disclosure Act," include but are not limited to the following:

- (1) Requiring full disclosure of each facility's financial standing;
- (2) Requiring full disclosure of the contractual obligations and ownership of the facilities;
- (3) Requiring full disclosure of the rights of residents in the facilities and the costs to the residents of residing in the facilities;
- (4) Establishing minimum standards concerning financial status of facilities to ensure their financial solvency; and
- (5) Establishing a Continuing Care Advisory Council to assist the commissioner in establishing and maintaining a regulatory system for continuing care retirement facilities.

This substitute further requires that every provider of continuing care in the State apply to the Department of Community Affairs for a certificate of authority before the provider can offer continuing care services. Certain facilities offering continuing care and established prior to the effective date of the bill may continue operating under temporary certificates of authority for a period of up to two years even though they do not meet all the financial requirements of the substitute. An additional three year extension may be requested from the department by certain providers in order to gain additional time within which to meet the financial requirements.

In applying for a certificate of authority, the provider must include a sample disclosure statement which is given to a prospective resident of the facility, together with a standard form contract for continuing care.

Providers must maintain liquid reserves either equal to the aggregate amount of all debt services during the next year on account of mortgage payments or other long-term financing, or 15% of the projected annual operating expenses less depreciation for the next year, whichever is greater. The Commissioner of the Department of Community Affairs may require additional reserves, if appropriate.

The Commissioner of Community Affairs is authorized to file a lien on the assets of a facility whenever such action is determined to be in the best interests of the residents of the facility. The placing of a lien is intended to ensure that residents come before creditors in the event of bankruptcy of the facility.

The commissioner is also authorized to require providers to place entrance fees in escrow until a resident occupies the facility, or until the commissioner is satisfied that certain financing requirements have been met by the facility.

The continuing care contract is required to disclose specific information, including but not limited to the following:

- (1) The value of property transferred to the facility;
- (2) All services to be provided to the residents by the facility;
- (3) A description of the rights of the resident to continue residing at the facility under different circumstances; and

The continuing care contract is required to disclose specific information, including but not limited to the following:

- (1) The value of property transferred to the facility;
- (2) All services to be provided to the resident by the facility;
- (3) Description of the rights of the resident to continue residing at the facility under different circumstances; and
- (4) Procedures for cancellation of a continuing care agreement.

Facilities with 50 or fewer residents under continuing care agreements on the date of enactment of the bill are exempt from its provisions, but such facilities shall not be exempt if they increase the number of their residents under continuing care agreements to 50 or more, after the date of enactment of the bill.

The bill creates a Continuing Care Advisory Council, consisting of 17 members, to advise and provide information to the commissioner regarding operation and regulation of continuing care retirement facilities, to review and comment upon relevant legislation, to recommend changes in rules and regulations and State and federal law, and to assist in the rehabilitation of facilities.

The substitute appropriates \$50,000.00 to the Department of Community Affairs.

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 2594 and 2613

STATE OF NEW JERSEY

ADOPTED JANUARY 24, 1985

Sponsored by Assemblymen PATERNITI and ZIMMER

AN ACT regulating continuing care retirement facilities, establishing an advisory council and supplementing Title 52 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. This act shall be known and may be cited as the "Continuing
2 Care Retirement Community Regulation and Financial Disclosure
3 Act."

1 2. The Legislature finds and declares that: continuing care re-
2 tirement communities are becoming an important and increasingly
3 preferred alternative for the long-term residential, social and health
4 care needs of New Jersey's senior citizens; because senior citizens
5 often expend a significant portion of their savings in order to pur-
6 chase care in the retirement community and thereby expect to
7 receive care at the retirement community for the rest of their lives,
8 tragic consequences can result to senior citizens when a continuing
9 care provider becomes insolvent or unable to provide responsible
10 care; and there is a need for full disclosure concerning the terms
11 of agreements made between prospective residents and the con-
12 tinuing care provider and the operations of the providers; there-
13 fore, it is the policy of this State that providers of continuing care
14 shall register with and be monitored by the State Department of
15 Community Affairs and that a Continuing Care Advisory Council
16 be established to advise and assist the Commissioner of Community
17 Affairs in the monitoring of these providers and the regulation
18 of continuing care retirement facilities.

1 3. As used in this act:

2 a. "Application fee" means the fee an individual is charged, in

3 addition to an entrance fee or any other fee, to cover the provider's
4 reasonable cost for processing the individual's application to be-
5 come a resident at the facility. An application fee shall not exceed
6 \$150.00.

7 b. "Commissioner" means the Commissioner of the Department
8 of Community Affairs.

9 c. "Continuing care" means the provision of lodging and nursing,
10 medical or other health related services at the same or another
11 location to an individual pursuant to an agreement effective for
12 the life of the individual or for a period greater than one year,
13 including mutually terminable contracts, and in consideration of
14 the payment of an entrance fee with or without other periodic
15 charges. An individual who is provided continuing care is not re-
16 lated by consanguinity or affinity to the person who provides the
17 care.

18 d. "Department" means the State Department of Community
19 Affairs.

20 e. "Entrance fee" means a transfer to a provider of a sum of
21 money or other property made or promised to be made as full or
22 partial consideration for acceptance of a specified person as a resi-
23 dent in a facility and includes a fee which is refundable upon the
24 death, departure or option of the resident.

25 A fee which is less than the sum of the regular periodic charges
26 for one year of residency is not considered an entrance fee for the
27 purposes of this act. A transfer of a sum of money or other prop-
28 erty, by or on behalf of a resident, to a trust account which is
29 managed by the facility or an independent trustee for the benefit
30 of the resident is not considered an entrance fee for the purposes
31 of this act if the transfer is not a condition of admission or of
32 continued stay and the principal amount and any interest thereon
33 are the exclusive and sole property of the resident or the individual
34 acting on behalf of the resident.

35 f. "Facility" means the place or places in which a person under-
36 takes to provide continuing care to an individual.

37 g. "Living unit" means a room, apartment, cottage or other area
38 within a facility set aside for the exclusive use or control of one
39 or more persons.

40 h. "Operator or administrator" means a person who operates
41 or manages a facility for the provider.

42 i. "Provider" means a person who undertakes to provide con-
43 tinuing care in a facility.

44 j. "Resident" means a person entitled to receive continuing care
45 in a facility.

1 4. a. A person shall not establish, operate or administer a con-
2 tinuing care facility in this State without obtaining and maintain-
3 ing a certificate of authority pursuant to this act. A certificate of
4 authority granted pursuant to this act is not transferable.

5 b. A person shall file an application for a certificate of authority
6 with the department on forms prescribed by the commissioner.
7 The application shall include a disclosure statement prepared pur-
8 suant to section 7 of this act and other information as required
9 by the commissioner.

10 c. Upon receipt of the application for a certificate of authority,
11 the department shall, within 10 business days, issue a notice of
12 filing to the applicant. Within 60 days of the notice of filing, the
13 commissioner shall issue the certificate of authority or reject the
14 application pursuant to subsection d. of this section.

15 d. If the commissioner determines that any of the requirements
16 of this act has not been met, the commissioner shall notify the
17 applicant in writing and specify those particulars which need to
18 be corrected. The applicant has 30 days from the date of notifica-
19 tion to correct the application as specified by the commissioner.
20 If the requirements are not met within the time allowed, the com-
21 missioner may reject the application and notify the applicant in
22 writing of the reason for the rejection. The rejection shall be
23 effective 20 days after the foregoing 30 day period. During the 20
24 day period, the applicant may request reconsideration of the com-
25 missioner's action and is entitled to a hearing conducted pursuant
26 to the "Administrative Procedure Act," P. L. 1968, c. 410 (C.
27 52:14B-1 et seq.).

28 e. In the case of a provider who has offered continuing care
29 agreements to existing or prospective residents in a facility estab-
30 lished prior to the effective date of this act and which has one or
31 more residents living there pursuant to agreements entered into
32 prior to the effective date of this act, if the provider is unable to
33 comply with section 10 of this act within the time required, the
34 commissioner may, upon the written request of the provider, issue
35 a temporary certificate of authority to the provider. The provider
36 may then enter into continuing care agreements which are in com-
37 pliance with all other applicable provisions of this act until the
38 permanent certificate is issued. The temporary certificate shall be
39 issued only to those existing providers who shall be able to comply
40 with the provisions of section 10 of this act within a period of time
41 determined by the commissioner but which does not exceed two
42 years.

43 If a provider is not in compliance on or before the expiration

44 date of the temporary certificate, the provider may request an
45 extension from the commissioner. The commissioner may grant
46 an extension of up to three years to a provider who shall be able
47 to comply with section 10 of this act in that time period.

48 f. If an existing provider is granted a permanent certificate of
49 authority, the provider shall give a resident who entered into an
50 agreement before the certificate of authority was granted, a copy
51 of the initial disclosure statement and any amendments thereto.

52 g. If a facility is accredited by a process approved by the com-
53 missioner as substantially equivalent to the requirements of this
54 section, the facility is deemed to have met the requirements of this
55 section and the commissioner shall issue a certificate of authority
56 to the facility.

57 h. A person who establishes, operates or administers a continu-
58 ing care facility in this State without obtaining or maintaining a
59 certificate of authority pursuant to this act is guilty of a crime of
60 the third degree.

1 5. a. The certificate of authority or temporary certificate of
2 authority of a provider shall remain in effect until revoked, after
3 notice and hearing conducted pursuant to the "Administrative
4 Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.), upon the
5 commissioner's written finding of fact that the provider has:

6 (1) Purposely or knowingly violated any provision of this act
7 or any regulation adopted hereunder;

8 (2) Failed to file an annual disclosure statement or resident
9 agreement pursuant to this act;

10 (3) Failed to deliver to a prospective resident the disclosure
11 statement required pursuant to this act;

12 (4) Delivered to a prospective resident a disclosure statement
13 which makes an untrue statement or omits a material fact and the
14 provider at the time of the delivery of the disclosure statement
15 had actual knowledge of the misstatement or omission; or

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

17 b. The commissioner shall include with the findings of fact in
18 support of revocation a concise and explicit statement of the under-
19 lying facts supporting the findings.

20 c. If the commissioner has cause to believe that the provider
21 is guilty of a violation for which revocation may be ordered, the
22 commissioner may issue an order directing the provider or operator
23 to cease and desist from engaging in any practice in violation of
24 this act.

25 d. If the cease and desist order is not or may not be effective in
26 remedying the violation, the commissioner, after notice and hearing

27 conducted pursuant to the "Administrative Procedure Act," P. L.
 28 1968, c. 410 (C. 52:14B-1; et seq.), may revoke the certificate of
 29 authority or temporary certificate of authority and order that it
 30 be surrendered to the commissioner.

1 6. a. A person who desires to acquire an ownership interest in
 2 a continuing care facility shall so notify the department in writing
 3 at least 60 days in advance of the acquisition. The person shall
 4 obtain the approval of the commissioner for the acquisition prior
 5 to the completion of the sale or transfer of the facility's ownership
 6 interest.

7 b. For the purposes of this act, an acquisition of an ownership
 8 interest in a continuing care facility shall be deemed to take place
 9 if:

10 (1) The facility is a corporation and there is an acquisition by
 11 or a transfer of ownership to an individual, partnership or cor-
 12 poration through purchase, contract, donation, gift or stock option
 13 of 25% or more of the corporation's outstanding stock, either pre-
 14 ferred or common, or there is acquisition of the physical assets of
 15 the facility by a newly formed or existing corporation;

16 (2) The facility is a partnership and there is an acquisition by
 17 or a transfer of ownership to an individual, partnership, or cor-
 18 poration of 10% or more of the existing partnership's total capital
 19 interest or there is acquisition of the physical assets of the facility
 20 by a newly formed or existing partnership; and

21 (3) The facility is individually owned and there is a purchase
 22 of the physical assets of the facility.

1 7. The provider shall provide a disclosure statement to a pros-
 2 pective resident of a continuing care facility or the person with
 3 whom the provider shall enter into a contract to provide continuing
 4 care, at the time of or prior to the execution of the contract or at
 5 the time of or prior to the transfer of any money or other property
 6 to the provider by or on behalf of the prospective resident, which-
 7 ever occurs first. The cover page of the disclosure statement shall
 8 state in a prominent location and type face, the date of the dis-
 9 closure statement.

10 The provider shall attach a copy of the standard form of con-
 11 tract for continuing care used by the provider as an exhibit to each
 12 disclosure statement.

13 The disclosure statement shall contain the following information
 14 unless the information is contained in the contract:

15 a. The name and business address of the provider and a state-
 16 ment of whether the provider is a partnership, corporation or
 17 other type of legal entity.

18 b. The names and business addresses of the officers, directors,
19 trustees, managing or general partners and any person having
20 a 10% or greater equity or beneficial interest in the provider and
21 a description of that person's interest in or occupation with the
22 provider.

23 c. With respect to the provider, any person named in response
24 to subsection b. of this section and the proposed operator if the
25 facility is managed on a day-to-day basis by a person other than
26 an individual directly employed by the provider:

27 (1) A description of the person's business experience, if any,
28 in the operation or management of similar facilities;

29 (2) The name and address of any professional service, firm,
30 association, trust, partnership or corporation in which the person
31 has a 10% or greater interest and which may provide goods, leases
32 or services to the facility of a value of \$500.00 or more, within
33 any year;

34 (3) A description of the goods, leases or services provided pur-
35 suant to paragraph (2) of this subsection and the probable or
36 anticipated cost thereof to the facility or provider;

37 (4) A description of any matter in which the person has been
38 convicted of a felony or pleaded nolo contendere to a felony charge,
39 or has been held liable or enjoined in a civil action which involved
40 fraud, embezzlement, fraudulent conversion or misappropriation
41 of property; and

42 (5) A description of any matter in which the person is subject
43 to a currently effective injunctive or restrictive court order or,
44 within the past five years, had a State or federal license or permit
45 suspended or revoked as a result of an action brought by a gov-
46 ernmental agency or department, which arose out of or related to
47 business activity or health care, including actions affecting a li-
48 cense to operate a residential health care facility, nursing home,
49 retirement home, home for the aged or facility registered under
50 this act or a similar act in another state.

51 d. A statement whether the provider is or ever has been affiliated
52 with a religious, charitable or other nonprofit organization, the
53 nature of the affiliation, if any, the extent to which the affiliate
54 organization is responsible for the financial and contractual obli-
55 gations of the provider, and the provision of the federal Internal
56 Revenue Code, if any, under which the provider or affiliate is
57 exempt from the payment of income tax.

58 e. The location and description of the physical property of the
59 facility, both existing and proposed, and with respect to proposed
60 property, the estimated completion date, the date construction

61 began or shall begin and the contingencies subject to which con-
62 struction may be deferred.

63 f. The services provided or proposed to be provided under con-
64 tracts for continuing care at the facility, including the extent to
65 which medical care and other services are furnished under the
66 basic contract and which other care or services are available at
67 or by the facility at extra charge.

68 g. A description of all fees required of residents, including the
69 application fee, entrance fee and periodic charges, if any, the
70 manner by which the provider may adjust periodic charges or
71 other recurring fees and the limitation on the adjustments, if any,
72 and if the facility is already in operation or if the provider or
73 operator operates one or more similar facilities within this State,
74 tables showing the frequency and average dollar amount of each
75 increase in periodic rates at each facility for the previous five
76 years or as many years as the facility has been operated by the
77 provider or operator, whichever is less.

78 h. The provisions that have been made or will be made, if any,
79 to provide reserve funding or security which will enable the pro-
80 vider to fully perform its obligations under contracts to provide
81 continuing care at the facility, including the establishment of es-
82 crow accounts, trusts or reserve funds, the manner in which the
83 funds shall be invested and the names and experience of persons
84 who will make the investment decisions.

85 i. Certified financial statements of the provider which include
86 balance sheets and income statements for the two most recent
87 completed fiscal years or for as long as the provider has been in
88 existence, whichever is less.

89 j. If operation of the facility has not yet commenced, a state-
90 ment of the anticipated source and application of the funds used
91 or to be used in the purchase or construction of the facility, in-
92 cluding:

93 (1) An estimate of the cost of purchasing or construction and
94 equipping the facility which includes related costs such as financ-
95 ing expenses, legal expenses, land costs, marketing and develop-
96 ment costs and other similar costs the provider expects to incur
97 or become obligated for prior to the commencement of operations;

98 (2) A description of any mortgage loan or other long-term
99 financing intended to be used for the financing of the facility and
100 the anticipated terms and costs of the financing;

101 (3) An estimate of the total amount of entrance fees to be re-
102 ceived from or on behalf of residents at or prior to commencement
103 of operation of the facility;

104 An estimate of the funds, if any, which are anticipated to be
105 necessary to fund start-up losses and provide reserve funds to
106 assure full performance of the obligations of the provider under
107 contracts for the provision of continuing care;

108 (5) A projection of estimated income from fees and charges
109 other than entrance fees, a description of individual rates antici-
110 pated to be charged, the assumptions used for calculating the esti-
111 mated occupancy rate of the facility and the effect on the income
112 of the facility of government subsidies, if any, for health care
113 services provided pursuant to the contracts for continuing care;

114 (6) A projection of estimated operating expenses of the facility,
115 including a description of the assumptions used in calculating the
116 expenses and separate allowances, if any, the replacement of equip-
117 ment and furnishings and any anticipated major structural re-
118 pairs or additions;

119 (7) Identification of assets pledged as collateral for any pur-
120 pose; and

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

123 k. Other material information concerning the facility or the pro-
124 vider as required by the department or as the provider wishes
125 to include.

1 8. a. The provider shall file an annual disclosure statement with
2 the commissioner which contains the information required for the
3 initial disclosure statement pursuant to section 7 of this act. The
4 annual disclosure statement also shall include a narrative describ-
5 ing any material differences between the pro forma income state-
6 ments filed pursuant to this act either as part of the initial appli-
7 cation for a certificate of authority or the most recent annual dis-
8 closure statement and the actual results of operations during the
9 fiscal year. The statement also shall contain a revised pro forma
10 income statement for the next fiscal year. The commissioner may
11 request additional income statements if necessary.

12 The provider shall file the annual disclosure statement within
13 six months following the end of the provider's fiscal year.

14 b. Prior to the provider's acceptance of part or all of any ap-
15 plication or entrance fee or the execution of the continuing care
16 agreement by the resident, whichever occurs first, the provider
17 shall deliver the most current annual disclosure statement to the
18 current or prospective resident and to any other person with whom
19 the continuing care agreement is or may be entered into.

20 c. A provider may amend its currently filed annual disclosure
21 statement at any time if, in the opinion of the provider, an amend-

22 ment is necessary to prevent the disclosure statement from con-
23 taining any material misstatement of fact or omission to state a
24 material fact as required pursuant to this act. The provider shall
25 file an amendment or amended disclosure statement with the com-
26 missioner before the provider provides it to a resident or pros-
27 pective resident.

1 9. a. No provider or person acting on behalf of the provider
2 shall make, publish, disseminate, circulate or place before the public,
3 or cause, directly or indirectly, to be made, published, disseminated,
4 circulated or placed before the public in a newspaper or other
5 publication, or in the form of a notice, circular, pamphlet, letter
6 or poster, or over any radio or television station, or in any other
7 way, an advertisement, announcement or statement of any sort
8 containing an assertion, representation or statement which is
9 untrue, deceptive or misleading.

10 b. No provider or person acting on behalf of the provider shall
11 file with the department or make, publish, disseminate, circulate
12 or deliver to any person or place before the public, or cause, di-
13 rectly or indirectly, to be made, published, disseminated, circulated
14 or delivered to any person, or placed before the public, any dis-
15 closure statement, financial statement or continuing care agreement
16 that contains an assertion, representation, or statement which is
17 untrue, deceptive or misleading.

18 c. A person who willfully and knowingly violates the provisions
19 of this section is guilty of a crime of the third degree.

1 10. a. For the first five years following the effective date of this
2 act, a provider shall establish and maintain liquid reserves in an
3 amount equal to or exceeding 10% of the projected annual operat-
4 ing expenses of the facility, exclusive of depreciation.

5 b. For subsequent years, beginning six years following the ef-
6 fective date of this act, a provider shall establish and maintain
7 liquid reserves in an amount equal to or exceeding the greater of:

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

11 (2) 10% of the projected annual operating expenses of the fa-
12 cility, exclusive of depreciation.

13 c. A provider shall notify the commissioner in writing at least
14 10 days prior to reducing the amount of funds available to satisfy
15 the applicable liquid reserve requirement. A provider may not
16 expend more than $\frac{1}{12}$ of the required balance each calendar month.

17 d. In a facility where some residents are not under continuing
18 care agreements, the reserve shall be computed only on the pro-

19 proportional share of financing or operating expenses that is applicable
20 to residents under continuing care agreements at the end of the
21 provider's most recent fiscal year.

22 e. A provider may use funds in an endowment fund or escrow
23 account, including an escrow account established by or pursuant
24 to a mortgage loan, bond indenture or other long-term financing,
25 to satisfy the reserve requirements of this section if the funds are
26 available to make payments when operating funds are insufficient
27 for these purposes.

1 11. a. The commissioner may require a provider to establish and
2 maintain in escrow, on a current basis with a bank, trust company
3 or other escrow agent approved by the department, a portion of
4 all entrance fees received by the provider in an aggregate amount
5 not to exceed the total of all principal and interest payments due
6 during the next 12 months on account of any first mortgage loan
7 or other long-term financing of the facility. The provider may in-
8 vest the funds in the escrow account, with the earnings thereon
9 payable to the provider. If the provider so requests in writing,
10 the escrow agent shall release up to $\frac{1}{2}$ of the original principal
11 balance of the escrow account. The escrow agent shall not so re-
12 lease funds more than once during any calendar month, and then
13 only after the escrow agent has given written notice to the com-
14 missioner at least 10 days prior to the release. The amount of this
15 escrow fund shall be included in satisfying the reserves required
16 pursuant to section 10 of this act.

17 b. This section is applicable only when the commissioner has
18 cause to believe that additional protection is necessary to secure
19 the provider's performance of the terms of all resident agreements.

1 12. Prior to the issuance of a certificate of authority pursuant
2 to this act, or at any other time the commissioner determines it
3 is in the best interests of residents of a facility, the commissioner
4 may file a lien on the real and personal property of the provider
5 or facility to secure the obligations of the provider pursuant to
6 existing and future contracts for continuing care. A lien filed
7 under this section is effective for a period of 10 days following its
8 filing and may be extended by the commissioner if the commissioner
9 finds that the extension is advisable for the protection of residents
10 of the facility.

11 The commissioner may foreclose on the lien upon the liquidation
12 of the facility or the insolvency or bankruptcy of the provider.
13 In this event, the commissioner shall use the proceeds thereof for
14 full or partial satisfaction of obligations of the provider pursuant
15 to contracts for continuing care in effect at that time.

16 The lien provided for in this section is subordinate to the lien
17 of any first mortgage on the real property of the facility, and if
18 the commissioner determines and so states in writing that it is
19 advisable for the efficient operation of the facility, the lien may be
20 subordinated to the claims of other persons.

1 13. The commissioner shall require a provider to establish an
2 interest bearing escrow account with a bank, trust company or
3 other escrow agent approved by the commissioner, as a condition
4 of issuing a certificate of authority. The provider shall place in
5 the escrow account any entrance fees or payments in excess of 5%
6 of the then existing entrance fee for the living unit that are re-
7 ceived by the provider prior to the date the resident is permitted
8 to occupy the living unit in the facility. The fees or payments are
9 subject to release from the escrow account in the following manner:

10 a. If the entrance fee gives the resident the right to occupy a
11 living unit which has been previously occupied, the entrance fee
12 and any interest earned thereon shall be released to the provider
13 when the living unit becomes available for occupancy by the new
14 resident.

15 b. If the entrance fee applies to a living unit which has not been
16 previously occupied, the entrance fee and any interest earned
17 thereon shall be released to the provider when the commissioner
18 is satisfied that:

19 (1) aggregate entrance fees received or receivable by the pro-
20 vider pursuant to executed continuing care agreements equal at
21 least 50% of the sum of the entrance fees due at full occupancy
22 of the portion of the facility under construction, except that en-
23 trance fees receivable pursuant to an agreement shall be counted
24 only if the facility has received a deposit of 35% or more of the
25 entrance fee due from the individual signing the contract;

26 (2) the aggregate entrance fees received or receivable pursuant
27 to the preceding paragraph plus anticipated proceeds of any first
28 mortgage loan or other long-term financing commitment and funds
29 from other sources in the actual possession of the provider are
30 equal to at least 50% of the aggregate cost of constructing or
31 purchasing, equipping and furnishing the facility plus at least 50%
32 of the funds necessary to fund start-up losses as estimated by the
33 provider in the statement of anticipated source and application
34 of funds submitted pursuant to subsection j. of section 7 of this
35 act; and

36 (3) the provider has received a preliminary commitment for any
37 permanent mortgage loan or other long-term financing described
38 pursuant to subsection j. of section 7 of this act and any conditions

39 of the commitment prior to disbursement of funds thereunder,
40 other than completion of the construction or closing of the purchase
41 of the facility, are substantially satisfied.

42 c. If the funds in the escrow account established pursuant to
43 this section and any interest earned thereon are not released
44 within 36 months, or a greater time if so specified by the provider
45 with the consent of the commissioner, the escrow agent shall return
46 the funds to the individuals who made payments to the provider.

47 d. Nothing in this section shall require the provider to place
48 any nonrefundable application fees charged to prospective resi-
49 dents in escrow.

50 e. In lieu of any escrow required pursuant to this section, a
51 provider is entitled to post a letter of credit from a financial
52 institution, negotiable securities or a bond by a surety authorized
53 to do business in this State, in a form approved by the commis-
54 sioner and in an amount not to exceed the amount required by
55 paragraph (1) of subsection b. of this section. The provider shall
56 execute the letter of credit, negotiable securities or bond in favor
57 of the commissioner on behalf of individuals who are entitled to
58 a refund of entrance fees from the provider.

59 f. A provider may apply to the commissioner for a waiver of
60 the applicable escrow requirements of this section when a pro-
61 vider constructs additional living units in an amount that does
62 not exceed 10% of the facility's existing living units for continuing
63 care residents.

64 The provider shall apply for the waiver in writing to the com-
65 missioner. The commissioner may grant the waiver which may
66 be effective for a period of one year or longer, at the discretion
67 of the commissioner, if the construction of additional units meets
68 the requirements of this subsection.

69 g. Upon receipt of a notice from the provider that an individual
70 is entitled to a refund of an entrance fee, the escrow agent shall
71 return the funds held in the escrow account to the individual.

1 14. A provider shall pledge only the unencumbered assets of a
2 continuing care facility as collateral for the purpose of securing
3 loans for other continuing care facilities, whether proposed or
4 existing.

1 15. a. A continuing care agreement executed on or after the
2 effective date of this act shall be written in nontechnical language
3 easily understood by a layperson and shall include but not be
4 limited to the following:

5 (1) A provision for the continuing care of one resident, or two
6 or more residents occupying space designed for multiple occupancy

7 under appropriate procedures established by the provider, and a
8 statement showing the value of all property transferred, including
9 donations, subscriptions, fees and any other amounts payable by,
10 or on behalf of, the resident;

11 (2) A statement specifying all services which are to be provided
12 to the resident by the provider including, in detail, all items which
13 the resident will receive such as food, shelter, nursing care, pharma-
14 ceuticals and burial and whether the items will be provided for a
15 designated period of time or for life;

16 (3) A description of the health and financial conditions upon
17 which the provider may have the resident relinquish his space in
18 the designated facility;

19 (4) A description of the health and financial conditions required
20 for a person to continue as a resident;

20A (5) A description of the circumstances under which the resident
21 shall be permitted to remain in the facility in the event of financial
22 difficulties of the resident;

23 (6) A statement of the fees that will be charged if the resident
24 marries a person who is not a resident of the facility, the terms
25 concerning the entry of a spouse into the facility and the conse-
26 quences if the spouse does not meet the requirements for entry;

27 (7) A statement providing that the agreement may be canceled
28 upon giving at least 60 days' notice by the provider or the resident,
29 except that if an agreement is canceled by the provider because
30 there has been a good faith determination in writing, signed by
31 the medical director and the administrator of the facility, that a
32 resident is a danger to himself or others, only notice that is reason-
33 able under the circumstances is required;

34 (8) A statement providing in clear and understandable language,
35 in print no smaller than the largest type used in the body of the
36 agreement, the terms governing the refund of any portion of the
37 entrance fee;

38 (9) A statement of the terms under which an agreement is can-
39 celed by the death of the resident, which statement may contain a
40 provision stating that upon the death of the resident the moneys
40A paid for the continuing care of the resident shall be considered
41 earned and become the property of the provider; and

42 (10) A statement providing for at least 30 days' advance notice
43 to the resident before any change in fees or changes in the scope
44 of care or services are effective, except for changes required by
45 State or federal assistance programs.

46 b. A resident has the right to rescind a continuing care agree-
47 ment without penalty or forfeiture within seven days after making

48 an initial deposit or executing the agreement. A resident is not
49 required to move into the facility designated in the agreement
50 before the expiration of the seven day period.

51 c. If a resident dies before the occupancy date, or through ill-
52 ness, injury or incapacity is precluded from becoming a resident
53 under the terms of the continuing care agreement, the agreement
54 is automatically rescinded and the resident or the resident's legal
55 representative shall receive a full refund of all moneys paid to the
56 facility, except those costs specifically incurred by the facility at
57 the request of the resident and set forth in writing in a separate
58 addendum signed by both parties to the agreement.

59 d. No agreement for care shall permit dismissal or discharge
60 of the resident from the facility prior to the expiration of the
61 agreement without just cause for the removal. For the purposes
62 of this act, "just cause" means but is not limited to a good faith
63 determination in writing, signed by the medical director and the
64 administrator of the facility, that a resident is a danger to himself
65 or others while remaining in the facility. If a facility dismisses a
66 resident for just cause, the facility shall pay the resident any re-
67 fund due in the same manner as if the resident's agreement was
68 terminated pursuant to this act. A resident may request a hearing
69 to contest a facility's decision to dismiss or discharge the resident.
70 The hearing shall be held pursuant to the "Administrative Pro-
71 cedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.).

72 e. No act, agreement or statement of a resident or of an indi-
73 vidual purchasing care for a resident under any agreement to fur-
74 nish care to the resident shall constitute a valid waiver of any
75 provision of this act intended for the benefit or protection of the
76 resident or the individual purchasing care for the resident.

77 f. An agreement entered into prior to the effective date of this
78 act or prior to the issuance of a certificate of authority to the pro-
79 vider is valid and binding upon both parties in accordance with
80 the terms of the agreement.

1 16. a. Residents living in a facility which holds a certificate of
2 authority issued pursuant to this act have the right of self-organi-
3 zation.

4 b. The board of directors, a designated representative, or other
5 governing body of a continuing care facility shall hold quarterly
6 meetings with the residents or their elected representatives of the
7 continuing care facility for the purpose of free discussion of sub-
8 jects which may include income, expenditures and financial matters
9 as they apply to the facility and proposed changes in policies, pro-

10 grams and services. Residents shall be given at least seven days'
11 notice of each quarterly meeting.

1 17. a. The commissioner may apply to a court of competent
2 jurisdiction or to the federal bankruptcy court, if that court had
3 previously taken jurisdiction over the provider or facility, for an
4 order authorizing the commissioner to appoint a trustee to re-
5 habilitate or to liquidate the facility if, after notice and hearing
6 pursuant to the "Administrative Procedure Act," P. L. 1968, c. 410
7 (C. 52:14B-1 et seq.), the commissioner determines that:

8 (1) A portion of a provider's reserve fund escrow as required
9 pursuant to this act has been or is proposed to be released;

10 (2) A provider is or will be unable to meet the pro forma income
11 or cash flow projections filed pursuant to section 7 of this act,
12 except in a manner that may endanger the ability of the provider
13 to fully meet its continuing care contracts obligations;

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

16 (4) A provider is bankrupt or insolvent, or in imminent danger
17 of becoming bankrupt or insolvent.

18 b. An order to rehabilitate a facility shall direct the commissioner
19 or trustee to take possession of the property of the provider and
20 to conduct the business thereof, including the employment of man-
21 agers or agents that the commissioner or trustee deems necessary
22 and to take those steps the court directs toward removal of the
23 causes and conditions which have made rehabilitation necessary.

24 c. If the court finds, upon petition of the commissioner, trustee
25 or provider, or on its own motion, that the objectives of an order
26 to rehabilitate a facility have been accomplished and that the
27 facility may be returned to the provider's management without
28 further jeopardy to the residents, creditors and owners of the
29 facility, and to the public, the court may, upon a full report and
30 accounting of the conduct of the facility's affairs during the re-
31 habilitation and the facility's current financial condition, terminate
32 the rehabilitation and order return of the facility and its assets
33 and affairs to the provider's management.

34 d. If the commissioner determines that further efforts to re-
35 habilitate the provider would be useless, the commissioner may
36 apply to the court for an order of liquidation.

37 e. The court may issue an order of liquidation upon application
38 to the commissioner whether or not a prior order to rehabilitate
39 the facility had been issued. The order shall act as a revocation
40 of the certificate of authority issued to the facility pursuant to
41 this act. The order shall direct the commissioner or a trustee to

42 marshal and liquidate all of the provider's assets located within
43 the State.

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

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

51 (2) Used on behalf of residents of a facility that is being liqui-
52 dated; or

53 (3) Paid, on behalf of those persons, to other facilities operated
54 by providers who hold a certificate of authority issued pursuant
55 to this act.

56 g. The court shall refuse or vacate an order for rehabilitation
57 if the provider posts a bond by a surety authorized to do business
58 in this State and executed in favor of the commissioner on behalf
59 of persons who may be found entitled to a refund of entrance fees
60 from the provider or other damages in the event the provider is
61 unable to fulfill the terms of its contracts to provide continuing
62 care at the facility. The amount of the bond shall be equal to the
63 reserve funding which would otherwise need to be available to
64 fulfill the provider's obligations, as determined by the court.

1 18. a. A provider or person acting on behalf of the provider is
2 liable to the person who contracts for the continuing care for
3 damages including repayment of all fees paid to the provider,
4 facility or person who violates this act plus interest thereon at the
5 legal rate, court costs and reasonable attorney's fees if the pro-
6 vider or person acting on behalf of the provider:

7 (1) Enters into a contract for continuing care at a facility which
8 does not have a certificate of authority issued pursuant to this act;

9 (2) Enters into a contract for continuing care at a facility with-
10 out having first delivered a disclosure statement to a person con-
11 tracting for continuing care pursuant to this act; or

12 (3) Enters into a contract for continuing care at a facility with
13 a person who has relied on a disclosure statement which omits a
14 material fact required to be stated therein pursuant to this act.

15 The reasonable value of care and lodging provided to the resi-
16 dent by or on whose behalf the contract for continuing care was
17 entered into prior to discovery of the violation, misstatement or
18 omission or the time the violation, misstatement or omission should
19 reasonably have been discovered shall be deducted from the amount
20 of repayment due the person.

21 b. A provider is liable under this section whether or not the
22 provider has actual knowledge of the violation, misstatement or
23 omission. A person acting on behalf of the provider is liable under
24 this section only if the person has actual knowledge of the viola-
25 tion, misstatement or omission.

26 c. A person may not file or maintain an action under this section
27 if before filing the action, the person received an offer to refund all
28 amounts paid to the provider, facility or person violating this act
29 plus interest from the date of payment, less the reasonable value of
30 care and lodging provided prior to receipt of the offer and the
31 person failed to accept the offer within 30 days of its receipt. At the
32 time a provider makes a written offer of rescission, the provider
33 shall file a copy with the commissioner and obtain the approval of
34 the commissioner for the offer. The offer shall be written in clear
35 and understandable language and shall explain the limitation on
36 court action provided pursuant to this subsection.

37 d. No person shall institute an action to enforce a liability created
38 under this act more than six years after the execution of the contract
39 for continuing care which gave rise to the violation.

40 e. Except as expressly provided in this act, civil liability in
41 favor of a private party shall not arise against a person by im-
42 plication from or as a result of the violation of this act or an order
43 issued pursuant to this act. This act shall not limit a liability which
44 may exist by virtue of any other law if this act were not in effect.

1 19. a. The commissioner or his designee may, as often as he
2 reasonably deems necessary, conduct an investigation to determine
3 whether any person has violated or is about to violate any pro-
4 vision of this act or to aid in the enforcement of this act or in the
5 prescribing of rules and forms hereunder.

6 b. For the purpose of any investigation or proceeding under this
7 act, the commissioner or his designee may administer oaths and
8 affirmations, subpoena witnesses, compel their attendance, take
9 evidence and require the production of any books, papers, corre-
10 spondence, memoranda, agreements or other documents or records
11 which the commissioner deems relevant or material to the inquiry.

1 20. The commissioner or his designee shall visit each facility
2 offering continuing care in this State to examine its books and
3 records at least once every four years.

1 21. The commissioner shall prepare and cause to be distributed
2 to the public a consumers guide to continuing care facilities and
3 an annual directory of continuing care facilities in the State.

1 22. If the commissioner determines or has cause to believe that

2 a person has engaged in any act or practice which constitutes a
3 violation of this act, the commissioner may:

4 a. Issue an order requiring the person to cease and desist from
5 engaging in the act or practice; or

6 b. Bring an action in a court of competent jurisdiction to enjoin
7 the act or practice and to enforce compliance with this act. Upon
8 a proper showing, the court may grant a permanent or temporary
9 injunction, restraining order or writ of mandamus and may
10 appoint a receiver or conservator for the defendant or the defen-
11 dant's assets. The commissioner shall not be required to post a
12 bond.

1 23. a. The commissioner may refer any available evidence con-
2 cerning criminal violations of this act to the Attorney General or
3 the appropriate county prosecutor.

4 b. The Attorney General or a county prosecutor may institute
5 appropriate criminal proceedings either in response to a referral
6 from the commissioner or on their own initiative.

7 c. Nothing in this act limits the power of the State to punish any
8 person for any conduct which constitutes a crime under any other
9 law.

1 24. The commissioner shall determine reasonable fees for filing
2 an application for a certificate of authority and other required
3 documents pursuant to this act. The commissioner also may assess
4 a provider for reasonable expenses incurred by the department in
5 the investigation or rehabilitation of a provider or facility pur-
6 suant to this act.

1 25. A provider who is offering but not providing continuing care
2 may be given a reasonable time, not to exceed one year from the
3 date of promulgation of applicable regulations, within which to
4 comply with the requirements of this act and obtain a certificate of
5 authority.

1 26. A facility which has not entered into any agreements for
2 continuing care pursuant to this act since 1965, is not subject to
3 the provisions of this act; but this exclusion shall not apply if that
4 facility enters into one or more agreements for continuing care
5 on or after the effective date of this act.

1 27. A facility which has less than 50 residents who are under
2 continuing care agreements on the date of enactment of this act
3 is not subject to the provisions of this act; but this exclusion shall
4 not apply if that facility increases the number of its residents under
5 continuing care agreements to 50 or more, after the date of enact-
6 ment of this act.

1 28. a. There is created a Continuing Care Advisory Council

2 which consists of 12 members as follows: the Commissioner of
3 Community Affairs or the commissioner's designee, who shall serve
4 ex officio and shall be a non-voting member; seven public members
5 appointed by the Governor who are residents of the State and three
6 of whom are administrators of continuing care facilities in this
7 State, one of whom is a representative of the business community
8 and knowledgeable in the area of management, one of whom is a
9 certified public accountant, one of whom is an attorney licensed to
10 practice in this State and one of whom is a resident of a continuing
11 care retirement community in this State; two members of the Senate
12 appointed by the President thereof, not more than one of whom is
13 a member of the same political party; and two members of the
14 General Assembly appointed by the Speaker thereof, not more than
15 one of whom is a member of the same political party.

16 b. The term of office for each public member is three years, or
17 until the member's successor has been appointed; except that of the
18 public members first appointed, two shall be appointed for a term
19 of one year, two for a term of two years and three for a term of
20 three years. The legislative members shall be appointed for their
21 legislative term of office.

22 A vacancy in the membership of the council shall be filled in the
23 same manner as the original appointment, but for the unexpired
24 term. A member of the council is eligible for reappointment.

25 The members of the council shall serve without compensation, but
26 the council shall reimburse the members for the reasonable ex-
27 penses incurred in the performance of their duties.

28 c. The council shall hold an organizational meeting within 30
29 days after the appointment of its members. The members of the
30 council shall elect from among them a chairman who shall be the
31 chief executive officer of the council and the members shall elect a
32 secretary who need not be a member of the council.

33 d. The council shall meet at least four times a year but may meet
34 more frequently at the discretion of the chairman or the commis-
35 sioner.

36 e. The council may call to its assistance and avail itself of the
37 services and assistance of any officials and employees of the De-
38 partment of Community Affairs or other State agency and political
39 subdivisions and their departments, boards, bureaus, commissions
40 and agencies as it requires and as is available to it for this purpose
41 and may expend any funds that are appropriated or otherwise
42 made available to it pursuant to this act.

43 f. The council shall:

44 (1) Advise and provide information to the commissioner on

45 matters pertaining to the operation and regulation of continuing
46 care retirement facilities, upon request of the commissioner;

47 (2) Review and comment upon, as appropriate, any proposed
48 rules and regulations and legislation pertaining to continuing care
49 retirement facilities;

50 (3) Make recommendations to the commissioner about any
51 needed changes in rules and regulations and State and federal laws
52 pertaining to continuing care retirement facilities; and

53 (4) Assist in the rehabilitation of a continuing care retirement
54 facility, upon request of the commissioner.

1 29. The commissioner shall adopt rules and regulations necessary
2 to carry out the provisions of this act pursuant to the "Administra-
3 tive Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.). The
4 commissioner shall adopt the regulations within six months of the
5 effective date of this act.

1 30. This act shall take effect on the 180th day following enact-
2 ment.

January 13, 1986

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY BILL NOS. 2594 AND 2613 (SR)

To the General Assembly:

Pursuant to Article V, Section 1, Paragraph 14 of the Constitution, I herewith return Assembly Committee Substitute for Assembly Bill Nos. 2594 and 2613 (SR) without my signature.

This bill seeks to provide New Jersey with the ability to regulate the practices and ensure the financial solvency of continuing care retirement communities. These communities are facilities where older Americans live and receive varying degrees of continuing health care for their lives or a period greater than one year. While there is clearly a need for regulation in this area, I regret I am unable to sign this bill as it appears before me today. This is a very complex bill, and additional time is needed to study its provisions and develop amendments which will provide workable and strong protections for senior citizens.

As New Jersey citizens begin to reach their twilight years, they become fearful that they will fall victim to the illnesses that so often accompany age. To allay their fears, many decide to investigate the various continuing care retirement communities that are becoming more prevalent in our State. There are currently four such communities in operation and some fifteen additional facilities in the start-up stages.

The astounding speed with which these communities are growing has convinced me that legislation must be put in place to regulate the industry. However, these regulations must be carefully drafted so as to provide residents and prospective residents with facilities that offer secure economic, health and living arrangements.

The drafting and guidance of this bill through the legislative process was a difficult task, and I commend the sponsors for having the foresight to attempt to regulate an industry that by its very nature invites abuse. I do not believe, however, that the provisions in this legislation go far enough to protect New Jersey's older citizens who choose to enroll in continuing care retirement communities.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

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When a senior citizen joins a community, often he must turn over a substantial portion of his assets. In addition, he is required to pay monthly maintenance fees to ensure the continuation of services offered at the facility. In light of this, I believe more safeguards should be built into this legislation to protect residents and prospective residents. For example, I believe that more complete disclosure requirements should be considered. In addition, I am not convinced that the reserve requirements in this bill are sufficient, and I believe further study in this area is required. A provision should be added to prevent unconscionable fee increases as well as reductions in services. Finally, other provisions in the bill should be clarified and, in some instances, expanded to offer the maximum protection to residents under the laws of this State. Due to the significant additional work which this complex legislation requires, I am unable to sign it at this time.

Accordingly, I herewith return Assembly Committee Substitute for Assembly Bill Nos. 2594 and 2613 (SR) without my approval.

Respectfully,
/s/ Thomas H. Kean
GOVERNOR

[seal]

Attest:
/s/ W. Cary Edwards
Chief Counsel



OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001

Contact: JOHN SAMERJAN
609-292-8956 OR 292-6000 EXT. 207

TRENTON, N.J. 08625

Release: WED., SEPT. 3, 1986

Governor Thomas H. Kean today signed legislation to protect New Jersey senior citizens by regulating the burgeoning continuing care retirement community industry.

Continuing care retirement communities (CCRC's) provide lodging, nursing, medical or other health related services to individuals who enter into a contractual agreement with the facility, generally for the life of the person.

The legislation, (A-2432/S-2310), was sponsored by Assemblyman Richard A. Zimmer (R-Hunterdon) and Senator Frank Pallone (D-Monmouth).

"This law will ensure that those senior citizens who choose this increasingly popular retirement option will receive the 'continuing care' for which they paid significant sums of money," the Governor said.

"Tragic consequences can result for the senior citizen if a continuing care facility were to become insolvent or unable to provide the services promised --- or if the resident, unable to meet the monthly maintenance fees, faces eviction after having invested the bulk of his or her savings in securing admittance to the facility."

There are currently four CCRC's in New Jersey, all of which are not for profit and have been existence for many years. They include Navesink House, Red Bank; Meadow Lakes, Hightstown; Medford Leas, Medford; and Cadbury, Cherry Hill. These facilities all offer residential accommodations with on-site nursing facilities.

- more -

However, several existing facilities will fall under the auspices of this law and 12 additional certificates of need have been issued for new CCRC's. These include three facilities planned for Lakewood, two in Morris County and two in Burlington County.

"The demand for CCRC's is growing rapidly as more people become familiar with this concept and the market could support many more than currently exist," noted Department of Community Affairs (DCA) Commissioner Leonard Coleman, whose department will implement this law.

"In fact, a recent study suggests that by 1990 as many as 14 additional CCRC's may be needed to meet the demand for these facilities. Without this law they could continue to develop at will, placing in jeopardy the personal and financial welfare of their residents," he added.

Among the provisions of this law are:

1) the requirement that a full disclosure is made of each facility's financial standing and of the contractual obligations and ownership of the facilities;

2) the establishment of minimum standards concerning the financial solvency of the CCRC, including the provision that during the first five years a minimum liquid reserve of 15 percent of the projected annual operating expenses be created;

3) the authorization given to the DCA Commissioner to place a lien on the assets of a financially troubled CCRC to ensure that residents come before creditors if bankruptcy occurs; and

4) the requirement that full disclosure be made of the rights of the residents in the facilities and the costs to the resident of residing in the CCRC.

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