

House Bill 843

By: Representatives Jacobs of the 80th and Knox of the 24th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to
2 extensively revise the requirements for continuing care providers and facilities; to revise
3 definitions; to provide for enforcement powers of the Commissioner of Insurance; to revise
4 provisions relating to annual disclosure statements; to revise requirements for continuing care
5 agreements; to provide extensive requirements for disclosure statements; to provide for
6 specific financial requirements; to provide for supervision, rehabilitation, and liquidation of
7 a continuing care provider facility; to revise provisions relating to penalties for violations;
8 to provide for related matters; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by
12 revising Chapter 45, relating to continuing care providers and facilities, as follows:

13 style="text-align:center">"CHAPTER 45

14 33-45-1.

15 As used in this chapter, the term:

16 (1) 'Continuing care' or 'care' means furnishing pursuant to an agreement ~~shelter, lodging~~
17 in which a resident lives independently, food, and ~~either nursing care or personal services~~,
18 whether such nursing care ~~or personal services are~~ is provided in the facility or in another
19 setting designated by the agreement for continuing care, to an individual not related by
20 consanguinity or affinity to the provider furnishing such care upon payment of an
21 entrance fee. ~~Other personal~~ Personal services provided, if any, shall be designated in the
22 continuing care agreement. Agreements to provide continuing care include agreements
23 to provide care for any duration, including agreements that are terminable by either party.

24 (2) 'Continuing care agreement' means a contract or agreement to provide continuing
 25 care or other services regulated by this chapter.

26 ~~(2)~~(3) 'Entrance fee' means an initial or deferred payment of a sum of money or property
 27 made as full or partial payment to assure the resident a place in a facility continuing care
 28 and lodging in which a resident lives independently. Provided, however, that such an
 29 initial or deferred payment of a sum of money or property made which is greater than or
 30 equal to 12 times the monthly care fee shall be presumed to be an entrance fee so long as
 31 such payment is intended to be a full or partial payment to assure the resident lodging in
 32 which he or she lives independently and certain other services which do not otherwise
 33 constitute continuing care. An accommodation fee, admission fee, or other fee of similar
 34 form and application shall be considered to be an entrance fee.

35 ~~(3)~~(4) 'Facility' means a place in which it is undertaken to provide continuing care or
 36 other services regulated by this chapter.

37 ~~(4)~~(5) 'Licensed' means that the provider has obtained a certificate of authority from the
 38 department.

39 (6) 'Monthly care fee' means the fee charged to a resident for continuing care on a
 40 monthly or periodic basis. Periodic fee payments or other prepayments shall not be
 41 monthly care fees.

42 ~~(5)~~(7) 'Personal services' means, but is not limited to, such services as: individual
 43 assistance with eating, bathing, grooming, dressing, ambulation, and housekeeping;
 44 supervision of self-administered medication; arrangement for or provision of social and
 45 leisure services; arrangement for appropriate medical, dental, nursing, or mental health
 46 services; and other similar services which the department may define. 'Personal services'
 47 shall not be construed to mean the provision of medical, nursing, dental, or mental health
 48 services by the staff of a facility.

49 ~~(6)~~(8) 'Provider' means the owner or operator, whether a natural person, partnership, or
 50 other unincorporated association, however organized, trust, or corporation, of an
 51 institution, building, residence, or other place, whether operated for profit or not, which
 52 owner or operator undertakes to provide continuing care or other services regulated under
 53 this chapter for a fixed or variable fee, or for any other remuneration of any type, whether
 54 fixed or variable, for the period of care, payable in a lump sum or lump sum and monthly
 55 maintenance charges or in installments.

56 ~~(7)~~(9) 'Resident' means a purchaser of or a nominee of or a subscriber to a continuing
 57 care agreement or other agreement regulated under this chapter. Such an agreement may
 58 not be construed to give the resident a part ownership of the facility in which the resident
 59 is to reside unless expressly provided for in the agreement.

60 33-45-2.

61 ~~Except as provided in this chapter, providers of continuing care facilities shall be governed~~
 62 ~~by the provisions of this chapter and shall be exempt from all other provisions of this title.~~

63 (a) For the purpose of enforcing the requirements of this chapter, the Commissioner and
 64 the department are authorized to use the powers granted in Chapters 1 and 2 of this title.

65 (b) A facility which charges a resident an entrance fee for lodging in which a resident lives
 66 independently and for certain services which do not constitute continuing shall not call
 67 itself nor be considered a provider of continuing care, but such facility shall otherwise be
 68 subject to the requirements imposed upon the providers and facilities regulated by this
 69 chapter.

70 33-45-3.

71 Nothing in this title or chapter shall be deemed to authorize any provider of a continuing
 72 care facility to transact any insurance business other than that of continuing care insurance
 73 or otherwise to engage in any other type of insurance unless it is authorized under a
 74 certificate of authority issued by the department under this title. Nothing in this chapter
 75 shall be construed so as to interfere with the jurisdiction of the Department of Human
 76 Resources, the Department of Community Health, or any other regulatory body exercising
 77 authority over continuing care providers.

78 33-45-4.

79 The administration of this chapter is vested in the department, which shall:

80 (1) Prepare and furnish all forms necessary under the provisions of this chapter;

81 (2) Collect in advance, and the applicant shall pay in advance, the following fees:

82 (A) At the time of filing an application for a certificate of authority, an application fee
 83 as provided in Code Section 33-8-1 for each facility;

84 (B) At the time of renewal of a certificate of authority, a renewal fee as provided in
 85 Code Section 33-8-1 for each year or part thereof for each facility where continuing
 86 care is provided; and

87 (C) A late fee in an amount equal to 50 percent of the renewal fee in effect on the last
 88 preceding regular renewal date. In addition to any other penalty that may be provided
 89 for under this chapter, the department may levy a fine not to exceed \$50.00 a day for
 90 each day of noncompliance; and

91 (3) Adopt rules, within the standards of this chapter, necessary to effect the purposes of
 92 this chapter. Specific provisions in this chapter relating to any subject shall not preclude
 93 the department from adopting rules concerning such subject if such rules are within the
 94 standards and purposes of this chapter.

95 ~~(4) Adopt rules, within the standards of this chapter, to set a bond conditioned upon~~
 96 ~~compliance with the provisions of this chapter. The amount of the bond shall be not less~~
 97 ~~than \$10,000.00. The rules adopted by the department shall provide for consideration of~~
 98 ~~the obligations, financial condition, amounts of debt, service provisions, and such other~~
 99 ~~features as deemed pertinent and applicable to the determination of a sufficient bond~~
 100 ~~amount; and~~

101 ~~(5) Impose administrative fines and penalties pursuant to this chapter.~~

102 33-45-5.

103 No person may engage in the business of providing continuing care or issuing continuing
 104 care agreements in this state without a certificate of authority therefor obtained from the
 105 department as provided in this chapter. The application for approval or renewal of a
 106 certificate of authority shall be on such forms as provided by the department. The
 107 department shall issue such certificate of authority if the applicant pays the required fees
 108 and the continuing care agreement for the applicant meets the requirements of Code
 109 Section 33-45-7. The department shall renew a certificate of authority if the provider pays
 110 the required fees and furnishes the annual disclosure statements required by Code Section
 111 33-45-6 and is otherwise not in violation of this chapter.

112 33-45-6.

113 (a) Annually, on or before ~~May 1~~ the time of renewal of a certificate of authority, the
 114 provider shall file ~~an annual~~ a revised disclosure statement and such other information and
 115 data showing its condition as of the last day of the preceding calendar year or fiscal year
 116 of the provider. If the department does not receive the required information on or before
 117 ~~May 1~~ the time of renewal of the certificate of authority or within 120 days after the last
 118 day of the fiscal year of the provider, a late fee may be charged ~~pursuant to Code Section~~
 119 ~~33-45-4~~. The department may approve an extension of up to 30 days.

120 (b) The provider shall also make the revised disclosure statement available to all the
 121 residents of the facility. The revised disclosure statement shall include a narrative
 122 describing any material differences between the forecasted statements of revenues and
 123 expenses and cash flows or other forecasted financial data filed pursuant to paragraph (9)
 124 of subsection (d) of Code Section 33-45-9 as a part of the disclosure statement recorded
 125 immediately subsequent to the start of the provider's most recently completed fiscal year
 126 and the actual results of operations during that fiscal year, together with the revised
 127 forecasted statements of revenues and expenses and cash flows or other forecasted financial
 128 data being filed as a part of the revised disclosure statement. A provider may also revise
 129 its disclosure statement and have the revised disclosure statement recorded at any other

130 time if, in the opinion of the provider, revision is necessary to prevent an otherwise current
 131 disclosure statement from containing a material misstatement of fact or omitting a material
 132 fact required to be stated therein. Only the most recently recorded disclosure statement,
 133 with respect to a facility, and in any event, only a disclosure statement dated within one
 134 year plus 120 days prior to the due date of the time of renewal of a certificate of authority
 135 required by this chapter, shall be considered current.

136 ~~(b) The annual statement shall be in such form as the department prescribes and shall~~
 137 ~~contain at least the following:~~

138 ~~(1) Financial statements audited by an independent certified public accountant, which~~
 139 ~~shall contain, for two or more fiscal years if the facility has been in existence that long,~~
 140 ~~the following:~~

141 ~~(A) An accountant's opinion and, in accordance with generally accepted accounting~~
 142 ~~principles:~~

143 ~~(i) A balance sheet;~~

144 ~~(ii) A statement of income and expenses;~~

145 ~~(iii) A statement of equity or fund balances; and~~

146 ~~(iv) A statement of changes in financial position; and~~

147 ~~(B) Notes to the financial statements considered customary or necessary for full~~
 148 ~~disclosure or adequate understanding of the financial statements, financial condition,~~
 149 ~~and operation;~~

150 ~~(2) The following financial information:~~

151 ~~(A) A schedule giving additional information relating to property, plant, and equipment~~
 152 ~~having an original cost of at least \$25,000.00 so as to show in reasonable detail with~~
 153 ~~respect to each separate facility original costs, accumulated depreciation, net book~~
 154 ~~value, appraised value or insurable value and date thereof, insurance coverage,~~
 155 ~~encumbrances, and net equity of appraised or insured value over encumbrances. Any~~
 156 ~~property not used in continuing care shall be shown separately from property used in~~
 157 ~~continuing care;~~

158 ~~(B) The level of participation in medicare or Medicaid programs, or both;~~

159 ~~(C) A statement of all fees required of residents including, but not limited to, a~~
 160 ~~statement of the entrance fee charged, the monthly service charges, the proposed~~
 161 ~~application of the proceeds of the entrance fee by the provider, and the plan by which~~
 162 ~~the amount of the entrance fee is determined if the entrance fee is not the same in all~~
 163 ~~cases; and~~

164 ~~(D) Any change or increase in fees when the provider changes either the scope of, or~~
 165 ~~the rates for, care or services, regardless of whether the change involves the basic rate~~
 166 ~~or only those services available at additional costs to the resident; and~~

167 ~~(3)~~(c) If the provider is an individual, the annual revised disclosure statement shall be
 168 sworn to by the individual; if a limited partnership, by the general partner; if a partnership
 169 other than a limited partnership, by all the partners; if any other unincorporated
 170 association, by all its members or officers and directors; if a trust, by all its trustees and
 171 officers; and, if a corporation, by the president and secretary thereof.

172 33-45-7.

173 (a) In addition to other provisions considered proper to effectuate any continuing care
 174 agreement, addendum, or amendment, each such agreement, addendum, or amendment
 175 shall be in writing and shall:

176 (1) Provide for the continuing care of only one resident, or for two persons occupying
 177 space designed for double occupancy under appropriate regulations established by the
 178 provider, and shall state the total consideration to be paid, including a list all properties
 179 transferred and their market value at the time of transfer, including donations,
 180 subscriptions, fees, and any other amounts paid or payable by, or on behalf of, the
 181 resident or residents;

182 (2) Specify all services which are to be provided by the provider to each resident,
 183 including, in detail, all items which each resident will receive, whether the items will be
 184 provided for a designated time period or for life, and whether the services will be
 185 available on the premises or at another specified location. The provider shall indicate
 186 which services or items are included in the agreement for continuing care and which
 187 services or items are made available at or by the facility at extra charge. Such items ~~shall~~
 188 may include, but are not limited to, food, ~~shelter~~ lodging, personal services or nursing
 189 care, drugs, burial, and incidentals;

190 (3) Estimate the number of residents of the facility to be provided services;

191 ~~(3)~~(4) Describe the terms and conditions under which an agreement for continuing care
 192 may be canceled by the provider or by a resident and the conditions, if any, under which
 193 all or any portion of the entrance fee will be refunded in the event of cancellation of the
 194 agreement by the provider or by the resident, including the effect of death of or any
 195 change in the health or financial condition of a person between the date of entering an
 196 agreement for continuing care and the date of initial occupancy of a living unit by that
 197 person;

198 ~~(4)~~(5) Describe:

199 (A) The living quarters in which the resident will be living independently;

200 (B) Any property rights of the resident;

201 (C) The the health and financial conditions required for a person to be accepted as a
 202 resident and to continue as a resident, once accepted, including the effect of any change

203 in the health or financial condition of a person between the date of entering into a
 204 continuing care agreement and the date of taking occupancy in a living unit; and
 205 (D) The conditions under which a living unit occupied by a resident may be made
 206 available by the provider to a different or new resident other than on the death of the
 207 prior resident;
 208 ~~(5)(E) Describe the~~ The policies to be implemented and the circumstances under which
 209 the resident will be permitted to remain in the facility in the event of financial
 210 difficulties of the resident; and
 211 (F) The procedures the provider shall follow to change the resident's accommodation
 212 if necessary for the protection of the health or safety of the resident or the general and
 213 economic welfare of the residents;
 214 (6) State the fees that will be charged if the resident marries while at the designated
 215 facility, the terms concerning the entry of a spouse to the facility, and the consequences
 216 if the spouse does not meet the requirements for entry;
 217 (7) State whether the funds or property transferred for the care of the resident is:
 218 (A) Nonrefundable, in which event the agreement shall comply with this subparagraph.
 219 Such agreement shall allow a 90 day trial period of residency in the facility during
 220 which time the provider, resident, or person who provided the transfer of funds or
 221 property for the care of such resident may cancel the agreement after written notice.
 222 A refund ~~must~~ shall be made of such funds, property, or both within 120 days after the
 223 receipt of such notice and shall be calculated on a pro rata basis with the provider
 224 retaining no more than 10 percent of the amount of the entry fee. Notwithstanding the
 225 provisions of this subparagraph, the provisions of paragraph (8) of this subsection; and
 226 the provisions of subsections (b) and (e) of this Code section shall apply to
 227 nonrefundable agreements; or
 228 (B) Refundable, in which event the agreement shall comply with this subparagraph.
 229 Such agreement may be canceled upon the giving of written notice of cancellation of
 230 at least 30 days by the provider, the resident, or the person who provided the transfer
 231 of property or funds for the care of such resident; provided, however, that if an
 232 agreement is canceled because there has been a good faith determination that a resident
 233 is a danger to that resident or to others, only such notice as is reasonable under the
 234 circumstances shall be required. The agreement shall further provide in clear and
 235 understandable language, in print no smaller than the largest type used in the body of
 236 the agreement, the terms governing the refund of any portion of the entrance fee, which
 237 terms shall include a provision that all refunds be made within 120 days of notification.
 238 The agreement shall further comply with the following requirements:

239 (i) For a resident whose agreement with the facility provides that the resident does
 240 not receive a transferable membership or ownership right in the facility and who has
 241 occupied his or her unit, the refund shall be calculated on a pro rata basis with the
 242 facility retaining no more than 2 percent per month of occupancy by the resident and
 243 no more than a 4 percent fee for processing. Such refund shall be paid no later than
 244 120 days after the giving of notice of intention to cancel; or

245 ~~(ii) Alternatively, if~~ If the contract provides for the facility to retain no more than 1
 246 percent per month of occupancy by the resident, it may provide that such refund will
 247 be payable upon receipt by the provider of the next entrance fee for any comparable
 248 unit upon which there is no prior claim by any resident. Unless the provisions of
 249 subsection (e) of this Code section apply, for any prospective resident, regardless of
 250 whether or not such a resident receives a transferable membership or ownership right
 251 in the facility, who cancels the agreement prior to occupancy of the unit, the refund
 252 shall be the entire amount paid toward the entrance fee, less a processing fee not to
 253 exceed 4 percent of the entire entrance fee, but in no event shall such processing fee
 254 exceed the amount paid by the prospective resident. Such refund shall be paid no
 255 later than 60 days after the giving of notice of intention to cancel. For a resident who
 256 has occupied his unit and who has received a transferable membership or ownership
 257 right in the facility, the foregoing refund provisions shall not apply but shall be
 258 deemed satisfied by the acquisition or receipt of a transferable membership or an
 259 ownership right in the facility. The provider shall not charge any fee for the transfer
 260 of membership or sale of an ownership right;

261 (8) State the terms under which an agreement is canceled by the death of the resident.
 262 These terms may contain a provision that, upon the death of a resident, the entrance fee
 263 of such resident shall be considered earned and shall become the property of the provider.
 264 When the unit is shared, the conditions with respect to the effect of the death or removal
 265 of one of the residents shall be included in the agreement;

266 (9) Require:

267 (A) ~~Describe the policies which may lead to changes in monthly recurring and~~
 268 ~~nonrecurring charges or fees for goods and services received.~~ The agreement shall to
 269 provide for advance notice to the resident, of not less than 60 days, before any change
 270 in fees or charges or the scope of care or services may be effective, except for changes
 271 required by state or federal assistance programs;

272 (B) A description of the manner by which the provider may adjust periodic charges or
 273 other recurring fees and the limitations on these adjustments, if any; and

274 (C) A description of any policy regarding fee adjustments if the resident is voluntarily
 275 absent from the facility;

276 (10) Provide the location of other facilities, if any, which the provider owns or operates
 277 in the State of Georgia;

278 ~~(10)(11) Provide that charges for care paid in one lump sum shall not be increased or~~
 279 ~~changed during the duration of the agreed upon care, except for changes required by state~~
 280 ~~or federal assistance programs;~~

281 ~~(11) Specify whether or not the facility is, or is affiliated with, a religious, nonprofit, or~~
 282 ~~proprietary organization or management entity, the extent to which the affiliate~~
 283 ~~organization will be responsible for the financial and contractual obligations of the~~
 284 ~~provider, and the provisions of the federal Internal Revenue Code, if any, under which~~
 285 ~~the provider or affiliate is exempt from the payment of federal income tax; and~~

286 (12) State any religious or charitable affiliations of the provider and the extent, if any,
 287 to which the affiliate organization will be responsible for the financial and contractual
 288 obligations of the provider; and

289 ~~(12)(13) Describe the policy of the provider regarding reserve funding~~ State that the
 290 provider maintains an operating reserve in conformance with the requirements of Code
 291 Section 33-45-10 or is not yet required to maintain an operating reserve pursuant to that
 292 Code section.

293 (b) Notwithstanding the provisions of subparagraph (a)(7)(A) of this Code section, a A
 294 resident has the right to rescind a continuing care agreement or other agreement regulated
 295 by this chapter, without penalty or forfeiture, within seven days after executing the such
 296 agreement. During the seven-day period, the resident's funds shall be retained in a separate
 297 escrow account under terms approved by the department. A resident shall not be required
 298 to move into the facility designated in the agreement before the expiration of the seven-day
 299 period. If the provider fails to meet the requirements for release of funds held in this
 300 escrow account within a time period the Commissioner considers reasonable, these funds
 301 shall be returned to the persons who have made payment to the provider. The
 302 Commissioner shall notify the provider of the length of this time period when the provider
 303 requests release of the funds.

304 (c) The agreement shall include or shall be accompanied by a statement, printed in
 305 boldface type, which reads: 'This facility and all other continuing care facilities in this state
 306 are regulated by Chapter 45 of Title 33 of the Official Code of Georgia Annotated. A copy
 307 of the law is on file in this facility. The law gives you or your legal representative the right
 308 to inspect our most recent annual statement before signing the agreement.'

309 (d) Before the transfer of any money or other property, other than an application fee which
 310 shall not exceed \$1,500.00, to a provider by or on behalf of a prospective resident, the
 311 provider shall present a typewritten or printed copy of the agreement and the disclosure
 312 statement required pursuant to Code Section 33-45-9 to the prospective resident and all

313 other parties to the agreement. The provider shall secure a signed, dated statement from
 314 each party to the contract certifying that a copy of the agreement with the specified
 315 attachment as required pursuant to this chapter was received.

316 (e) If a resident dies before occupying the facility or, through illness, injury, or incapacity,
 317 is precluded from becoming a resident under the terms of the continuing care agreement,
 318 the agreement is shall be automatically canceled, and the resident or his or her legal
 319 representative shall receive a full refund of all moneys paid to the facility, except those
 320 costs specifically incurred by the facility at the request of the resident and set forth in
 321 writing in a separate addendum, signed by both parties, to the agreement.

322 (f) In order to comply with this Code section, a provider may furnish information not
 323 contained in the continuing care agreement through an addendum.

324 33-45-8.

325 No act, agreement, or statement of any resident, or of an individual purchasing care for a
 326 resident, under any agreement to furnish care to the resident shall constitute a valid waiver
 327 of any provision of this chapter intended for the benefit or protection of the resident or the
 328 individual purchasing care for the resident.

329 33-45-9.

330 (a) Each facility shall maintain as public information, available upon request, ~~an annual~~
 331 a copy of its current disclosure statement and the disclosure statements that have been filed
 332 with the department in the previous years of operation.

333 (b) Each facility shall post in a prominent position in the facility so as to be accessible to
 334 all residents and to the general public a summary of the ~~latest annual~~ disclosure statement
 335 required pursuant to subsection (d) of this Code section, indicating in the summary where
 336 the full ~~annual~~ disclosure statement may be inspected in the facility. A listing of any
 337 proposed changes in policies, programs, and services shall also be posted.

338 (c) Before entering into an agreement to furnish continuing care or at the time of, or prior
 339 to, the transfer of any money or other property to a provider by or on behalf of a
 340 prospective resident, whichever occurs first, the provider undertaking to furnish the care,
 341 or the agent of the provider, shall ~~make full disclosure and provide~~ the current disclosure
 342 statement required pursuant to subsection (d) of this Code section and copies to the
 343 prospective resident, or his or her legal representative, of the agreement to furnish
 344 continuing care.

345 (d) At the time of, or prior to, the execution of a contract to provide continuing care, or
 346 at the time of, or prior to, the transfer of any money or other property to a provider by or
 347 on behalf of a prospective resident, whichever occurs first, the provider shall deliver a

348 current disclosure statement to the person with whom the contract is to be entered into, the
349 text of which shall contain at least:

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

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

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

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

360 (B) The name and address of any professional service firm, association, trust,
361 partnership, or corporation in which the person has, or which has in the person, a 10
362 percent or greater interest and which it is presently intended shall currently or in the
363 future provide goods, leases, or services to the facility, or to residents of the facility, of
364 an aggregate value of \$500.00 or more within any year, including a description of the
365 goods, leases, or services and the probable or anticipated cost thereof to the facility,
366 provider, or residents or a statement that this cost cannot presently be estimated; and

367 (C) A description of any matter in which the person has been convicted of a felony or
368 pleaded nolo contendere to a felony charge or been held liable or enjoined in a civil
369 action by final judgment, if the felony or civil action involved fraud, embezzlement,
370 fraudulent conversion, or misappropriation of property; or is subject to a currently
371 effective injunctive or restrictive court order or, within the past five years, had any state
372 or federal license or permit suspended or revoked as a result of an action brought by a
373 governmental agency or department, if the order or action arose out of or related to
374 business activity of health care, including actions affecting a license to operate a foster
375 care facility, nursing home, retirement home, home for the aged, or facility subject to
376 this chapter or a similar law in another state;

377 (4) A statement as to whether the provider is or is not affiliated with a religious,
378 charitable, or other nonprofit organization; the extent of the affiliation, if any; the extent
379 to which the affiliate organization will be responsible for the financial and contract
380 obligations of the provider; and the provision of the Federal Internal Revenue Code, if
381 any, under which the provider or affiliate is exempt from the payment of income tax;

382 (5) The location and description of the physical property or properties of the facility,
383 existing or proposed, and to the extent proposed, the estimated completion date or dates,

384 whether construction has begun, and the contingencies subject to which construction may
385 be deferred;

386 (6) The provisions that have been made or will be made, including, but not limited to,
387 the requirements of Code Section 33-45-10, to provide reserve funding or security to
388 enable the provider to perform its obligations fully under contracts to provide continuing
389 care at the facility, including the establishment of escrow accounts, trusts, or reserve
390 funds, together with the manner in which these funds will be invested, and the names and
391 experience of any individuals in the direct employment of the provider who will make the
392 investment decisions;

393 (7) Financial statements of the provider certified to by an independent public accountant
394 as of the end of the most recent fiscal year or such shorter period of time as the provider
395 shall have been in existence. If the provider's fiscal year ended more than 120 days prior
396 to the date the disclosure statement is recorded, interim financial statements as of a date
397 not more than 90 days prior to the date of recording the statement shall also be included,
398 but need not be certified to by an independent certified public accountant;

399 (8) In the event the provider has had an actuarial report prepared within the prior two
400 years, the summary of a report of an actuary that estimates the capacity of the provider
401 to meet its contractual obligations to the residents;

402 (9) Forecasted financial statements for the provider of the next five years, including a
403 balance sheet, a statement of operations, a statement of cash flows, and a statement
404 detailing all significant assumptions. Reporting routine, categories, and structure may be
405 further defined by regulations or forms adopted by the Commissioner;

406 (10) A financial statement audited by an independent certified public accountant which
407 shall contain, for two or more fiscal years if the facility has been in existence that long,
408 the following:

409 (A) An accountant's opinion and, in accordance with generally accepted accounting
410 principles:

411 (i) A balance sheet;

412 (ii) A statement of income and expenses;

413 (iii) A statement of equity or fund balances; and

414 (iv) A statement of changes in financial position;

415 (B) Notes to the financial statements considered customary or necessary for full
416 disclosure or adequate understanding of the financial statements, financial condition,
417 and operation; and

418 (C) The following financial information:

419 (i) A schedule giving additional information relating to property, plants, and
420 equipment having an original cost of at least \$25,000.00 so as to show in reasonable

421 detail with respect to each separate facility original costs, accumulated depreciation,
 422 net book value, appraised value or insurable value and date thereof, insurance
 423 coverage, encumbrances, and net equity of appraised or insured value over
 424 encumbrances. Any property not used in continuing care shall be shown separately
 425 from property used in continuing care;

426 (ii) The level of participation in medicare or Medicaid programs, or both;

427 (iii) A statement of all fees required of residents, including, but not limited to, a
 428 statement of the entrance fee charged, the monthly service charges, the proposed
 429 application of the proceeds of the entrance fee by the provider, and the plan by which
 430 the amount of the entrance fee is determined if the entrance fee is not the same in all
 431 cases; and

432 (iv) Any change or increase in fees when the provider changes either the scope of,
 433 or the rates for, care or services, regardless of whether the change involves the basic
 434 rate or only those services available at additional costs to the resident; and

435 (11) If a facility is in a stage of being proposed or developed, it shall additionally
 436 provide:

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

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

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

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

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

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

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

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

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

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

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

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

468 (g)(1) The Commissioner may prescribe a standardized format for the disclosure
469 statement required by this Code section.

470 (2) The Commissioner may also require the provider to submit to him or her a copy of
471 the standardized format for the disclosure statement and a copy of the standardized form
472 of contract for continuing care used by the provider. Provided, however, that nothing in
473 this paragraph shall prohibit the department from requiring the submission of an
474 individual contract between the continuing care provider and the resident.

475 (h) The disclosure statement shall be in plain English, printed in font no smaller than ten
476 point, and in language understandable by a layperson and combine simplicity and accuracy
477 to fully advise residents of the items required by this Code section.

478 (i) The department may require a provider to alter or amend its disclosure statement in
479 order to provide full and fair disclosure to prospective residents. The department may also
480 require the revision of a disclosure statement which it finds to be unnecessarily complex,
481 confusing, or illegible.

482 33-45-10.

483 (a) In addition to the requirements of subsection (b) of Code Section 33-45-7, and
484 following the seven-day period in which the provider shall place funds in escrow as
485 required by such Code section, a provider shall ensure that the total amount of any entrance
486 fee, or any other fee or deposit paid by residents and prospective residents, shall be placed
487 in a separate account in accordance with the provisions of this Code section and under
488 terms approved by the department. The terms of the account required by this subsection
489 shall provide that funds may be released only as follows:

490 (1) When the agreement between a provider and resident or prospective resident provides
491 that funds deposited by such resident or prospective resident are refundable, funds shall

492 be released by the provider to such resident or prospective resident upon the written
 493 request of such resident or prospective resident requesting a refund of the payment made
 494 to the provider. The amount refunded shall be the entire amount deposited or the amount
 495 initially deposited less any withdrawal fee or fee that may be retained by the provider as
 496 permitted pursuant to subparagraphs (a)(9)(A) and (a)(9)(B) of Code Section 33-45-7;

497 (2) At the time a new project is financed or after the opening of a facility by a provider,
 498 funds deposited by a resident or prospective resident may be remitted to a trustee or
 499 mortgage holder of a financing instrument, if any, in order to complete construction or
 500 reduce debt, so long as sufficient funds are withheld to maintain the operating reserve
 501 required by this subsection;

502 (3) Funds deposited by a resident or prospective resident may be released to a financing
 503 trustee or mortgage holder when:

504 (A) The provider has presold at least 50 percent of the independent living units, having
 505 received a minimum 10 percent deposit on the presold units;

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

509 (C) Aggregate entrance fees received or receivable by the provider pursuant to binding
 510 continuing care contracts, plus the anticipated proceeds of any first mortgage loan or
 511 other long-term financing commitment are equal to not less than 90 percent of the
 512 aggregate cost of constructing or purchasing, equipping, and furnishing the facility plus
 513 not less than 90 percent of the funds estimated in the statement of cash flows submitted
 514 by the provider as that part of the disclosure statement required by this chapter, to be
 515 necessary to fund start-up losses and assure full performance of the obligations of the
 516 provider pursuant to continuing care contracts; or

517 (4) When the provider submits a plan of reorganization that is accepted and approved by
 518 the Commissioner.

519 (b) A provider shall maintain an operating reserve in accordance with the following
 520 requirements:

521 (1) A provider shall maintain after the opening of a facility: an operating reserve equal
 522 to 50 percent of the total operating costs of the facility forecasted for the 12 month period
 523 following the period covered by the most recent disclosure statement filed with the
 524 department. The forecast statements required by paragraph (9) of subsection (d) of Code
 525 Section 33-45-9 shall serve as the basis for computing the operating reserve. In addition
 526 to total operating expenses, total operating costs shall include debt service, consisting of
 527 principal and interest payments along with taxes and insurance on any mortgage loan or
 528 other long-term financing, but shall exclude depreciation, amortized expenses, and

529 extraordinary items as approved by the Commissioner. If the debt service portion is
 530 accounted for by way of another reserve account, the debt service portion may be
 531 excluded. If a facility maintains an occupancy level in excess of 90 percent, a provider
 532 shall only be required to maintain a 25 percent operating reserve upon approval of the
 533 Commissioner, unless otherwise instructed by the Commissioner. The operating reserve
 534 may be funded by cash, by invested cash, or by investment grade securities, including
 535 bonds, stocks, United States Treasury obligations, or obligations of United States
 536 government agencies;

537 (2) A provider shall maintain the operating reserve required by this subsection for a
 538 facility no later than five years after the facility reaches an occupancy rate of 95 percent
 539 or higher in lodging in which residents live independently; and

540 (3) An operating reserve shall only be released upon the submittal of a detailed request
 541 from the provider or facility and shall be approved by the Commissioner. Such requests
 542 shall be submitted in writing for the Commissioner to review at least ten business days
 543 prior to the date of withdrawal.

544 33-45-11.

545 Any resident injured by a violation of this chapter may bring an action for the recovery of
 546 damages plus reasonable attorney's fees.

547 33-45-12.

548 (a) If, at any time, the Commissioner determines, after notice and an opportunity for the
 549 provider to be heard, that:

550 (1) A provider has been or will be unable, in such a manner as may endanger the ability
 551 of the provider to fully perform its obligations pursuant to contracts for continuing care,
 552 to meet the forecasted financial data previously filed by the provider;

553 (2) A provider has failed to maintain the escrow account deposits or an operating reserve
 554 required by Code Section 33-45-10, or otherwise not complied with the requirements of
 555 such Code section under this chapter; or

556 (3) A provider is bankrupt or insolvent, or in imminent danger of becoming bankrupt or
 557 insolvent;

558 the Commissioner may commence a supervision proceeding pursuant to applicable law or
 559 may apply to the Superior Court of Fulton County or to the federal bankruptcy court that
 560 may have previously taken jurisdiction over the provider or facility for an order directing
 561 the Commissioner or authorizing the Commissioner to rehabilitate or to liquidate a facility
 562 in accordance with law.

563 (b) If, at any time, the court finds, upon petition of the Commissioner or provider or on its
 564 own motion, that the objectives of an order to rehabilitate a provider have been
 565 accomplished and that the facility or facilities owned by, or operated by, the provider can
 566 be returned to the provider's management without further jeopardy to the residents of the
 567 facility or facilities, the court may, upon a full report and accounting of the conduct of the
 568 provider's affairs during the rehabilitation and of the provider's current financial condition,
 569 terminate the rehabilitation and, by order, return the facility or facilities owned by, or
 570 operated by, the provider, along with the assets and affairs of the provider, to the provider's
 571 management.

572 (c) In applying for an order to rehabilitate or liquidate a provider, the Commissioner shall
 573 give due consideration in the application to the manner in which the welfare of persons
 574 who have previously contracted with the provider for continuing care may be best served.

575 (d) An order for rehabilitation may be refused or vacated if the provider posts a bond, by
 576 a recognized surety authorized to do business in this state and executed in favor of the
 577 Commissioner on behalf of persons who may be found entitled to a refund of entrance fees
 578 from the provider or other damages in the event the provider is unable to fulfill its contracts
 579 to provide continuing care at the facility or facilities, in an amount determined by the court
 580 to be equal to the reserve funding that would otherwise need to be available to fulfill such
 581 obligations.

582 ~~33-45-10.~~ 33-45-13.

583 (a) Any person who knowingly maintains, enters into, performs, or, as manager or officer
 584 or in any other administrative capacity, assists in entering into, maintaining, or performing
 585 any continuing care agreement subject to this chapter without a valid certificate of authority
 586 or renewal thereof, as contemplated by or provided in this chapter, or who otherwise
 587 violates any provision of this chapter, is guilty of a misdemeanor. Each violation of this
 588 chapter constitutes a separate offense.

589 (b) ~~The~~ In addition to the powers granted pursuant to Chapters 1 and 2 of this title, the
 590 department may bring an action to enjoin a violation, threatened violation, or continued
 591 violation of this chapter in the superior court of the county in which the violation occurred,
 592 is occurring, or is about to occur.

593 (c) Any action brought by the department against a provider shall not abate by reason of
 594 a sale or other transfer of ownership of the facility used to provide care, which provider is
 595 a party to the action, except with the express written consent of the Commissioner ~~of~~
 596 ~~Insurance.~~

597 ~~33-45-12:~~ 33-45-14.

598 Any contract or agreement for continuing care executed before July 1, 1991, which is
599 amended or renewed subsequent to July 1, 1991, and any contract or agreement for
600 continuing care executed on or after July 1, 1991, is subject to this chapter."

601 **SECTION 2.**

602 All laws and parts of laws in conflict with this Act are repealed.