

Senate Bill 166

By: Senators Stone of the 23rd, Mullis of the 53rd and Jeffares of the 17th

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 that is not in a skilled nursing facility as defined in paragraph (34) of Code Section
18 31-6-2, an intermediate care facility as defined in paragraph (22) of Code Section 31-6-2,
19 or a personal care home as defined in Code Section 31-7-12; food; and ~~either~~ nursing
20 care ~~or personal services~~, whether such nursing care ~~or personal services are~~ is provided
21 in the facility or in another setting designated by the agreement for continuing care, to an
22 individual not related by consanguinity or affinity to the provider furnishing such care
23 upon payment of an entrance fee. ~~Other personal services provided shall be designated~~
24 ~~in the continuing care agreement. Agreements to provide continuing care include~~

25 ~~agreements to provide care for any duration, including agreements that are terminable by~~
 26 ~~either party.~~

27 (2) 'Continuing care agreement' means a contract or agreement to provide continuing
 28 care or limited continuing care. Agreements to provide continuing care or limited
 29 continuing care include agreements to provide care for any duration, including
 30 agreements that are terminable by either party.

31 ~~(2)~~(3) 'Entrance fee' means an initial or deferred payment of a sum of money or property
 32 made as full or partial payment to assure the resident a place in a facility continuing care
 33 or limited continuing care; provided, however, that any such initial or deferred payment
 34 which is greater than or equal to 12 times the monthly care fee shall be presumed to be
 35 an entrance fee so long as such payment is intended to be a full or partial payment to
 36 assure the resident lodging in a residential unit. An accommodation fee, admission fee,
 37 or other fee of similar form and application greater than or equal to 12 times the monthly
 38 care fee shall be considered to be an entrance fee.

39 ~~(3)~~(4) 'Facility' means a place in which it is undertaken to provide continuing care or
 40 limited continuing care.

41 ~~(4)~~(5) 'Licensed' means that the provider has obtained a certificate of authority from the
 42 department.

43 (6) 'Limited continuing care' means furnishing pursuant to an agreement lodging that is
 44 not in a skilled nursing facility as defined in paragraph (34) of Code Section 31-6-2, an
 45 intermediate care facility as defined in paragraph (22) of Code Section 31-6-2, or a
 46 personal care home as defined in Code Section 31-7-12; food; and personal services,
 47 whether such personal services are provided in a facility such as a personal care home or
 48 in another setting designated by the continuing care agreement, to an individual not
 49 related by consanguinity or affinity to the provider furnishing such care upon payment
 50 of an entrance fee.

51 (7) 'Monthly care fee' means the fee charged to a resident for continuing care or limited
 52 continuing care on a monthly or periodic basis. Monthly care fees may be increased by
 53 the provider to provide care to the resident as outlined in the continuing care agreement.
 54 Periodic fee payments or other prepayments shall not be monthly care fees.

55 (8) 'Nursing care' means services which are provided to residents of skilled nursing
 56 facilities or intermediate care facilities.

57 ~~(5)~~(9) 'Personal services' means, but is not limited to, such services as: individual
 58 assistance with eating, bathing, grooming, dressing, ambulation, and housekeeping;
 59 supervision of self-administered medication; arrangement for or provision of social and
 60 leisure services; arrangement for appropriate medical, dental, nursing, or mental health
 61 services; and other similar services which the department may define. 'Personal services'

62 shall not be construed to mean the provision of medical, nursing, dental, or mental health
 63 services by the staff of a facility. Personal services provided, if any, shall be designated
 64 in the continuing care agreement.

65 ~~(6)~~(10) 'Provider' means the owner or operator, whether a natural person, partnership, or
 66 other unincorporated association, however organized, trust, or corporation; of an
 67 institution, building, residence, or other place, whether operated for profit or not, which
 68 owner or operator undertakes to provide continuing care or limited continuing care for
 69 a fixed or variable fee, or for any other remuneration of any type, whether fixed or
 70 variable, for the period of care, payable in a lump sum or lump sum and monthly
 71 maintenance charges or in installments.

72 ~~(7)~~(11) 'Resident' means a purchaser of or a nominee of or a subscriber to a continuing
 73 care agreement. Such an agreement ~~may~~ shall not be construed to give the resident a part
 74 ownership of the facility in which the resident is to reside unless expressly provided for
 75 in the agreement.

76 (12) 'Residential unit' means a residence or apartment in which a resident lives that is not
 77 a skilled nursing facility as defined in paragraph (34) of Code Section 31-6-2, an
 78 intermediate care facility as defined in paragraph (22) of Code Section 31-6-2, or a
 79 personal care home as defined in Code Section 31-7-12.

80 33-45-2.

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

83 (a) For the purpose of enforcing the requirements of this chapter, the Commissioner and
 84 the department shall be authorized to use the powers granted in Chapters 1 and 2 of this
 85 title.

86 (b) A provider or facility which charges a resident an entrance fee for lodging in a
 87 residential unit and provides limited continuing care shall not call itself nor be considered
 88 a provider of continuing care, but such provider or facility shall otherwise be subject to the
 89 requirements imposed upon the providers and facilities regulated by this chapter; provided,
 90 however, that a facility that has received a certificate of authority and has been in
 91 conformance with the provisions of this chapter prior to July 1, 2011, may continue to call
 92 and present itself to the public as a provider of continuing care.

93 33-45-3.

94 Nothing in this title or chapter shall be deemed to authorize any provider of a continuing
 95 care facility or a facility providing limited continuing care to transact any insurance
 96 business other than that of continuing care insurance or limited continuing care insurance

97 or otherwise to engage in any other type of insurance unless it is authorized under a
 98 certificate of authority issued by the department under this title. Nothing in this chapter
 99 shall be construed so as to interfere with the jurisdiction of the Department of Community
 100 Health or any other regulatory body exercising authority over continuing care providers or
 101 limited continuing care providers regulated by this chapter.

102 33-45-4.

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

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

105 (2) Collect in advance, and the applicant shall pay in advance; at the time of filing, a fee
 106 for an application for a certificate of authority or a renewal of a certificate of authority,
 107 both as provided in Code Section 33-8-1, and a late fee to be determined by the
 108 department. The department may also levy a fine not to exceed \$50.00 a day for each day
 109 of noncompliance; and the following fees:

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

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

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

119 (3) Adopt rules, within the standards of this chapter, necessary to effect the purposes of
 120 this chapter. Specific provisions in this chapter relating to any subject shall not preclude
 121 the department from adopting rules concerning such subject if such rules are within the
 122 standards and purposes of this chapter;.

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

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

130 33-45-5.

131 No person may engage in the business of providing continuing care or limited continuing
 132 care or issuing continuing care agreements in this state without a certificate of authority
 133 therefor obtained from the department as provided in this chapter. For purposes of this
 134 Code section, the term 'engage in the business of' shall include the development or
 135 construction of a facility subject to regulation under this chapter or the holding of oneself
 136 out to the public as a provider. The application for approval or renewal of a certificate of
 137 authority shall be on such forms as provided by the department. The department shall issue
 138 such certificate of authority if the applicant pays the required fees, and the continuing care
 139 agreement for the applicant meets the requirements of Code Section 33-45-7. The
 140 department shall renew a certificate of authority if the provider pays the required fees and
 141 furnishes the annual disclosure statements required by Code Section 33-45-6 and is
 142 otherwise not in violation of this chapter.

143 33-45-6.

144 (a) Annually, on or before ~~May 1~~ June 1, the provider shall file ~~an annual~~ a revised
 145 disclosure statement and such other information and data showing its condition as of the
 146 last day of the preceding calendar year or fiscal year of the provider. If the department
 147 does not receive the required information on or before ~~May 1~~ or within 120 days after the
 148 ~~last day of the fiscal year of the provider,~~ June 1, a late fee may be charged pursuant to
 149 ~~Code Section 33-45-4~~. The department may approve an extension of up to 30 days.

150 (b)(1) The provider shall also make the revised disclosure statement available to all the
 151 residents of the facility.

152 (2) A provider shall also revise its disclosure statement and have the revised disclosure
 153 statement recorded at any other time if revision is necessary to prevent an otherwise
 154 current disclosure statement from containing a material misstatement of fact or omitting
 155 a material fact required to be stated therein. Only the most recently recorded disclosure
 156 statement, with respect to a facility, and in any event, only a disclosure statement dated
 157 within one year plus 120 days prior to the due date of the time of renewal of a certificate
 158 of authority required by this chapter, shall be considered current.

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

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

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

166 ~~(I) A balance sheet;~~
 167 ~~(ii) A statement of income and expenses;~~
 168 ~~(iii) A statement of equity or fund balances; and~~
 169 ~~(iv) A statement of changes in financial position; and~~
 170 ~~(B) Notes to the financial statements considered customary or necessary for full~~
 171 ~~disclosure or adequate understanding of the financial statements, financial condition,~~
 172 ~~and operation;~~
 173 ~~(2) The following financial information:~~
 174 ~~(A) A schedule giving additional information relating to property, plant, and equipment~~
 175 ~~having an original cost of at least \$25,000.00 so as to show in reasonable detail with~~
 176 ~~respect to each separate facility original costs, accumulated depreciation, net book~~
 177 ~~value, appraised value or insurable value and date thereof, insurance coverage,~~
 178 ~~encumbrances, and net equity of appraised or insured value over encumbrances. Any~~
 179 ~~property not used in continuing care shall be shown separately from property used in~~
 180 ~~continuing care;~~
 181 ~~(B) The level of participation in medicare or Medicaid programs, or both;~~
 182 ~~(C) A statement of all fees required of residents including, but not limited to, a~~
 183 ~~statement of the entrance fee charged, the monthly service charges, the proposed~~
 184 ~~application of the proceeds of the entrance fee by the provider, and the plan by which~~
 185 ~~the amount of the entrance fee is determined if the entrance fee is not the same in all~~
 186 ~~cases; and~~
 187 ~~(D) Any change or increase in fees when the provider changes either the scope of, or~~
 188 ~~the rates for, care or services, regardless of whether the change involves the basic rate~~
 189 ~~or only those services available at additional costs to the resident; and~~
 190 ~~(3)(c) If the provider is an individual, the annual statement shall be sworn to by the~~
 191 ~~individual; if a limited partnership, by the general partner; if a partnership other than a~~
 192 ~~limited partnership, by all the partners; if any other unincorporated association, by all its~~
 193 ~~members or officers and directors; if a trust, by all its trustees and officers; and, if a~~
 194 ~~corporation, by the president and secretary thereof. Notwithstanding the provisions of~~
 195 ~~Code Section 33-45-9, the Commissioner may require a provider to submit such other~~
 196 ~~information as he or she deems necessary to enforce this chapter.~~

197 33-45-7.

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

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

207 (2) Specify all services which are to be provided by the provider to each resident,
 208 including, in detail, all items which each resident will receive, whether the items will be
 209 provided for a designated time period or for life, and whether the services will be
 210 available on the premises or at another specified location. The provider shall indicate
 211 which services or items are included in the ~~agreement for continuing care~~ monthly care
 212 fee and which services or items are made available at or by the facility at extra charge.
 213 Such items ~~shall~~ may include, but are not limited to, food, ~~shelter~~ lodging, personal
 214 services or nursing care, drugs, burial, and incidentals;

215 (3) Describe the terms and conditions under which ~~an agreement for continuing care~~ the
 216 continuing care agreement may be canceled by the provider or by a resident and the
 217 conditions, if any, under which all or any portion of the entrance fee will be refunded in
 218 the event of cancellation of the continuing care agreement by the provider or by the
 219 resident, including the effect of death of or any change in the health or financial condition
 220 of a person between the date of entering ~~an agreement for continuing care~~ a continuing
 221 care agreement and the date of initial occupancy of a living residential unit by that
 222 person;

223 (4) Describe:

224 (A) The residential unit;

225 (B) Any property rights of the resident;

226 (C) The ~~the~~ health and financial conditions required for a person to be accepted as a
 227 resident and to continue as a resident, once accepted, including the effect of any change
 228 in the health or financial condition of a person between the date of entering into a
 229 continuing care agreement and the date of taking occupancy in a living residential unit;

230 (D) The conditions under which a residential unit occupied by a resident may be made
 231 available by the provider to a different or new resident other than on the death of the
 232 prior resident;

233 ~~(5)~~(E) Describe the The policies to be implemented and the circumstances under which
 234 the resident will be permitted to remain in the facility in the event of financial
 235 difficulties of the resident; and

236 (F) The procedures the provider shall follow to change the resident's accommodation
 237 if necessary for the protection of the health or safety of the resident or of the general
 238 and economic welfare of the facility;

239 ~~(6)~~(5) State the fees that will be charged if the resident marries while at the designated
 240 facility, the terms concerning the entry of a spouse to the facility, and the consequences
 241 if the spouse does not meet the requirements for entry;

242 ~~(7)~~(6) State whether the funds or property transferred for the care of the resident is:

243 (A) Nonrefundable, in which event the continuing care agreement shall comply with
 244 this subparagraph. Such continuing care agreement shall allow a 90 day trial period of
 245 residency in the facility during which time the provider, resident, or person who
 246 provided the transfer of funds or property for the care of such resident may cancel the
 247 agreement after written notice. A refund ~~must~~ shall be made of such funds, property,
 248 or both within 120 days after the receipt of such notice and shall be calculated on a pro
 249 rata basis with the provider retaining no more than 10 percent of the amount of the
 250 entry fee. Notwithstanding the provisions of this subparagraph, the provisions of
 251 paragraph ~~(8)~~(7) of this subsection; and the provisions of subsections (b) and (e) of this
 252 Code section shall apply to nonrefundable continuing care agreements; or

253 (B) Refundable, in which event the continuing care agreement shall comply with this
 254 subparagraph. Such continuing care agreement may be canceled upon the giving of
 255 written notice of cancellation of at least 30 days by the provider, the resident, or the
 256 person who provided the transfer of property or funds for the care of such resident;
 257 provided, however, ~~that if an a~~ continuing care agreement is canceled because there has
 258 been a good faith determination that a resident is a ~~danger to that resident or to~~ threat
 259 to his or her health or safety or to the health or safety of others, only such notice as is
 260 reasonable under the circumstances shall be required. The continuing care agreement
 261 shall further provide in clear and understandable language, in print no smaller than the
 262 largest type used in the body of the continuing care agreement, the terms governing the
 263 refund of any portion of the entrance fee, which terms shall include a provision that all
 264 refunds be made within 120 days of notification. The moneys refunded to the resident
 265 may be from the escrow account required by Code Section 33-45-8 or from other funds
 266 available to the provider, and the continuing care agreement shall further comply with
 267 the following requirements:

268 (i) For a resident whose continuing care agreement with the facility provides that the
 269 resident does not receive a transferable membership or ownership right in the facility
 270 and who has occupied his or her residential unit, the refund shall be calculated on a
 271 pro rata basis with the facility retaining no more than 2 percent per month of
 272 occupancy by the resident and no more than a 4 percent fee for processing. Such

273 refund shall be paid no later than 120 days after the giving of notice of intention to
 274 cancel; or

275 (ii) Alternatively, if the contract continuing care agreement provides for the facility
 276 to retain no more than 1 percent per month of occupancy by the resident, it may
 277 provide that such refund will be payable upon receipt by the provider of the next
 278 entrance fee for any comparable residential unit upon which there is no prior claim
 279 by any resident; provided, however, that the agreement may define the term
 280 'comparable residential unit upon which there is no prior claim'; specifically delineate
 281 when such refund is due; and establish the order of priority of refunds to residents.

282 Unless the provisions of subsection (e) of this Code section apply, for any prospective
 283 resident, regardless of whether or not such a resident receives a transferable
 284 membership or ownership right in the facility, who cancels the agreement prior to
 285 occupancy of the residential unit, the refund shall be the entire amount paid toward
 286 the entrance fee, less a processing fee not to exceed 4 percent of the entire entrance
 287 fee, but in no event shall such processing fee exceed the amount paid by the
 288 prospective resident. Such refund shall be paid no later than 60 days after the giving
 289 of notice of intention to cancel. For a resident who has occupied his or her residential
 290 unit and who has received a transferable membership or ownership right in the
 291 facility, the foregoing refund provisions shall not apply but shall be deemed satisfied
 292 by the acquisition or receipt of a transferable membership or an ownership right in the
 293 facility. The provider shall not charge any fee for the transfer of membership or sale
 294 of an ownership right. Nothing in this paragraph shall be construed to require a
 295 continuing care agreement to provide a refund to more than one resident at a time
 296 upon the vacation of a specific comparable residential unit;

297 ~~(8)~~(7) State the terms under which an a continuing care agreement is canceled by the
 298 death of the resident. These terms may contain a provision that, upon the death of a
 299 resident, the entrance fee of such resident shall be considered earned and shall become
 300 the property of the provider. When the unit is shared, the conditions with respect to the
 301 effect of the death or removal of one of the residents shall be included in the continuing
 302 care agreement;

303 ~~(9)~~(8) Require:

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

309 (B) A description of the manner by which the provider may adjust periodic charges or
 310 other recurring fees and the limitations on these adjustments, if any; and
 311 (C) A description of any policy regarding fee adjustments if the resident is voluntarily
 312 absent from the facility;

313 ~~(10)~~(9) Provide that charges for care paid in one lump sum shall not be increased or
 314 changed during the duration of the agreed upon care, except for changes required by state
 315 or federal assistance programs; and

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

321 ~~(12)~~(10) Describe the policy of the provider regarding reserve funding.

322 (b) Notwithstanding the provisions of subparagraph (a)(6)(A) of this Code section, a A
 323 resident has the right to rescind a continuing care agreement, without penalty or forfeiture,
 324 within seven days after executing the such continuing care agreement. During the
 325 seven-day period, the resident's funds shall be retained in a separate an escrow account
 326 under terms approved by the department in accordance with the provisions of subsection
 327 (a) of Code Section 33-45-8. A resident shall not be required to move into the facility
 328 designated in the continuing care agreement before the expiration of the seven-day period.
 329 In the event that the prospective resident exercises his or her right to rescind the continuing
 330 care agreement within seven days of executing such continuing care agreement, the facility
 331 shall return any portion of the entrance fee paid by the resident within 30 days of receipt
 332 of the prospective resident's notice of rescission.

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

339 (d) Before the transfer of any money or other property, other than an application fee which
 340 shall not exceed \$1,500.00, to a provider by or on behalf of a prospective resident, the
 341 provider shall present a typewritten or printed copy of the continuing care agreement and
 342 the disclosure statement required pursuant to Code Section 33-45-10 to the prospective
 343 resident and all other parties to the agreement. The provider shall secure a signed, dated
 344 statement from each party to the contract certifying that a copy of the continuing care

345 agreement ~~with the specified attachment as required pursuant to this chapter and the~~
 346 disclosure statement was received.

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

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

355 (g) The Commissioner may also require the provider to submit to him or her a copy of the
 356 continuing care agreement generally used by the provider; provided, however, that nothing
 357 in this subsection shall prohibit the department from requiring the submission of an
 358 individual contract between the provider and the resident.

359 33-45-8.

360 (a) Any portion of the entrance fee paid by a resident to the provider shall be held in an
 361 escrow account. The escrow agreement shall state that its purpose is to protect the resident
 362 or the prospective resident. Escrow funds may be released to the resident, prospective
 363 resident, or provider in accordance with the provisions of this Code section.

364 (b) Entrance fees placed in escrow may be released in accordance with the provisions of
 365 this subsection as follows:

366 (1) Escrow funds may be released to the resident during or following the seven-day right
 367 of rescission period required in subsection (b) of Code Section 33-45-7. Such release
 368 shall be in accordance with the provisions of that Code section;

369 (2) When a continuing care agreement between a resident and provider is nonrefundable,
 370 escrow funds or a portion thereof may be released to the resident if the resident exercises
 371 his or her right to receive a refund as provided in subparagraph (A) of paragraph (6) of
 372 subsection (a) of Code Section 33-45-7. The amount and timing of the release of funds
 373 to the resident shall be in compliance with the provisions of that subparagraph;

374 (3) When the continuing care agreement between a provider and resident or prospective
 375 resident is refundable, escrow funds may be released by the provider to such resident or
 376 prospective resident. The amount and timing of the release of funds to the resident shall
 377 be in compliance with the provisions of subparagraph (B) of paragraph (6) of subsection
 378 (a) of Code Section 33-45-7;

379 (4) For a facility under construction or in development, escrow funds may be released
 380 to the provider when:

381 (A) The provider has presold at least 50 percent of the residential units, having
 382 received a minimum 10 percent deposit on each of the presold residential units;
 383 (B) The provider has received a commitment for any first mortgage loan or other
 384 financing, and any conditions of the commitment prior to disbursement of funds
 385 thereunder have been substantially satisfied; and
 386 (C) Aggregate entrance fees received or receivable by the provider pursuant to binding
 387 continuing care agreements, plus the anticipated proceeds of any first mortgage loan or
 388 other financing commitment, are equal to not less than 90 percent of the aggregate cost
 389 of constructing or purchasing, equipping, and furnishing the facility, and not less than
 390 90 percent of the funds estimated in the statement of cash flows submitted by the
 391 provider as that part of the disclosure statement required by this chapter, to be necessary
 392 to fund start-up losses and assure full performance of the obligations of the provider
 393 pursuant to continuing care contracts shall be on hand;
 394 (5) At the time a new project is financed or after the opening of a facility by a provider,
 395 escrow funds may be released to the provider, so long as the provider is in compliance
 396 with the financial reserves required by Code Section 33-45-11 and sufficient funds are
 397 maintained in escrow to meet the provider's obligations under subparagraphs (1) and (2)
 398 of this subsection; or
 399 (6) Escrow funds may be released to the provider under terms submitted to and approved
 400 by the Commissioner.

401 33-45-9.

402 No act, agreement, or statement of any resident, or of an individual purchasing continuing
 403 care or limited continuing care for a resident, under any continuing care agreement to
 404 furnish care to the resident shall constitute a valid waiver of any provision of this chapter
 405 intended for the benefit or protection of the resident or the individual purchasing care for
 406 the resident; provided, however, that nothing in this Code section shall be construed to
 407 prohibit a continuing care agreement from providing for a resident or prospective resident
 408 to agree to arbitration prior to bringing any action pursuant to Code Section 33-45-12.

409 ~~33-45-9.~~33-45-10.

410 (a) Each facility shall maintain as public information, available upon request, ~~an annual~~
 411 a copy of its current disclosure statement and the disclosure and all previous disclosure
 412 statements that have been filed with the department.
 413 (b) Each facility shall post in a prominent position in the facility so as to be accessible to
 414 all residents and to the general public a brief summary of the ~~latest annual~~ disclosure
 415 statement required pursuant to subsection (a) of this Code section, indicating in the

416 summary where the full ~~annual~~ disclosure statement may be inspected in the facility. A
 417 listing of any proposed changes in policies, programs, and services shall also be posted.

418 (c) Before entering into ~~an~~ a continuing care agreement to furnish continuing care or at the
 419 time of, or prior to, the transfer of any money or other property to a provider by or on
 420 behalf of a prospective resident, whichever occurs first, the provider undertaking to furnish
 421 the care, or the agent of the provider, shall ~~make full disclosure and provide the current~~
 422 disclosure statement required pursuant to subsection (a) of this Code section and copies to
 423 the prospective resident, or his or her legal representative, of the continuing care agreement
 424 to furnish continuing care.

425 (d) The text of the disclosure statement required by this Code section shall contain at least:

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

428 (2) The names and business addresses and description of the business experience of the
 429 person, if any, in the operation or management of similar facilities of the officers,
 430 directors, trustees, managing or general partners, any person having a 10 percent or
 431 greater equity or beneficial interest in the provider, and any person who will be managing
 432 the facility on a day to day basis and a description of these persons' interests in or
 433 occupations with the provider;

434 (3) Information on all persons named in response to paragraph (2) of this subsection
 435 which details:

436 (A) Any conflict or potential conflict of interest; and

437 (B) Any relevant criminal record, including a plea of nolo contendere, background on
 438 relevant civil judicial proceedings, and relevant action brought by a governmental
 439 agency or department, if the order or action arose out of or related to business activity
 440 of health care;

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

446 (5) An estimate of the number of residents of the facility to be provided services;

447 (6) The location and description of the physical property or properties of the facility,
 448 existing or proposed, and to the extent proposed, the estimated completion date or dates,
 449 whether construction has begun, and the contingencies subject to which construction may
 450 be deferred;

451 (7) The location of other facilities, if any, which the provider owns or operates;

- 452 (8) A statement that the provider maintains financial reserves in conformance with the
 453 requirements of Code Section 33-45-11 or otherwise meets the requirements of that Code
 454 section; the provisions that the provider has made or will make to provide reserve funding
 455 or security to enable the provider to perform its obligations fully under continuing care
 456 agreements to provide continuing care or limited continuing care at the facility, including
 457 the establishment of escrow accounts, trusts, or reserve funds, together with the manner
 458 in which these funds will be invested; and the names and experience of any individuals
 459 in the direct employment of the provider who will make the investment decisions;
- 460 (9) A financial statement audited by an independent certified public accountant which
 461 shall provide the information required by this Code section for two or more fiscal years
 462 if the facility has been in existence that long. If the facility has been in existence for a
 463 lesser length of time, the financial statements of the provider shall be for the most recent
 464 fiscal year or such shorter period of time as the provider shall have been in existence. If
 465 the provider's fiscal year ended more than 120 days prior to the date the disclosure
 466 statement is recorded, interim financial statements as of a date not more than 90 days
 467 prior to the date of recording the statement shall also be included but need not be certified
 468 to by an independent certified public accountant. The financial statement shall contain
 469 the following:
- 470 (A) An accountant's opinion and, in accordance with generally accepted accounting
 471 principles:
- 472 (i) A balance sheet;
 473 (ii) A statement of income and expenses;
 474 (iii) A statement of equity or fund balances; and
 475 (iv) A statement of changes in financial position; and
- 476 (B) Notes to the financial statements considered customary or necessary for full
 477 disclosure or adequate understanding of the financial statements, financial condition,
 478 and operation and additional costs to the resident;
- 479 (10) The level of participation in medicare or Medicaid programs, or both; and
- 480 (11) A statement concerning all fees required of residents, including, but not limited to:
- 481 (A) A statement of the entrance fee charged, the monthly service charges, the proposed
 482 application of the proceeds of the entrance fee by the provider, and the plan by which
 483 the amount of the entrance fee is determined if the entrance fee is not the same in all
 484 cases; and
- 485 (B) A record of past increases in entrance fees and monthly care fees and other similar
 486 charges during the previous three years;
- 487 (12) If a facility is in a stage of being proposed or developed, it shall additionally
 488 provide:

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

491 (B) A statement of cash flows and narrative disclosure detailing all significant
492 assumptions used in the preparation of the statement of cash flows. The Commissioner
493 may establish by rule or regulation the necessary and significant assumptions used in
494 the preparation of the statements of cash flow; and

495 (13) Any additional costs to the resident.

496 (e) The cover page of the disclosure statement shall state, in a prominent location and in
497 boldface type, the date of the disclosure statement, the last date through which the
498 disclosure statement may be delivered if not earlier revised, and that the delivery of the
499 disclosure statement to a contracting party before the execution of a continuing care
500 agreement is required by this chapter, but that the disclosure statement has not been
501 reviewed or approved by any government agency or representative to ensure accuracy or
502 completeness of the information set out.

503 (f) A copy of the continuing care agreement generally used by the provider shall be
504 attached to each disclosure statement.

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

507 (h) The department may require a provider to alter or amend its disclosure statement in
508 order to provide full and fair disclosure to prospective residents. The department may also
509 require the revision of a disclosure statement which it finds to be unnecessarily complex,
510 confusing, or illegible.

511 33-45-11.

512 (a) A provider or facility shall maintain financial reserves equal to 25 percent of the total
513 operating costs of the facility projected for the 12 month period following the period
514 covered by the most recent audited financial statements included in the disclosure
515 statement required by Code Section 33-45-10. In addition to total operating expenses, total
516 operating costs shall include debt service, consisting of principal and interest payments,
517 along with taxes and insurance on any mortgage loan or other financing, but shall exclude
518 depreciation, amortized expenses, and extraordinary items as approved by the
519 Commissioner. If the debt service portion is accounted for by way of another reserve
520 account, the debt service portion may be excluded.

521 (b) A provider or facility which has opened but not yet achieved full occupancy, as defined
522 by its lender or financing documents, if any, or 95 percent occupancy of its residential
523 units; or a provider or facility that has received a certificate of authority and has been in
524 conformance with the provisions of this chapter prior to July 1, 2011, shall be required to

525 achieve the level of financial reserves required by paragraph (1) of this subsection as
526 follows:

527 (1) The provider or facility shall submit a plan to the Commissioner the terms of which
528 assure that the provider or facility shall maintain sufficient progress to achieving the level
529 of financial reserves required by this Code section; and

530 (2) The plan demonstrates that the provider or facility is substantially likely to achieve
531 the required level of financial reserves within five years of opening or for existing
532 facilities that received a certificate of authority and have been in conformance with the
533 provisions of this chapter prior to July 1, 2011, within five years of July 1, 2011. For
534 purposes of this paragraph, the term 'substantially likely' means a provider or facility shall
535 meet the level of financial reserves required by paragraph (1) of this subsection at a
536 minimum rate of 20 percent per year as of the end of each fiscal year after the later of the
537 date the facility opens or July 1, 2011, up to a total of 100 percent as of the end of the
538 fifth fiscal year.

539 (c) The financial reserves required by this Code section may be funded by cash, by
540 invested cash, or by investment grade securities, including bonds, stocks, United States
541 Treasury obligations, obligations of United States government agencies, any reserves
542 required by lenders or established by the facility, or any other financial resources approved
543 by the Commissioner that can be used by the facility to meets its operating reserve.

544 (d) The provider or facility shall notify the Commissioner as soon as the provider or
545 facility has knowledge of the need to expend any funds which reduce the balance in the
546 financial reserves to an amount less than the amount required by this Code section. Such
547 notice shall be made within at least 30 business days of the provider or facility having such
548 knowledge. If the provider or facility does not have such knowledge within 30 business
549 days, the provider or facility shall notify the Commissioner as soon as possible, but not
550 more than 30 business days after the expenditure of such funds. In the event that the
551 amount in the reserves falls to an amount less than the amount required by this Code
552 section, the Commissioner:

553 (1) Shall require that the provider or facility submit a corrective action plan to be
554 approved by the department such that the Commissioner finds that the provider or facility
555 can be reasonably expected to be able to reinstate the level of financial reserves required
556 by this Code section within sufficient time to ensure that the contractual liabilities of the
557 provider and the best interests of the residents of the facility will be adequately protected;
558 and

559 (2) May require the provider or facility to make additional financial arrangements to
560 ensure that the contractual liabilities of the provider and the best interests of the residents
561 of the facility are adequately protected. Such arrangements may include:

- 562 (A) The posting of a security bond;
 563 (B) Requiring that the proceeds from any entrance fees from new residents be placed
 564 in escrow. Any requirement to escrow funds shall not be applied to funds which are
 565 subject to prior claims by a resident of the facility;
 566 (C) Any other security which the Commissioner determines provides adequate
 567 assurance that the provider or facility will be able to fulfill its obligations to its residents
 568 to the same extent as it would be if the financial reserves were funded at the amount
 569 required by this Code section; or
 570 (D) Requiring the provider or facility to work with lenders to refinance or reevaluate
 571 the current debt of the provider or facility.
- 572 (e) Upon written application by a provider, the Commissioner may authorize a facility to
 573 maintain financial reserves in an amount less than the amount set forth in this Code section,
 574 or at a lesser rate than the minimum rate of 20 percent per year as of the end of each fiscal
 575 year set forth in paragraph (2) of subsection (b) of this Code section, if the Commissioner
 576 determines that the contractual liabilities of the provider and the best interests of the
 577 residents of the facility may be adequately protected by the financial reserves in a lesser
 578 amount or by achieving the required financial reserves at a lesser rate than 20 percent per
 579 year.

580 ~~33-45-11.33-45-12.~~

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

583 ~~33-45-10.33-45-13.~~

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

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

594 (c) If, after a period of 180 days, or such additional time as the department shall deem
 595 appropriate, the corrective action plan required by paragraph (1) of subsection (d) of Code
 596 Section 33-45-11 has been submitted and approved by the department and the department

597 deems the facility or provider to be unable to achieve the necessary financial reserves or
 598 is not making substantial progress toward achieving the required financial reserves, the
 599 department shall be authorized to take immediate action against the facility or provider's
 600 certificate of authority, including suspension or revocation of the certificate of authority;
 601 provided, however, that before the Commissioner suspends or revokes a certificate of
 602 authority, the Commissioner shall conduct a hearing in accordance with Chapter 2 of this
 603 title.

604 (e)(d) Any action brought by the department against a provider shall not abate by reason
 605 of a sale or other transfer of ownership of the facility used to provide care, which provider
 606 is a party to the action, except with the express written consent of the Commissioner of
 607 Insurance.

608 ~~33-45-12:33-45-14.~~

609 Any contract or ~~agreement for~~ continuing care agreement executed before July 1, 1991,
 610 which is amended or renewed subsequent to July 1, 1991, and any contract or continuing
 611 care agreement for continuing care executed on or after July 1, 1991, is shall be subject to
 612 this chapter."

613 **SECTION 2.**

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