

Senate Bill 166

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

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"CHAPTER 45

33-45-1.

As used in this chapter, the term:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33-45-2.

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

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

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

33-45-3.

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

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

33-45-4.

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

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

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

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

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

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

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

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

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

33-45-5.

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

33-45-6.

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

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

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

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

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

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

~~(I) A balance sheet;~~

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

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

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

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

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

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

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

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

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

~~(3)(c) If the provider is an individual, the annual statement shall be sworn to by the individual; if a limited partnership, by the general partner; if a partnership other than a limited partnership, by all the partners; if any other unincorporated association, by all its members or officers and directors; if a trust, by all its trustees and officers; and, if a corporation, by the president and secretary thereof. Notwithstanding the provisions of Code Section 33-45-9, the Commissioner may require a provider to submit such other information as he or she deems necessary to enforce this chapter.~~

33-45-7.

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

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

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

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

(4) Describe:

(A) The residential unit;

(B) Any property rights of the resident;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33-45-8.

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

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

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

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

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

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

(A) The provider has presold at least 50 percent of the residential units, having received a minimum 10 percent deposit on each of the presold residential units;

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

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

(5) At the time a new project is financed or after the opening of a facility by a provider, escrow funds may be released to the provider, so long as the provider is in compliance with the financial reserves required by Code Section 33-45-11 and sufficient funds are maintained in escrow to meet the provider's obligations under subparagraphs (1) and (2) of this subsection; or

(6) Escrow funds may be released to the provider under terms submitted to and approved by the Commissioner.

33-45-9.

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

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

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

(b) Each facility shall post in a prominent position in the facility so as to be accessible to all residents and to the general public a brief summary of the ~~latest annual~~ disclosure statement required pursuant to subsection (a) of this Code section, indicating in the

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

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

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

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

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

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

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

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

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

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

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

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

(8) A statement that the provider maintains financial reserves in conformance with the requirements of Code Section 33-45-11 or otherwise meets the requirements of that Code section; the provisions that the provider has made or will make to provide reserve funding or security to enable the provider to perform its obligations fully under continuing care agreements to provide continuing care or limited continuing care at the facility, including the establishment of escrow accounts, trusts, or reserve funds, together with the manner in which these funds will be invested; and the names and experience of any individuals in the direct employment of the provider who will make the investment decisions;

(9) A financial statement audited by an independent certified public accountant which shall provide the information required by this Code section for two or more fiscal years if the facility has been in existence that long. If the facility has been in existence for a lesser length of time, the financial statements of the provider shall be for the most recent fiscal year or such shorter period of time as the provider shall have been in existence. If the provider's fiscal year ended more than 120 days prior to the date the disclosure statement is recorded, interim financial statements as of a date not more than 90 days prior to the date of recording the statement shall also be included but need not be certified to by an independent certified public accountant. The financial statement shall contain the following:

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

(i) A balance sheet;

(ii) A statement of income and expenses;

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

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

(B) Notes to the financial statements considered customary or necessary for full disclosure or adequate understanding of the financial statements, financial condition, and operation and additional costs to the resident;

(10) The level of participation in medicare or Medicaid programs, or both; and

(11) A statement concerning all fees required of residents, including, but not limited to:

(A) A statement of the entrance fee charged, the monthly service charges, the proposed application of the proceeds of the entrance fee by the provider, and the plan by which the amount of the entrance fee is determined if the entrance fee is not the same in all cases; and

(B) A record of past increases in entrance fees and monthly care fees and other similar charges during the previous three years;

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

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

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

(13) Any additional costs to the resident.

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

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

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

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

33-45-11.

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

(b) A provider or facility which has opened but not yet achieved full occupancy, as defined by its lender or financing documents, if any, or 95 percent occupancy of its residential units; or a provider or facility that has received a certificate of authority and has been in 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 meet 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.