

VIRGINIA ACTS OF ASSEMBLY -- 2012 SESSION

CHAPTER 303

An Act to amend and reenact §§ 38.2-4900, 38.2-4902, 38.2-4904, and 38.2-4905 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 49 of Title 38.2 an article numbered 2, consisting of sections numbered 38.2-4918 through 38.2-4923, and an article numbered 3, consisting of sections numbered 38.2-4924 through 38.2-4932; and to repeal §§ 38.2-4906 through 38.2-4909, 38.2-4911, and 38.2-4913 through 38.2-4916 of the Code of Virginia, relating to continuing care providers and community-based continuing care providers.

[H 735]

Approved March 21, 2012

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-4900, 38.2-4902, 38.2-4904, and 38.2-4905 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 49 of Title 38.2 an article numbered 2, consisting of sections numbered 38.2-4918 through 38.2-4923, and an article numbered 3, consisting of sections numbered 38.2-4924 through 38.2-4932, as follows:

CHAPTER 49.

CONTINUING CARE PROVIDER REGISTRATION AND DISCLOSURE PROVIDERS AND COMMUNITY-BASED CONTINUING CARE PROVIDERS.

Article 1.

Registration of Continuing Care Providers.

§ 38.2-4900. Definitions.

As used in this chapter article and Article 3 (§ 38.2-4924 et seq.):

"Continuing care" means providing or committing to provide board, lodging and nursing services to an individual, other than an individual related by blood or marriage, (i) pursuant to an agreement effective for the life of the individual or for a period in excess of one year, including mutually terminable contracts, and (ii) in consideration of the payment of an entrance fee. A contract shall be deemed to be one offering nursing services, irrespective of whether such services are provided under such contract, if nursing services are offered to the resident entering such contract either at the facility in question or pursuant to arrangements specifically offered to residents of the facility.

"Continuing care" also means providing or committing to provide lodging to an individual, other than an individual related by blood or marriage, (i) pursuant to an agreement effective for the life of the individual or for a period in excess of one year, including mutually terminable contracts, (ii) in consideration of the payment of an entrance fee, and (iii) where board and nursing services are made available to the resident by the provider, either directly or indirectly through affiliated persons, or through contractual arrangements, whether or not such services are specifically offered in the agreement for lodging.

"Entrance fee" means an initial or deferred transfer to a provider of a sum of money or other property made or promised to be made in advance or at some future time as full or partial consideration for acceptance of a specified individual as a resident in a facility. A fee which in the aggregate is less than the sum of the regular periodic charges for one year of residency shall not be considered to be an entrance fee except as provided in subsection A of § 38.2-4904.1.

"Facility" means the place or places in which a person undertakes to provide continuing care to an individual.

"Provider" means any person, corporation, partnership or other entity that provides or offers to provide continuing care to any individual in an existing or proposed facility in this Commonwealth. Two or more related individuals, corporations, partnerships or other entities may be treated as a single provider if they cooperate in offering services to the residents of a facility.

"Resident" means an individual entitled to receive continuing care in a facility.

"Solicit" means all actions of a provider or his agent in seeking to have individuals enter into a continuing care agreement by any means such as, but not limited to, personal, telephone or mail communication or any other communication directed to and received by any individual, and any advertisements in any media distributed or communicated by any means to individuals.

§ 38.2-4902. Disclosure statement.

A. The disclosure statement of each facility shall contain all of the following information unless such information is contained in the continuing care contract and a copy of that contract is attached to and made a part of the initial disclosure statement:

1. The name and business address of the provider and a statement of whether the provider is a partnership, foundation, association, corporation or other type of business or legal entity.
2. Full information regarding ownership of the property on which the facility is or will be operated

and of the buildings in which it is or will be operated.

3. The names and business addresses of the officers, directors, trustees, managing or general partners, and any person having a ten percent or greater equity or beneficial interest in the provider, and a description of such person's interest in or occupation with the provider.

4. For (i) the provider, (ii) any person named in response to subdivision 3 of this subsection or (iii) the proposed management, if the facility will be managed on a day-to-day basis by a person other than an individual directly employed by the provider:

a. A description of any business experience in the operation or management of similar facilities.

b. The name and address of any professional service, firm, association, foundation, trust, partnership or corporation or any other business or legal entity in which such person has, or which has in such person, a 10 percent or greater interest and which it is presently intended will or may provide goods, leases or services to the provider of a value of \$500 or more, within any year, including:

(1) A description of the goods, leases or services and the probable or anticipated cost thereof to the provider;

(2) The process by which the contract was awarded;

(3) Any additional offers that were received; and

(4) Any additional information requested by the Commission detailing how and why a contract was awarded.

c. A description of any matter in which such person:

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

(2) Is subject to an injunctive or restrictive order of a court of record, or within the past five years had any state or federal license or permit suspended or revoked as a result of an action brought by a governmental agency or department, arising out of or relating to business activity or health care, including without limitation actions affecting a license to operate a foster care facility, nursing home, retirement home, home for the aged or facility registered under this chapter or similar laws in another state; or

(3) Is currently the subject of any state or federal prosecution, or administrative investigation involving allegations of fraud, embezzlement, fraudulent conversion, or misappropriation of property.

5. A statement as to:

a. Whether the provider is or ever has been affiliated with a religious, charitable or other nonprofit organization, the nature of any such affiliation, and the extent to which the affiliate organization is or will be responsible for the financial and contractual obligations of the provider.

b. Any provision of the federal Internal Revenue Code under which the provider is exempt from the payment of income tax.

6. The location and description of the real property of the facility, existing or proposed, and to the extent proposed, the estimated completion date or dates of improvements, whether or not construction has begun and the contingencies under which construction may be deferred.

7. The services provided or proposed to be provided under continuing care contracts, including the extent to which medical care is furnished or is available pursuant to any arrangement. The disclosure statement shall clearly state which services are included in basic continuing care contracts and which services are made available by the provider at extra charge.

8. A description of all fees required of residents, including any entrance fee and periodic charges. The description shall include (i) a description of all proposed uses of any funds or property required to be transferred to the provider or any other person prior to the resident's occupancy of the facility and of any entrance fee, (ii) a description of provisions for the escrowing and return of any such funds, assets or entrance fee, the manner and any conditions of return and to whom earnings on escrowed funds are payable and (iii) a description of the manner by which the provider may adjust periodic charges or other recurring fees and any limitations on such adjustments. If the facility is already in operation, or if the provider operates one or more similar facilities within this Commonwealth, there shall be included tables showing the frequency and average dollar amount of each increase in periodic rates at each facility for the previous five years or such shorter period that the facility has been operated by the provider.

9. Any provisions that have been made or will be made to provide reserve funding or security to enable the provider to fully perform its obligations under continuing care contracts, including the establishment of escrow accounts, trusts or reserve funds, together with the manner in which such funds will be invested and the names and experience of persons who will make the investment decisions. The disclosure statement shall clearly state whether or not reserve funds are maintained.

10. Certified financial statements of the provider, including (i) a balance sheet as of the end of the two most recent fiscal years and (ii) income statements of the provider for the two most recent fiscal years or such shorter period that the provider has been in existence.

11. A pro forma income statement for the current fiscal year.

12. If operation of the facility has not yet commenced, a statement of the anticipated source and application of the funds used or to be used in the purchase or construction of the facility, including:

a. An estimate of the cost of purchasing or constructing and equipping the facility including such related costs as financing expense, legal expense, land costs, occupancy development costs and all other similar costs that the provider expects to incur or become obligated for prior to the commencement of operations.

b. A description of any mortgage loan or other long-term financing intended to be used for any purpose in the financing of the facility and of the anticipated terms and costs of such financing, including without limitation, all payments of the proceeds of such financing to the provider, management or any related person.

c. An estimate of the percentage of entrance fees that will be used or pledged for the construction or purchase of the facility, as security for long-term financing or for any other use in connection with the commencement of operation of the facility.

d. An estimate of the total entrance fees to be received from or on behalf of residents at or prior to commencement of operation of the facility.

e. An estimate of the funds, if any, which are anticipated to be necessary to fund start-up losses and provide reserve funds to assure full performance of the obligations of the provider under continuing care contracts.

f. A projection of estimated income from fees and charges other than entrance fees, showing individual rates presently anticipated to be charged and including a description of the assumptions used for calculating the estimated occupancy rate of the facility and the effect on the income of the facility of any government subsidies for health care services to be provided pursuant to the continuing care contracts.

g. A projection of estimated operating expenses of the facility, including (i) a description of the assumptions used in calculating any expenses and separate allowances for the replacement of equipment and furnishings and anticipated major structural repairs or additions and (ii) an estimate of the percentage of occupancy required for continued operation of the facility.

h. Identification of any assets pledged as collateral for any purpose.

i. An estimate of annual payments of principal and interest required by any mortgage loan or other long-term financing.

13. A description of the provider's criteria for admission of new residents.

14. A description of the provider's policies regarding access to the facility and its services for nonresidents.

15. Any other material information concerning the facility or the provider that may be required by the Commission or included by the provider.

16. The procedure by which a resident may file a complaint or disclose any concern.

B. The disclosure statement shall state on its cover that the filing of the disclosure statement with the Commission does not constitute recommendation or endorsement of the facility by the Commission.

C. A copy of the standard form or forms for continuing care contracts used by the provider shall be attached as an exhibit to each disclosure statement.

D. If the Commission determines that the disclosure statement does not comply with the provisions of this chapter, it shall have the right to take action pursuant to § ~~38.2-4915~~ 38.2-4931.

§ 38.2-4904. Annual disclosure statements.

A. Within four months following the end of the provider's fiscal year, each provider shall file with the Commission and make available by written notice to each resident at no cost an annual disclosure statement which shall contain the information required for the initial disclosure statement set forth in § 38.2-4902.

B. The annual disclosure statement shall also be accompanied by a narrative describing any material differences between:

1. The prior fiscal year's pro forma income statement, and
2. The actual results of operations during that fiscal year.

C. The annual disclosure statement shall describe the disposition of any real property acquired by the provider from residents of the facility.

D. In addition to filing the annual disclosure statement, the provider shall amend its currently filed disclosure statement at any other time if, in the opinion of the provider, an amendment is necessary to prevent the disclosure statement from containing any material misstatement of fact or failing to state any material fact required to be stated therein. Any such amendment or amended disclosure statement shall be filed with the Commission before it is delivered to any resident or prospective resident and is subject to all the requirements of this chapter, and the provider shall notify each resident of the existence of such amendment or amended disclosure statement.

E. If the Commission determines that the disclosure statement does not comply with the provisions of this chapter, it shall have the right to take action pursuant to § ~~38.2-4915~~ 38.2-4931.

§ 38.2-4905. Resident's contract.

A. In addition to other provisions considered proper to effect the purpose of any continuing care contract, each contract executed on or after the effective date of this chapter July 1, 1985, shall:

1. Provide for the continuing care of only one resident, or for two or more persons occupying space

designed for multiple occupancy, under appropriate regulations established by the provider.

2. Show the value of all property transferred, including donations, subscriptions, fees and any other amounts paid or payable by, or on behalf of, the resident or residents.

3. Specify all services which are to be provided by the provider to each resident including, in detail, all items that each resident will receive and whether the items will be provided for a designated time period or for life. Such items may include, but are not limited to, food, shelter, nursing care, drugs, burial and incidentals.

4. Describe the physical and mental health and financial conditions upon which the provider may require the resident to relinquish his space in the designated facility.

5. Describe the physical and mental health and financial conditions required for a person to continue as a resident.

6. Describe the circumstances under which the resident will be permitted to remain in the facility in the event of financial difficulties of the resident.

7. State (i) the current fees that would be charged if the resident marries while at the designated facility, (ii) the terms concerning the entry of a spouse to the facility and (iii) the consequences if the spouse does not meet the requirements for entry.

8. Provide that the provider shall not cancel any continuing care contract with any resident without good cause. Good cause shall be limited to: (i) proof that the resident is a danger to himself or others; (ii) nonpayment by the resident of a monthly or periodic fee; (iii) repeated conduct by the resident that interferes with other residents' quiet enjoyment of the facility; (iv) persistent refusal to comply with reasonable written rules and regulations of the facility; (v) a material misrepresentation made intentionally or recklessly by the resident in his application for residency, or related materials, regarding information which, if accurately provided, would have resulted in either a failure of the resident to qualify for residency or a material increase in the cost of providing to the resident the care and services provided under the contract; or (vi) material breach by the resident of the terms and conditions of the continuing care contract. If a provider seeks to cancel a contract and terminate a resident's occupancy, the provider shall give the resident written notice of, and a reasonable opportunity to cure within a reasonable period, whatever conduct is alleged to warrant the cancellation of the agreement. Nothing herein shall operate to relieve the provider from duties under Chapter 13.2 (§ 55-248.2 et seq.) of Title 55 when seeking to terminate a resident's occupancy.

9. Provide in clear and understandable language, in print no smaller than the largest type used in the body of the contract, the terms governing the refund of any portion of the entrance fee and the terms under which such fee can be used by the provider.

10. State the terms under which a contract is cancelled by the death of the resident. The contract may contain a provision to the effect that, upon the death of the resident, the money paid for the continuing care of such resident shall be considered earned and become the property of the provider.

11. Provide for at least ~~thirty~~ 30 days' advance notice to the resident, before any change in fees, charges or the scope of care or services may be effective, except for changes required by state or federal assistance programs.

12. 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.

B. A resident shall have the right to rescind a continuing care contract, without penalty or forfeiture, within seven days after making an initial deposit or executing the contract. A resident shall not be required to move into the facility designated in the contract before the expiration of the seven-day period.

C. If a resident dies before occupying the facility, or is precluded through illness, injury or incapacity from becoming a resident under the terms of the continuing care contract, the contract is automatically rescinded and the resident or his legal representative shall receive a full refund of all money paid to the provider, except those costs specifically incurred by the provider at the request of the resident and set forth in writing in a separate addendum, signed by both parties to the contract.

D. No standard continuing care contract form shall be used in this Commonwealth until it has been submitted to the Commission. If the Commission determines that the contract does not comply with the provisions of this chapter, it shall have the right to take action pursuant to § 38.2-4915 38.2-4931 to prevent its use. The failure of the Commission to object to or disapprove of any contract shall not be evidence that the contract does or does not comply with the provisions of this chapter. However, individualized amendments to any standard form need not be filed with the Commission.

Article 2.

Community-Based Continuing Care Providers.

§ 38.2-4918. Definitions.

As used in this article and Article 3 (§ 39.2-4924 et seq.):

"Community-based continuing care" or "CBCC" means a program providing or committing to provide a range of services, including long-term care services, to an individual, other than an individual related by blood or marriage, (i) pursuant to an agreement, including mutually terminable contracts, effective for the life of the individual or for a period in excess of one year; and (ii) in consideration of

the payment of an entrance fee. "Community-based continuing care" or "CBCC" also means the provision of the enumerated services in the individual's private residence as long as medically feasible and the provision of facility-based long-term care services when required, either directly or indirectly through affiliated services or through contractual arrangements.

"Community-based continuing care entrance fee" or "CBCC entrance fee" means an initial or deferred transfer to a CBCC provider of a sum of money or other property made or promised to be made in advance or at some future time as full or partial consideration for acceptance of a specified individual as a participant. A fee that in the aggregate is less than the sum of the regular periodic charges for one year of participation shall not be considered to be an entrance fee except as provided in § 38.2-4922.

"Community-based continuing care provider" or "CBCC provider" means any person, corporation, partnership, or other entity that provides or offers to provide community-based continuing care and that has operated a Continuing Care Retirement Community facility for a minimum of three years.

"Continuing Care Retirement Community facility" or "CCRC facility" means a facility, as defined in § 38.2-4900, that is registered with the Commission pursuant to § 38.2-4901.

"Participant" means an individual who has entered into a community-based continuing care contract.

"Range of services" means, without limitation, coordinated in-home care management, wellness programs, health assessments, health information and referral, home safety evaluation, homemaker services, assistance with activities of daily living, personal emergency response systems, chronic disease management, professional nursing services, services provided by a home care organization as defined in § 32.1-162.7, facility-based assisted living care provided pursuant to Article 1 (§ 63.2-1800 et seq.) of Chapter 18 of Title 63.2, and care in a certified nursing facility as defined in § 32.1-123.

"Solicit" means all actions of a CBCC provider or his agent in seeking to have individuals enter into a community-based continuing care contract by any means such as, but not limited to, personal, telephone, or mail communication or other communication directed to and received by any individual, and any advertisements in any media distributed or communicated by any means to individuals.

§ 38.2-4919. Required filing.

A. No CBCC provider shall engage in the business of providing or offering to provide community-based continuing care in the Commonwealth unless the CBCC provider (i) is registered with the Commission pursuant to Article 1 (§ 38.2-4900 et seq.) and (ii) has filed a statement with the Commission with respect to such CBCC program as provided in subsection B.

B. A statement shall be filed with the Commission by the CBCC provider on forms prescribed by the Commission and shall include:

1. All information required by the Commission pursuant to its enforcement of this article; and
2. The initial disclosure statement required by § 38.2-4920.

C. The statement shall be approved or disapproved in writing by the Commission within 90 days of the filing.

§ 38.2-4920. Community-based continuing care disclosure statement; availability of disclosure statement to prospective participants.

A. The initial disclosure statement of each community-based continuing care program shall contain the following information unless such information is contained in the CBCC contract and a copy of that contract is attached and made a part of the initial disclosure statement:

1. The name and business address of the CBCC provider and a statement of whether the provider is a partnership, foundation, association, corporation, or other type of business or legal entity;
2. Full information regarding ownership of the CCRC facility that the CBCC provider has operated for the minimum three-year period as required in the definition of CBCC provider in § 38.2-4918;
3. A complete listing of all CCRC facilities owned or operated, or both, by the CBCC provider and, for each, total liquid assets on the balance sheet and current occupancy percentages in independent living units;

4. The names and business addresses of the officers, directors, trustees, managing or general partners, and any person having a 10 percent or greater equity or beneficial interest in the CBCC provider, and a description of such person's interest in or occupation with the provider;

5. For (i) the CBCC provider, (ii) any person named in response to subdivision 4, and (iii) the proposed management, if the CBCC program will be managed on a day-to-day basis by a person other than an individual directly employed by the provider:

a. A description of any business experience in the operation or management of community-based continuing care or long-term care programs;

b. The name and address of any professional service, firm, association, foundation, trust, partnership, or corporation or any other business or legal entity in which such person has, or which has in such person, a 10 percent or greater interest and which it is presently intended will or may provide goods, leases, or services to the CBCC provider of a value of \$500 or more, within any year, including:

(1) A description of the goods, leases, or services and the probable or anticipated cost thereof to the CBCC provider;

(2) The process by which the contract was awarded;

(3) Any additional offers that were received; and

(4) Any additional information requested by the Commission detailing how and why a contract was awarded; and

c. A description of any matter in which such person:

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

(2) Is subject to an injunctive or restrictive order of a court of record, or within the past five years had any state or federal license or permit suspended or revoked as a result of an action brought by a governmental agency or department, arising out of or relating to business activity or health care, including without limitation action affecting a license to operate a home care company, foster care facility, nursing home, retirement home, home for the aged, or facility registered under this article or similar laws in another state; or

(3) Is currently the subject of any state or federal prosecution or administrative investigation involving allegations of fraud, embezzlement, fraudulent conversion, or misappropriation of property;

6. A statement as to:

a. Whether the CBCC provider is or ever has been affiliated with a religious, charitable, or other nonprofit organization, the nature of any such affiliation, and the extent to which the affiliate organization is or will be responsible for the financial and contractual obligations of the CBCC provider; and

b. Any provision of the federal Internal Revenue Code under which the CBCC provider is exempt from the payment of income tax;

7. A description of the services provided or proposed to be provided under community-based continuing care contracts, including the extent to which medical care is furnished or is available pursuant to any arrangement. The disclosure statement shall clearly state which services are included in basic community-based continuing care contracts and which services are made available by the CBCC provider at extra charge. The disclosure statement shall also clearly state which services are offered by the CBCC provider and which services are offered through contractual arrangements. The name and address of the party providing such services shall be disclosed. A definition of the services shall also be provided;

8. A description of all fees required of participants, including any entrance fee and periodic charges. The description shall include (i) a description of all proposed uses of any funds or property required to be transferred to the CBCC provider or any other person prior to the participant's enrollment in the program and of any entrance fee; (ii) a description of provisions for the escrowing and return of any such funds, assets, or entrance fee, the manner and any conditions of return, and to whom earnings on escrowed funds are payable; and (iii) a description of the manner by which the CBCC provider may adjust periodic charges or other recurring fees and any limitations on such adjustments. If the program is already in operation, or if the CBCC provider operates one or more similar programs within the Commonwealth, there shall be included tables showing the frequency and average dollar amount of each increase in periodic rates at each program for the previous five years or such shorter period that the program has been operated by the CBCC provider;

9. A description of any provisions that have been made or will be made to provide reserve funding or security to enable the CBCC provider to fully perform its obligations under community-based continuing care contracts, including the establishment of escrow accounts, trusts, or reserve funds, together with the manner in which such funds will be invested and the names and experience of persons who will make the investment decisions. The disclosure statement shall clearly state whether or not reserve funds are maintained;

10. Certified financial statements of the CBCC provider, including (i) a balance sheet as of the end of the two most recent fiscal years and (ii) income statements of the CBCC provider for the two most recent fiscal years;

11. A pro forma income statement for the current fiscal year for the community-based continuing care program and for the provider of the CBCC;

12. A description of the CBCC provider's criteria for enrollment of participants;

13. A description of the CBCC provider's policies regarding community-based services to non-participants;

14. Any other material information concerning the program or the CBCC provider that may be required by the Commission or included by the CBCC provider; and

15. The procedure by which a participant may file a complaint or disclose any concerns, to include the CBCC provider's process for resolving complaints and concerns.

B. The disclosure statement shall state on its cover that the filing of the disclosure statement with the Commission does not constitute recommendation or endorsement of the CBCC program by the Commission.

C. A copy of the standard form or forms for CBCC contracts used by the CBCC provider shall be attached as an exhibit to each disclosure statement.

D. If the Commission determines that the disclosure statement does not comply with the provisions of this article, it shall have the right to take action pursuant to § 38.2-4931.

E. Three days prior to the execution of a community-based continuing care contract or the transfer of any money or other property to a provider by or on behalf of a prospective participant, whichever first occurs, the CBCC provider shall deliver to the person with whom the CBCC contract is to be entered into a copy of a disclosure statement with respect to the program in question meeting all requirements of this article as of the date of its delivery.

§ 38.2-4921. Annual community-based continuing care disclosure statements.

A. Within four months following the end of the CBCC provider's fiscal year, the CBCC provider shall file with the Commission and make available by written notice to each participant at no cost an annual disclosure statement that shall contain the information required for the initial disclosure statement set forth in § 38.2-4920.

B. The annual disclosure statement shall also be accompanied by a narrative describing any material differences between:

- 1. The prior fiscal year's pro forma income statement, and*
- 2. The actual results of operations during that fiscal year.*

C. The annual disclosure statement shall describe the disposition of any real property acquired by the CBCC provider from participants.

D. In addition to filing the annual disclosure statement, the CBCC provider shall amend its currently filed disclosure statement at any other time if, in the opinion of the provider, an amendment is necessary to prevent the disclosure statement from containing any material misstatement of fact or failing to state any material fact required to be stated therein. Any such amendment or amended disclosure statement shall be filed with the Commission before it is delivered to any participant or prospective participant and is subject to all the requirements of this article, and the CBCC provider shall notify each participant of the existence of such amendment or amended disclosure statement.

E. If the Commission determines that the disclosure statement does not comply with the provisions of this article, it shall have the right to take action pursuant to § 38.2-4931.

§ 38.2-4922. Escrow of entrance fee to community-based continuing care providers and others.

A. A CBCC provider shall maintain in escrow with a bank or trust company, or other escrow agent approved by the Commission, all CBCC entrance fees or portions thereof in excess of \$1,000 per person received by the CBCC provider prior to the date the participant is permitted to enroll and receive services in the CBCC program. Funds or assets deposited therein shall be kept and maintained in an account separate and apart from the CBCC provider's business accounts. For the purposes of this section only, the term "CBCC entrance fee" shall include within its meaning any advanced payment or series of advanced payments totaling \$1,000 or more, and the term "CBCC provider" shall include any person or entity that would be included in the definition thereof in § 38.2-4918 if such fee of \$1,000 or more constituted a CBCC entrance fee for the purposes of the definition of "community-based continuing care" in § 38.2-4918.

B. All funds or assets deposited in the escrow account shall remain the property of the prospective participant until released to the CBCC provider in accordance with this section. The funds or assets shall not be subject to any liens, judgments, garnishments, or creditor's claims against the provider or facility. The escrow agreement may provide that charges by the escrow agent may be deducted from the funds or assets if such provision is disclosed in the disclosure statement.

C. All funds or assets deposited in escrow pursuant to this section shall be released to the CBCC provider when the provider presents to the escrow agent evidence that the corporation has been deemed eligible to begin service and enter into permanent contracts.

D. Notwithstanding any other provision of this section, all funds or assets deposited in escrow pursuant to this section shall be released according to the terms of the escrow agreement to the prospective participant from whom it was received (i) if such funds or assets have not been released within three years after placement in escrow (but in any event within six years after placement in escrow unless specifically approved by the Commission) or within such longer period as determined appropriate by the Commission in writing, (ii) if the prospective participant dies before enrolling and receiving services from the program, or (iii) upon rescission of the CBCC contract pursuant to provisions in the CBCC contract or in this article. Funds or assets subject to release under clause (i) of this subsection or under subsection C may be held in escrow for an additional period at the mutual consent of the provider and the prospective participant; however, the prospective participant may consent to such additional period only after his deposit has been held in escrow for at least two years. Clause (i) of this subsection shall not apply if fees are refundable within 30 days of request for refund.

E. Unless otherwise specified in the escrow agreement, funds or assets in an escrow account pursuant to this section may be held in the form received or if invested shall be invested in instruments authorized for the investment of public funds as set forth in Chapter 45 (§ 2.2-4500 et seq.) of Title 2.2 and not in default as to principal or interest.

F. This section shall not apply to application or reservation fees whether or not such fees are considered to be a portion of the CBCC entrance fee, provided such application or reservation fees are

not in excess of \$1,000 per person.

§ 38.2-4923. Participant's contract.

A. In addition to other provisions considered proper to affect the purpose of any community-based continuing care contract, each CBCC contract executed on or after July 1, 2012, shall:

1. Provide for community-based continuing care;
2. Show the value of all property transferred, including donations, subscriptions, fees, and any other amounts paid or payable by, or on behalf of, the participant;
3. Specify all services that are to be provided by the CBCC provider to each participant including, in detail, all items that each participant will receive, whether the items will be provided at a certain percentage for a designated time period or for life, and what criteria will be used to distinguish eligibility for certain services;
4. Describe the physical and mental health and financial conditions upon which the CBCC provider may require the participant to relinquish his participation in the program, if any exist;
5. Describe the circumstances under which the participant will be permitted to remain in the program in the event of financial difficulties of the participant;
6. Provide that the CBCC provider shall not cancel any community-based continuing care contract with any participant without good cause. Good cause shall be limited to (i) proof that the participant is a danger to himself or others; (ii) nonpayment by the participant of a monthly or periodic fee; (iii) repeated conduct by the participant that interferes with other participants' quiet enjoyment of a facility or service, if applicable; (iv) persistent refusal to comply with reasonable written rules and regulations of the program; (v) a material misrepresentation made intentionally or recklessly by the participant in his application for participation in the program, or related materials, regarding information which, if accurately provided, would have resulted in either a failure of the participant to qualify for participation or a material increase in the cost of providing to the participant the care and services provided under the CBCC contract; or (vi) material breach by the participant of the terms and conditions of the community-based continuing care contract. If a CBCC provider seeks to cancel a CBCC contract and terminate a participant's participation, the provider shall give the participant written notice of, and a reasonable opportunity to cure within a reasonable period, whatever conduct is alleged to warrant the cancellation of the CBCC contract;
7. Provide in clear and understandable language, in print no smaller than the largest type used in the body of the CBCC contract, the terms governing the refund of any portion of the CBCC entrance fee and the terms under which such fee can be used by the CBCC provider;
8. State the terms under which a CBCC contract is cancelled by the death of the participant. The CBCC contract may contain a provision to the effect that, upon the death of the participant, the money paid for the community-based continuing care of such participant shall be considered earned and become the property of the CBCC provider; and
9. Provide for at least 30 days' advance notice to the participant before any change in fees, charges, or the scope of care or services may be effective, except for changes required by state or federal assistance programs.

B. A participant shall have the right to rescind a community-based continuing care contract, without penalty or forfeiture, within seven days after making an initial deposit or executing the contract. A participant shall not be required to initiate the program outlined in the contract before the expiration of the seven-day period.

C. If a participant dies before initiating the program, or is precluded through illness, injury, or incapacity from becoming a participant under the terms of the community-based continuing care contract, the contract is automatically rescinded and the participant or his legal representative shall receive a full refund of all money paid to the CBCC provider, except those costs specifically incurred by the CBCC provider at the request of the participant and set forth in writing in a separate addendum, signed by both parties, to the contract.

D. No standard community-based continuing care contract form shall be used in the Commonwealth until it has been submitted to the Commission. If the Commission determines that the CBCC contract does not comply with the provisions of this article, it shall have the right to take action pursuant to § 38.2-4931 to prevent its use. The failure of the Commission to object to or disapprove of any CBCC contract shall not be evidence that the contract does or does not comply with the provisions of this article. However, individualized amendments to any standard form need not be filed with the Commission.

Article 3.

General Provisions.

§ 38.2-4924. Sale or transfer of ownership or change in management.

A. No provider and no person or entity owning a provider shall sell or transfer, directly or indirectly, more than 50 percent of the ownership of the provider or of a continuing care facility or community-based continuing care without giving the Commission written notice of the intended sale or transfer at least 30 days prior to the consummation of the sale or transfer. A series of sales or transfers to one person or entity, or one or more entities controlled by one person or entity, consummated within

a six-month period that constitute, in the aggregate, a sale or transfer of more than 50 percent of the ownership of a provider or of a continuing care facility or community-based continuing care shall be subject to the foregoing notice provisions.

B. A provider of community-based continuing care or of a continuing care facility that shall change its chief executive officer, or its management firm if managed under a contract with a third party, shall promptly notify the Commission and the residents or participants of each such change.

§ 38.2-4925. Financial instability.

The Commission may act as authorized by § 38.2-4931 to protect residents, prospective residents, participants, or prospective participants when the Commission determines that:

1. A provider has been or will be unable to meet the pro forma income or cash flow projections previously filed by the provider and such failure may endanger the ability of the provider to perform fully its obligation pursuant to its continuing care contracts or community-based continuing care contracts; or

2. A provider is bankrupt, insolvent, under reorganization pursuant to federal bankruptcy laws, or in imminent danger of becoming bankrupt or insolvent.

§ 38.2-4926. Waivers.

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

§ 38.2-4927. Untrue, deceptive, or misleading advertising.

The provisions of § 18.2-216 shall apply to all providers.

§ 38.2-4928. Civil liability.

A. A person contracting with a provider for continuing care or community-based continuing care may terminate the continuing care or CBCC contract and such provider shall be liable to the person contracting for continuing care or CBCC for repayment of all fees paid to the provider, facility, or person violating this chapter, together with interest thereon at the legal rate for judgments, court costs, and reasonable attorney fees, less the reasonable value of care and lodging provided to the resident prior to the termination of the contract, and for damages if, after the effective date of this chapter, such provider or a person acting on his behalf, with or without actual knowledge of the violation, enters into a contract with such person:

1. For continuing care at a facility or community-based continuing care which has not registered under this chapter; or

2. Without having first provided to such person a disclosure statement that does not (i) contain any untrue statement of a material fact or (ii) omit a material fact required to be stated therein or necessary in order to make the statements made therein not misleading, in light of the circumstances under which they are made.

B. A person who willfully or recklessly aids or abets a provider in the commission of any act prohibited by this section shall be liable as set out in subsection A.

C. The Commission shall have no jurisdiction to adjudicate controversies concerning continuing care contracts or community-based continuing care contracts. A breach of contract shall not be deemed a violation of this chapter. Termination of a contract pursuant to subsection A shall not preclude the resident or participant from seeking any other remedies available under any law.

§ 38.2-4929. Regulations.

A. The Commission shall have the authority to adopt, amend, or repeal rules and regulations that are reasonably necessary for the enforcement of the provisions of this chapter. The Commission may issue regulations setting forth those transactions that shall require the payment of fees by a provider and the fees that shall be charged.

B. Any provider may be given a reasonable time, not to exceed 120 days from the date of publication of any applicable rules and regulations or amendments thereto adopted pursuant to this chapter, within which to comply with the rules and standards.

§ 38.2-4930. Investigations and subpoenas.

A. The Commission may make public or private investigations within or outside of the Commonwealth it deems necessary to determine whether any person has violated any provision of this chapter or any rule, regulation, or order promulgated by the Commission.

B. For the purpose of any investigation or proceeding under this chapter, the Commission or any officer designated by it may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records that the Commission deems relevant or material to the inquiry.

§ 38.2-4931. Cease and desist orders; injunctions.

Whenever it appears to the Commission that any person has engaged in, or is about to engage in, any act or practice constituting a violation of this chapter or any rule, regulation, or order issued under this chapter, the Commission may:

1. Issue an order directed at any such person requiring him to cease and desist from engaging in such act or practice; and

2. Upon a proper showing, issue a permanent or temporary injunction or a restraining order to enforce compliance with this chapter or any rule, regulation, or order issued under this chapter.

§ 38.2-4932. Penalties.

A. Any person who willfully and knowingly violates any provision of this chapter, or any rule, regulation, or order issued under this chapter, shall be subject to payment of a fine as provided in § 38.2-218.

B. Nothing in this chapter limits the power of the Commonwealth to punish any person for any conduct that constitutes a crime under any other statute.

2. That §§ 38.2-4906 through 38.2-4909, 38.2-4911, and 38.2-4913 through 38.2-4916 of the Code of Virginia are repealed.