

Preliminary Exposure Draft

For Comment and Review

Text of Model Text of Model CCRC Standard Contract Provisions Act

1. This Law shall be known as "The Model CCRC Standard Contract Provisions Law" and may be referred to as the CCRC Standard Provisions Act.
2. After the effective date of this act, no Continuing Care Contract shall be entered into in this state unless it is approved by the [State or Commonwealth CCRC Regulator], is written in nontechnical language such that it is found by the [State or Commonwealth CCRC Regulator] to be readily understood by a person with an Eighth Grade education or more, and contains all of the provisions required by this CCRC Standard Provisions Act.
3. As used in this Act:
 - (i) "[State or Commonwealth CCRC Regulator]" shall mean the senior state official responsible for the financial oversight of CCRCs and/or CCAHs.
 - (ii) "Resident" means a resident of a CCRC or a person receiving contracted services under a CCAH agreement.
 - (iii) "Facility" means all physical assets maintained by a provider to fulfill the contractual commitments undertaken.
 - (iv) "Provider" means a person or organization who enters into Continuing Care Contracts for the benefit of an eligible person.
4. There shall be a title on the Continuing Care Contract, briefly describing benefits and limitations of the same.
5. A Continuing Care Contract shall contain all of the following information in no less than twelve point type and in plain language, in addition to any other terms or matter as may be required by regulations:
 - (i) **Entire contract.** There shall be a provision that except as otherwise expressly provided by law, the contract and the

application therefor, if a copy of such application is indorsed upon or attached to the policy when issued, shall constitute the entire contract between the parties, and that all statements contained in the application shall, in the absence of fraud, be deemed representations and not warranties.

(ii) **Payment of fees -- Return of contract.**

- (a) There shall be a provision relating to the time and place of payment of fees.
- (b) There shall be a provision which shall state that the contract will only take effect after the beginning of residence in a CCRC or the first provision of services under a CCAH contract.
- (c) There shall be a provision which shall state in substance that the contract may be voided by the CCRC resident or CCAH participant, within a period of not less than ninety (90) days after the effective date.
- (d) Immediately upon any such voiding of the contract by written notice to the provider, the contract will be deemed void from its inception and any monies paid for such contract shall be promptly returned to the contractholder by the provider net of the demonstrated true cost of any residence or services provided.

(iii) **Grace period.** There shall be a provision that a grace period of thirty (30) days, or, at the option of the provider, of one (1) month of not less than thirty (30) days, shall be allowed within which the payment of any fee required after the first may be made, during which period of grace the contract shall continue in full force. The provider may impose an interest charge for the number of days of grace elapsing before the payment of the fee, and, whether or not such interest charge is imposed, the demonstrated true cost of

any residence or services provided during such period of grace may be assessed even beyond contract termination due to nonpayment. The grace period shall date from the recurring fee due dates specified in the contract. In any case in which a resident in a CCRC or a participant in a CCAH has been found legally incompetent or has designated another person as responsible for payment of fees the grace period shall date from the time of acknowledged receipt of notice by the designated payor with proof of delivery of notice (by certified mail or otherwise) constituting sufficient evidence of acknowledgment.

(iv) **Must contain entire contract -- Exception concerning Resident Handbook.**

- (a) No agreement in conflict with, modifying, or extending any contract of continuing care shall be valid unless in writing and made a part of the contract.
- (b) No provider or its representative shall make any contract or agreement relative thereto other than as is plainly expressed in the continuing care contract.
- (c) The requirements of this section shall not apply to the Resident Handbook provided no new fees are introduced and provided that all changes to the Resident Handbook are approved at least 60 days before they take effect by a Resident Council, chosen by the residents. Such approval may not be unreasonably withheld and the bases for approval or disapproval are to be documented by the Resident Council in writing. If the [State or Commonwealth CCRC Regulator], upon petition by the provider, finds the action of the Resident Council to be unreasonable, the [State or Commonwealth CCRC Regulator] may substitute the reasoned approval of the regulatory authority for the decision of the Resident Council.

- (v) **Incontestability.** There shall be a provision that the continuing care contract shall be contestable after it has been in force during the lifetime of the resident or participant for a period of not more than two (2) years after its effective date, except for nonpayment of required fees.
- (vi) **Exclusions or restrictions.** A clause in a Continuing Care Contract that such contract shall be contestable after a specified period shall preclude only a contest of the validity of the policy, and shall not preclude the assertion at any time of defenses based upon provisions in the contract which exclude or restrict protections thereunder, whether or not such restrictions or exclusions are excepted in such clause.
- (vii) **Misstatement of age or sex.** There shall be a provision that if the age or sex or both of the CCRC resident or CCAH participant, or of any other person whose age or sex is considered in determining the fees payable for, or benefits provided by the Continuing Care Contract, has been misstated, the provider shall be entitled to restitution for such misstatement but all other terms of the Continuing Care contract shall remain in full force and effect. Such provision may provide that, in the event age has been misstated, and if according to the correct age the Continuing Care Contract would not have become effective, then the provider's liability shall be limited to the refund, upon request, of all monies paid net of the demonstrated true cost of any residence or services provided as a result of the misstatement.
- (viii) **Consideration.** There shall be a complete description of the amount of all money transferred, including, but not limited to, donations, subscriptions, deposits, fees, and any other amounts paid or payable by, or on behalf of, the resident or residents;

(ix) **Third Party Guarantor.** If any person other than the CCRC resident or CCAH participant is required to guarantee the payment of fees or other amounts payable or forecast to be payable under a Continuing Care Contract, there shall be a full statement of the terms of such a guarantee including reasonable limitations on the liability exposure of the guarantor(s) to ensure that any such guarantee is reasonable and within the means of the guarantor(s) to meet.

(x) **Services Provided.** The Continuing Care Contract shall include a readily understandable description of all services which are to be furnished by the provider, a description of any fees in addition to the entrance fee and periodic charges provided for in the contract, and the conditions under which the fees may be adjusted, provided that an provider shall not charge any non-refundable application fee to a prospective resident who has paid a non-refundable priority reservation agreement application fee;

(xi) **Multiple Occupancy.** The contract shall include a full description of any additional fees and other terms concerning the entry of a partner to the community and the consequences if the partner does not meet the requirements for entry; the contract shall also include a statement of the financial adjustments and changes in benefits resulting from changes in marital status including death of a partner, divorce, remarriage, or cohabitation.

(xii) **Contract Termination.** The contract shall contain a statement of the circumstances under which a provider may terminate the contract or, alternatively, the procedure by which a resident can terminate it, including a reference to any nonforfeiture value or other continuing benefits to which the resident may be entitled.

(xiii) **Involuntary Transfers.** The contract shall include a clear and lucid statement of:

(a) The procedures and conditions under which a resident may be transferred from his or her living unit including a statement that, at the time of transfer, the resident will be represented by an independent advocate, be given the reasons for the transfer; the process by which a transfer decision is made; the persons with the authority to make the decision to transfer; a description of any change in charges to be paid by the resident for services not covered by the contract fees as a result of the transfer; and a statement regarding the disposition of and the right to return to the living unit in cases of temporary and permanent transfers. The inclination shall be to allow residents choice when transfer becomes desirable for the good of the resident or for the well-being of other residents. If the resident is no longer able reasonably to exercise such choice, then a declaration of legal incompetency shall be needed to allow another to decide for the resident what is in the resident's best interest. If the provider is the initiating party in bringing a transfer about the Chief Executive Officer of the provider shall certify in writing that the transfer is not being made for pecuniary gain but solely for the welfare of the transferee and the community.

(b) The circumstances under which a living unit may be considered vacant and eligible for transfer or resale to a new resident, either due to the permanent transfer of a resident to the community's nursing or other specialized facility or due to the permanent transfer of a resident to a hospital or other facility outside of the community; provided, however, that nothing therein shall relieve a community from its obligations to provide or to insure provision of all contractually required care pursuant to

the terms of a continuing care retirement contract. Should a resident's chronic condition require placement in a more specialized chronic care facility that provides services beyond those provided through the community's nursing facility, the liability of community pursuant to the terms of a continuing care retirement contract shall be equal to the current per diem rate of the alternative facility (other than a hospital) that provides the needed services which the provider does not provide; the provider shall continue to be entitled to receive the resident's monthly fee and other service fees for the period of care required by the contract.

- (xiv) **Voluntary Transfers or Reinstatement.** The contract shall contain a description of the process for internal voluntary transfers or for reinstatement policies if a resident leaves the facility or if the contract is otherwise cancelled or reformed; the process shall involve financial terms according to a plan to be filed for approval with the [State or Commonwealth CCRC Regulator] and that the [State or Commonwealth CCRC Regulator] has found to be fair and equitable to all parties and the terms for reinstatement shall be similar to those for internal transfers except for health and other considerations specific to a reinstatement transaction.
- (xv) **Failure to Enter into Residency.** The contract shall include a statement that, if the resident dies prior to occupancy date or, through illness, injury, or incapacity is precluded from becoming a resident under the terms of the contract, the contract is automatically rescinded and the resident or his or her legal representative shall receive a full refund of all moneys paid to the facility, except for the demonstrated true cost of any residence or services provided;

(xvi) **Nature of Entrance Fees.** The Continuing Care Contract shall include a statement that Entrance Fees are in partial consideration of the contractual commitments undertaken by the provider and that Entrance Fees paid before the effective date of the contract are to be held in an interest bearing escrow account and are only released to the provider when the contract takes effect. The availability of nonforfeiture benefits related to Entrance Fees shall be stated.

(xvii) **Changes in Fees.** The Continuing Care Contract shall include a statement of the circumstances that may lead to changes in prospective fees, the limitations if any on the use of such fee increases, and a statement that such fee increases shall be approved at least 60 days before they take effect by a Resident Council, chosen by the residents. Such approval may not be unreasonably withheld and the bases for approval or disapproval are to be documented by the Resident Council in writing. If the [State or Commonwealth CCRC Regulator], upon petition by the provider, finds the action of the Resident Council to be unreasonable, the [State or Commonwealth CCRC Regulator] may substitute the reasoned approval of the regulatory authority for the decision of the Resident Council.

(xviii) **Resolution of Disputes.** The contract shall contain a description of the process for resolution of disputes, if any should arise. In no instance shall it be a requirement of adhesion that any person give up rights to judicial resolution of disputes that cannot be resolved administratively.

(xix) **Maintenance of Healthcare Protections.** The contract may, as determined by the provider, contain a statement that:

(a) the resident shall, if eligible, enroll in Medicare Parts A and B or the equivalent, e.g. a Part C Medicare Advantage Plan, and shall continue to maintain that coverage, together

with Medicare Supplement coverage at least equivalent in benefits to those established by the [State or Commonwealth CCRC Regulator] as minimum benefits for Medicare Supplement policies;

(b) if the resident fails to maintain Medicare coverage and Medicare Supplement coverage, or is ineligible for such coverage and fails to purchase the equivalent of such coverage, the community shall purchase the coverage or equivalent coverage on behalf and at the expense of the resident and shall have the authority to require an appropriate adjustment in payments by the resident to the community;

(c) if the community cannot purchase Medicare coverage and Medicare Supplement coverage or the equivalent, the community shall have the authority to require an adjustment in monthly fees, subject to the approval of the superintendent, to fund the additional risk to the facility (plus a pro rata share of the cost to determine the actuarial value of such risk); and

(d) if the resident fails to purchase or maintain Medicare coverage and Medicare Supplement coverage or the equivalent, and the community has not purchased such coverage, the community will be responsible for any expenses which would have been covered by Medicare and Medicare Supplement coverage. The community may add the amount of such expenses to the resident's monthly fees.

(xx) **Non-duplication of Coverage Provision.** The contract shall include a statement for the determination of equivalent fee reductions to recognize the value of the irrevocable assignment to the provider of long term care insurance proceeds with the

provider entitled to pay the premiums to ensure such long term care insurance remains in force with such premiums added to the resident's recurring fees. The equivalent fee reductions may be achieved by an adjustment of entrance, monthly, or other fees otherwise payable.

- (xxi) **Statutory Conformance.** The contract shall include a statement that any provision found not to be in conformance with statute shall be construed as though it did conform.
- (xxii) **Other Terms and Conditions.** The contract shall include the following:
 - (a) A statement that any amendment to the contract and any change in fees or charges, other than those within the guidelines of an approved rating system, must be approved by the [State or Commonwealth CCRC Regulator]; and
 - (b) A statement that property shall only be substituted as payment for either the entrance fee or monthly fee with the consent of the provider and on a basis that an independent appraiser, agreed to in writing by all parties to the contract, has found to be financially equivalent.
 - (c) A statement whether the Continuing Care Contract includes any ownership, beneficial or trust interest in the assets of the provider, the assets of the facility, or both. Assets shall include, but are not limited to equity interests, property, trusts, reserves, interest and other assets.

2. This law shall be effective for all contracts entered into for CCRC services on or after an effective date of January 1, 20??.