PUBLIC HEARING

before

ASSEMBLY COMMITTEE ON AGING

on

LEGISLATION TO REGULATE CONTINUING CARE COMMUNITIES

Held:
November 19, 1984
Room 420
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Thomas H. Paterniti, Chairman
Assemblyman Anthony P. Vainieri, Vice Chairman
Assemblyman John O. Bennett

ALSO PRESENT:

Norma Svedosh, Research Assistant
Office of Legislative Services
Aide, Assembly Committee on Aging

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ASSEMBLYMAN THOMAS H. PATERNITI (Chairman): Good afternoon, ladies and gentlemen. I am pleased to welcome all of you to this public hearing conducted by the Assembly Committee on Aging. As you know, my name is Thomas Paterniti, and I am the Chairman of this Committee.

Before I start, I would like to take this opportunity to introduce the one member of this Committee who is present, Assemblyman John Bennett. The other members will probably be here shortly. I guess they are at other committee hearings or meetings, but they will probably be here soon. As they come in, I will mention their names.

I would also like to mention that if you have any written testimony, or wish to be placed on our witness list, pleace contact our staff aide, Norma Svedosh.

The public hearing we are holding today is on legislation to regulate continuing care communities. Two bills have been introduced in the Assembly concerning this subject. One is A-2594, which I sponsored, and the other is A-2613, sponsored by Assemblyman Zimmer. Both bills define continuing care communities and establish requirements which cover certification, financial status, relationships between residents and the continuing care communities, and State administration.

The provisions of A-2594 and A-2613 differ, however, with A-2594 based on the Florida law, and A-2613 based on the Pennsylvania law. The purpose of this public hearing is to get input regarding these two bills and their provisions so that the Committee can move ahead and support legislation which will best regulate continuing care communities in our State.

I would like to ask witnesses to keep their testimony as brief as possible. Anyone wishing to present written testimony for the public record may do so. Now, who is our first witness, Norma?

MRS. SVEDOSH: Assemblyman Zimmer.

ASSEMBLYMAN PATERNITI: Assemblyman Zimmer, will you please step forward?

ASSEMBLYMAN RICHARD A. ZIMMER: Thank you, Mr. Chairman. I want to thank you on several counts. First of all, for calling me first, since

I have to be two other places at once. Secondly, for considering my bill when, in fact, you have a bill before this Committee which you sponsored yourself. And, finally, for cosponsoring my bill, as have four of the members of this Committee.

As you pointed out, both bills try to address the same problem. I don't think there is any question that we are more in agreement than disagreement on our approaches. I believe, though, that in several specific cases the Pennsylvania model is more appropriate than the Florida model, particularly because the Pennsylvania model provides adequate financial assurances for the participants and residents of the continuing care communities, while not restricting the finances to such an extent that only large corporate entities could get into the business. Secondly, I think the disclosure requirements in the Pennsylvania law are more specifically tailored to the actual needs of the government and the consuming public than are the Florida provisions.

Finally, the Florida law is the product of a series of amendments over the years, so it does not have the internal consistency of the Pennsylvania law, which was drafted in a piece of legislation based on the experiences of a number of other states, including Florida.

I have been provided with some of the comments by Mr. Fishman, who will be testifying, I'm sure, at greater length later in these proceedings. I don't want to steal his thunder or plagiarize his research, but I do want to point out that in every instance where in his memorandum he points to Pennsylvania as being a preferable alternative, there is a comparable provision in my bill that would contain those same provisions.

So, those are the comments I would like to make. I would be glad to answer any questions you may have.

ASSEMBLYMAN PATERNITI: Fine. I, too, have read the gentleman's comments and I know exactly what he plans to speak on before this Committee. I am very aware of that. Assemblyman Bennett, do you have any questions?

ASSEMBLYMAN BENNETT: No, thank you.

ASSEMBLYMAN PATERNITI: Thank you very much, Assemblyman Zimmer. Our next witness will be Dennis Hett, Executive Director, New Jersey Association of Non-Profit Homes for the Aging.

DENNIS R. HETT: Thank you, Mr. Chairman.

ASSEMBLYMAN PATERNITI: Do you have any extra copies of your statement?

MR. HETT: Mrs. Svedosh has several copies.

ASSEMBLYMAN PATERNITI: Okay, thank you.

MR. HETT: I am Dennis Hett, Executive Director of the New Jersey Association of Non-Profit Homes for the Aging, which represents 91 non-profit, both voluntary and governmental, facilities for the aged in New Jersey. All four of the existing continuing care retirement communities are members of the Association.

The CCRC, which might be a good abbreviation for the day, is an elaboration of the traditional non-profit approach to care for the aging. Back in the last century, it emerged as the residents signing over their assets to the organization in return for life care. This, over time, has proven to be untenable and has developed into a more sophisticated approach involving both housing and health care, usually on the same campus. We have found in our discussions that many of these facilities go beyond the campus approach to more of a health maintenance approach that is sometimes unrelated to residency.

The field is changing at this point. We are concerned that legislation address and participate in this process, but that it move the progress of continuing care retirement communities along. Therefore, there are four points we would like to make.

The first is that it should continue to be an affordable option for middle-income persons, that is, a person of moderate means should be able to plan for his or her retirement and the possibility of catastrophic illness. You know, I believe from your original hearings of this Committee, that the elderly population in this State is increasing and so is the incidence of chronic disability. And, institutionalization in a nursing home is a chronic illness. It is likely to have a very long duration and, therefore, provision has to be made for it. This is why the Medicaid program is being utilized in such an increasing way in our age now.

To manage that requires a great deal of sophistication. Therefore, we have to be sensitive that the arrangement is allowed to continue and flourish. As I hinted, the CCRC is an alternative to the freestanding Medicaid nursing home. As the nursing home industry is set up, the consumer is not a true consumer. Someone else chooses the site and another person pays for it. All they do is receive the care. This continuing care retirement community allows individuals to have a choice and a voice in where they are going to receive their care and, therefore, we have a greater assurance of quality.

We have also decided on four points we think are crucial to the success of this legislation. I would remind you that we are in support of the concept of legislation. We have been delayed in introducing our own action because of other legislation we have been dealing with. But, the four things we think are of critical importance are, number one, an advisory council to advise the regulating department on the implementation of the act, and to have the expertise of administrators and consumer-oriented persons in the implementation of regulations. This is critical because we have found a great variance in practice among our four existing communities. As I have said, it requires a great deal of sophistication, so this should be viewed as a resource. You will see that you have received a letter from my counterpart at the Florida Association of Homes for the Aging stating the benefits of an advisory council.

We are also concerned that the service stay within the price range of middle-income people. I need not say more about that.

For some reason, financing has been hindered in the State of New Jersey. We only have four CCRCs that meet what we would call a classical continuing care model, whereas the Commonwealth of Pennsylvania has 27, at least. There is a tremendous concentration across the Delaware, but not in New Jersey. We feel that some barrier -- we have not identified it yet -- needs to be overcome in order to promote development. We hope that this legislation will, at a minimum, not hinder new financing, and, ideally, we hope it will promote financing of a sound industry.

Finally, we ask that we be allowed to cooperate with you in the final drafting of the legislation in order to come forth with a workable act.

There is one thing I did not mention in my statement that we have not had time to consider. We fear that existing non-profit homes that have an entry fee, such as the Masons or other religious groups, may get caught in the snare of this act. We are not prepared to address that today, but please put that into your considerations. We may need some work on our definition in order not to ensnare facilities that were not intended within this act.

We have representatives here today of the four CCRCs, trustees and one resident who is also a trustee and a retired actuary. We have coordinated our testimony so that we will not be repetitive and so that everyone may be brief. I will be happy to answer any general questions, but our attorney and the other people are prepared to talk in greater depth.

ASSEMBLYMAN PATERNITI: Thank you. Do any of the members of the Committee have any questions they would like to ask this gentleman? (negative response) If not, Dennis, thank you very much.

MR. HETT: Thank you.

ASSEMBLYMAN PATERNITI: Our next witness will be Mr. Leonard Fishman, Counsel to NJANPHA. Mr. Fishman, I believe you came before this Committee last time, am I correct?

LEONARD FISHMAN: You are correct. Mr. Chairman, I think you and the other members of the Committee have copies of the material I have submitted.

ASSEMBLYMAN PATERNITI: Your letter and your memorandum, yes.

MR. FISHMAN: Mr. Chairman and members of the Committee, thank you for permitting me to appear this afternoon. I am a partner in the firm Tomar, Gelade, Kamensky, Klein & Lehmann. Our firm is counsel to the New Jersey Association of Non-Profit Homes for the Aging. If I refer to it hereafter as the Association, I know we can get through the hearing in half of the time. (laughter)

I have submitted a letter and a memorandum analyzing the bill. When I say the bill, I am referring to Assembly Bill 2594. That

is the bill I have focused upon. To conserve time and avoid repetition, I am only going to hit the main points of the memorandum and will then answer any questions you gentlemen may have.

As a preliminary matter, I would like to make a few observations about the Florida statute which is the model for A-2594. It was enacted in 1953. It was the first regulation in the country. It has since been amended eight times and in some cases the amendments have been very substantial. As a result, I think the current Florida statute is a very difficult one to navigate from a draftsmanship point of view and from the point of view of a lawyer who looks ahead to trying to comply with its provisions. It is not as tight a statute as one would want to work with. Significantly, it has not been followed by any other state in the country. But I think more significant, and this point perhaps is the most important one I am going to make about the Florida statute, it has not been enforced in the way one would expect a New Jersey statute to be enforced. By that I mean that our experience in this State is that regulatory agencies take their responsibilities very seriously and take the responsibilities set forth in their statutes very seriously. Until recently, Florida had allocated only a half-time person to monitor regulations under this act -- or under the Florida statute -- and I would point out that there are 70 continuing care facilities. This suggests to me that an awful lot of documentation is piling up on a desk somewhere in Florida and is not being carefully reviewed.

When you look at the voluminous requirements of this bill, I think you must come to the conclusion that the regulation there is not in line with the requirements of the statute. On the other hand, the minimum liquid reserve requirements of the Florida statute really have not gone into effect yet. They are quite rigorous, and yet there is a 20-year phase-in period. That means that most facilities will not be complying with the minimum liquid reserve requirements of the Florida statute until the year 2003. The ones they are complying with are the ones that were in effect as of October 1, 1982, and they are only half as stringent as the requirements of the Pennsylvania statute, or Assembly Bill 2613.

In other words, most facilities -- if not all of them today -- have effective minimum liquid reserve requirements that are only half of what Pennsylvania's are, even though it would appear that Pennsylvania's are not as stringent. Furthermore, according to Karen Torgesen, who has submitted a letter to this Committee, the one-to-one ratio of current assets to current liabilities -- which is a requirement of the Florida bill -- has really not been enforced. In New Jersey, I think we can expect -- and this Committee ought to expect -- rigorous enforcement of the bill it drafts, but that fact should be taken into account in drafting a bill that is practical and enforceable. We believe, that is the Association believes, that the Pennsylvania statute provides a better model and a better foundation upon which to build a statute that is suited to the New Jersey environment.

I set forth the reasons in my letter. Very quickly, I think that the Pennsylvania environment is really more like our own in New Jersey. The Pennsylvania statute is a result of two years of effort and draws on the experience of other states, including Florida. It was drafted in a single stroke, which I think makes it a much tighter internally consistent bill. There are two representatives of the industry in Pennsylvania here to speak to this Committee. They will share with the members of the Committee their experience in drafting the statute and, also, what life has been like under the regulations. I guess they really don't have all that much experience, because the bill just became effective in June of this year. However, they can certainly go into the considerations that led to the provisions in the Pennsylvania statute.

To hit the main points of A-2594 that I think are worth hitting, one has to start with a definition. That is the most elemental part of this bill. Whatever this Committee drafts is going to be meaningless if it does not encompass the communities that this Committee wishes to deal with. So, the first question that has to be decided under Section 2 is, what kinds of communities do you wish to deem continuing care communities for the purposes of this regulation? I would simply point out that there is tremendous variety within the

field of continuing care communities, and I don't know that we have an answer to the question of what an appropriate definition is. However, I can tell you that the members of the Association believe that none of the definitions currently in use -- and I list several of them in my memorandum -- really encompass all the communities that one would normally think of as continuing care communities. Since the objective of this legislation is to require disclosure and regulation in cases where residents believe they are entering into a continuing care contract, particular care ought to be given to the definitional part of the statute.

On another point, Section 4, there is a provision that asks for evidence that the applicant, chief administrator, manager, etc. are "reputable and of responsible character." We would suggest that the same thing could be accomplished by deleting Sections 4. a.(3)(a) and 4. a.(3)(b), as I indicate in my memorandum, in favor of 4. a.(3)(c), which simply requires disclosure of what is really significant, which is whether those individuals have been convicted, are subject to any investigation, and so on.

Sections 4. b.(3) and (4) require that a preliminary feasibility study include an evaluation of the potential market. The requirements have been lifted from the Florida statute, and they suggest that detailed information about similar and competing facilities within a 50- and 100-mile radii be discussed in the feasibility study. We believe that that provision is just unmanageably large. If you visualize Florida, it is basically a peninsula that sticks out into the ocean. New Jersey is at the center of the densest population concentration in the United States. If you require prospective communities to do an intensive analysis of the potential market, they are going to include Philadelphia and New York City, and it is really going to be tremendously burdensome. We do not think that would be necessary if the provisions of Section 4. b.(2) were amended to require a discussion of the relevant market, and relevant market could be determined by the expert who prepares the feasibility study. Of course, his or her credentials would be a part of the submission that would go to the Department of Insurance.

Section 4. d. is one that is very close to an attorney's heart. That is the one that talks about the timetable for submitting an application. As 4. d. now stands, the only requirement on the Commissioner of Insurance is that he acknowledge receipt of the application within 14 days. After that, there is absolutely no statutory guidance for how the application procedure is going to proceed in a timely fashion. We believe that that portion ought to be amended to require the Commissioner, first of all, to accept or reject the application within a reasonable period of time -- we think 60 days is a reasonable period -- to make findings of fact if he doesn't believe that the application is a good one, and, finally, to allow an appeal to the Commissioner if the applicant believes he has been wrongly denied a provisional Certificate of Authority.

I would point the members of this Committee to Sections 4. c. and 4. d. of the Pennsylvania statute, and Section 4. a. of Assembly Bill 2613, which, in our opinion, sets forth a very reasonable timetable. However, without that timetable, I am really fearful that applications will get lost or will simply not be acted upon if the Commissioner of Insurance does not make this a high priority.

The next point has to do with Section 5. That is the section that sets forth the requirement for escrowing entrance fees. In summary, this bill would require that a facility escrow 75% of money paid for all or any part of initial entrance fees collected until: (1) the facility has received payment in full for 70% of the total units, and (2), a Certificate of Occupancy has been issued.

I have listed a number of other formulations from other states in my memorandum just to give the Committee a sense of how other states have dealt with this problem. Florida's are clearly the most stringent, and we think they go beyond what is necessary to ensure prudent financial management. The Pennsylvania statute provides a different scenario, and I would just point out that this is a good example of the Florida statute being difficult to navigate. A sensible way to approach this problem is to say, first of all, that there are two categories of units. The first category is those units that have been occupied before, which means that you are simply reselling units

that already exist. The second category is those units that have not been occupied before, which in general will be brand new units.

The Pennsylvania statute and A-2613 draw that distinction, and say that in the case of a unit that has been occupied before, you simply hold the entrance fee in escrow until the unit is ready to be occupied by the new resident. The provision for the second kind of unit, that which has not formerly been occupied, is different under the Pennsylvania statute than under the Florida statute. In a nutshell, there is a 50% escrow requirement which we think, as I have already said, goes far enough to ensure prudent financial management, but doesn't go so far that it ties up, needlessly, the funds of a life care community that is attempting either to expand or to come into existence.

We are concerned that if the Florida provisions are followed, it is going to be very difficult for not-for-profit communities to come into existence. The for-profits, the Marriott Hotel chain, and so on, will be able to meet any escrow requirements you make, but that is not necessarily true of the not-for-profits. I think if any of you gentlemen have time to visit one of the four not-for-profit communities existing in this State, you will agree that they are doing an extraordinary job and their role, if anything, ought to be protected.

Regarding Section 6. c., the one that requires the facility to show a ratio of no less than one-to-one of current assets to current liabilities within five years of its opening date, we believe, again, that this is an example of lifting a provision of the Florida statute which simply is not being enforced at this time. The most important thing to remember about the ratio of current assets to current liabilities is that it is subject to great fluctuation. It is not subject to control even by the exercise of good management techniques. The single largest factor in that ratio is the amount of new entrance fees which a facility is taking in at any given time. That is a result of the death rate, which is beyond the control of a facility. We believe the history of the existing facilities in this State which are very financially sound indicates: (A) that five years is not enough time to reach that ratio; (B) that even after you reach it you

can drop below it again for a period of time; and, (C) as I pointed out earlier, the statute from which this provision is lifted in Florida is not being rigorously enforced. So, we really do not have experience with whether or not this is a livable provision.

A review I made of several other state statutes indicates that Florida is the only state that has this requirement. If this requirement is going to remain in, we believe it ought to be treated as a kind of bench mark, and that if the Commissioner finds that within five years a facility has not reached that ratio, then it would make sense, perhaps, to raise that question with the facility, ask the facility to explain why, and then come up with a plan by which the facility will reach that ratio within a reasonable period of time. Certainly, it should not, as the Florida statute provides, constitute a crime of the third degree to not reach that ratio within five years.

Sections 8. a. and b. set forth the minimum liquid reserve escrow requirements. We believe that those requirements are excessive for a number of reasons. First of all, Section 8. a. requires a minimum liquid reserve escrow in an amount equal to the aggregate amount of all principal and interest payments due during the fiscal year on account of any loan or other long-term financing. Then, Subsection 8. b.(1) requires that a facility which has been in operation for more than 10 years maintain an operating escrow in an amount equal to 30% of total operating costs. Subsection 8. b.(2) refers to facilities that have been in operation for less than 10 years, and of them it requires an escrow equal to 40% of total operating costs.

First of all, it is not clear whether 8. a. and then 8. b.(1) or 8. b.(2), depending on which one a facility has to meet, are cumulative. If thy are cumulative, it is really a monstrous requirement the facilities are being asked to meet. It goes way beyond any other statute in the country. That is the first problem. The second problem is, there is no definition of extensive health care in Subsection 8. b.(2) of the bill, which deals with facilities that have an extensive health care guarantee.

Third, and most important, we believe the reserve requirements are really excessive. We have studied the Pennsylvania provision, and the Pennsylvania provision, in a nutshell, requires that you reserve the greater of 10% of your operating budget or the total of all principal and interest payments due during the next 12 months on account of any mortgage loan or other long-term financing. Most states follow the Pennsylvania approach, and we think that is a prudent approach. Let me put it this way, it is certainly a more prudent approach than the Florida statute. I think among the members of the organization there is some disagreement about the extent to which even this provision is going to make it difficult for existing communities to expand, but there is no question that it is a more reasonable requirement than the Florida statute.

Again, our fear is that if the Florida statute, with those very difficult requirements, is enacted, it is going to become impossible for not-for-profit communities to build and expand, whereas the for-profits, again, will be able to meet whatever liquid reserve requirements you enact. However, I do not think it is the intention of this Committee to knock out the not-for-profits, which, to this point, have been providing the bulk of care in this State.

In Section 10. a.(7), let me make a very quick point. There is a provision that says that residents have the right to cancel their contracts within 30 days. We believe that ought to be expanded to 60 days just as a consumer protection measure. We believe that 60 days is a more reasonable period than 30 days to give prospective residents to cancel a contract. In addition, to protect residents, we think this should be spelled out in the statute where it says the contract can be cancelled by the facility if a "good faith determination is made that a resident is a danger to himself or others," and that the statute should say that that kind of a determination should be made by the administrator and by the medical director, rather than leaving it open to question. The statute does not now specify who has to make that determination.

Section 16. a. requires the presubmission to the Commissioner of basically all material that a facility prints before it can be sent

out. We think that kind of a provision is going to guarantee that the same thing happens in this State that is now happening in Florida, which is that the pile grows without anyone really looking carefully at what is going on. We think there is a better provision in the Pennsylvania statute, which simply says if a facility circulates any material that presents false information, it is subject to a criminal penalty, that is, it is guilty of a crime in the third degree. We think that would discourage that kind of material. If you put that together with the civil enforcement provision of the act, it allows residents who get that material to sue the facilities which have been distributing it. So, we think that is sort of a self-enforcing provision that will reduce the load on the Commissioner of Insurance and still guarantee that accurate information is being circulated.

Section 19. b. is part of the section that deals with what happens if a facility is in trouble, if the Commissioner is fearful that a facility is about to go into bankruptcy or has gone into bankruptcy. The second paragraph of 19. b. says that when a facility has been suspended, or when a Certificate of Authority has been suspended by the Commissioner, it cannot enter into any new contracts. We think that is a mistake. If you provide that a facility cannot enter into any new contracts for a period of a year, which would be the typical period of suspension, that facility very likely is going to go down the tubes, no matter what the managers of the facility try to do, because a large part of a facility's income is attributable to its entrance fees.

We think a more reasonable approach would be to say, "You can't enter into any new contracts unless the Commissioner of Insurance allows you to do so." That would allow the Commissioner of Insurance to come in and say, "You people are making strides in the right direction and, therefore, I am going to allow you to continue to enter into new contracts. If I don't allow you to enter into new contracts, you are not going to be around by the time the period of suspension is over."

Section 21 is a section that I simply want to highlight for the members of this Committee. I do not have any answers to the

problem, but the problem is this: That section allows the Commissioner to step in over the head of a trustee in bankruptcy and basically take control of a facility. The problem with this provision is, it is so complete, or the powers of the Commissioner are so complete, that a lending institution might not be willing to offer financing to a community if it feared that if the community were on the ropes, the Commissioner of Insurance could simply step in over the head of the trustee in bankruptcy and do whatever he or she wanted to do.

I do not have an answer to this question, but I think the Committee should confer with appropriate State agencies and investment banking firms to find out what would be acceptable to them. It is critical to the development of this industry in New Jersey that existing communities and prospective communities be able to get financing. We do not want a provision that is so broad that it is simply going to turn off potential lending institutions.

Section 23. a. is the criminal penalty section. We think that section is overly broad. It would basically make any violation of the act a criminal penalty. You could have a situation where failing to have a one-to-one ratio within five years could be a criminal penalty, or where failing to post the latest change in fees at a facility within the appointed period of time could be a criminal penalty. We think that should be narrowed to apply only to the provisions which basically have to do with disclosure, to ensure that the facilities are dealing fairly and accurately with the public.

I have a couple of quick comments about points which are not covered in the bill. We believe there should be a provision that if a facility proposes to substantially change control or ownership, the Commissioner of Insurance be required to approve it in advance. Otherwise, you could have one set of people applying for a Certificate of Authority, and then once that facility is up and running, transferring to people who, frankly, the Commissioner of Insurance may not be comfortable with running the facility. So, we think the same thing ought to be done that is done in the case of a Certificate of Need. You should have to get the Commissioner's approval prior to changing ownership or substantial control.

The second point is, A-2594 and A-2613 both omit the advisory council, which according to representatives in the State of Florida is really a very good thing. It gives the regulator some insight into the problems of the regulated, and vice versa. We think that would be a very good meeting ground between the Department and the industry. We would strongly recommend that such a provision be included. In my memo, or attached to my memo, I have included the provisions of the Florida statute which deal with the advisory council.

Third, and a point that I will just mention because it will be dealt with by others, is the alternate accreditation of facilities. There is now a national movement to establish rigorous accreditation standards for continuing care communities. We believe the Commissioner should have the authority to use the standards in the alternative, if he or she decides they are appropriate.

The final point I would like to make is this: I just want to make an observation about the people who are going to follow me who run the four not-for-profit continuing care communities in this State. We have met four times in lengthy sessions principally to go over A-2594. The people who are now running facilities in this State are very dedicated, sincere, and knowledgeable people, and they are devoted to the welfare of their residents and other people who are prospective residents in this State. They are really a splendid resource for the members of this Committee. They, as well as myself, are at this Committee's disposal to work with you to draft legislation that you will think is the best possible bill and will make New Jersey a leader in this field.

Thank you very much. If you have any questions, I will be happy to answer them at this time.

ASSEMBLYMAN PATERNITI: Thank you very much, Mr. Fishman. Do any of the members on this panel have any questions? (negative response) If not, we want to thank you for your input. We are going to take a lot of it into consideration. Again, thank you for coming.

MR. FISHMAN: Thank you very much, Mr. Chairman and members of the Committee.

ASSEMBLYMAN PATERNITI: The next person I would like to call on is Lois Forrest from Medford Leas.

LOIS FORREST: Assemblyman Paterniti, I wonder if these two gentlemen from Pennsylvania who have a long drive home could speak now.

ASSEMBLYMAN PATERNITI: Fine. May I have their names, please? Is one of them Mr. Richard DeWees?

MS. FORREST: Yes, Mr. DeWees and Mr. Lloyd Lewis.

ASSEMBLYMAN PATERNITI: Fine. Will you come up, please?

RICHARD R. DeWEES: Thank you, Mr. Chairman. I am Richard DeWees; I am Associate Director of Kendal-Crosslands, which operates two non-profit life care communities near Kenneth Square, Pennsylvania. I have been there for 10 years, and have been in charge of finance for most of that time.

I was asked by the New Jersey Association to testify here because I have been working in Pennsylvania on state legislation since 1979. I have been working with the Pennsylvania Association of Non-Profit Homes and the Legislature, and have testified at similar hearings which were held there.

I would like to speak about two matters. One is some of the problems inherent in trying to regulate this field, and the other matter is to make a recommendation about legislation and regulation. This field is one which is incredibly diverse. Regardless of the definition you use for a continuing care retirement community, you will find that you catch all sorts of different types of facilities in the regulation. There is no single model for contracts, for services, for finances; in fact, no two facilities offer essentially identical programs.

We had a situation where four facilities in Pennsylvania and New Jersey had the same attorney, so we started with the same resident and care agreement. Now, 10 years later, we have four quite different agreements. We are still recognized as being similar, but there are differences among us. The differences are such that a national accounting firm publishes an annual report on the field, and the facilities in this area looking at the data in that report find it difficult to recognize their own facilities.

One result has been described in the Florida experience already, with several modifications to the Florida bill. This same

experience has been repeated in Maryland, where there have been virtually annual revisions to the legislation.

In Pennsylvania, we are still awaiting regulations. These are due out within the next few weeks, and compliance with these regulations is due by the end of 1986. By the end of the year, we will begin to find out what the Pennsylvania act is really going to mean. We will find out for the first time exactly how many facilities are covered. We know there are at least 25 or 27 facilities which will be covered. There may be an equal number we do not know about yet, smaller facilities which have a small number of people under life care contracts. We simply do not know what the total number of regulated facilites will be. We have no idea yet what the impact is going to be on the smaller facilities or how the Pennsylvania act will have to be changed.

In spite of all this, I am still pro-regulation. We went into the first hearings in Pennsylvania supporting legislation in Pennsylvania, opposing what was originally proposed, but supporting legislation nonetheless. I urge you to take an approach to regulating what can be done safely now, leaving for later what we do not really know enough about yet. I would urge you to begin with registration and disclosure provisions. These are basic in every act. They help you to find out what facilities ycu have to regulate. You know you have at least four, but there are still open questions on how many more you have.

That would provide the basic level of consumer protection through disclosure. The Pennsylvania act, again, provides a model of the types of disclosure that can be required. I can't speak to the Florida act in that regard. One provision which Florida has, which Pennsylvania does not -- and which I would urge you to adopt -- is an advisory group to provide a regular way for providers and others concerned in the field to communicate with the Legislature about how regulation is working. And, that advisory group, after you have some disclosure registration requirements adopted, can help to frame further legislation.

Two provisions which have been included in several acts, which you may also want to include -- though I do not recommend them right off -- are escrow and reserve requirements. The difficulty with these is that it is very easy to do damage, to raise costs in the communities, and to make it hard for non-profit organizations to get financing or to operate. I suspect -- well, I am quite sure -- that none of the legislators involved in Pennsylvania, Florida, or elsewhere have intended that. Escrowing entry fees is often done until the success of the project is fairly well assured. It protects the deposits of residents before the facility opens in case the facility does not open, but it adds the financing cost. Anytime you have to tie up money in an escrow account you have to borrow an equal amount, and you will wind up paying an additional amount for the project. So, there is a price for that security which the residents wind up paying.

The other provision is reserve requirements. Here there is no agreement in the field, and I speak of the field nationally, about what reserve requirements are appropriate for this type of facility. There are four or five different reasons for having reserves, from debt service to contingencies, to make up for low reoccupancy rates in early years, to fund future health care, or for building replacement. Residents are the source of funds for those reserves, and the question is always whether residents should put the money up in advance or essentially pay as they go. Even with these hesitations about reserves, reserves can rationally be used as a trigger mechanism, and this is how they are used in the Pennsylvania bill. They are set at an arbitrary, but fairly easy to calculate amount, a year's debt service or 10% of annual operating expenses. This level is high enough so that a facility still has enough cash to work itself out of difficulty, but is low enough so that it is not unduly costly to the facility.

The purpose of the reserves in Pennsylvania is simply to be a signal to the Legislature, to the regulating department, that a facility is in financial difficulty, that something must be done, and that there is still time to act. I am afraid that this field is not yet sophisticated enough to go much beyond that, but that does provide adequate consumer protection.

That concludes my remarks. I wish you well in your endeavors to regulate continuing care retirement communities. I hope you will be able to make some advances in the field, and improve on some things we have in Pennsylvania, which are not perfect by any means.

ASSEMBLYMAN PATERNITI: Thank you, Mr. DeWees. Our next witness will be Mr. Lloyd Lewis.

LLOYD LEWIS: My name is Lloyd Lewis; I am the Executive Director of Kendal-Crosslands. I also serve on the Executive Board of the American Association of Homes for the Aging, and am Chairman of the National Committee for Continuing Care Retirement Communities.

Depending upon the definition that is used, there are 300 to 600 communities in the United States today. Florida, California, and Pennsylvania have the bulk of the highest concentration.

I would like to speak today just on the subject of accreditation. I think you will have ample testimony on the other areas I could speak about.

I also happen to be chairman of an effort that a group of continuing care communities in the Delaware Valley has been working on since 1959. We have been working on the development of an accreditation system that will give the public, the consumers, and the government a reasonable assurance that our facilities are being operated on a sound fiscal basis and on an honest and open basis with the highest ethics. This project we have been working on-- I have two copies I can leave with you of an outline of where we are now. You will see that there is a brochure describing the Continuing Care Accreditation Association. There is also a copy of the instrument we are now using to give accreditation. We have just received a national grant from the Pew Memorial Trust in Philadelphia for $183,700. This grant is meant to take this accreditation system national. The American Association of Homes for the Aging has taken this on as a project and we will shortly be dissolving this Association into the American Association of Homes for the Aging.

It is worthy to note that three of the four New Jersey facilities have been active in the development of this system since its very beginning and, in fact, two of the executive directors serve on

the Board of Directors of the Continuing Care Accreditation Association.

We are seeking to model the kind of thing we do after the effort we see with the Joint Commission on Accreditation of Hospitals and the activities of accreditation in the field of education. To that end, we have several members of the educational world, including Clarence Mall, Chancellor of Widener University, and Joan Lionau and Mary Ann Tuft, both active in the field of nursing. All three of these individuals have been very active in the development of national accreditation programs and, hopefully, will play an important role in the development of our system. This Board will be expanded shortly, within the next few months, and will become a more nationally representative board.

The burden of all of my testimony is to ask that you will, hopefully, provide for accreditation in lieu of the provisions of your act, and have a similar provision to what we have in Pennsylvania in this regard. We think that this Accreditation Association may, in the long run, save the state some money and save the residents some money. Also, it will give assurance of high quality communities to live in.

I think that is the burden of my testimony. I appreciate the opportunity of coming here to tell you about it.

ASSEMBLYMAN PATERNITI: Thank you very much, Mr. Lewis. Are there any questions from the members of the Committee? (negative response) Next we will call on Lois Forrest from Medford Leas. Lois?

MS. FORREST: Good afternoon. I am Lois Forrest, Executive Director of Medford Leas. Medford Leas is a continuing care retirement community under the care of members of the Religious Society of Friends. The non-profit corporation responsible for its operation was founded in 1914 for the purpose of maintaining a home for the elderly. As the Chief Executive Officer of this corporation, looking back at its history, I believe the board showed great vision in moving from the limited concept of care that was provided in their small home for the care of the elderly to the development of Medford Leas, where people share all of the medical costs, thereby avoiding the possibility of becoming indigent because of catastrophic illness, and have living

arrangements available to them ranging from independent apartments to skilled nursing beds.

The first residents of Medford Leas moved into their apartments in 1971. We presently have a resident population of over 450 people, and we anticipate a population of slightly over 500 people when the buildings that have been approved by planning boards have been completed.

The board of Medford Leas has long favored regulation of CCRCs by New Jersey to offer protection to the consumer. At a board meeting on January 28, 1981, they elected to support such regulation, with emphasis on disclosure, and urged the New Jersey Association of Non-Profit Homes for the Aging to work toward such regulation. On their behalf, I would like to commend Assemblyman Paterniti and the other members of the Assembly Committee on Aging, Assemblymen Vainieri, Schwartz, Bennett, and Gill, for their interest.

There are many critics of the growth of regulation in our State and in the nation. They cite horror stories to prove how burdensome and inappropriate regulations are. With careful planning and analysis, we believe that regulations can be very beneficial to the public. We welcome this opportunity to provide testimony that addresses some of the issues that must be considered when drafting such legislation.

I will make four major points concerning Assembly Bill 2594. The first point you have heard other people raise, and that is that the definition of continuing care should be broadly written so that some communities which are obviously operating as CCRCs are not freed from the requirements of the regulations. You have two problems. You may include communities that essentially are not continuing care retirement communities and leave out others which should be included.

The second point is, finance requirements should recognize the vastly different financial conditions of the existing or proposed communities. Arbitrary escrow requirements may be detrimental to the financial health of a community.

Third, regulations should focus on disclosure to broaden, rather than narrow, the range of options open to our older citizens.

We find many creative new ideas coming forward regarding how CCRCs should operate. They should not be forced into a limited mode.

Fourth, regulations should not be burdensome or restrictive when there is minimal benefit to be derived from them.

First I will address the issue of definition. Some communities now advertising in this geographic area, or planned for this area, are using language that is likely to exclude them from this and other laws or regulations. One such community does not have an entrance fee, but rather payment for "cooperative stock and proprietary lease." In all other aspects, this community would be covered by the proposed bills now before the New Jersey Assembly. Medford Leas was one of the founders of Friends' Services for the Aging, an organization funded by the Johnson Foundation, the Commonwealth Foundation, and the Pew Memorial Trust, to seek alternatives to the more traditional model of CCRCs. A major aim of this organization is to research and plan for lower cost models of life care. One model under consideration would offer a continuing care contract with the signers remaining in their own homes. Participants would move when, and if, they needed nursing care. If this model now being planned in cooperation with a specific institution is offered to the public, it might not be covered by the present definition.

A suggested change in wording for your consideration is: "Community offers a contract that lasts for more than one year and guarantees shelter and various health care services when needed. Fees for health care services are less than the full cost of such services and have been partly prepaid by the person to be served." Such a definition would cover any prepayment for medical care, but would allow great flexibility in the programs offered.

Second is the important issue of financial protection for the residents. Without exception, the specific financial regulations of the bill do not relate to the assets and liabilities of the community. Therefore, they may place unnecessary expense on communities whose assets would not require the escrowing of funds to protect the residents. I would cite as an example the financial condition of Medford Leas. Our buildings and equipment are worth in excess of $25

million. Debt is less than $1 million and will be completely paid by the end of the 1988/89 fiscal year. We have securities and investments exceeding $3.5 million and cash flow of over $1 million. The bill, as now written, requires us to escrow 30% of the operating budget. At some time in the future, our community may require substantial repair or renovation. It might be financially advantageous to the community to use those necessary reserves, rather than to borrow money at a rate of interest well above any interest that would be received by investments.

Reserves to cover principal and interest on a year of debt service, or 10% of a year's budgeted operating expenses, is a much more reasonable requirement. Because of the liquid assets of Medford Leas, there is also no valid reason for requiring escrowing of entrance fees. I would suggest that escrowing requirements be waived by the regulatory authority when the community has sufficient liquid assets available to cover any liability for refunding entrance fees. Medford Leas is currently adding new units without borrowing money or using investments. The phased-in nature of the construction has made it possible to finance the construction entirely from the entrance fees of the new residents. The financial assets of the community are adequate to protect against any of the eventualities to be covered by the escrowing provisions. Again, I believe the regulatory authority should be able to waive escrow requirements when they are unnecessary.

Third is the concern to focus primarily on disclosure. When the bill attempts to regulate specific aspects of the operation of the CCRCs, it may result in a too narrow approach to the best methods for providing continuing care. This bill requires the posting of policy changes. How would residents not living on site be made aware of policy changes or notices of meetings? The requirement to hold four meetings a year with the residents of the facility may not provide the best forum or method for sharing relevant information. At Medford Leas, for example, there is a committee of residents, appointed by the residents, which reviews the financial condition of the community and has access to our financial records. We meet bimonthly with elected representatives; a member of the Medford Leas board is present, in

addition to staff. At the request of residents, we attend meetings scheduled for all residents. It is far better that the elected representative choose the format and frequency of the meetings, than that they be arbitrarily set by regulation.

The new units at Medford Leas do not have meals as a part of the contract, but the regulations specify the provision of food. The residents of our new units prefer to provide their own meals as long as they are physically able.

I have only addressed examples of situations that are in conflict with procedures we now have at our facility which may, in some instances, be different than what is proposed. The test of each regulatory provision should be: Is it necessary, or would greater flexibility achieve the same or a better result?

Fourth, there are, within the act, many requirements that would greatly increase the cost of administration without having a material effect on residents. One example is the requirement that all policy changes be posted. Our facility and its various departments operate with policy manuals; all items in these manuals have been board approved. The total physical size of the policy manuals is greater than three feet of bookshelf space. Most of these policies only affect the residents indirectly. Some are of an intimate or personal nature, such as the care of incontinent residents, useful for staff and individual residents or their families to know, but inappropriate for general dissemination.

I also suspect that the postings of thousands of policies might result in the residents knowing less, not more, since they might be likely to ignore the flood of policies listed and miss one that is most relevant to their situation. Another example of an unnecessary requirement is the requirement that all changes in fees would require 60 days' notice. Medford Leas provides some services to residents as a convenience; a small country store and newspapers are examples. The cost of these items, and others, may change without notice from our suppliers, and residents not using those services would be subsidizing the payments of others until the increase could be made. I would suggest that changes in rates or costs should require notification only

if there are changes to the basic monthly charge for residential rates in a living unit or in nursing care. Incidental charges are not likely to significantly impact residents financially.

One additional option I would ask you to consider is the provision that exists in the Pennsylvania legislation that states: "If a facility is accredited by a process approved by the commissioner as substantially equivalent to the requirements of this section, the facility is deemed to have met the requirements of this section and the commissioner shall issue a Certificate of Authority to the facility." Such a provision would avoid duplication and would allow the regulatory authority to concentrate on facilities that might benefit from further scrutiny.

In closing, I would encourage each of you to visit Medford Leas and other CCRC facilities. I have copies of the brochures of all of the facilities for the Committee members. We offer our experience and resources to assist in the orderly development and regulation of CCRCs in New Jersey. Thank you for your time and interest.

ASSEMBLYMAN PATERNITI: Thank you very much. Do you have any comments or questions, Assemblyman Vainieri?

ASSEMBLYMAN VAINIERI: No, I don't.

ASSEMBLYMAN PATERNITI: All right. Thank you for your input, Ms. Forrest.

MS. FORREST: We also have with us the Controller of Medford Leas, who will comment on issues related to financing.

ASSEMBLYMAN PATERNITI: We still have to hear from at least four more people.

FRANK W. GENTILE: I will be very brief, Mr. Chairman.

ASSEMBLYMAN PATERNITI: I will appreciate it.

MR. GENTILE: My name is Frank Gentile. I am a CPA and I am the Controller of Medford Leas Retirement Community in Medford, New Jersey.

I just want to take the time today to point out two major financial areas of concern. Finance is the field of my expertise at Medford Leas. The two areas are the liquid escrow reserve requirement and the construction escrow of entrance fees.

The bill provides for escrow reserve requirements in liquid form. This is a form of insurance for the residents in the event that the community wanders into financial difficulty. The bill calls for 30% to 40% of a year's budgeted expenses, plus a debt service requirement be met. This is a very tall and a very superfluous order for most communities, and many could not meet it without borrowing funds from a bank.

What this does is cause the community to either borrow or set aside funds that it might otherwise use to improve the community -- improving medical services, improving the grounds, improving the property, improving the dining services. So, what it boils down to, to the residents, is that they are going to have to pay a higher monthly fee to get a better quality of life. It either becomes a financial burden or a reduced quality of life if the liquid escrow reserve requirements become too large and too burdensome for the community to handle.

Looking at the Pennsylvania act, it strikes a very, very reasonable balance between the objectives of escrow and how they should really be achieved. Although I am reiterating what has been mentioned to you before, the Pennsylvania bill requires that the greater of one year's debt service or 10% of the budgeted operating expenses, excluding depreciation, be maintained in liquid form. We feel that this is very, very reasonable, and would not provide too much of an additional cost to the residents.

The second thing I would like to comment on is the construction escrow of entrance fees. This is when the community is first being built. It requires that 75% of entrance fees be escrowed until 70% of the units have paid their fees in full. What this requirement will do is stifle construction of new CCRCs, particularly by not-for-profit organizations, because it would require them to have tremendous cash flow ability and tremendous capital formation at their fingertips. So, what you will see is a lot of large for-profit corporations, such as Marriott or the Hilton, being able to build these facilities because they do have the tremendous capital resources at their fingertips. This is very similar to what Assemblyman Zimmer was speaking about earlier.

The Pennsylvania bill is listed in the handout. I won't go through it because it is lengthy. However, it does offer a very, very reasonable alternative to that which is proposed in New Jersey. It would provide for a better cash flow and a much better environment for not-for-profits to build.

We also feel that in lieu of the escrow required under this section, any provider should have an opportunity to file a letter with the Commissioner, a bond of credit, or something that would more or less exempt him from being required to comply with these requirements because his financial situation is favorable.

I thank you for allowing me to have this opportunity today, and I will be happy to answer any questions.

ASSEMBLYMAN PATERNITI: Thank you very much. Are there any questions? (negative response) There are no questions, so we just want to thank you for your input.

Next we would like to call upon Mr. Thomas LePrevost from the Presbyterian Home at Meadow Lakes.

THOMAS F. LePREVOST: My name is Thomas F. LePrevost. I am the Executive Vice President of the Presbyterian Home at Meadow Lakes. Meadow Lakes is a continuing care retirement community located in Hightstown, New Jersey. The Presbyterian Homes is an organization that was initiated in 1916 by the Presbyterian Churches to provide services and care to our elderly population. It qualifies as a non-profit/charitable organization under 501 (C)(3) of the Internal Revenue Code. Meadow Lakes was opened and accepted its first residents in February, 1965. This is a facility where all residents share the costs of their care and never have to be concerned about losing their home because they do not have the funds to pay for the full cost of their care. We provide living arrangements ranging from independent living units -- apartments -- to skilled nursing care.

We wish to commend Assemblyman Paterniti and the other members of the Committee, Assemblymen Vainieri, Schwartz, Bennett, and Gill, on their interest in this proposed legislation. The Presbyterian Homes also supports legislation that will respond to this growing need of the elderly in the continuing care retirement communities.

My remarks today will be addressed primarily to Assembly Bill 2594, and I would like to make the following comments which we hope will be helpful in the Committee's consideration of the legislation. Many of these comments are based on how the proposed legislation will affect Meadow Lakes; however, some of the same problems apply to other CCRCs.

Briefly, I would like to talk about Section 2. c. where it refers to the Department of Insurance for implementation of legislation. We believe, after reviewing this, that the Department of Insurance is the proper choice for the regulation of continuing care retirement communities because, in part, continuing care communities are predicated on actuarial assumptions which affect their financial health and that of the community.

In Section 5. a.(3), we suggest that the forfeiture provision be amended to say that a minimum of 1%, but no greater than 2%, be assessed as a forfeiture penalty, in place of the required 2% in the bill. In addition, there could be a requirement that the person submitting the list certify that it is a bona fide list.

Section 5. b. is a problem because of the escrow requirements and the time the moneys have to be held. Since the developer of a continuing care retirement community will have to borrow funds for the construction, and those funds will be at interest, this will add to the total cost of producing the facility. We believe a lower escrow requirement should be considered which would protect the residents and still provide money for refunds to those who do not enter. Such escrow could be 10%, but no greater than 20%.

Section 5. c.(3) requires a 30-year lease. This would be acceptable if the property were leased from the Residents' Trust as discussed in Sections 5. c.(1) and (2). However, because of the substantial development costs involved in continuing care retirement communities, some non-profits have looked to the conventional financing market to help them develop their communities. An approach that is being pursued is to work with a general partner who sells shares to limited partners to provide the necessary funds for the initial development. The benefits to the limited partners earn a tax shelter

that rewards them for the risk they have taken. If the lease is 20 years or less, they may enjoy the benefits of the Accelerated Cost Recovery System Depreciation Guidelines. Should the lease be longer, they would have to depreciate the facility over a 40-year period. This would effectively remove these funds from the market of producing CCRCs. Usually these communities, after they lease them for a period of years, are purchased from the partners, and that is usually after nine to eleven years. The non-profit can, with this approach, provide this important and necessary care, and yet assure the residents that the facility will remain under the control of the non-profit sponsor for an indefinite period of time.

We would like to request reconsideration of 5. c.(3) based on the above concerns. It would put the non-profit provider in a disadvantageous position in relation to the profit-motivated developer.

In Section 5. d., we believe, based on our experience of approximately 20 years, that the requirement of maintaining 10% of all entrance fees collected in escrow for six months for cancelled contracts is excessive. Once the agreement is signed with a resident for a unit at Meadow Lakes, the withdrawal rate is approximately 1% to 2% on the average.

In Section 6. c., we believe that the current ratio of one to one is an ideal that every facility would like to meet. If the escrow requirements included in this bill could be classified as current assets in meeting the current ratio, we believe it would alleviate some of the concerns we have as providers in meeting the current ratio test.

It would also be helpful if the legislation would define the ratio so that all facilities could conform their reporting. It should also be noted that this ratio is affected by the entrance fees that are received. While they are predictable within actuarial assumptions, they may fluctuate based on the size of the units and the number resold each year.

In Sections 8. a. and b., the requirement that a facility have in escrow one year of debt service, plus insurance and taxes, is a goal that each facility would like to reach. We have a practical

problem for Meadow Lakes in that our budgeting process separates debt service from taxes and insurance. The debt service is paid from entrance fees. Taxes and insurance are provided through the monthly service fees. We, as good fiscal managers, have provided for the one year's debt service within actuarial limits. However, the taxes and insurance portion of the required reserve come to us monthly as our residents pay their monthly service fees. If we were required to meet this reserve requirement in one year, we would have to add $400,000 or more to our monthly service fees. Our fees to our present residents would have to be raised by approximately $100 a month or $1,200 a year in the first year of enactment. This would be approximately a 5% average increase in rates.

The reserve requirements of 30% to 40%, depending on whether we are determined to provide comprehensive medical care, would require us to add on top of the reserve stated above, an additional reserve of somewhere between $2.2 million and $3.1 million, or more. Again, if this had to be imposed in the first year, we would have to collect for the year between $7,000 and $11,650 per unit, or between $580 and $970 per month. This would increase the monthly service fees on a one-time basis by 30% to 40%.

If we borrowed the money, assuming a lender would provide the funds, we would add to our operating costs approximately $450,000 per year. This assumes $3.1 million at 13.5% for 20 years. If we invested the moneys at 10%, we would receive $310,000 of income, creating a negative arbitrage of $140,000 per year. That negative arbitrage or loss attributed to borrowing the money would have to be added to the cost the residents would pay for the next 20 years at about $35.00 per month, or $425 per year, an annual increase of 2% in monthly service fees.

Our programs, when originally designed, attempted to protect, as much as possible, the assets of our residents. While we believe certain reserves are necessary, we have a concern that the reserves included in this bill will take away from residents in existing facilities, and add to costs of new facilities, funds that are presently earning income for the residents which they use to pay their monthly service fees.

For new facilities it will assure continuing care retirement communities for the very affluent in our society. We at the Presbyterian Homes have been working on a model that we would like to be affordable for the moderate-income elderly. These additional reserves could change that concept and assure that these facilities would serve only the affluent elderly.

We would like to suggest that an advisory council be made a part of any legislation. That council could work with the Commissioner of Insurance in proposing regulations or making decisions that would affect continuing care retirement communities.

We have, as Ms. Forrest mentioned, provided brochures of Meadow Lakes for your reference. As you can see from the brochures that have been presented, there is a diversity of living environments offering the elderly of our State the opportunity to select the home that appeals to them.

I would like to thank you for your time and patience in allowing me, on behalf of The Presbyterian Home at Meadow Lakes, to present our concerns with Assembly Bill 2594. We would be happy to answer any questions.

ASSEMBLYMAN PATERNITI: Thank you very much. Are there any questions? (negative response) Okay, thank you for your input. The next person to testify will be Karen Uebele from Navensink House.

KAREN J. UEBELE: Good afternoon. My name is Karen Uebele, and I am the Administrator of the Navensink House, which is a non-profit CCRC located in Red Bank, New Jersey. I have brought with me some photographs of the Navensink House, which I felt might demonstrate to you a little bit about what life is like there. We have a 12-story facility which houses 170 apartments and a 33-bed nursing unit. These photos will give you an idea of what the apartments, the dining room, and the nursing services look like.

Since I know we are running short on time, I am going to try to skip through some of what I have in my statement. The Navensink House has been in operation for 16 years. We are proud of our home and we believe that we serve a crucial function for our current and future residents. Our ability to continue to offer the kind of service we now

deliver will, however, be significantly strained if the legislation before you is adopted in its present form.

Please allow me to outline some reasons for this statement. Although the Navensink House is affiliated with the Baptist Church, we receive no funding from the Baptist Church or any other source, including the government. Thus, our sole means of support is limited to the entrance fees and monthly maintenance fees charged to the residents.

Moreover, more than half of our residents entered the Navesink House under contracts which differ substantially from the current contract, where the actual cost of care is now charged. Our initial contract 16 years ago guaranteed residents no more than four increases in the monthly maintenance fees of no more than 5%. This contract was then modified in 1973 to allow for no more than 10 increases of 5% or less over the lifetime of the contract. The result today is that these residents, although they represent half of our community, pay only 36% of the actual costs. They pay less if the costs of the nursing facility, where most are under these contracts, are taken into account.

Given this financial reality, it is understandable why it is so difficult for us to concur with the portion of A-2594 mandating that a facility in operation more than 10 years must maintain in escrow an amount equal to 30% of the projected total annual operating costs, while also having to maintain a one-to-one current ratio of assets to liabilities.

More difficult yet would be the possibility that this legislation would also mandate that the life care facility maintain in escrow a minimum liquid reserve equal to the amount of all principal and interest payments due during the fiscal year on any mortgage loan or long-term financing of the facility. The cumulative effect of these three provisions would be disastrous to us at the Navesink House.

It is not that we are not solvent; we are. We have a working capital of over $600,000. If, however, we are forced to abide by these three sections of the bill, we estimate we would have to borrow around $1.4 million and decrease our working capital to approximately

$200,000. How would we repay this loan? As a non-profit entity with no outside source of funding, our only alternative would be to increase the monthly maintenance fees of the 50% under our new contracts. Moreover, we are afraid that the monthly fee increase would have to be triple what the affected residents now pay. Many, of course, would be unable to meet this charge, and others waiting to enter our facility would have to seek housing elsewhere.

These provisions are particularly devastating to older facilities, such as ours, which are in need of capital improvements. For example, we are currently in the process of securing funding for a $1 million expansion to our nursing unit. This expansion is needed for us to be able to guarantee a nursing bed for any resident in need of such. If this legislation were law, however, we would be forced to utilize these moneys for our escrow responsibilities. The result would be that we would have to find room in another facility for any resident unable to secure a bed in our nursing section, and we would have to pay the cost of this relocation.

I am certain it was not the intention of the sponsor to create this problem for us, a problem which the large for-profit facilities would not face. Yet, unless these provisions are modified to reflect our concerns, I fear that the future of the Navesink House is in jeopardy.

There are two other problems I would like to briefly outline. First, A-2594 requires financial disclosures by a life care community's directors, trustees, and members. The Board of Directors of the Navesink House is a voluntary board. No members receive remuneration for their services. We actively recruit board members whose expertise, whether it be in law, banking, nursing, or social services, can assist our operation. We would find it difficult indeed to recruit new members or keep our existing members if financial disclosure was mandated.

Secondly, the bill does not clearly speak to what application it has, if any, to existing life care facilities desiring expansion.

In conclusion, I would urge the sponsor and the Committee members to consider either amending A-2594 or drafting a Committee

Substitute which would largely incorporate A-2613, legislation cosponsored by Asemblyman Paterniti, which mirrors the Pennsylvania law on life care facilities. As I mentioned at the outset, the Navesink House firmly believes that life care facilities should be regulated, especially in view of the expected increase in such communities in New Jersey. But, any regulation which severely impinges on the capability of existing homes to function must be considered detrimental not only to the residents of the facilities in question, but also to the State's efforts to provide good health care and adequate housing to its senior citizens.

I have with me Mr. Henry Hohorst, who is a Board Member with the Navesink House. He would like to address a few points.

HENRY HOHORST: Mr. Chairman and Assemblyman Vainieri, I have copies of the details of my presentation, so I am not going to read all of it; I am just going to highlight a couple of things that I think are most important. However, if you have a chance to read the whole statement, I would appreciate it.

As Karen said, all of our board members are voluntary members. We do not get paid for the work, but we are delighted to do it because we think this concept is a super concept. I hope someday to be able to live in such a facility; I think it is that good.

We are a financially sound organization today. We expect to remain that way. We do not have any government funds, as Karen mentioned. The residents pay for everything we have at Navesink House. I am very much concerned about the impact on these residents. I do not want to unnecessarily increase their costs, because most of them are on a fixed income and really can't afford increased costs.

You have heard from a number of people about the various impacts of the financial ratios in escrow required under this bill. Suffice it to say that in total it would require us to have a lot more dollars sitting around than we have today. There are one or two ways we can do that. We can either raise the fees in one year to raise that amount of money, or we can attempt to borrow money for a 10-year period and pay it off over 10 years. There might be a third alternative, but I don't think it is acceptable. The third alternative

would be to borrow the money, put it in a bank, and let it earn interest. In that way, we could cover it and we would only have the difference in interest costs between what we borrow and what we pay as something we would have to carry every year. The disadvantage of that approach is, if we ever needed an expansion, we could not get the borrowing we needed because we would have already used up our borrowing resources to cover the escrow requirements. So, I think you have to raise these funds one way or another.

If we were, in the worst case, to raise these funds in one year, not from the people who are on the limited contracts, but from the people who are in a position where we could raise their fees, we would almost have to triple those fees for one year to get the amount of money needed. I don't think you ever intended for us to do a thing like that to our residents.

If we try to do it over 10 years, because of the amount of borrowing and the interest costs associated with it, we would be looking at something like a 50% increase in the current operating fees for the half of these people who could afford the increase. I don't think it is necessary; I think it is overkill, and it is important to us that we do not burden our residents with something of that nature.

There is another part in there about if some facility were judged as not meeting all of the requirements -- and we wouldn't initially meet these requirements -- the Commissioner could say, "No more new residents." We looked at what that would have meant to us if in the last year we had not brought in any new residents. The amount of revenue we received in the last year from new residents was about 10% of our total revenue. In addition to that, our founders' fee dollars were rather substantial. Where the income was $150,000, the founders' fee was $380,000. You can see that when you start eliminating funds like that for a year, if you are not allowed to bring in any new residents for a year, it would just put you in a tailspin and take you to the bottom in a hurry.

I think we can live with the Pennsylvania bill more realistically. There is still one provision of that which troubles me

a little bit. It has to do with the kinds of incentives I like to see in any bill. The incentives should be in the right direction. When we are asked to have 10% of our operating expenses available as working capital, I think that is quite realistic and is at about the level where I feel we should be. That would require us to have about $200,000 working capital. Currently, we are a little over $600,000, and we are trying to raise the amount of money we have so we can do a much-needed expansion of our nursing floor.

The other provision that says "one year's debt service," has the impact of raising any expansion costs by 10% to 15%, because you have to borrow an additional amount of money, not only to do the expansion, but to have enough to escrow for the first year's payments on that mortgage. So, it would automatically increase the cost of any expansion, and we are looking at a rather substantial expansion of our nursing floor. I don't want to see the costs go up 10% more than they might necessarily have to because of that part of the Pennsylvania bill. In fact, I would say that the incentives are wrong. The incentives are there to discourage doing something that we all know we need to do.

We do not want to see too much paperwork. We do not have a big staff. We try not to run too much of a staff, so we like to keep the paperwork to a minimum. I look at what we have compared to other facilities in the State, retirement facilities that are receiving a lot of their funds from Medicaid or some other government source, and their paperwork requirements are far higher than ours are. I see them running two or three extra clerical jobs in their facilities compared to what we do.

I think that some of the people you have heard today could be useful to you as an advisory staff for the future. Thank you.

ASSEMBLYMAN PATERNITI: Thank you very much. The next person I would like to call on is Debra Zuckerman from the Cadbury Retirement Community. Debra, please try to condense some of your testimony because we are running out of time and we would like to hear from everyone. All right?

DEBRA ZUCKERMAN: My name is Debra Zuckerman. I am a Certified Public Accountant and the Controller at Cadbury. Mr. John Clancy, the Executive Director, sends his apologies for being unable to attend this public hearing. Unfortunately, today's hearing is scheduled at the same time as the meeting of the Cadbury Board of Directors. They are meeting to discuss imminent union negotiations.

Cadbury is a Quaker-related continuing care retirement community operated on a not-for-profit basis. Cadbury began in September, 1977, when the Cadbury Board purchased a failing hotel operation. This hotel now serves as our central community building and residential apartment area for approximately 200 apartments. This Cherry Hill area is regulated by the Department of Community Affairs. In February, 1981, we floated a bond issue through the New Jersey Health Care Facilities Financing Authority which enabled us to construct our health care center. In July, 1981, we opened our 120-bed health care center, thus becoming a full-service CCRC in which a resident could expect a span of services ranging from a fully-independent apartment accommodation to a highly-dependent skilled nursing bed accommodation. The health care center is regulated by the Department of Health. Due to the large size of our health care center, we also enjoy the opportunity to provide health services to the surrounding community, which includes participation in both the Medicare and Medicaid programs.

Cadbury has continually striven to provide all of these services to both our internal and external communities at the most reasonable costs possible. The following comments are a few of our concerns relative to Assembly Bill 2594.

I would first like to address Section 8. b., the section dealing with escrow requirements. An escrow requirement of 30% to 40% of a facility's operating budget can create quite a substantial--

ASSEMBLYMAN PATERNITI: (interrupting) Excuse me. This must be the fourth time we have heard a lot of these points you are bringing up. We do not want to be too repetitive.

MS. ZUCKERMAN: Okay.

ASSEMBLYMAN PATERNITI: I notice that almost every person who has come up here to speak has continually repeated the same points.

MS. ZUCKERMAN: I suppose we feel this is an important issue; we wanted to stress the point. I will move on.

ASSEMBLYMAN PATERNITI: All right.

MS. ZUCKERMAN: I would like to address one item that has not been included in Assembly Bill 2594, which is our concern of dual escrow requirements. Certain communities, like Cadbury, are required by the terms of their bond issue to maintain certain escrowed funds with the bond trustee. For example, in order to comply with our bond requirements, Cadbury must deposit in an escrow account one year's bond interest and principal payments. Also, 40% of every entrance fee we receive must be deposited in an escrow account maintained by our bond trustee. Cadbury currently has in escrow with its bond trustee 27% of its total operating budget.

We would like to recommend that Assembly Bill 2594 include a provision whereby communities be allowed to apply funds already escrowed with other authorities to the escrow requirements of Assembly Bill 2594.

Lastly, I would like to comment briefly on the annual statement which would be required reporting under Section 6. b. of the bill. Currently, Cadbury is required to submit audited financial statements to various regulatory authorities, a 15-page Medicaid cost report to the Department of Health, and a 56-page Medicare cost study to our Medicare provider. All are due 90 days after the fiscal year ends. In addition to these, we also prepare an annual report brochure for distribution to both current and prospective residents. All the communities' accounting and administrative staffs are quite modest in relation to the size of their facilities, and such additional reporting requirements would naturally increase the administration costs, which in turn may be borne by the residents. We would recommend that the bill require that the annual statement contain the same information required by the application for Certificate of Authority.

In closing, we would like to join our fellow presenters in commending the Assembly Committee on Aging. Your efforts will help to ensure that the life care industry in the State of New Jersey has the opportunity to develop and expand in ways which will protect the senior

citizens interested in the life care option. We hope it will do so in a fashion that will not limit the facilities' ability to provide high quality services at the most reasonable cost.

Thank you for allowing me the opportunity to testify today.

ASSEMBLYMAN PATERNITI: Thank you very much for your input. Next we would like to call on Frank Blair, who is a trustee/resident of Medford Leas. Frank?

B. FRANKLIN BLAIR: My name is B. Franklin Blair. My wife and I have been residents at Medford Leas for five years. My wife's paternal grandmother was one of the 11 original incorporators of Medford Leas when it was started in 1914 under the name "Estaugh Corporation." For two and a half years, I have been on the 12-member Board of Trustees of the Estaugh Corporation.

I appreciate the opportunity to testify here. Before I retired in 1973, I was Senior Vice President and Actuary of the second largest life insurance company in Pennsylvania. In my memorandum I outline my experience with state regulations, disclosure of financial statements, and solvency.

Because of this experience, I approve of the Department of Insurance being given the responsibility for administering the provisions of Assembly Bill 2594. In my opinion, the Department of Insurance has the experience and personnel to administer disclosure and solvency provisions -- particularly when solvency involves actuarial considerations -- better than any other department. Incidentally, the insurance industry has always regarded the New Jersey Insurance Department as one of the best-staffed and best-run insurance departments in the country. Most of the states which have laws dealing with CCRCs do vest administration in the Department of Insurance.

I will skip the other parts of my statement, because they have been covered -- though not from the same point of view -- by other witnesses. However, I would like to digress on two points which are not in my written statement. I support Ms. Forrest's point of view that the requirement of quarterly meetings with the residents is unnecessary. In her testimony, she mentioned that at Medford Leas we have bimonthly meetings between the representatives of the Board and

representatives of the residents. Those meetings should not be bimonthly; they should be semimonthly. That is just a minor correction in her testimony. I didn't mention to her that I was going to make that correction. (laughter)

MS. FORREST: I'll get your head for that, Frank.

MR. BLAIR: The other point I would like to add to my written testimony bears on some of the experiences that banks have had under FDIC. The customers of the banks have gotten to the point where they have not looked as much into the actual strength of the banks as they used to. They have relied on the FDIC guarantee, instead of requiring the management of the bank to run the bank in a safe manner. As a result of that, we have had situations like the Continental Illinois situation out in Illinois, and many other cases of bank failure, some of which would undoubtedly have been avoided if the depositors of the banks had expected the same degree of conservatism in running the banks as they had a right to expect. For that reason, I think that disclosure to the representatives is a much better way to protect the residents than having detailed requirements and regulations. You cannot write laws and regulations that some smart person won't find a way to get around. But, disclosure so that the residents know what they are getting into is, in my opinion, the direction which this legislation should primarily focus on.

ASSEMBLYMAN PATERNITI: Thank you very much for your input. I think we still have one more witness, Mr. Carmen Armenti. How are you doing, Carmen?

CARMEN ARMENTI: Good afternoon, Mr. Chairman. It is nice to see you again.

ASSEMBLYMAN PATERNITI: Same here.

MR. ARMENTI: Mr. Chairman and Assemblyman Vainieri, thank you very much. I know you are laboring under difficult time restraints, and I appreciate this opportunity to make this statement on behalf of the Department of Community Affairs and the New Jersey Housing and Mortgage Finance Agency. Accompanying me this afternoon is Ms. Barbara Parkoff, who is Director of the Division on Aging, Department of Community Affairs.

BARBARA PARKOFF: I am not the Director, please.

MR. ARMENTI: I just promoted you.

MS. PARKOFF: Very much so. I am a housing specialist.

MR. ARMENTI: Also with me is Marianne Rees, who is with the New Jersey Housing and Mortgage Finance Agency.

The Department of Community Affairs and the New Jersey Housing and Mortgage Finance Agency support the general purposes of Assembly Bill 2594, which are to encourage fiscal responsibility and disclosure of information from project sponsors who promise continuing care to elderly people. They disagree, however, with the methods proposed to reach these objectives. Assembly Bill 2594 would regulate, through detailed and demanding processes, the planning and operation of a wide variety of residential projects that offer health-related services to residents. We are mindful of the onerous administrative and financial burdens that over-regulation can place on residential projects. Excessive regulations could ultimately work against the best interest of elderly residents by increasing the costs of needed housing and care. Moreover, aspects of the bill that have an impact on the financing of new continuing care retirement communities by the New Jersey Housing and Mortgage Finance Agency are of particular concern.

Assembly Bill 2594, which is patterned after a Florida statute, reflects a long and sometimes questionable history involving retirement communities in that state. Fortunately, New Jersey is not in the position of having to rectify past wrongs. It can learn from the Florida experience, and the experience of other states, and can establish a strong and healthy foundation for the operation of communities yet to be developed here.

We believe that oversight authority for existing and privately-financed projects should be vested in the Department of Community Affairs. DCA, not the Department of Insurance, is the appropriate State-regulating agency because of the special nature of continuing care facilities. Such projects involve the provision of services to the elderly in a predominantly residential environment. DCA is experienced in the regulation of residential premises and has, within its jurisdiction, responsibility for protecting the rights and interests of elderly people. These responsibilities far outweigh the

need for Insurance Department oversight of health care guarantees. The number and types of services to be provided by a contract will vary widely among projects, thus minimizing the benefits to be gained from the Department's actuarial expertise.

Furthermore, the field is undergoing rapid change in the direction of limiting guarantees for health services based on entry fee charges. Special attention, on the other hand, should be paid to the promised and actual delivery of housing and support services, an evaluation best understood by the skilled staff of DCA's Division on Aging.

The Department of Community Affairs has for many years been responsible for the regulation of retirement communities and planned real estate developments and has gained expertise in this area. It would be most appropriate to bring all of the continuing care facilities within the jurisdiction of DCA under the Planned Real Estate Development Full Disclosure Act by amending that act to specifically include them. There will need to be some supplementary provisions as well to recognize, for example, the ongoing protection and monitoring needed by this vulnerable population. Moreover, there should be a provision to ensure adequate consultation with the Department of Insurance on all actuarial issues.

Neither the Florida model proposed by this bill, nor the Pennsylvania model embodied in Assembly Bill 2613 deal effectively with the intricacies of tax exempt bond financing. Enactment of legislation in this area must not inadvertently prevent the financing of new projects with low-rate tax exempt funds by the State's own finance agencies. The NJHMFA is investigating a program to create new financing opportunities for continuing care retirement communities. More work remains to be done because of the complicated issues involved in obtaining an investment grade rating for bonds sold to finance entry fee projects. However, we do know that separate and sometimes conflicting reasons for imposing restrictions on projects could jeopardize the Agency's ability to provide financing. Subjecting projects to dual escrow requirements and dual remedies in the event of project failure, for example, would interfere with an already fragile financing structure.

Because of the potential for conflict between the two sets of standards, we propose that projects financed with State agency bonds be exempted from legislated regulating requirements. The NJHMFA has undertaken extensive preparation and research to establish proper financial and programmatic standards for CCRCs. Project review criteria have been designed specifically to protect the interests not only of bondholders, but also of project residents. Agency disclosure requirements regarding service contracts and project financial status could easily be made to conform to the disclosure required under the companion regulatory statute for these types of facilities.

Actual financial requirements imposed by the Agency will probably be more severe than those contained in any State oversight regulations, largely because publicly-issued bonds must receive a rating from bond-rating agencies. Existing organizations and organizations financed through conventional means should not be subjected to the more stringent and expensive standards governing bond financing. This would raise costs unnecessarily for those project residents. The most efficient approach for all facilities, therefore, is joint regulation -- regulation by the New Jersey Housing and Mortgage Finance Agency for projects financed by its bonds, and regulation by the Department of Community Affairs as the selected State oversight Department for the remaining projects.

ASSEMBLYMAN PATERNITI: Thank you very much, Carmen.

MR. ARMENTI: Thank you.

ASSEMBLYMAN PATERNITI: Is there anyone else out there who would like to be heard? (no response) Was there someone here earlier from the Department of Insurance? (no response) I know someone came in, but he must have left.

I want to thank all of you for coming. All of this input will be wisely used because I believe there will be many, many amendments to this piece of legislation. We are going to try to come up with legislation which will not put the non-profit homes at a disadvantage, because I feel they are strongly needed and I think they are doing a good job. We have mentioned both the Florida and the Pennsylvania bills. Both have pluses and minuses. The Florida bill is

an old bill which has been amended many times. The Pennsylvania bill is new; actually, it has no real experience rating because it is new. It hasn't even been tried. Chances are there will probably be many amendments. I hope we can come up with something where we can actually by-pass that particular situation.

I chair the Assembly Committee on Aging, as you know, and I am very concerned about costs to the elderly. In fact, if you check most of my legislation, it has always been in a direction where I am trying to get more and more programs for the elderly at the minimum amount of cost. I know we are going to try to take that into consideration. We do not want to put any facility in more or less of a strait-jacket.

I want to thank all of you for coming. Your input was very, very good, and I know we are going to use it. I think we are going to come up with a piece of legislation we can all live with and which will be in the best interests of the elderly of this State. Thank you very much.

(HEARING CONCLUDED)

APPENDIX

NJANPHA
Founded 1931

New Jersey Association of Non-Profit Homes for the Aging

CENTER FOR HEALTH AFFAIRS 760 Alexander Road, CN1, Princeton, New Jersey 08540
Telephone 609-452-1161

November 19, 1984

Thomas A. Paterniti, Chairman
Assembly Committee on Aging
New Jersey General Assembly
Trenton, NJ 08625

RE: **Continuing Care Retirement Community Legislation**

Dear Mr. Chairman:

The New Jersey Association of Non-Profit Homes for the Aging has as members 91 governmental and voluntary non-profit facilities for the aging, including four Continuing Care Retirement Communities. Collectively, our members serve over 12,000 people.

The CCRC elaborates a traditional non-profit approach to care and services for the aging: Sponsored by a community that cares, the non-profit CCRC provides a continuum of services that provides for the resident an environment that promotes independence, self-determination, security and maximum fulfillment.

We support the enactment of a CCRC statute in order that prospective residents may have the confidence that communities are supervised by the State, and so that the development of new CCRC's in New Jersey may be orderly and without, as far as possible, preventable difficulties.

The CCRC field is complex and changing:

• New Jersey's four existing communities are all non-profit, and committed to the highest quality of service to residents at an affordable cost. At least eight CCRC's are under development in the state, not all of which will be non-profit. We are concerned that for-profit CCRC's might not be affordable for those who need the service most; that is, that they will cater to upper-income rather than middle-income persons.

• Maintaining residents at maximum independence requires great expertise. Insuring the viability of a community that must be prepared to provide care for persons with catastrophic illnesses requires the utmost sophistication. We are concerned that future CCRC's might inadvertently be encouraged to reduce services that foster well-being by a statute that contains unintended incentives.

• By providing an alternative to the free-standing Medicaid-provider nursing home, CCRC's save the state money. We are concerned that adverse legislation would increase, not alleviate, Medicaid's burden on taxpayers.

• Finally, we are concerned that the cost of compliance with the resulting statute not be burdensome to our residents, for whom the CCRC exists, and by whom costs are paid.

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PLEASE REPLY TO:

November 16, 1984

The Honorable Thomas H. Paterniti, Chairman
The Honorable Anthony P. Vainieri, Vice-Chairman
The Honorable David C. Schwartz
The Honorable John D. Bennett
The Honorable Edward K. Gill
Assembly Committee on Aging
State House Annex
Trenton, New Jersey 08625

Re: Legislation to regulate continuing care communities

Gentlemen:

This firm is Counsel to the New Jersey Association of Non-Profit Homes for the Aging ("Association"), which includes among its members all four not-for-profit continuing care communities in New Jersey.

Shortly after Assembly Bill No. 2594 was introduced, the Association formed an ad hoc committee composed of top management representatives from each of the four continuing care communities to study the bill. The ad hoc committee has now convened at four lengthy sessions to analyze the bill as carefully as time has permitted. In this connection, it should be noted that all members of the ad hoc committee, as well as the undersigned, believe that, notwithstanding our best efforts, we have not had enough time to adequately digest the bill. At each working session, we have detected issues and problems overlooked at earlier sessions and I have no doubt that the same would occur if we were to convene again.

Considering that the Florida statute (upon which A 2594 is modeled) has evolved over a period of some twenty years, and that the Pennsylvania statute (upon which Assembly Bill No. 2613 is modeled) was the result of two years of cooperative effort among legislators, continuing care community representatives and regulators, I believe that additional time is needed to carefully analyze the implications of A 2594 and A 2613, both of which are complex and far-reaching bills that would chart brand new territory in New Jersey.

In order to produce a bill that is both well deliberated and well suited to the New Jersey environment, we believe that it would be helpful to convene an ad hoc committee composed of representatives of continuing care committees and the appropriate legislative staff to review the pending legislation in complete detail and to report its findings to this Committee within two to three months. We believe that this is a reasonable timetable since there are substantial models to work from in other states - particularly Pennsylvania. (If this Committee believes that a two to three month pause is unacceptable, the Association and its members are prepared to sit down immediately with legislative staff to begin detailed review of the legislation).

Notwithstanding the need for further and prompt study, there is a strong feeling among the representatives of the continuing care communities that regulation is needed to maintain the integrity of the industry in New Jersey and to ensure that future communities live up to the standards of excellence that have been set by the four communities that are members of the Association. The Association supports regulation and commends the Chairman and other members of the Assembly Committee on Aging for their timely initiative.

Attached to this letter is a Memorandum providing a section by section analysis of A 2594. While the Memorandum is intended to be comprehensive, I want to reiterate that our study of the bill has necessarily been hurried. I am certain that there are some points - some of them, perhaps, important - that we have not yet discovered. I have reviewed numerous other state statutes and, where appropriate, have drawn on those statutes for perspective and guidance. At the public hearing, it is my intention to focus only on the most significant of the points covered in the Memorandum.

I also want to point out that the ad hoc committee has not focused on A 2613 as carefully as it has on A 2594. However, there are numerous references throughout the Memorandum to Pennsylvania's "Continuing Care Provider Registration Disclosure Act," Act No. 1984-82, 35 P.S. §449.1 et seq., approved June 18, 1984.

Finally, some general observations about the Florida statute, Fla. Stat. Ann. 651.011 et seq., and the Pennsylvania statute are in order. The Florida statute was enacted in 1953 and was the first in the country. Since 1953, it has been amended eight times, rather substantially in some cases. As a result, the Florida statute lacks internal consistency, and is a very difficult statute to navigate. Significantly, the Florida model has not been followed by any other state in the country.

More significant is the fact that the provisions of the Florida statute have not been tested by the kind of rigorous enforcement that one would anticipate in New Jersey. Specifically, community care representatives in Florida inform us that enforcement has been lax. This is not surprising in light of the fact that the Florida Department of Insurance had, until recently, assigned

oversight to a half-time staff person. (Recently, the position was increased to one full-time person.) In any case, it is obvious that the voluminous documentation generated by the statute is not being effectively digested or monitored.

Fortunately, New Jersey's regulatory philosophy is quite different and, therefore, this Committee can expect that the bill it drafts will be rigorously enforced. Correspondingly, this suggests that the provisions of the bill should be practical and enforceable.

The members of the Association strongly desire legislation that is practical, effective and comprehensive. For example, on the most fundamental point - how "continuing care" is defined - they believe that neither the Florida statute nor the Pennsylvania statute contains a definition broad enough to encompass the great variety of continuing care communities existing and planned. (This point is discussed in greater detail in the attached Memorandum).

The members of the Association believe that the Pennsylvania statute provides a far better model than the Florida statute for continuing care legislation in New Jersey. The Pennsylvania statute is the result of two years of careful study, and draws upon the regulatory experience and statutory provisions of Florida, Indiana, California and other states. In addition, since the Pennsylvania statute was created in one stroke, it is much tighter and more internally consistent than the Florida statute, which will assist both the regulators and the regulated to comply with its provisions.

Whatever course is taken by this Committee following the public hearing, the Association and its members are anxious to work with the Committee to create legislation that will make New Jersey a leader in the field.

Sincerely,

LEONARD FISHMAN
TOMAR, GELADE, KAMENSKY,
KLEIN & LEHMANN

LF/dsg
Enc.
cc: Norma Svedosh

M E M O R A N D U M

TO: Dennis Hett, Executive Director, New Jersey Association of Non-Profit Homes for the Aging

FROM: Leonard Fishman, Tomar, Gelade, Kamensky, Klein & Lehmann

RE: Assembly Bill No. 2594

DATE: November 15, 1984

INTRODUCTION

Following is a section by section analysis of Assembly Bill No. 2594, introduced on September 17, 1984, by Assemblyman Thomas H. Paterniti, Chairman of the Assembly Committee on Aging.

ANALYSIS

Page	Section
1	1 For the sake of clarity, the short title of the act should be the "Continuing Care Retirement Community Regulation and Financial Disclosure Act." By adding the word "Retirement" the bill clearly excludes other kinds of communities that might be construed as providing continuing care: for example, a four year undergraduate college.
1	2.b The definition of "continuing care" may be inadequate. Virtually every state that has continuing care legislation uses a different definition. A sampling of definitions follows:

> California: ". . . nursing services, medical services, or health-related services, board and lodging and care as necessary, or any combination of such services . . . ."
>
> Florida: ". . . shelter, food, and either nursing care or personal food services . . . whether such nursing care or personal services are provided in the facility or in another setting designated by the agreement for continuing care . . . ."
>
> Illinois: ". . . nursing services, medical services or personal care services, in addition to maintenance services . . . ."

Page Section

1 2.b(cont.)

> Pennsylvania: ". . . board and lodging together with nursing services, medical services or other health-related services, regardless of whether or not lodging and services are provided at the same location . . . ."
>
> Wisconsin: ". . . nursing services, medical services, or personal services, in addition to maintenance services.

None of the definitions currently in use is broad enough to encompass the great variety of continuing care communities existing or planned. By way of illustration only, one planned community does not require an "entrance fee" but instead requires "payment for cooperative stock and proprietary lease." In another instance, it is proposed that individuals sign a continuing care contract but remain in their individual homes until such time as they require nursing care. These examples suggest that the definitions of "continuing care" and "entrance fee" must be carefully drafted to anticipate the many possible permutations of continuing care. Otherwise, communities created after the act may structure themselves to fit the definitional loopholes.

1 2.d The reference to "accomodation fee" is confusing because the term is not defined.

1 2 This section should contain a definition of "application fee." The Indiana statute contains the following definition:

> "Application fee" means the fee charged an individual in addition to the entrance fee or any other fee, to cover the provider's reasonable cost in processing the individual's application to become a resident. Ind. Code Ann. Sec. 233-2-4-1.

3 4.a(3)(a) This section asks for evidence that the applicant, chief administrator, manager, members, shareholders are "reputable and of responsible character." This requirement is overly broad

Page	Section

3 4.a(3)(a) (cont.)

and vague. What is really significant is whether there is evidence that any of the foregoing individuals is not reputable or of responsible character. Section 4.a(3)(c) requires disclosure of convictions, etc. It is recommended that Section 4.a(3)(a) be dropped in favor of 4.a(3)(c). This is the approach of the Pennsylvania statute. See Pa. Act. Sec.7(a)(3)(C).[1]

3 4.a(3)(b) Same objection as 4.a(3)(a) above.

4 4.a(6) This section is overly broad and vague. In addition, the Commissioner should not be authorized to inquire into the financial matters of directors and trustees. Since not-for-profit facilities rely upon volunteer boards of trustees, their personal financial matters should not be open to scrutiny by the Commissioner, particularly where no apparent purpose will be served. It is recommended that "directors, trustees, members," be deleted from Line 91. In addition, the Commissioner's authority to demand information from "branches, subsidiaries or affiliates" should be limited to cases where such entities' assets and liabilities are related to the subject facility.

4 4.b(2) See discussion of 4.b(3) and (4).

4 4.b(3)&(4) These sections require that a preliminary feasibility study include an evaluation of the potential market. The proposed 50 and 100 mile radii are unmanageably large. This provision is derived from Florida which is both larger than New Jersey and largely surrounded by water. New Jersey is at the center of the densest population concentration in the United States. Therefore, if the 50 and 100 mile radii provisions were

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[1] "Pa. Act" refers to Pennsylvania's "Continuing Care Provider Registration Disclosure Act," Act. No. 1984-82, 35 P.S. Sec. 449.1 et seq., approved June 18, 1984.

Page Section

4 4.b(3)&(4) (cont.)

imposed, New Jersey would have a greater burden than any state in the country.

The goals of these subsections could be met without undue hardship by deleting 4.b(3)&(4) and substituting subsection 4.b(2), altered as follows:

> (2) An identification and evaluation of the potential market, including:
>
> > (i) the demographic and economic profile of the population in the market area of a facility; and
> >
> > (ii) Identification of existing and proposed competitive or similar facilities within the relative market area of the facility. For the purpose of this subsection, a proposed facility shall mean a facility which, at a minimum, has received a Certificate of Authority ("COA") or a provisional COA.

Since the feasibility study must be certified by a trained and experienced individual, Sec.4.b(9), it will be sufficient to require a discussion of competing facilities within the "relevant market area."

5 4.b(7) This subsection requires disclosure of the assets and liabilities of the applicant for a provisional COA. Since the applicant may be an organization which has assets beyond those it intends to commit to the project, this subsection should require that the applicant specify its assets and liabilities related to the project. It is recommended that this subsection be amended as follows:

> (7) Current assets and liabilities of the applicant and specification of assets reserved for and liabilities related to the proposed facility.

5 4.d This subsection requires the Commissioner to acknowledge receipt of an application for a provisional COA within fourteen days.

Page Section

5 4.d (cont.)

The Commissioner is subject to no other time requirements. Specificall the subsection does not state the date by which the Commissioner must decide whether to accept or reject the application for a provisional COA. In addition, there is no requirement that the Commissioner make findings of fact in the event of rejection. Finally, there is no provision for appeal to an Administrative Law Judge from an unfavorable decision by the Commissioner. Without the requirements of time, fact-finding and the right of appeal, the application process may become unnecessarily long and arbitrary.

It is recommended that the statute incorporate the provisions of the Pa. Act. Sec.4(c)&(d), 35 P.S. 449.4(c)&(d). In essence, those subsections provide as follows:

1. Within ten days of receipt of application for COA, Department shall issue notice of filing to provider;

2. Within sixty days of the notice of filing, Department shall enter order issuing or rejecting the application for COA;

3. If Commissioner determines that any requirements of act have not been met, Commissioner shall notify applicant that application must be corrected within thirty days in such particulars as designated by Commissioner.

4. If requirements are not met within thirty days, Commissioner may enter order rejecting application which shall include findings of fact upon which order is based and which shall not become effective until twenty days after the end of the foregoing thirty-day period.

5. During the twenty-day period, the applicant may petition for reconsideration and shall be entitled to a hearing.

5 5 As a general observation, this section is confusing because it contains too much. At a minimum, this section should be broken into two sections, the first dealing with the form and content of the application for a COA (sections 5.a, 5.e, 5.f and 5.g), and the

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5	5 (cont.) second dealing with escrow of entrance fees (5.b-d).
6	5.a(3) This subsection requires that an applicant for a COA prove that the projecthas a minimum of 50% of the units reserved. The subsection further provides that a unit is not considered reserved unless the provider has collected a minimum deposit of 10% with a forfeiture penalty of 2%. A 2% forfeiture penalty may be excessive. It is recommended that facilities have the authority to charge a forfeiture penalty of no less than 1% (which would accomplish the goal of assuring that the reservation is serious) and no more than 2% (which would protect the consumer from a duly harsh forfeiture penalty). In addition, the applicant should be required to certify and affirm that the reservations are bona fide.
6	5.a(3) The provisions of this subsection (Lines 27-30) that authorize the Commissioner to require the COA holder to disclose information beyond what is required by section 10 is superfluous because the section 10 disclosure requirements are thoroughly comprehensive.
6	5.a(4) The applicant probably will not be able to get final commitment for construction financing and long-term financing until it has obtained a COA. Therefore, on Line 32, the word "preliminary" should be inserted between "that" and "commitment."
6	5.a(7)(a) For the reasons cited in connection with 4.b(7) above, this subsection should be amended as follows: (a) a balance sheet of all of the assets and liabilities of the applicant and specification of assets reserved for and liabilities related to the project.

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6 5.a(7)(b) Facilities should be given the choice of using a calendar year or fiscal year for two reasons. First, it may cost facilities now operating on a fiscal year $10,000 or more to convert their books to conform with calendar year requirements. Second, from the Department's point of view, enforcement will be easier if the act does not require that all documents be sent to the Department at the same time - that is, at the end of the calendar year. Notice that the Pa. Act. Sec.7(b), 35 P.S. 449.7(b) provides for reporting on a fiscal year basis.

7 5.b This subsection sets forth the requirements for escrowing entrance fees. In summary, it is required that a facility escrow 75% of money paid for all or any part of initial entrance fees collected until (1) the facility has received payment in full for 70% of the total units; and (2) a Certificate of Occupancy has been issued. Because of the importance and complexity of the entrance fee escrow, alternative provisions from the statutes of California, Illinois, Indiana, Maryland and Pennsylvania are summarized below. As a preliminary matter, it should be noted that this subsection does not effectively distinguish between the collection of entrance fees for living units previously occupied and to living units not previously occupied. Many states divide the escrow fee requirements into two parts: the escrow of entrance fee for units previously occupied and the escrow of entrance fees for units not previously occupied. For living units that have been previously occupied, the typical provision is as follows:

> The entrance fee and any income earned thereon shall be released when the living unit is first occupied by the new resident. Pa. Act. Sec.12(1), 35 P.S. 449.12(1); Ind. Code Ann. Sec.23-2-4-10(b); and several other states.

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7 5.b (cont.)

California: Entrance fees must be escrowed until "project is at least 50% completed and 50% subscribed to." Cal. Health & Safety Code Sec. 1770.

Illinois: Entrance fees must be escrowed until provider has sold one half of living units, obtained a mortgage commitment, if needed, and obtained all necessary zoning permits and Certificates of Need, if required. At that point, one-fifth of resident's entrance fee may be released. Another one-fifth may be released upon completion of foundation. Another one-fifth may be released when unit is under roof. Balance may be released when unit is ready for occupancy. Ill. Ann Stat. ch. 111½, Sec.4160-7.

Indiana: Entrance fees must be escrowed until the aggregate entrance fees received or receivable by provider pursuant to executed continuing care agreements, plus anticipated proceeds of any first mortgage loan or other long-term financing commitment plus funds from other sources in actual possession of provider are equal to at least 50% of aggregate cost of constructing, purchasing, equipping and furnishing the home, plus at least 50% of the estimate of funds necessary to fund start-up losses of the home; and a commitment has been received by provider for any permanent mortgage loan or other long-term financing and any conditions precedent to disbursing have been met. Ind. Code Ann. Sec.23-2-4-10(b)(1) and (2).

Maryland: Entrance fees must be escrowed until issuance of Certificate of Registration (which is similar to the application for a provisional COA under A 2594). Md. Ann. Code art. 70B, Sec.11(c).

Pennsylvania: Entrance fee escrow shall be released when:

> (i) Aggregate entrance fees received or receivable by provider pursuant to executed continuing-care agreements equal not less than 50% of the sum of the entrance fees due at full occupancy of the portion of the facility under construction. Note that this provision takes care of the situation where units are being added to existing facility. For purposes of this paragraph, entrance fees will be counted only if facility has received 35% or more of the entrance fee due from the individual.

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7 5.b (cont.)

(ii) Entrance fees received or receivable pursuant to preceding pargraph plus anticipated proceeds of any first mortgage loan or other long-term financing commitment plus funds from other sources in the actual possession of provider are equal to not less than 50% of aggregate cost of constructing or purchasing, equipping and furnishing the facility plus not less than 50% of refunds necessary to fund start-up losses.

(iii) A commitment has been received by the provider for any permanent mortgage loan or other long-term financing and conditions precedent to disbursement of funds thereunder, other than completion of construction or closing of the purchase of the facility, have been substantially satisfied. Pa. Act Sec.12(2)(i)-(iii), 35 P.S. 449.12(2)(i)-(iii).

Notice that the Pennsylvania statute also provides an alternative to the foreoging entrance fee escrow requirements:

(5) In lieu of any escrow required under this section, provider shall be entitled to post a letter of credit from a financial institution, negotiable securities or a bond by surety authorized to do business in Pennsylvania and approved by the Commissioner as to form and in an amount not to exceed the amount required by paragraph (2)(i). The bond, letter of credit or negotiable securities shall be executed in favor of the Commissioner on behalf of individuals who may be found entitled to a refund of entrance fees from the provider. Pa. Act. Sec.12(5), 35 P.S. Sec.449.12(5).

The requirements of the Pennsylvania statute are more practical than those contained in A 2594. There is real concern that only large for-profit corporations will be able to meet the entrance fee escrow requirements of A 2594. It is recommended that the Pennsylvania language be utilized and that there be an additional subsection authorizing the Commissioner to waive the escrow requirements when he is satisfied that a facility is financially capable of meeting its obligations. Prudent exercise of this authority would save facilities the cost of securing a bond by surety.

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8 5.d The requirement that 10% of all initial entrance fees remain in escrow for six months after issuance of COA to provide a fund to refund cancelled contracts is excessive. Experience indicates that cancelled contracts amount to approximately 2% and this provision should be adjusted accordingly: 5% would be a reasonable and conservative figure.

8 5 There should be a provision specifically exempting "application fees" from the escrow requirements. Pa. Act. Sec.12(4) provides as follows:

> (4) Nothing in this section shall require the escrow of any nonrefundable application fee charged to prospective residents. (A similar provision may be found at Ind. Code Ann. Sec.23-2-4-10(e).)

8 6.a For the reasons cited in connection with subsection 5.a(7)(b) this subsection should be amended to permit facilities to file on either a calendar year or fiscal year basis.

8 6.b The requirements of the annual statement are excessive. Existing continuing care communities have modest administrative departments. Massive reporting requirements will simply increase the cost of administration which, in turn, will be borne by residents. It would be preferable to require that the annual statement contain the same kind of information required by the application for a COA. The Pennsylvania statute follows this approach and also requires a narrative describing any material differences in pro forma income statements filed pursuant to the Act and the actual results of operations during the fiscal year. Pa. Act. Sec.7(b), 35 P.S. Sec.449.7(b).

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9 6.b(3)(b) This subsection contains reporting requirements that are unnecessarily detailed, time-consuming, costly to prepare and not customary. Therefore, it is recommended that this section be deleted.

9 6.b(3)(e) This section requires a facility to report any change in fees "regardless of wehther [sic] the change involves the basic rate or only those services available at additional cost to the resident . . . ." This section is overly broad and could be construed to encompass such fee changes as an increase in the price of items for sale at a facility's convenience store. It is recommended that this subsection be deleted, or that it specify the kinds of fees that are included: for example, entrance fees, and monthly service fees.

9 6.b(5) For the reasons cited in connection with section 5.a(7)(b) above, this subsection should be amended to permit reporting on a fiscal year basis. In addition, the required computations can be more easily made thirty days before the commencement of each fiscal year. Therefore, "thirty days" should be substituted for "sixty days" on Line 50 of page 9.

10 6.c This subsection requires the facility, within five years of its opening date, to show a ratio of no less than one to one of current assets to current liabilities.

The ratio of current assets to current liabilities is subject to great fluctuation; at any given point in time, the ratio is the result of many factors, not all of which can be controlled by good management techniques. The single largest factor is the

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10 6.c (cont.)

amount of new entrance fees which is a function of the death rate. The history of the existing facilities indicates that: (1) five years is not a sufficient time within which to reach a one to one ratio; and (2) even after a one to one ratio is reached, subsequent fluctuation may drop the ratio below one to one. Furthermore, in its present form, this section together with section 23.a would make it a crime of the third degree to not have a one to one ratio in five years. A review of several other state statutes indicates that only Florida has this requirement.

It is recommended that this requirement be deleted. If not deleted, then criminal liability should be removed and the subsection should be modified as follows:

> If a facility, within ten years of its opening date or the effective date of this act, whichever is later, has not achieved a ratio of no less than one to one of current assets (including funds which have been escrowed pursuant to the requirements of this act) to current liabilities, such a facility shall be required to file a statement with the Commissioner setting forth the reasons therefor and the facility's plan for achieving such a ratio within a period of three years.

10 7 It should be required that the escrow account be interest-bearing. It is recommended that on page 10, Line 2, the phrase "interest-bearing" be inserted between "an" and "escrow." Such a provision appears in the Pa. Act. Sec.12, 35 P.S. Sec.449.12.

10 7.a A facility should not be required to get approval of the Commissioner to use a particular bank, savings and loan association or trust company of New Jersey. Instead, facilities should be permitted to use any such organization licensed to do business

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10 7.a (cont.)

in the State of New Jersey. It is recommended that on page 10, Line 5, between "company" and "in", there be inserted the phrase "licensed to do business" and that on Lines 5-6, the phrase "that in [sic] approved by the commissioner" be deleted.

11-12 8.a&b These subsections set forth the minimum liquid reserve escrow requirements. In summary, subsection 8.a requires a minimum liquid reserve escrow in an amount equal to the aggregate amount of all principal and interest payments due during the fiscal year on account of any mortgage loan or other long-term financing, including taxes and insurance and any leasehold payments and all costs related to same.

Subsection 8.b(1) requires a facility in operation for more than ten years to maintain an operating escrow in an amount equal to 30% of total operating costs projected for the first twelve months of operation. Subsection 8.b(2) requires a facility in operation for less than ten years, with an extensive health care guarantee, to maintain an operating escrow in an amount equal to 40% of total operating costs projected for the first twelve months of operation.

The minimum liquid reserve requirements of 8.a and 8.b are unsound for the following reasons. First, it is not clear whether the requirements of 8.a and 8.b(1) or 8.b(2) are cumulative. Second, there is no definition of "extensive health care guarantee" in 8.b(2). Third, a stricter reserve requirement for facilities with an extensive health care guarantee is unreasonable since there is no evidence that such a facility's expenses will be greater. In fact, there is empirical evidence that nursing costs decline at facilities where extensive health care is available to residents.

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11-12 8.a&b (cont.)

Fourth, the reserve requirements are excessive. Fifth, while the minimum liquid reserve requirements of A 2594 have been copied almost verbatim from the Florida statute, it must be noted than an essential provision permitting a twenty-year phase-in of the minimum liquid reserve requirement has been omitted. Fla. Stat. Ann. Sec.651.035(3) provides as follows:

> In lieu of fulfilling the escrow requirements provided in subsections (1) and (2), each facility licensed prior to October 1, 1983, shall be required to maintain in escrow the minimum liquid reserve that would have been required under this section as it existed on October 1, 1982, plus 5% of the difference between the former escrow requirement and the present escrow requirement multiplied by the number of years the facility has been in operation after October 1, 1983. Beginning October 1, 2003, the escrow requirements provided in subsections (1) and (2) shall apply in full to facilities licensed before October 1, 1983.

The minimum liquid reserve required under the foregoing section of the statute as it existed on October 1, 1982, was as follows:

> A provider shall maintain in escrow and as a minimum liquid reserve an amount equal to one-half the aggregate amount of all principal and interest payments due during the fiscal year on any mortgage loan or other long-term financing of the facility, including taxes and insurance. The amount shall include any leasehold payments and all costs related to same. Fla. Stat. Ann. Sec.651.035(1)(1982). (This earlier version was entacted by Fla. Laws 1981, c. 81-292, Sec.7. The present version of Sec.651.035(3) was enacted by Fla. Laws 1983, c. 83-328, Sec.8.)

The import of the foregoing is that all facilities in Florida licnesed prior to October 1, 1983, have a twenty-year phase-in period to comply with the current provisions of the statute regarding minimum liquid reserves.

Sixth, in determining appropriate reserve requirements, it is necessary to strike a balance between prudent financial

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11-12 8.a&b (cont.)

management necessary to protect the interests of residents, on one hand, and cost containment on the other hand. To the extent that reserve requirements are excessive, facilities will be forced to borrow funds which means increased debt service and higher costs to residents - in the form of higher monthly service fees and higher entrance fees. Old facilities in need of capital improvements will be particularly hard-hit.

These subsections will favor large for-profit corporations with tremendous reserves over the more modest not-for-profit corporations. Moreover, by penalizing facilities offering extensive health care guarantees, the act would create an incentive - not offer such guarantees - which is contrary to state policy. It is the policy of this State to encourage continuing care communities with extensive health care to relieve the pressure on nursing homes and reduce the State's health care costs. Subsection 8.b(2), however, will encourage the development of condominium-type communities with minimal or no health care, contrary to the underlying state policy.

It is recommended that the act specify whether the requirements of 8.a and 8.b(1)-8.b(2) are cumulative. It is recommended that the reference to "extensive health care" be deleted or, in the alternative, the term be defined. It is recommended that the distinction be abolished between facilities having an "extensive health care guarantee" and facilities not having such a guarantee.

It is recommended that the minimum liquid reserve requirements of A 2594 be replaced by the corresponding provisions in the Pennsylvania statute, Pa. Act Sec.9, 35 P.S. Sec.449.9 (see below) or, in the alternative, that the twenty-year phase-in provision of the Florida statute be incorporated in A 2594. Pennsylvania provisions are deemed preferable because they are both prudent and

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11-12 8.a&b (cont.)

achievable. It is doubtful whether any facility (with the exception of large for-profits with tremendous reserves) would be able to meet the excessive requirements of the Florida statute. Following are alternative formulations from various states.

Pennsylvania: Each provider shall establish and maintain liquid reserves in an amount equal to or exceeding the greater of:

(1) the total of all principal and interest payments due during the next twelve months on account of any mortgage loan or other long-term financing of the facility; or

(2) ten percent of the projected annual operating expenses of the facility exclusive of depreciation.

The provider must notify the commissioner in writing at least ten days prior to reducing the funds available to satisfy this requirement and may expend no more than one-twelfth of the entire balance each calendar month. In facilities where some residents are not under continuing-care agreements, the reserve shall be computed only on the proportional share of financing or operating expenses that is applicable to residents under continuing-care agreements at the end of the provider's most recent fiscal year. Funds in escrow account may be used to satisfy this reserve requirement if such funds are available to make payments when operating funds are insufficient for such purposes.

Arizona: The size of the reserve fund is the same as Pennsylvania. The reserve must be placed in escrow but the principal of the escrow amount may be invested, apparently without limitation, with the earnings and up to one-sixth of the principal payable to the provider.

California: The size of the reserve fund is as follows: total of interest, principal, and rental payments due during the next year (that is, the same as Pennsylvania plus rental payments). There is an additional requirement that reserve be sufficient to cover the obligations assumed under continuing care agreements, as calculated through the use of state-approved mortality tables. The former reserve requirement must be placed in escrow, but the funds can

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11-12 8.a&b (cont.)

be invested with the same limitations as applied to the second type of reserve. These limitations allow investment and bank deposits, first mortgages, approved bonds and stocks, real estate, and furniture and equipment of the community. Twenty-five percent must be in cash and listed bonds and stocks.

Colorado: The size of the reserve fund must be as follows: 65% of the amount of any advance payment made by all residents. Straightline amortization over a five-year period. At no time can reserve fall below 30% of the original requirement. Reserves must be held in bank accounts, first mortgages, real estate, or furniture of the community. At least 10% must be in bank accounts and listed stocks and bonds.

Illinois: The size of the reserve fund must be as follows: the escrow amount shall be the aggregate principal and interest payments due during the next six months on account of any first mortgage or other long-term financing.

Minnesota: The size of the reserve fund must be as follows: an amount equal to the total of all principal and interest payments due during the next twelve months on account of any first mortgage or on account of any other long-term financing of the facility. Funds must be placed in escrow, but the principal of the escrow may be invested, apparently without limitation, with the income and one-twelfth of the principal payable to the provider.

Maryland, Michigan and Wisconsin have no reserve requirements.

Indiana: Indiana does not require reserve funds. Instead, there is an Indiana Retirement Home Guaranty Fund. Ind. Code Ann. Sec.23-2-4-13. The purpose of the fund is to protect the interests of the residents if the continuing care community goes into bankruptcy. A $100 fee is assessed on each community care resident entering into a continuing care contract. That fund is then available for distribution to residents of continuing care communities upon meeting certain conditions. There are a number of exemptions from participation in the fund, including the tax-exempt status of the provider.

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13 9 This section prohibits the removal from this State of any records or assets without the Commissioner's consent in writing before the removal. This section is overly broad; it could be construed to include the sale of an "asset" - for example, a piece of furniture, or the temporary removal of an asset - for example, a van driving residents to Philadelphia.

13 10.a(2) The language of the last sentence of this subsection is unclear; it should be clarified that "include" means that such items need be merely enumerated not included.

14 10.a(7) Prospective residents should be given sixty days to cancel rather than thirty days as provided by this subsection. In addition, it should be specified whose responsibility it is to make a "good faith determination that a resident is a danger to himself or others." It is recommended that such determination be made by the facility's Medical Director and Administrator. It should also be specified that in addition to the 4% fee for processing, a facility is entitled to keep the application fee, if any. It should be specified that the "2%", (page 14, Line 54), "4%", (page 14, Line 55), "1%", (page 14, Line 56), and "4%" (page 15, Line 62) are percentages of the entrance fee. It is recommended that after each percentage, the phrase "of the entrance fee" be inserted.

Without regard to whether a facility's contract provides for the facility to retain 1% or 2% per month of occupancy, the facility should be entitled to retain the amount to be refunded until a unit formerly reserved has been resold; provided, however, that the facility is required to use its best efforts to resell that unit ahead of any others.

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15	10.a(9)	Requiring notice of sixty days before changing fees will result in a greater mark-up in order to anticipate such changes in costs to the facility that may not be passed along to residents for sixty days. This makes the actual rate setting process less accurate. In addition, this sections is written so broadly that it may be construed to apply, for example, to items for sale in a facility's convenience store. It is recommended that "sixty days" be changed to "thirty days" and that it be specified which fees, charges and services are subject to the notice requirement.
15	10.a(10)	This section is poorly written and, if strictly construed, could be taken to mean that there can be no increase in charges at all. It is recommended that this section be deleted or rewritten to say that an entrance fee charge cannot be increased once a resident has signed a contract.
16	10.e	This subsection incorrectly assumes that all contracts provide that the facility's responsibility for the health care of a resident does not begin until the resident becomes an occupant. In fact, under some contracts, the facility becomes responsible for health care upon the effective date of the contract which may very well precede occupancy. Therefore, the automatic cancellation provision should be removed. Instead, a resident should be given the option whether to occupy if, between the time of signing the contract and taking occupancy, the resident is prevented from taking occupancy through illness, injury or incapacity; provided, however, that a resident will be required to reimburse the facility for any health care treatment incurred on his behalf up to the time that he rescinds the contract.

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16 11 For the reasons cited in connection with subsection 10.a(7) above, it should be specified that a determination about removal for "just cause" must be made by the Medical Director and Administrator.

17 14.b Residents should have the option of electing representatives who will represent them at meetings with the governing body of their facility. This is probably a more efficient and practical way to inform the residents about the operation of the facility and, in any case, the residents should have the option to elect representatives. Therefore, it is recommended that this subsection be modified as follows: on page 17, Line 9, after "facility" insert "or their duly elected representatives."

18 15.b(3) The requirement that proposed changes in policies be prominently posted is overly broad and impractical. The requirement should be narrowed so that it is not burdensome. The posting requirement should be replaced by a requirement that the information referred to in this subsection be available for inspection and that the summary of the annual statement be distributed to residents.

19 16.a This section is overly broad and cumbersome. It is overly broad because it appears to apply to all information distributed by a facility and it is cumbersome because it will create a backlog that the Commissioner will be unable to handle. A better approach is to simply prohibit dissemination of false or misleading material. It is recommended that subsections 16.a-c be replaced with the following provisions from the Pa. Act. Sec.8(a)&(b):

> (a) No provider shall make, publish disseminate, circulate or place before the public, or cause, directly or indirectly, to be made, published, disseminated, or circulated or placed before the public, in a newspaper or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement

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19 16.a (cont.)

or statement of any sort containing any assertion, representation or statement which is untrue, deceptive or misleading.

(b) No provider shall file with the Department or make, publish, disseminate, circulate or deliver to any person or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated or delivered to any person or place before the public any financial statement which does not accurately state its true financial condition.

19 17 The term "multi-facility" should be defined.

20 18 This section sets forth the mechanism for requiring facilities to take corrective action to remedy deficiencies. However, the mechanism is unclear. It is recommended that this section be deleted and that the Commissioner be authorized to set up such a mechanism by regulation. In the alternative, the process should be simplified along the following lines: (1) Commissioner gives notice of deficiency; (2) facility supplies plan of correction; (3) if deficiency is not corrected as set forth in the plan of correction and by the time required, and unless extended by mutual agreement of the Commissioner and the facility, at the discretion of the Commissioner, the facility may be fined an amount not to exceed $50.00 per day.

21 19.b The second paragraph of this subsection provides that a provider shall not issue any new contracts during a period of suspension. This prohibition is so severe that it would probably undermine a facility's attempt to rehabilitate itself. Consistent with the protection sought by this section, the provision should be modified as follows: on Page 21, Line 34, after "contracts" insert "without the approval of the commissioner."

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21	20 The Commissioner should not be authorized to act upon the determination that a person "is about to engage in" an act or practice in violation of the act. Therefore, the phrase "or is about to engage in" on page 21, Line 2, should be deleted.
21	21 The powers conferred upon the Commissioner in this section are so broad that a lender might well refuse financing for fear that the Commissioner would step in and nullify the terms of the financing. Nor could the facility and the lender agree otherwise since the statute would preempt their contract. It is recommended that the appropriate state agencies and investment banking firms be contacted to determine whether the terms of this section are acceptable to financing agencies and other lending institutions.
24	23.a This criminal penalty subsection is overly broad since it would make willful and knowing violation of "any provision of this act" a crime of the third degree. Many of the provisions of the act are civil in nature and may be beyond the control of the administrators of the facility. For example, application of this section to section 6.c would make the failure to show a ratio of no less than one to one of current assets to current liabilities a crime of the third degree. It is recommended that this subsection recite exactly which sections are subject to the criminal penalty provisions of this statute. (This may be done in a single section or at the end of each section for which violation carries criminal liability.) The obvious sections would be those involving disclosure: for example, provisional COA application, COA application, annual statement, dissemination of information, etc.

OTHER COMMENTS

1. Provision should be made for approval by the Commissioner in advance of a contemplated substantial change in control or ownership of a facility. This provision appears in the Pa. Act. Sec.6, 35 P.S. Sec.449.6.

2. A 2594 omits the section of the Florida statute that provides for a "Continuing Care Advisory Council to the Department of Insurance." Fla. Stat. Ann. Sec.651.121. (A copy of this section is attached to this memorandum.) It is strongly recommended that provision be made for an "Advisory Council" in the New Jersey legislation.

3. In light of national developments leading to comprehensive and rigorous accreditation standards, provision should be made for alternate accreditation of facilities, subject to the approval of the Commissioner. Such a provision appears in Pa. Act. Sec.4(i), 35 P.S. Sec.449.4(i):

> (i) If a facility is accredited by a process approved by the commissioner that is substantially equivalent to the requirements of this section, then the facility shall be deemed to have met the requirements of this section and the commissioner shall issue a certificate of authority to the facility.

4. Some facilities are required, by the terms of their bond indentures, to escrow substantial sums of money - for example, a certain percentage of entrance fees. Requiring that facilities aggregate all the escrow requirements of the act together with their private escrow requirements may result in severe financial hardship. Provision must be made for the interaction of private escrow requirements and the escrow requirements of this act. Therefore, the Commissioner should be authorized to waive multiple escrow provisions when doing so would be consistent with priciples of sound financial management.

5. Provision should also be made for extensions of the compliance period for providers in existence as of the effective date of this act. Such provisions appear in the Pa. Act. Sec. 4(e) and (f) and Sec.24, 35 P.S. Sec.449.4(e) and (f) and Sec.449.24.

6. Since continuing care facilities will be required to apply to the New Jersey State Department of Health for Certificates of Need, in addition to filing with the Department of Insurance for provisional COAs and COAs, the Department of Insurance and the Department of Health should be required to conform their requirements insofar as possible.

has under the provisions of part I of chapter 631 in regard to delinquency proceedings of insurance companies.

(7) The rights of the department described in this section are subordinate to the rights of a trustee pursuant to the terms of a resolution, ordinance, or indenture of trust securing bonds or notes issued to finance a facility.

Repeal

For repeal of this section, see the italicized note at the head of this chapter.

Historical Note

Derivation:

Laws 1983, c. 83-328, § 20.
Laws 1981, c. 81-292, § 19.
Laws 1980, c. 80-355, § 2.
Laws 1977, c. 77-323, § 1.

Laws 1980, c. 80-355, § 2, added subsec. (3) [now subsec. (7)].

Laws 1981, c. 81-292, § 19, interpolated new subsecs. (1) to (4) and redesignated former subsecs. (1) to (3) as subsecs. (5) to (7), substituted at the beginning of subsec. (5) "Should the department find that sufficient grounds exist" for "If any of the grounds".

Laws 1983, c. 83-328, § 20, inserted "s. 651.023(2) or" in subsec. (1), substituted "later than 30 days" for "no less than 30 days and no more than 45 days" in subsec. (3), added subsec. (3)(d), and deleted the department name in subsec. (5).

Library References

Asylums ⇐3.
C.J.S. Asylums and Institutional Care Facilities §§ 5 to 8.

651.121. Advisory council

(1) The Continuing Care Advisory Council to the Department of Insurance is created to consist of seven members appointed by the Governor, each of whom shall be a resident of, and geographically representative of, this state. Three members shall be administrators of facilities which hold valid certificates of authority under this chapter and shall have been actively engaged in the offering of continuing care agreements in this state for 5 years before appointment. The remaining members shall include:

(a) A representative of the business community whose expertise is in the area of management.

(b) A certified public accountant.

(c) An attorney.

(d) A resident or other consumer representative.

(2) The term of office for each member shall be 3 years, or until his successor has been appointed and qualifies; except that of the members first appointed, two shall be appointed for terms of 1 year each, two for terms of 2 years each, and three for terms of 3 years each.

(3) The council members shall serve without pay, but shall be reimbursed for per diem and travel expenses by the department in accordance with s. 112.061.

(4) Each prospective council member shall submit to the appointing officer a statement detailing any financial interest of 10 percent or more in one or more continuing care facilities, including, but not limited to, ownership interest in a facility, property leased to a facility, and ownership in any company providing goods or services to a facility. This statement shall include the name and address of each facility involved and the extent and character of the financial interest of the applicant. Upon appointment of the council member, this statement [1] shall become a public document.

(5) The council shall:

(a) Meet within 30 days after the members' appointment and elect a chairman from their number and elect or appoint a secretary, each of whom shall hold office for 1 year and thereafter until his successor is elected and qualified.

(b) Hold an annual meeting and hold other meetings at such times and places as the department or the chairman of the council may direct.

(c) Keep a record of its proceedings. The books and records of the council shall be prima facie evidence of all matters reported therein and shall be open to inspection at all times.

(d) Act in an advisory capacity to the department.

(e) Recommend to the department needed changes in statutes and rules.

(f) Upon the request of the department, assist in the rehabilitation of continuing care operations.

[1] The word "statement" was substituted by the division of statutory revision for the word "information".

Repeal

Laws 1983, c. 83-328, § 34, provides for repeal of this section on October 1, 1993, and review pursuant to the Sundown Act, § 11.611. See, also, the italicized note at the head of this chapter.

Historical Note

Derivation:

Laws 1983, c. 83-328, § 1.
Laws 1981, c. 81-292, § 20.
Laws 1979, c. 79-164, § 171.
Laws 1977, c. 77-323, § 1.

Prior Provisions for Legislative Review of Regulatory Statutes:

Laws 1982, c. 82-46, which rewrote the provisions of the Sundown Act, provided for the repeal of this section on October 1, 1983, and for review of the continuing care advisory council by the legislature prior thereto pursuant to provisions contained in

FINANCIAL IMPLICATIONS OF ASSEMBLY BILL NO. 2594,
AN ACT REGULATING CONTINUING CARE RETIREMENT COMMUNITIES

Comments By: Frank W. Gentile, CPA
Controller of Medford Leas Retirement Community, Medford, New Jersey

Assembly Bill No. 2594 has many implications from the financial standpoint. I will address the two major financial areas of concern. First and most importantly, is the liquid escrow reserve requirement. Second is the construction escrow of entrance fees.

The bill provides for escrow reserve requirements in liquid form. This is a form of insurance for the residents of CCRCs in the event of financial difficulties. The bill calls for 30 to 40 percent of a year's budgeted expenses to be reserved in addition to one year's debt service requirements. This is a tall and superfluous order. Frankly, many communities could not meet it without borrowing the funds. Further, it ties up an unnecessarily large amount of dollars that could be used for improving the community and its services to residents. This is normally accomplished by property improvements, improvements in health care facilities and medical services, enhancements in dining facilities, etc. By imposing such a large reserve, residents will be forced to pay a higher monthly fee in order to have a better quality life at the CCRC to finance such improvements. Hence, the hardship turns out to be either financial or a reduced quality of life. Both can be avoided by adopting the Pennyslvania's Acts requirement for escrow which shows a reasonable balance between the escrow objectives and how to achieve them.

The Pennsylvania bill requires the greater of one year's debt service or 10% of a year's budgeted operating expenses, exclusive of depreciation, be maintained in liquid form.

A provider who may have escrowed funds for the purpose of meeting bond or other long-term debt requirements may apply those reserves to meet the reserve requirements under this act. This would eliminate the carrying of dual reserves.

The bill also provides that no more than 25% of moneys paid for the entrance fee be for construction or purchase of a facility and that 75% of entrance fees collected be escrowed until 70% of the units residents have paid their fees in

full. Such requirements would stifle the construction of new CCRC's except for those being built by large for-profit corporations which have tremendous resources for capital. The requirements, if enacted, would cause a severe cash flow problem for in-progress facilities.

The Pennsylvania bill offers a reasonable alternative to the proposed New Jersey Act in that it would create a better atmosphere for development of CCRC's for both profit and not-for-profit providers.

In Pennsylvania, entrance fee escrow shall be released when:

(i) aggregate entrance fees received or receivable by provider pursuant to executed continuing-care agreements equal not less than 50% of the sum of the entrance fees due at full occupancy of the portion of the facility under construction. (Notice that this provision takes care of the situation where units are being added to existing facility.) For purposes of this paragraph, entrance fees will be counted only if facility has recieved 35% or more of the entrance fee due from the individual.

(ii) entrance fees received or receivable pursuant to the preceding paragraph plus anticipated proceeds of any first mortgage loan or other long-term financing commitment plus funds from other sources in the actual possession of provider are equal to not less than 50% of aggregate cost of constructing or purchasing, equipping and furnishing the facility plus not less than 50% of refunds necessary to fund start-up losses.

(iii) A commitment has been received by the provider for any permanent mortgage loan or other long-term financing and conditions precedent to disbursement of funds thereunder, other than completion of construction or closing of the purchase of the facility, have been substantially satisfied. Pa Act S12(2)(i) - (iii).

Notice that the Pennsylvania statute also provides an alternative to the foregoing:

In lieu of any escrow required under this section, provider shall be entitled to post a letter of credit from a financial institution, negotiable securities or a bond by surety authorized to do business in Pennsylvania and approved by

the Commissioner as to form and in an amount not to exceed the amount required by paragraph (2)(i). The bond, letter of credit or negotiable securities shall be executed in favor of the Commissioner on behalf of individuals who may be found entitled to a refund of entrance fees from the provider.

Further, the provider should be entitled to file with the commissioner for exemption from these provisions if it feels its financial situation would indicate that escrow of entrance fees is unnecessary.

FWG/ds

Exhibit A

Submitted by:
Debra Zuckerman

CADBURY CORPORATION

ANALYSIS OF ESCROW FUNDS REQUIRED

Shortage of funds	$1,219,000
Interest rate to borrow	14%
Cost per year	$170,660
Number of residents	200
Annual cost per resident	$853
Studio rate	$717
Average rate increase	6%
Plus monthly cost of escrow per resident	$71
Total new rate per resident	$831 or 16% rate increase to meet escrow requirements

*Based upon a 40% escrowing requirement and an operating budget adjusted for continuing care residents only.

ASSEMBLY BILL NO. A2594 - HEARING ON NOVEMBER 19,1984

Comments by B. Franklin Blair

I am B. Franklin Blair. For five years my wife and I have been residents at Medford Leas, a Continuing Care Retirement Community at Medford, New Jersey. Medford Leas is owned and operated by the Estaugh Corporation, a non-profit corporation founded in 1914 by members of the Religious Society of Friends. My wife's paternal grandmother was one of the 11 original incorporators. For two and a half years I have been on the 12-member Board of Trustees of the Estaugh Corporation.

I am glad that Chairman Paterniti and the other members of the Committee on Aging are considering bills on regulation and financial disclosure of continuing care retirement facilities in order to make it reasonably certain that residents at all such facilities will receive the same fair and equitable treatment which residents at the facilities operated by Estaugh Corporation have received for 70 years.

Before I retired in 1973, I was Senior Vice President and Actuary of Provident Mutual Life Insurance Company, the second largest life insurance company in Pennsylvania. I was the author of several editions of "Interpreting Life Insurance Company Annual Statements"; I was also Chairman for two years of the Life Insurance Association of America's Committee on "Annual Statements and Valuation of Assets". So I have had considerable experience with state regulation of disclosure, of financial statements, and of solvency.

Because of this experience, I approve of the Department of Insurance being given by Bill A2594 the responsibility for administering the provisions of the bill. In my opinion, the Department of Insurance has the experience and personnel to administer disclosure and solvency provisions -- particularly when solvency involves actuarial considerations -- better than any other Department. Incidentally, the insurance industry regards the New Jersey Insurance Department as one of the best-staffed and best-run insurance departments in the country. Most of the states which have laws dealing with CCRC's do vest administration in the Department of Insurance.

As a Trustee of the Estaugh Corporation (a non-profit corporation which owns and operates Medford Leas), I believe that it is inadvisable to give the Commissioner the right (in Section 4.a(6)) to require "financial statements" from "directors,

trustees, members". These financial statements would have no effect on the financial status of the facility; moreover, such a requirement would undoubtedly make it more difficult — particularly in non-profit facilities — to recruit capable persons to serve on the Board. An analogous criticism applies to the inclusion in Section 5.a(9) of "directors, trustees, members". To require from them "financial statements" each year for the annual statement would be irksome without having any real value in the line of financial protection to the residents.

Section 14.b provides for "quarterly meetings with the residents ... for the purpose of free discussion" covering a wide range of subjects. In a large facility, it might be more practible — and the residents might prefer — to have the meetings held with their duly elected representatives. As a resident, I would certainly prefer having that degree of flexibility rather than having the law require such quarterly meetings open to all residents — many of whom might be too garrulous or too anxious to argue at length about their own pet peeve.

As a resident, I do not want the complexities of the law to increase costs without corresponding benefits. In general, the Pennsylvania bill with some changes — particularly those to reflect Pennsylvania experience since their bill was passed — seems better in this respect. A task force might be able to produce in a few months a bill combining the best features of the bills in all the states — protecting the residents without significantly increasing costs.

Two requirements in A2594, in my opinion, are so impractical as to be unworkable:

(1) Section 6.b(3)(e) providing that the annual statement contain information on changes or increases in fees for care and services.

(2) Section 15.b(3) requiring posting of a summary of the annual statement and posting of proposed changes in policies, programs, and services.

FLORIDA ASSOCIATION OF HOMES FOR THE AGING, INC.

An Organization of Non-Profit Homes

226 West Pensacola Street, Suite 201
Tallahassee, Florida 32301

(904) 222-3562

November 15, 1984

The Honorable Thomas A. Paterniti, Chairman
Assembly Aging Committee
New Jersey General Assembly
Trenton, NJ 08625

Dear Mr. Chairman:

Due to my involvement during the developmental and implementation stages of Florida's Continuing Care Contracts legislation, I have been asked to review ~~A-2594~~ which contains many of Florida's provisions. I hope these comments will be of assistance to you as you develop legislation in New Jersey.

Florida has had a statute regulating life care communities since the 1950's. Over the years, it has been expanded and revised. In 1983, Florida's statute, Chapter 651, F.S., was again significantly rewritten. During each revision, allowances have been made for existing facilities in order to minimize negative effects on on-going operations and on the residents of these existing communities. Specifically, in 1983, the Florida Legislature tripled the mandated reserve requirement, however, recognizing the devastating effect this could have on existing projects and their residents, they very deliberately included a 20 year phase-in of the new requirement for these facilities. I have noted that New Jersey's proposed legislation does not provide for this important phase-in, but only for departmental discretion. It is my belief that departmental discretion is inadequate. If a facility is out of compliance with the mandated provisions of a law, residents will worry needlessly, future marketing efforts will be hampered, and individual facilities will be forced to negotiate arbitrary reserve levels with the department. Most of Florida's licensed communities have been able to meet the phased-in requirements. The several licensed facilities which are not presently able to meet the reserve level have adopted corrective action plans approved by the department.

Regarding Florida's one-to-one ratio of current assets to current liabilities requirement, many facilities have not been able to meet this relatively new guideline, and further refinements to Florida's law will be needed. This guideline was inserted into our law in 1981 at our Association's request. The provision was regarded as an early warning

signal for the department indicating the possible future development of problems in a facility. It was commonly recognized as only one of many financial indicators which would assist the department in monitoring facilities, and it was also recognized that many viable facilities might not be able to meet it within the five year time-period. In addition to other problems encountered with this provision, the department has found that CPA's are unable to include restricted funds, such as the mandated reserves, as assets, therefore, no facility has technically been able to meet this guideline.

Currently, one full-time staff person in the Florida Department of Insurance is assigned to oversee the regulation of approximately 70 existing facilities, 30 under development, and others with applications pending. Until recently, this was a part-time position. Because of this serious problem of understaffing, long delays are commonplace in the application and approval process thereby significantly increasing development costs and causing inconvenience and frustration for the elderly who are waiting to enter a community.

As I have reviewed your proposed legislation, I have also noted that A-2594 omits the provision which authorizes the creation of a Continuing Care Advisory Council. This Council has proven to be an invaluable tool for the Department of Insurance here in Florida. The Council has been used effectively by the Department in providing the department with expert analysis of troubled facilities, pinpointing the cause of financial problems, and assisting the department in developing corrective action plans. As Secretary to the Council from 1982-1984, I can attest to the importance and value of establishing this body of experts who only act in an advisory capacity to the regulating agency on request. The complexities of this industry necessitates expert assistance.

In Florida, the continuing care retirement concept is a popular retirement alternative, and its development has been supported and encouraged by the state through favorable state public policy in such areas as bond financing and "sheltered" nursing beds. Although Florida's continuing care legislation may appear to take a punitive approach to enforcement this is due to the idiosyncrasies of Florida's insurance statutes and not to actual enforcement practices. Corrective plans of action developed with the Advisory Council's expertise have been effectively working to resolve problem areas.

If I can be of further assistance, please feel free to contact me at any time.

Sincerely,

Karen R. Torgesen

Karen R. Torgesen
Executive Director

KRT/sb