

HEALTH AND SAFETY CODE

TITLE 4. HEALTH FACILITIES

SUBTITLE B. LICENSING OF HEALTH FACILITIES

CHAPTER 246. CONTINUING CARE FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 246.001. SHORT TITLE. This chapter may be cited as the Texas Continuing Care Facility Disclosure and Rehabilitation Act. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.002. DEFINITIONS. In this chapter:

(1) "Board" means the State Board of Insurance.

(2) "Commissioner" means the commissioner of the State Board of Insurance.

(3) "Continuing care" means the furnishing of a living unit, together with personal care services, nursing services, medical services, or other health-related services, regardless of whether the services and the living unit are provided at the same location:

(A) to an individual who is not related by consanguinity or affinity, as determined under Chapter 573, Government Code, to the person furnishing the care; and

(B) under a continuing care contract.

(4) "Continuing care contract" means an agreement that requires the payment of an entrance fee by or on behalf of a resident in exchange for the furnishing of continuing care by a provider and that is effective for:

(A) the life of the resident; or

(B) more than one year.

(5) "Entrance fee" means an initial or deferred transfer of money or other property valued at an amount exceeding three months' rent, made, or promised to be made, as full or partial consideration for acceptance by a provider of a specified individual as a resident. The term does not include a deposit made under a reservation agreement.

(6) "Facility" means a place in which a person

provides continuing care to an individual.

(7) "Living unit" means a room, apartment, cottage, or other area that is in a facility and that is set aside for the exclusive use or control of one or more specified individuals.

(8) "Long-term nursing care" means nursing care provided for a period longer than 365 consecutive days.

(9) "Person" means an individual, corporation, association, or partnership, and includes a fraternal or benevolent order or society.

(10) "Provider" means a person who undertakes to provide continuing care in a facility.

(11) "Reservation agreement" means an agreement that requires the payment of a deposit to reserve a living unit for a prospective resident.

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 95, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 561, Sec. 31, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 953, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995.

Sec. 246.003. BOARD POWERS AND DUTIES. (a) The board shall regulate providers as provided by this chapter.

(b) The board may adopt rules and take other action as necessary to administer and enforce this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.004. RIGHTS OF RESIDENTS. A resident receiving care in a portion of a facility licensed to provide nursing home care, personal care, or custodial care is entitled to all statutory rights provided to a nursing home, personal care, or custodial care resident.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.005. LICENSING FOR CERTAIN TAX PURPOSES. A facility regulated under this chapter is licensed for purposes of

Section 151.314, Tax Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.006. QUALITY OF CARE. The commissioner may not regulate or in any manner inquire into the quality of care provided in a facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.007. REDUCTION OF FEES. The commissioner shall reduce the annual filing fees under this chapter if the cumulative amount of the fees exceeds the actual cost of regulation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### SUBCHAPTER B. CERTIFICATE OF AUTHORITY

Sec. 246.021. CERTIFICATE OF AUTHORITY REQUIRED. Unless a provider holds a certificate of authority issued under this subchapter, the provider may not:

- (1) acquire a facility;
- (2) enter into a continuing care contract; or
- (3) enter into a reservation agreement unless the agreement provides for the full refund, for any reason, of a deposit paid in connection with the agreement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 953, Sec. 2, eff. Sept. 1, 1993.

Sec. 246.022. APPLICATION FOR AND ISSUANCE OF CERTIFICATE OF AUTHORITY. (a) The commissioner shall adopt rules stating the information an applicant for a certificate of authority must submit.

(b) On receiving an application for a certificate of authority, the commissioner shall conduct a hearing on the application.

(c) The commissioner shall grant an application for a certificate of authority if the commissioner finds that:

- (1) the applicant or the facility is financially sound;
- (2) the competence, experience, and integrity of the

applicant, its board of directors, its officers, or its management make it in the public interest to issue the certificate; and

(3) the applicant is capable of complying with this chapter.

(d) The commissioner shall issue an order approving or disapproving an application not later than the 180th day after the date on which the application is filed.

(e) The commissioner may limit issuance of certificates of authority to incorporated entities only.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.023. MANDATORY ISSUANCE OF CERTIFICATE OF AUTHORITY TO CERTAIN FACILITIES. (a) The commissioner shall issue a certificate of authority for a facility that:

(1) was occupied by at least one resident on September 1, 1987;

(2) was under construction on September 1, 1987; or

(3) incurred substantial financial obligations before September 1, 1987, related to the development of the facility.

(b) A certificate of authority issued under this section may be suspended or revoked as any other certificate.

(c) This section prevails over Section 246.022.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.024. TRANSFER OF CERTIFICATE OF AUTHORITY. A certificate of authority may not be transferred without the prior approval of the commissioner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 96, eff. Sept. 1, 1991.

Sec. 246.025. SUSPENSION OR REVOCATION OF CERTIFICATE OF AUTHORITY. The commissioner may suspend or revoke a provider's certificate of authority if the provider:

(1) draws on its entrance fee escrow in an amount greater than provided for by Section 246.073;

(2) draws on its loan reserve fund escrow in an amount greater than provided for by Section 246.078; or

(3) intentionally violates this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 97, eff. Sept. 1, 1991.

Sec. 246.026. MANAGEMENT BY OTHERS. A holder of a certificate of authority may not contract for management of the facility unless the commissioner is notified of the contract.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.027. CERTIFICATE OF AUTHORITY FEES. (a) Except as provided by Subsection (b), a facility that files an application for a certificate of authority must pay to the commissioner a fee of \$10,000.

(b) A facility that files an application for a certificate of authority issued under Section 246.023 must pay to the commissioner:

(1) a fee of \$500; and

(2) a fee of \$2 for each living unit in the facility, excluding a unit devoted to that portion of the facility that is a licensed nursing home.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### SUBCHAPTER C. CONTINUING CARE CONTRACTS AND DISCLOSURE STATEMENTS

##### Sec. 246.041. PRECONTRACTUAL RECORDING REQUIREMENTS.

(a) A provider shall file with the board a current disclosure statement that meets the requirements of this subchapter and shall file copies of the agreements establishing the escrows under Subchapter D or a verified statement explaining that an escrow is not required before the provider:

(1) contracts to provide continuing care in a facility located or to be located in this state;

(2) extends the term of an existing continuing care contract in a facility that is located or to be located in this state and that requires or allows an entrance fee from any person, regardless of whether the extended contract requires an entrance fee; or

(3) including a person acting on the provider's

behalf, solicits for an individual who is a resident of this state a continuing care contract in this state.

(b) A contract is solicited in this state if, during the 12-month period preceding the date on which a continuing care contract for a facility is signed or accepted by either party, information concerning the facility or the availability of a continuing care contract for the facility is given:

(1) by personal, telephone, mail, or other communication directed to and received by a person at a location in this state; or

(2) in a paid advertisement published or broadcast from within this state, other than in a publication in which more than two-thirds of the circulation is outside this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.042. DELIVERY OF DISCLOSURE STATEMENT. (a) A provider who has not been issued a certificate of authority under Subchapter B must deliver a disclosure statement to any person from whom the provider accepts a deposit in connection with a reservation agreement before the provider accepts the deposit.

(b) A provider who has been issued a certificate of authority under Subchapter B must deliver a disclosure statement to a person with whom a continuing care contract is to be made before the earlier of:

(1) the execution of the continuing care contract; or

(2) the transfer of any entrance fee or nonrefundable deposit to the provider by or on behalf of the person.

(c) The most recently filed disclosure statement is the only statement that:

(1) is current for purposes of this chapter; and

(2) may be delivered under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 953, Sec. 3, eff. Sept. 1, 1993.

Sec. 246.043. COVER PAGE OF DISCLOSURE STATEMENT. The cover page of a disclosure statement must state:

(1) the date of the statement in a prominent location

and in type that is boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material so as to be conspicuous;

(2) that if the provider has not been issued a certificate of authority under Subchapter B, this chapter requires the delivery of a disclosure statement to a prospective resident before the payment of any deposit to reserve a living unit;

(3) that this chapter requires the delivery of a disclosure statement to a contracting party before the execution of a continuing care contract or the payment of an entrance fee or nonrefundable deposit; and

(4) that the disclosure statement has not been approved by a governmental agency or representative to ensure the accuracy of its information.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 98, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 953, Sec. 4, eff. Sept. 1, 1993.

Sec. 246.044. CONTENTS OF DISCLOSURE STATEMENT: PROVIDER.

(a) The disclosure statement must include the name and business address of the provider and a statement of whether the provider is a partnership, corporation, or other type of legal entity. If the provider is not an individual, the statement must include:

(1) the name and business address of each officer, director, trustee, and managing or general partner; and

(2) the name and business address of each person who has at least a 10 percent interest in the provider and a description of the person's interest in or occupation with the provider.

(b) The provider may include in the disclosure statement any other material information concerning the facility or the provider.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.045. CONTENTS OF DISCLOSURE STATEMENT: THIRD PARTY MANAGEMENT. If a person, other than an individual directly employed by the provider, is to be the day-to-day manager of a facility, the disclosure statement must include:

(1) a description of the person's business experience,

if any, in the operation or management of a similar facility;

(2) the name and address of any professional service, firm, association, trust, partnership, or corporation that:

(A) has in the person, or in which the person has, at least a 10 percent interest; and

(B) proposes to provide goods, leases, or services to the facility or to the residents of the facility, of an aggregate value of at least \$500 in a year;

(3) a description of any goods, leases, or services under Subdivision (2), and a statement of their probable or anticipated cost to the facility, provider, or residents, or a statement that their cost cannot be estimated; and

(4) a description of any matter in which the person:

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

(B) is subject to an injunction or restrictive order of a court of record; or

(C) has had any state or federal license or permit suspended or revoked as a result of an action brought by a governmental agency if the order or action arose out of or was related to a business activity in a health care field, including an action affecting a license to operate a foster care facility, a nursing home, a retirement home, a home for the aged, or a facility subject to this chapter or a similar statute in another state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.046. CONTENTS OF DISCLOSURE STATEMENT: AFFILIATION WITH NONPROFIT ORGANIZATION. The disclosure statement must state whether the provider is affiliated with a religious, charitable, or other nonprofit organization, and if so, the statement must:

(1) describe the extent of the affiliation;

(2) explain the extent to which the organization is responsible for the financial and contractual obligations of the



provider; and

(3) cite any provision of the Internal Revenue Code of 1986 under which the provider or affiliate claims to be exempt from the payment of income tax.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.047. CONTENTS OF DISCLOSURE STATEMENT: PHYSICAL PROPERTY. (a) The disclosure statement must provide the location and a description of the proposed or existing physical property of the facility.

(b) If the physical property of the facility is proposed, the disclosure statement must state:

- (1) the estimated completion date;
- (2) whether construction has begun; and
- (3) any contingencies under which construction may be deferred.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.048. CONTENTS OF DISCLOSURE STATEMENT: CONTRACTS AND FEES. The disclosure statement must describe:

(1) the services provided at the facility under a continuing care contract, including:

(A) the extent to which medical care is furnished; and

(B) those services that are included for specified basic fees for continuing care and those services that are made available at extra charge;

(2) all fees required of residents, including the entrance fee and any periodic charges;

(3) the conditions under which a continuing care contract at the facility may be canceled by the provider or the resident;

(4) any conditions under which all or part of the entrance fee is refundable on cancellation of the contract by the provider or the resident, or by the death of the resident before or during the occupancy of a living unit; and

(5) the manner by which the provider may adjust

periodic charges or other recurring fees and any limitations on those adjustments.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.049. CONTENTS OF DISCLOSURE STATEMENT: CHANGE OF CIRCUMSTANCES. The disclosure statement must state:

(1) the policy of the facility regarding changes in the number of people residing in a living unit because of marriage or other relationships;

(2) the policy of the facility relating to the admission of a spouse to the facility and the consequences if the spouse does not meet the requirements for admission;

(3) the conditions under which a living unit occupied by a resident may be made available by the facility to a different resident other than on the death of the previous resident; and

(4) the health and financial conditions required for acceptance as a resident and for continuation as a resident, including the effect of any change in the health or financial condition of an individual between the date of the continuing care contract and the date on which the individual initially occupies a living unit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.050. CONTENTS OF DISCLOSURE STATEMENT: FINANCIAL INFORMATION. (a) The disclosure statement must:

(1) describe any provisions made or to be made to provide reserve funding or security to enable the provider to fully perform its obligations under a continuing care contract at a facility, including:

(A) the establishment of escrow accounts, trusts, or reserve funds and the manner in which those funds will be invested; and

(B) the name and experience of any individual in the direct employment of the provider who will make the investment decisions; and

(2) provide financial statements of the provider, including:

(A) a balance sheet as of the end of the most recent fiscal year; and

(B) income statements and a statement of cash flow for each of the three most recent fiscal years that the provider has been in existence.

(b) Financial statements required by Subsection (a)(2) must be prepared in accordance with generally accepted accounting principles and must be audited by an independent certified public accountant, who shall state in the audit report whether the financial statements were prepared in accordance with those principles.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 99, eff. Sept. 1, 1991.

Sec. 246.051. CONTENTS OF DISCLOSURE STATEMENT: ANNUAL INCOME STATEMENTS. The disclosure statement must contain estimated annual income statements for the facility for at least five fiscal years, including:

(1) anticipated earning on any cash reserves;

(2) estimates of net receipts from entrance fees, other than entrance fees included in the statement of anticipated source and application of funds required under Section 246.052, minus estimated entrance fee refunds, including a description of the actuarial basis and method of computation for the projection of entrance fee receipts;

(3) an estimate of gifts or bequests to be relied on to meet operating expenses;

(4) a projection of estimated income from fees and charges, excluding entrance fees, that:

(A) states individual rates anticipated to be charged; and

(B) includes a description of the assumptions used for computing the estimated occupancy rate of the facility and the effect on the income of the facility of any government subsidies for health care services to be provided under the continuing care contract;

(5) a projection of the facility's operating

expenses, including:

(A) a description of the assumptions used in computing the expenses; and

(B) a separate allowance for the replacement of equipment and furnishings and anticipated major structural repairs or additions; and

(6) an estimate of annual payments of principal and interest required by a mortgage loan or other long-term financing arrangement relating to the facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 100, eff. Sept. 1, 1991.

Sec. 246.052. CONTENTS OF DISCLOSURE STATEMENT: ANTICIPATED SOURCE AND APPLICATION OF FUNDS. If a facility has not begun operation, the disclosure statement must include a statement of the anticipated source and application of the funds to be used in the purchase or construction of the facility, including:

(1) an estimate of the cost of purchasing or constructing and of equipping the facility, including financing expenses, legal expenses, land costs, occupancy development costs, and similar costs that the provider expects to incur or to become obligated to pay before operations begin;

(2) a description of any mortgage loan or other long-term financing arrangement for the facility, including the anticipated terms and costs of the financing;

(3) an estimate of the total entrance fees to be received from, or on behalf of, residents before the operation of the facility begins; and

(4) an estimate of any funds anticipated to be necessary to cover initial losses and to provide reserve funds to assure full performance of the obligations of the provider under a continuing care contract.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.053. STANDARD CONTRACT FORM. (a) A copy of the standard contract form used by a provider must be attached as an exhibit to each disclosure statement.

(b) The standard contract form must specify the refund provisions of Sections 246.056 and 246.057.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 101, eff. Sept. 1, 1991.

Sec. 246.054. ANNUAL DISCLOSURE STATEMENT REVISION.

(a) A provider shall file a revised disclosure statement with the board not later than the 120th day after the date on which the provider's fiscal year ends.

(b) The revised disclosure statement must revise, as of the end of the provider's fiscal year, the information required by this subchapter.

(c) The revised disclosure statement must describe any material differences between:

(1) the estimated income statements filed under Section 246.052 as a part of the disclosure statement filed after the start of the provider's most recently completed fiscal year; and

(2) the actual result of operations during that fiscal year with the revised estimated income statements filed as a part of the revised disclosure statement.

(d) A provider may revise its disclosure statement and may file the revised disclosure statement at any other time if, in the provider's opinion, revision is necessary to prevent a disclosure statement from containing a material misstatement of fact or omitting a material fact required to be included in the disclosure statement.

(e) The commissioner shall review the disclosure statement for completeness but is not required to review the disclosure statement for accuracy.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.055. ADVERTISEMENT IN CONFLICT WITH DISCLOSURES.

A provider may not engage in any type of advertisement for a continuing care contract or facility if the advertisement contains a statement or representation in conflict with the disclosures required under this subchapter.

Sec. 246.056. RESCISSION OF CONTRACT; REQUIRED LANGUAGE.

(a) A person who executes a continuing care contract with a provider may rescind the contract at any time before the later of midnight of the seventh day, or a later day if specified in the contract:

(1) after the date on which the continuing care contract is executed; or

(2) after the date on which the person receives a disclosure statement that meets the requirements of this subchapter.

(b) A resident who executes a continuing care contract may not be required to move into the facility before the expiration of the period during which the contract may be rescinded.

(c) If a continuing care contract is rescinded under this section, any money or property transferred to the provider, other than periodic charges specified in the contract and applicable only to the period a living unit was actually occupied by the resident, shall be refunded not later than the 30th day after the date of rescission.

(d) Each continuing care contract must include the following statement or a substantially equivalent statement in type that is boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material so as to be conspicuous:

"You may cancel this contract at any time prior to midnight of the seventh day, or a later day if specified in the contract, after the date on which you sign this contract or you receive the facility's disclosure statement, whichever occurs later. If you elect to cancel the contract, you must do so by written notice and you will be entitled to receive a refund of all assets transferred other than periodic charges applicable to your occupancy of a living unit."

(e) Each continuing contract also must include the following statement in type that is boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material so as to be conspicuous:

"This document, if executed, constitutes a legal and binding contract between you and \_\_\_\_\_. You may wish to consult a legal or financial advisor before signing, although it is not required that you do so to make this contract binding."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 102, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 953, Sec. 5, eff. Sept. 1, 1993.

Sec. 246.057. CANCELLATION OF CONTRACT: DEATH OR INCAPACITY BEFORE OCCUPANCY. (a) A continuing care contract is canceled if the resident:

(1) dies before occupying a living unit in the facility; or

(2) is precluded under the terms of the contract from occupying a living unit in the facility because of illness, injury, or incapacity.

(b) If a continuing care contract is canceled under this section, the resident or the resident's legal representative is entitled to a refund of all money or property transferred to the provider, minus:

(1) any nonstandard costs specifically incurred by the provider or facility at the request of the resident that are described in the contract or in an addendum to the contract signed by the resident; and

(2) a reasonable service charge, if set out in the contract, that may not exceed the greater of \$1,000 or two percent of the entrance fee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 953, Sec. 6, eff. Sept. 1, 1993.

Sec. 246.058. DISCLOSURE STATEMENT FEES. A facility that files a disclosure statement under Section 246.041 or 246.054 shall pay to the commissioner:

(1) a filing fee of \$500; and

(2) a fee of not more than \$2 for each living unit in the facility, excluding a unit devoted to that portion of the facility that is a licensed nursing home.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 103, eff. Sept. 1, 1991.

SUBCHAPTER D. ENTRANCE FEE AND RESERVE FUND ESCROW ACCOUNTS

Sec. 246.071. ENTRANCE FEE ESCROW ACCOUNT; ESCROW AGENT.

(a) Before a provider may accept the payment of a deposit made under a reservation agreement or any portion of an entrance fee, the provider must establish an entrance fee escrow account with a bank or trust company, as escrow agent, that is located in this state.

(b) The provider shall deposit with the escrow agent any deposit or any portion of an entrance fee received by the provider not later than 72 hours after the provider receives the deposit or fee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 953, Sec. 7, eff. Sept. 1, 1993.

Sec. 246.072. RETURN OF DEPOSITS; RELEASE OR RETURN OF ENTRANCE FEE. (a) On a written request from or on behalf of the provider or a prospective resident, the escrow agent shall return the amount on deposit to the person who paid the deposit or shall maintain the deposit as an entrance fee in the entrance fee escrow account.

(b) Unless the escrow agent receives a written request from or on behalf of a provider or a resident for the return of an entrance fee under Section 246.056, the agent shall release the fee to the provider or place the fee in a loan reserve fund escrow.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 104, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 953, Sec. 8, eff. Sept. 1, 1993.

Sec. 246.073. RELEASE TO THE PROVIDER. (a) Except as provided by Subsection (b), an escrow agent shall release an entrance fee to the provider if:

(1) a minimum of 50 percent of the number of living units in the facility have been reserved for residents, as evidenced by:

(A) uncanceled      executed      continuing      care



contracts with those residents; and

(B) the receipt by the agent of entrance fee deposits of at least 10 percent of the entrance fee designated in each continuing care contract;

(2) the total amount of aggregate entrance fees received or receivable by the provider under binding continuing care contracts, the anticipated proceeds of any first mortgage loan or other long-term financing commitment described under Subdivision (3), and funds from other sources in the actual possession of the provider are equal to or more than the total amount of:

(A) 90 percent of the aggregate cost of constructing or purchasing, equipping, and furnishing the facility;

(B) 90 percent of the funds estimated, in the statement of anticipated source and application of funds included in the disclosure statement, to be necessary to cover initial losses of the facility; and

(C) 90 percent of the amount of any loan reserve fund escrow required to be maintained by the provider under Section 246.077; and

(3) a commitment has been received by the provider for any permanent mortgage loan or other long-term financing described in the statement of anticipated source and application of funds included in the current disclosure statement and any conditions of the commitment before disbursement of funds have been substantially satisfied, other than completion of the construction or closing on the purchase of the facility; and:

(A) if construction of the facility has not been substantially completed:

(i) all necessary government permits or approvals have been obtained;

(ii) the provider and the general contractor responsible for construction of the facility have entered into a maximum price contract;

(iii) a recognized surety authorized to do business in this state has executed in favor of the provider a bond

covering faithful performance of the construction contract by the general contractor and the payment of all obligations under the contract;

(iv) the provider has entered a loan agreement for an interim construction loan in an amount that, when combined with the amount of entrance fees in escrow plus the amount of funds from other sources in the actual possession of the provider, equals or exceeds the estimated cost of constructing, equipping, and furnishing the facility;

(v) the lender has disbursed not less than 10 percent of the amount of the construction loan for physical construction or completed site preparation work; and

(vi) the provider has placed orders at firm prices for not less than 50 percent of the value of items necessary for equipping and furnishing the facility in accordance with the description in the disclosure statement, including any installation charges; or

(B) if construction or purchase of the facility has been substantially completed:

(i) an occupancy permit covering the living unit has been issued by the local government that has authority to issue the permit; and

(ii) if the entrance fee applies to a living unit that has been previously occupied, the living unit is available for occupancy by the new resident.

(b) Before the date on which the loan reserve fund escrow required under Section 246.077 is first established, the aggregate amount of entrance fees that may be released to the provider under this section may not exceed an amount equal to the aggregate amount of entrance fees received or receivable by the provider under binding continuing care contracts minus the amount of entrance fees received or receivable that are required to be maintained initially in the loan reserve fund escrow.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 105, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 953, Sec. 9, eff. Sept. 1, 1993.

Sec. 246.0735. PHASE-IN FACILITIES. The commissioner may create requirements for escrow release different from those under Section 246.073 for facilities that obtain a certificate of authority issued under this subchapter before the commencement of facility construction. A facility that meets the commissioner's requirements under this section is not required to satisfy Section 246.073.

Added by Acts 2007, 80th Leg., R.S., Ch. 1228, Sec. 1, eff. June 15, 2007.

Sec. 246.0736. CONTINUING RELEASE OF ESCROW. (a) After the initial release of an entrance fee by an escrow agent for a specific facility, the commissioner shall authorize an escrow agent to continue to release escrowed entrance fees for that facility to the provider without further proof of satisfying the requirements of Section 246.073 if:

(1) the provider provides a monthly report to the department on marketing activities for living units of the facility; and

(2) the provider immediately informs the department of any problems, issues, or irregularities encountered in its marketing activities for the facility.

(b) If the provider fails to meet the requirements of Subsection (a), the commissioner may require the provider to satisfy the requirements of Section 246.073 before the commissioner authorizes the escrow agent to continue releasing escrowed entrance fees to the provider.

(c) The commissioner shall adopt rules to implement this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1228, Sec. 1, eff. June 15, 2007.

Sec. 246.074. RETURN OF ENTRANCE FEE. The escrow agent shall return an entrance fee to the person who paid it if the fee is not released to the provider or placed in the loan reserve fund escrow required under Section 246.077 within:

(1) 36 months after the date on which any portion of

the entrance fee is received by the provider; or

(2) a longer time specified by the provider in the disclosure statement delivered with the continuing care contract under which the fee was paid.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 106, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 953, Sec. 10, eff. Sept. 1, 1993.

Sec. 246.075. ESCROW OF APPLICATION FEE NOT REQUIRED. This subchapter does not require the escrow of any nonrefundable portion of a deposit or entrance fee that:

(1) does not exceed an amount equal to two percent of the entrance fee; and

(2) is clearly designated as nonrefundable in the continuing care contract or reservation agreement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 953, Sec. 11, eff. Sept. 1, 1993.

Sec. 246.076. INTEREST ACCRUED ON ENTRANCE FEE FUNDS. Unless otherwise provided in a continuing care contract, interest that accrues on funds held in an entrance fee escrow account is the property of the provider.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 953, Sec. 12, eff. Sept. 1, 1993.

Sec. 246.077. RESERVE FUND ESCROW. (a) When a facility is first occupied by a resident, the provider shall establish and maintain in an escrow account with a bank or trust company, as escrow agent, that is located in this state a reserve fund equal to the total of all principal and interest payments due during the next 12 months on any first mortgage loan or other long-term financing arrangement for the facility. The requirements of this section may be met in whole or in part by other reserve funds held for the purpose of meeting loan obligations if the total amount equals or exceeds the amount required by this subsection.

(b) At the option of the facility, the loan reserve fund escrow amount may exclude the portion of principal and interest

payments applicable to that portion of the facility that is a licensed nursing home.

(c) The provider shall maintain the loan reserve fund escrow in an account that is fully covered by federal deposit insurance and is separate from the provider's business account or in other accounts or investments approved by the commissioner. The funds in the reserve fund escrow account may be invested, with earnings payable to the provider.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 107, eff. Sept. 1, 1991.

Sec. 246.078. RELEASE OF RESERVE FUND ESCROW. (a) The escrow agent may release an amount equal to not more than one-twelfth of the loan reserve fund required by Section 246.077 if the provider requests the release in writing.

(b) The escrow agent must give written notice to the board not later than the 11th day before the date of the release.

(c) The escrow agent may not release funds from the loan reserve fund escrow under this section more than once during a calendar year. A provider at any time may apply to the commissioner for the withdrawal of all or part of the loan reserve escrow funds. The provider may withdraw the funds on the approval of the withdrawal by the commissioner. The application must be made and the approval given as provided by rule.

(d) The provider must repay to the loan reserve fund escrow account the amount released to the provider under Subsection (a) or (c) not later than 18 months after the date the amount is released. The commissioner may place the provider or facility under supervision under Section 246.091 or take any other appropriate action as provided by law if the provider does not repay the loan reserve fund escrow account within the required period.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 108, eff. Sept. 1, 1991.

Sec. 246.079. TRANSITION. (a) A provider who operates a facility that existed on September 1, 1987, must comply with the filing requirements imposed under Section 246.041 and the escrow

requirements imposed under Sections 246.077 and 246.078 not later than September 1, 1990.

(b) The commissioner may extend the time for compliance under this section for a reasonable period if the commissioner determines that the provider is unable to comply with this section after making a good faith effort to comply.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 109, eff. Sept. 1, 1991.

Sec. 246.080. APPLICABILITY. Sections 246.071 through 246.076 do not apply to a facility that on September 1, 1987, was completed and occupied by at least one person.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 110, eff. Sept. 1, 1991.

#### SUBCHAPTER E. SUPERVISION, REHABILITATION, AND LIQUIDATION

Sec. 246.091. SUPERVISION BY COMMISSIONER. (a) The commissioner may place a provider or facility under supervision if:

(1) the provider draws on the provider's entrance fee escrow in an amount greater than permitted by Section 246.073;

(2) the provider draws on the provider's loan reserve fund escrow in an amount greater than permitted or more frequently than permitted by Section 246.078;

(3) the commissioner determines, after a complaint and investigation, that the provider is financially unsound or is unable to meet the income or available cash projections previously filed by the provider and that the ability of the provider to fully perform its obligations under continuing care contracts is endangered; or

(4) the provider is bankrupt, insolvent, or has filed for protection from creditors under a federal or state reorganization, bankruptcy, or insolvency law.

(b) The commissioner appoints the supervisor.

(c) The commissioner may provide that the provider may not, during the supervision period and without the prior approval of the commissioner or the supervisor:

(1) dispose of, convey, or encumber its assets;

(2) withdraw its bank accounts;

- (3) lend its funds;
- (4) invest its funds;
- (5) transfer its property;
- (6) incur a debt, obligation, or liability; or
- (7) merge or consolidate with another facility.

(d) The commissioner shall terminate the supervision and restore to a provider the authority to manage the affairs of the facility if the commissioner determines that the facility is capable of meeting its financial obligations.

(e) The facility or provider shall pay the costs of a supervisor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 111, eff. Sept. 1, 1991.

Sec. 246.092. APPLICATION FOR COURT ORDER FOR REHABILITATION OR LIQUIDATION. (a) The commissioner shall request the attorney general to apply to a district court of this state, or to the federal bankruptcy court that has exercised jurisdiction over a provider or facility, for an order directing the appointment of a trustee to rehabilitate or liquidate the facility if the commissioner elects not to place the facility under supervision and:

(1) the provider draws from the provider's loan reserve fund escrow an amount greater than permitted by Section 246.078;

(2) the provider does not repay the loan reserve fund escrow as required by Section 246.078;

(3) the board determines, after a complaint and investigation, that the provider is financially unsound or is unable to meet the income or available cash projections previously filed by the provider and that the ability of the provider to fully perform its obligations under continuing care contracts is endangered; or

(4) the provider is bankrupt, insolvent, or has filed for protection from creditors under a federal or state reorganization, bankruptcy, or insolvency law.

(b) In connection with an application for an order to

rehabilitate or liquidate a facility, the court shall consider the manner in which the welfare of persons who have previously contracted with the provider for continuing care at the facility may be best served, and may order that the proceeds of a lien imposed under Section 246.111 may be used in full or partial payment of entrance fees to other facilities on behalf of the residents of the facility being liquidated.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 112, eff. Sept. 1, 1991.

Sec. 246.093. ORDER TO REHABILITATE. An order to rehabilitate a facility must direct the trustee to:

(1) take possession of the provider's property in order to conduct the business, including employing any managers or agents the trustee considers necessary; and

(2) take action as directed by the court to eliminate the causes and conditions that made rehabilitation necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.094. ORDER TO LIQUIDATE. (a) If the trustee determines that further efforts to rehabilitate the provider would be impractical or useless, the trustee may apply to the court that ordered the rehabilitation for an order of liquidation.

(b) A court that has jurisdiction may issue an order to liquidate a facility on application of the board, regardless of whether an order to rehabilitate the facility exists. If the court issues an order to liquidate, the court shall appoint a trustee to collect and liquidate all of the provider's assets located in this state.

(c) A person may not contract for continuing care at a facility after an order to liquidate that facility has been entered.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.095. BOND. A court may refuse to make or may vacate an order to rehabilitate under this subchapter if the provider posts a bond that is:



(1) in an amount determined by the court to be equal to the reserve funding needed to fulfill the provider's obligations under its continuing care contracts at the facility;

(2) issued by a recognized surety authorized to do business in this state; and

(3) executed in favor of the state on behalf of all persons entitled to refunds of entrance fees from the provider or other damages if the provider is unable to fulfill its continuing care contracts at the facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.096. TERMINATION OF REHABILITATION. (a) A court may terminate a rehabilitation and order return of a facility and its assets and affairs to the management of the provider if the court, on petition of the trustee or the provider or on its own motion, finds that:

(1) the objectives of the order to rehabilitate the facility have been accomplished; and

(2) the facility can be returned to the provider's management without further jeopardy to the residents, creditors, or owners of the facility or the public.

(b) A court may enter an order under this section after:

(1) a full report and accounting of the conduct of the facility's affairs during the rehabilitation; and

(2) a report on the facility's financial condition.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.097. PAYMENT OF TRUSTEE. The reasonable costs, expenses, and fees of the trustee are payable from the assets of the facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### SUBCHAPTER F. ENFORCEMENT

Sec. 246.111. LIEN. (a) To secure the obligations of the provider under any continuing care contract, a lien attaches on the date a resident first occupies a facility. The lien covers the real and personal property of the provider located at the facility. The

provider shall prepare a written notice sworn to by an officer of the provider for each county where the provider has a facility. The notice must contain the name of the provider, the legal description of each facility of the provider, and a statement that the facility is subject to this chapter and the lien provided by this section. The provider shall file for record the notice in the real property records of each county where the provider has a facility on or before the later of January 1, 1994, or the date of the execution of the first continuing care contract relating to the facility.

(b) The commissioner may remove a lien under this section if requested by a provider to obtain secondary financing or refinancing of a facility if:

- (1) the facility is financially sound; and
- (2) removal of the lien does not adversely affect the residents.

(c) A lien under this section is subordinate to any liens on the property of the facility if the proceeds of the loan secured by the liens were used in whole or in part to:

- (1) construct, acquire, replace, or improve the facility; or
- (2) refinance an earlier loan used to construct, acquire, replace, or improve the facility.

(d) A lien under this section is effective for 10 years.

(e) A lien under this section may be foreclosed on application of the board if the facility is liquidated or the provider is insolvent or bankrupt. The proceeds from a foreclosed lien shall be used for full or partial satisfaction of the provider's obligations under continuing care contracts in effect on the date of the foreclosure.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 953, Sec. 13, 15, eff. Sept. 1, 1993.

Sec. 246.112. INVESTIGATIONS. The commissioner may conduct an examination or investigation as necessary to:

- (1) determine whether a person has violated or is about to violate this chapter;
- (2) aid in the enforcement of this chapter;

(3) determine the financial solvency of a facility;  
or

(4) verify a statement contained in a disclosure statement filed or delivered under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.113. PRODUCTION OF EVIDENCE. (a) In an investigation or proceeding under this chapter, the board may:

(1) require or allow a person to file a written statement regarding any of the facts and circumstances concerning the matter to be investigated;

(2) administer oaths and affirmations;

(3) subpoena witnesses;

(4) compel attendance;

(5) take evidence; and

(6) require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records considered relevant to the inquiry.

(b) The board may bring suit in district court to enforce a subpoena if the person to whom a subpoena is directed fails to comply.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.114. ACTUARIAL REVIEW. (a) This section applies only to a facility whose contracts offer future guarantees of long-term nursing care that develop current actuarial liabilities.

(b) A facility subject to this section that initially filed with the commissioner an actuarial review performed on or after September 1, 1982, and before September 1, 1987, shall file with the commissioner subsequent actuarial reviews at five-year intervals from the date of completion of the initial actuarial review.

(c) A facility subject to this section that initially filed with the commissioner an actuarial review performed on or after September 1, 1987, shall file with the commissioner subsequent actuarial reviews at five-year intervals from the date of the filing of the initial actuarial review.

(d) The commissioner may require an actuarial review of a

facility before the end of the five-year interval in which the facility would otherwise be required to file an actuarial review if, in the opinion of the commissioner, the facility exhibits conditions of financial instability warranting an earlier review. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 113, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 953, Sec. 14, eff. Sept. 1, 1993.

Sec. 246.115. CEASE AND DESIST ORDERS; INJUNCTIONS.

(a) The board may request that the attorney general bring an action to prohibit a person from engaging in an act or practice and to order compliance with this chapter if the board determines, after a complaint or by other means, that the act or practice violates this chapter or an order made under this chapter.

(b) The action may be brought in the district court of a county in which:

- (1) the defendant resides;
- (2) the defendant has done business;
- (3) the principal place of business of the defendant is located; or
- (4) the transaction occurred.

(c) The court may grant an injunction or restraining order on a proper showing. If the court grants an injunction or restraining order, the court shall issue it without bond.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.116. CRIMINAL PENALTY. (a) A person commits an offense if the person intentionally violates this chapter.

(b) An offense under this section is a Class A misdemeanor. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.117. CIVIL LIABILITY. (a) A provider who makes a continuing care contract without complying with the disclosure statement requirement under Subchapter C, or who makes a continuing care contract with a person who has relied on a disclosure statement that omits a material fact required to be stated in the statement or necessary to make the statement accurate, is liable to the person

with whom the continuing care contract is made for:

- (1) actual damages;
- (2) repayment of all fees paid to the provider minus the reasonable value of care and lodging provided to the person by or on whose behalf the continuing care contract was made before the violation, misstatement, or omission was discovered or reasonably should have been discovered;
- (3) interest at the legal rate for judgments;
- (4) court costs; and
- (5) reasonable attorney's fees.

(b) A provider is liable under this section regardless of whether the provider had actual knowledge of the misstatement or omission.

(c) A person may not file or maintain an action under this section if the person, before filing the action, received a written offer of a refund of all amounts paid to the provider, facility, or person violating this chapter and reasonable interest from the date of payment, minus the reasonable value of care and lodging provided before the receipt of the offer and:

- (1) the offer states the provisions of this section; and
- (2) the recipient of the offer fails to accept the offer within 30 days after the date the offer is received.

(d) A person must bring suit under this section not later than three years after:

- (1) the date on which the continuing care contract was entered into; or
- (2) the violation, misstatement, or omission is discovered or reasonably should have been discovered.

(e) Except as expressly provided by this chapter, civil liability does not arise in favor of a private party by implication from or as a result of the violation of this chapter or a rule or order adopted under this chapter.

(f) This chapter does not limit a liability that would exist under any other statute or common law if this chapter were not in effect.

(g) The provisions of this chapter are not exclusive and the

remedies provided by this chapter are in addition to any other remedies provided by any other law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.