

PROVIDER'S ARTICLE 70B CONTINUING CARE CONTRACT WORKSHEET

Community: _____ Date Submitted: ____/____/____

	Where (\$ and page)
<p>A. Description of Living Unit "Identify the specific living unit initially assigned to the subscriber;" COMAR 28A(21).</p>	
<p>B. Subscriber's Rights/Obligations Regarding Facility and Common Areas. "State the rights and obligations a subscriber has regarding the use of the facility, including common areas;" COMAR 28A(27)</p>	
<p>C. Provider's Rights/Obligations Regarding Facility/Right of Entry. "State the rights and obligations a provider has regarding its use of the facility, including what, if any, rights the provider has to enter a subscriber's unit;" COMAR 28A(28). (NOTE: COMAR 10.07.14.26 provides that a resident of an assisted living program has the right to "Privacy, including the right to have a staff member knock on the resident's door before entering unless the staff member knows that the resident is asleep;")</p>	
<p>D. Respective Rights/Obligations Regarding Subscriber's Property. "State the subscriber's and provider's respective rights and obligations as to any real and personal property of the subscriber transferred to or placed in the custody of the provider;" COMAR 28A(26).</p>	
<p>E. Description of Services/for Life. "Describe in detail all items of service to be provided to the subscriber, such as food, shelter, medical or nursing care, and other health-related services;" COMAR 28A(2). "State whether the items described for §A(2) of this regulation are to be provided for a designated time period or for life;" COMAR 28A(3).</p>	
<p>F. Priority Admission to Nursing Home. "If a subscriber is offered a priority for nursing home admission, state: (a) The name of the nursing home or homes with which the provider has a formal priority arrangement; (b) What provisions for care will be made if a nursing home bed is not available at a facility identified in §A(4)(a) of this regulation at the time the bed is needed; (c) What the payment provisions will be for care at a facility identified in §A(4)(a) of this regulation; and (d) That the provider shall promptly notify the</p>	

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I. ACCOMMODATIONS / SERVICES:

subscriber and the Department of any change in the formal priority arrangement between the provider and the nursing home,"
COMAR .28A(4).

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G. Special Requirements for Extensive Contracts and Modified Contracts.

"If the agreement is an extensive contract or modified contract, as defined in Article 70B, § 7, Annotated Code of Maryland, include provisions in accordance with the applicable requirements of Article 70B, § 14A, Annotated Code of Maryland;"
COMAR .28A(10).

1. Provision of Assisted Living under an Extensive Contract or Modified Contract.

"(a) (1) If a subscriber's continuing care agreement is an extensive or modified agreement that promises a provider will provide assisted living services, and if the provider does not have an assisted living bed available at the facility when the subscriber needs the promised care, the provider shall provide the assisted living services the subscriber needs in accordance with paragraph (2) of this subsection. (2) The provider shall provide assisted living services required under paragraph (1) of this subsection to a subscriber: (i) At the same rate the subscriber would have to pay if an assisted living bed were available; and (ii) At the provider's option: 1. In the subscriber's independent living unit; or 2. In a nearby licensed assisted living facility." Art. 70B, §14A(a).

2. Provision of Comprehensive Care under an Extensive Contract or Modified Contract.

"(b) (1) If a subscriber's continuing care agreement is an extensive or modified agreement that promises the provider will provide the subscriber with comprehensive care services if the subscriber needs them, and if the provider does not have a comprehensive care bed available when the subscriber needs the promised care, the provider shall provide the comprehensive care services needed in accordance with paragraph (2) of this subsection. (2) A provider shall provide the services required by paragraph (1) of this subsection: (i) At the same rates a subscriber would have paid if a comprehensive bed were available; and (ii) At the provider's option: 1. In the subscriber's independent or assisted living unit; or 2. In a nearby licensed comprehensive care facility." Art. 70B, §14A(b).

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II. FEES:

A. Total Consideration/Fee Schedule.

"List the total consideration paid, or to be paid, by the subscriber for continuing care, including a schedule or inventory that sets forth in one place the value of all entrance fees, subscription fees, property transferred, surcharges, periodic fees,

II. FEES:

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donations, and other fees;" COMAR 28A(1). (NOTE: In accordance with Art. 70B, §13(a)(23), include a statement of the amount of any subscriber deposit. In addition, Commercial Law Article, §14-1315 restricts the amount of late fees that providers may charge and when they may be imposed.)

B. Fees Used for Continuing Care Only.

"State that fees collected by a provider under the terms of a continuing care agreement may not be used for purposes other than those set forth in the agreement;" COMAR 28A(37).

C. Entrance Fee Plans.

"Designate the categories of subscribers at the facility according to the types of entrance fee plans offered;" COMAR 28A(5).

D. Rate Changes (bold type).

"State in clear and understandable language, and in boldface type of the largest font used in the body of the agreement, whether or not periodic fees, if charged, will be subject to periodic increases;" COMAR 28A(17).

E. Rate Changes - Days Notice (bold/underline/CAPS).

"If periodic fees are subject to increase, state in clear and understandable language, and in all capital, underlined, and bold letters of the largest type used in the body of the agreement, the number of days of notice that will be given by the provider before an increase becomes effective;" COMAR 28A(18). (NOTE: For rate changes in Assisted Living, **FORTY-FIVE (45) DAYS** notice must be provided, except if necessitated by a change in the subscriber's medical condition: Art. 70B, §13(d)(7)(v) and COMAR 10.07.14.13. There is also a 45-day notice requirement under Section 2.E of the DHMH comprehensive care agreement forms, discussed at Part VIII B below.)

F. One Lump Sum?/No Increase Allowed.

"State that the charges for prepaid care may not be increased, if the agreement provides that care is paid for in advance, in one lump sum;" COMAR 28A(19).

G. Absence from Unit.

"State what fee adjustments, if any, will be made by the provider in the event of a subscriber's voluntary absence from the facility for an extended period of time;" COMAR 28A(31).

H. Multiple Subscribers - increase/decrease of fees in unit.

II. FEES:

"State whether there will be a partial refund of an entrance fee, an additional fee, or any increase or decrease in a periodic fee in the event of an increase or decrease in the number of people occupying a unit;" COMAR 28A(12).

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I. Liability to Pay,

"Describe the policies of the facility regarding subscribers unable to meet the periodic charges;" COMAR 28A(13).

J. Medical or Public Assistance

1. "Specify the circumstances, if any, under which a subscriber will be required to apply for Medicaid, Medicare, public assistance, or any public benefit program;" COMAR 28A(32).

2. "State whether the facility is or plans to be a participant in Medicare or Medicaid;" COMAR 28A(33).

III. RESCISSION, DISCHARGE AND TERMINATION:

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A. Rescission Before Occupancy-

"A subscriber shall have the right to rescind a continuing care agreement for any reason prior to the date of occupancy by the said subscriber." Art. 70B, §14(a).

B. Termination upon Death.

"State the terms under which an agreement is canceled by the death of a subscriber;" COMAR 28A(16).

C. Dismissal or Discharge by the Provider ONLY with Just Cause & 60 Days Notice.

"An agreement may not permit dismissal or discharge of a subscriber from a facility, including by involuntary transfer to an accommodation outside the facility, before expiration of the agreement for any reason, unless the: (a) Dismissal or discharge is for just cause; and (b) Subscriber is given advance notice of at least 60 days;" COMAR 31B(1).

D. Just Cause defined.

"Just cause can exist only when there is: (a) Nonpayment; (b) Material breach of: (i) The agreement, or (ii) Written reasonable rules of the provider that contractually bind the subscriber; or (c) Health status or behavior that constitutes a substantial threat to the health or safety of the subscriber or other subscribers;" COMAR 31B(2).

E. Temporary Emergency Transfer to Outside Facility Is Not Just Cause for Discharge.

"An agreement may recognize that a subscriber may have to be moved in the event of an emergency. A move or transfer of a

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subscriber to an accommodation outside the facility because of an emergency may not, in and of itself, establish just cause for a dismissal or discharge." COMAR .31B(4).

F. Right of Subscriber to Terminate.

"A continuing care agreement shall allow a subscriber to elect to terminate the agreement by giving a written termination notice to the provider." Art. 70B, §15A(a).

IV. REFUNDS:

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A. GENERAL.

1. Terms of Refund - Discharge, Termination/Cancellation (bold type).

"State in clear and understandable language, and in boldface type of the largest font used in the body of the agreement, the terms governing the refund of any portion of the entrance fee in the event of: (a) Discharge by the provider; or (b) Termination by the subscriber;" COMAR .28A(14).

2. Non-Refundable Processing Fee.

"A processing fee may only be assessed against a subscriber one time and may not exceed \$300 per individual." COMAR .27C.

3. Termination by Subscriber after Occupancy - Agreement Controls.

"If the subscriber elects to terminate the agreement after the date of occupancy, refund of the entrance fee is governed by the terms of the agreement." COMAR .31A.

4. Multiple Subscribers - Refund upon decrease in unit.

"State whether there will be a partial refund of an entrance fee, an additional fee, or any increase or decrease in a periodic fee in the event of an increase or decrease in the number of people occupying a unit;" COMAR .28A(12).

5. Beneficiary Designation.

"Allow a subscriber to designate a beneficiary for receipt of any refundable portion of the entrance fee that is owed due to the death of the subscriber on or after the date of occupancy, if: (i) The designation is in writing; (ii) The designation is witnessed by two or more competent witnesses; (iii) The designation is noncontingent; and (iv) The designation is specified in

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percentages and accounts for 100 percent of the refund due," Art. 70B, §13(a)(25).

B. BEFORE OCCUPANCY.

1. Full Refund within 30 days of (1) Rescission Before Occupancy Because of Change in Condition, or (2) Rescission within 90 days of Execution of Agreement.

"(1) If the subscriber rescinds the agreement before the date of occupancy, and the rescission either occurs within 90 days after entering into the agreement or because of a substantial change in the subscriber's physical, mental, or financial condition, the provider shall, within 30 days of rescission, refund all moneys paid by the subscriber except: (a) Any processing fee previously specified as nonrefundable; and (b) Special additional costs incurred by the provider due to modifications in the structure or furnishings of the unit specifically requested by the subscriber, but only if the: (i) Costs do not exceed the costs of modification or the reasonable costs of restoration actually incurred by the provider, and (ii) Modification was described in writing in a separate addendum to the agreement as required by Regulation 28A(23) of this chapter." COMAR 29B(1)

2. Full Refund w/in 30 days of Rescission Before Occupancy Because of Ineligibility for Admission.

"If a provider rescinds an agreement before occupancy because it determines that the subscriber is not eligible for entrance into the facility, the provider shall refund the same amount specified in §B(1) of this regulation." COMAR 29B(4).

3. Full Refund w/in 30 days of Rescission Before Occupancy Because of Death; except if in name of two

subscribers.

"If a subscriber dies before the date of occupancy, the agreement is automatically canceled, and the provider shall refund to the subscriber's legal representative the same amount specified in §B(1) of this regulation, except that the cancellation is not automatic and is at the option of the surviving subscriber if the agreement is in the name of two subscribers." COMAR 29B(5).

4. Refund Prior to Occupancy For Reasons other than Death, Ineligibility or Change in Condition More Than 90

Days After Execution Of Agreement.

"If the subscriber rescinds the agreement before the date of occupancy, but more than 90 days after entering into the agreement, for any reason other than a substantial change in the subscriber's physical, mental, or financial condition, the provider shall refund the same amount specified in §B(1) of this regulation, except that the provider may require that the subscriber forfeit part of the refund. The forfeiture amount may not exceed 25 percent of any deposit paid by the subscriber."

COMAR 29B(2)

IV. REFUNDS:

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C. AFTER OCCUPANCY.

1. Contractual Refunds Upon Termination by Subscriber.

"Include provisions governing contractual entrance fee refunds in accordance with the applicable requirements of Article 70B, § 15A, Annotated Code of Maryland," COMAR 28A(15).

a. Within First 90 Days.

"(b) If a continuing care agreement is terminated by the subscriber's election or death within the first 90 days of occupancy, the provider shall pay any contractual entrance fee refund within 30 days of the earlier to occur of: (1) The recontracting for the unit of that subscriber by another subscriber for whom an entrance fee has been paid, or by another party not a subscriber; or (2) The later to occur of: (i) The 90th day after the date the written termination notice is given or of death; or (ii) The day the independent living units at the facility have operated at 95% of capacity for the previous 6 months." Art. 70B, §15A(b).

b. After First 90 Days if Certain Conditions Exist.

"(c) If a continuing care agreement is terminated by the subscriber's election or death after the first 90 days of occupancy, the provider shall pay any contractual entrance fee refund within 60 days of the subscriber's death or the effective date of termination, if on the date of death or at any time between the date the written termination notice is given and the effective date of termination the following conditions exist: (1) The subscriber no longer resides in a unit at the level of care in which the subscriber resided upon initially entering the facility; (2) The subscriber resides in a unit at a higher level of care than the level of care in which the subscriber resided upon initially entering the facility; and (3) The last unit in which the subscriber resided at the level of care in which the subscriber resided upon initially entering the facility has been occupied by or reserved for another subscriber who has paid an entrance fee." Art. 70B, §15A(c).

c. Requirement that Unit Be Vacated Before Refund Paid.

"(d) This section does not preclude a provider from requiring that a subscriber's unit be vacated before any contractual entrance fee refund is paid as a result of the subscriber's election to terminate a continuing care agreement." Art. 70B, §15A(d).

2. Statutory Refund Required Upon Discharge by Provider.

a. Refund Upon Discharge by Provider after Occupancy.

"In the event of a permissible dismissal or discharge, the provider shall pay to the discharged subscriber a refund equal to the subscriber's total entrance fee divided by the subscriber's years of expected life at admission multiplied by the subscriber's years of expected life at discharge or dismissal. Years of expected life at admission and at dismissal or discharge shall be computed at the time of discharge or dismissal. The computations shall be based upon the appropriate life tables in the most recently published version of the United States Decennial Life Tables published by the U.S. Department of Health and

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Human Services." COMAR 31C(1).

b. Refund Upon Discharge Due Later of 60 days of Discharge or Vacating Unit.

"A refund paid after a permissible dismissal or discharge shall be paid within 60 days of the later of the: (a) Effective date of the discharge or dismissal; or (b) Subscriber's vacating the unit." COMAR 31C(2).

c. Multiple Subscribers - Refund upon Discharge of One Subscriber -- Option to Terminate and Receive Refund.

"In the event of a discharge or dismissal of one subscriber from a unit occupied by two or more subscribers, the subscriber not discharged from the unit has the option to terminate the agreement and receive a refund based on the formula described in §C of this regulation." COMAR 31D.

d. Multiple Subscribers - Refund upon Discharge of Two Subscribers.

"In the event of a discharge of two subscribers who contracted for a single two-subscriber unit, or in cases where the option in §D of this regulation is selected, the refund shall be calculated based on the assumption that the entrance fee is attributable in equal shares to each subscriber. One half of the entrance fee is multiplied and divided by the appropriate life expectancy of each subscriber, and the results added to determine the total refund." COMAR 31E.

V. TRANSFERS WITHIN THE COMMUNITY:

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A. Transfer within the Community - Relocation Limited.

"State that a subscriber may not be relocated from the subscriber's unit except to protect the health or safety of the subscriber or for the general and economic welfare of other subscribers of the facility." COMAR 28A(6).

¹ As noted at Part III.E above, COMAR 32.02.01 31B(4) provides that an agreement may recognize that a subscriber may have to be moved in the event of an emergency. Except in an emergency, a provider may not move a subscriber to a higher level of care (e.g., from an assisted living unit to a comprehensive care bed) without the subscriber's consent, or, if the subscriber is not competent, the consent of the subscriber's authorized representative. Maryland law recognizes the right of a competent adult to refuse treatment. *Mack v. Mack*, 329 Md. 188, 210, 618 A.2d 744, 755 (1993). Persons who are unable to exercise that power themselves nevertheless enjoy the right. 329 Md. at 211, 618 A.2d at 756. A provider cannot assume the role of health care decision-maker for its subscribers (by making a unilateral decision to move a subscriber to a higher level of care) because an owner, operator or employee of a facility from which a subscriber is receiving health care may not serve as a health care agent. See §5-602 Health-General Article, Md. Code Ann. However, an

V. TRANSFERS WITHIN THE COMMUNITY:

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B. Procedures for Temporary Change in Unit

"While recognizing the constraints of §A(6) of this regulation, describe the procedures the parties to the agreement are to follow in order to temporarily transfer a subscriber: (a) From the unit in which the subscriber resides to another unit within the facility; or (b) To an accommodation outside of the facility;" COMAR .28A(7)

C. Procedures for Return to Unit

"Describe the procedures the parties to the agreement are to follow in order to return a subscriber to the unit in which the subscriber resided before a temporary change;" COMAR .28(A)(8).

D. Procedures for Permanent Change in Unit

"While recognizing the constraints of §A(6) of this regulation, describe the procedures the parties to the agreement are to follow in order to permanently transfer a subscriber: (a) From the unit in which the subscriber resides to another unit within the facility; or (b) To an accommodation outside of the facility;" COMAR .28A(9)

E. Multiple Subscribers

"(1) Describe how the procedures for changes, transfers, and returns, whether temporary or permanent, will operate if a unit is occupied by more than one subscriber;" COMAR 28A(11).

VI. CERTIFICATION ISSUES - STATE REQUIREMENTS:

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A. Financial Statement - Reviewed

"In a separate paragraph, signed by each subscriber, state: "I have received a copy of the provider's latest certified financial statement at least 2 weeks before signing this agreement, and I have reviewed the certified financial statement provided."

agreement may allow a provider to relocate a subscriber involuntarily to a different accommodation within the facility if: (1) the subscriber is being moved to protect his or her health or safety or for the general and economic welfare of the other subscribers of the facility; and (2) the move is not to a higher level of care (e.g., moving a subscriber from one assisted living unit to another because extensive repair work is needed to the unit).

Note that the continuing care regulations do not define the term "emergency" used in COMAR 32.02.01.31B(4). Accordingly, a continuing care agreement may use the term pursuant to COMAR 32.02.01.31B(4) without defining it. However, for those providers wishing to include a definition in the agreement, either of the following definitions is acceptable to the Department: "Emergency" means imminent danger of serious harm to the Resident or other residents;" "Emergency" means a situation placing the Resident or other residents in imminent danger of serious harm."

VI. CERTIFICATION ISSUES - STATE REQUIREMENTS:

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COMAR 28A(34).

B. Disclosure Statement – Reviewed

"In a separate paragraph, signed by each subscriber, state: "I have received a copy of the provider's latest disclosure statement, and I have reviewed the disclosure statement provided." COMAR 28A(41)

C. Financial Statements/Disclosure Statements Available

"State that the provider will make available to each subscriber, upon request, any certified financial statement or disclosure statement submitted to the Department," COMAR 28A(35)

D. Certificate of Registration.

"State in boldface type of the largest font used in the body of the contract: "A preliminary certificate of registration or certificate of registration is not an endorsement or guarantee of this facility by the State of Maryland. The Maryland Department of Aging urges you to consult with an attorney and a suitable financial advisor before signing any documents." COMAR 28A(39).

E. Pre-Certificate of Registration (where applicable).

"If an agreement is executed before the provider has received an initial certificate for the unit identified in the agreement, state: (a) The conditions that the provider must meet to be issued an initial certificate of registration by the Department; and (b) That all deposits and entrance fees shall be held in an escrow account in Maryland in a financial institution until: (i) An initial certificate of registration is issued, (ii) A certificate of occupancy is received, (iii) Construction is complete, and (iv) The provider has been issued appropriate licenses or certificates by DHMH, MHCC, and the Department," COMAR 28A(39).

F. Conflicts.

"State that if there are differences between the requirements for continuing care certification and the licensure requirements for assisted living and comprehensive care facilities, the applicable requirements most favorable to the subscriber will prevail while the subscriber is residing in an assisted living or comprehensive care unit." COMAR 28A(42).

VII. CERTIFICATION ISSUES - STATE REQUIREMENTS:

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G. Subscriber's Legal Remedies.

"State the legal remedies available to a subscriber in the event of injury caused by a provider's violation of the Act." COMAR 28A(40).

1. "A subscriber may rescind a continuing care agreement at any time if the terms of the agreement are in violation of the terms of this subtitle and the subscriber is injured by the violation. The subscriber shall be entitled to treble damages for extensive injuries arising from the violations." Art. 70B, §14(c).

2. "Any subscriber injured by a violation of this subtitle may bring an appropriate action for equitable relief or an action for the recovery of damages in any court of general jurisdiction. In such cases the court may award reasonable attorney's fees to a subscriber in whose favor a judgment is rendered." Art 70B, §19.

(NOTE: The following is a sample provision: "Under the continuing care laws set forth in Article 70B, Sections 7 through 23, of the Annotated Code of Maryland (the "Act"), Resident may rescind this Agreement at any time if its terms are in violation of the terms of the Act and Resident is injured by the violation. In such case, Resident will be entitled to treble damages for extensive injuries arising from the violations. In addition, under the Act, in the event Resident is injured by a violation of the Act, Resident may bring an appropriate action for equitable relief or an action for the recovery of damages in any court of general jurisdiction and, if a judgment is rendered in the Resident's favor, the court may award reasonable attorney's fees to Resident")

H. Amendments.

"The provider shall request approval from the Department for any modification, addition, or deletion to the terms of a continuing care agreement, before the agreement is offered to or used with subscribers." COMAR 28D. See also COMAR 35A(6)(c).

(NOTE: The following is a sample provision: "This Agreement may not be amended without the prior approval of the Maryland Department of Aging.")

VII. MISCELLANEOUS

Where (§ and page)

A. Unit Alterations.

"If any additional costs or charges will be incurred by the subscriber for any modifications to the unit requested by the subscriber, provide a separate, written addendum to the agreement that: (a) Describes the costs or charges; (b) Is signed by the subscriber; (c) States whether the additional costs or charges will be refunded in the event of cancellation or termination; and (d) States whether there will be charges or costs assessed against the subscriber or the subscriber's estate for restoration

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when the subscriber permanently releases the unit;" COMAR 28A(23).

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B. Subjecting.

"State whether the subscriber may assign the use of a unit to another and, if so, under what conditions;" COMAR 28A(22).

C. Funeral/Burial.

"State whether funeral and burial services are furnished by the provider;" COMAR 28A(20).

D. Subscriber Associations.

"State that subscribers have the right to: (a) Organize and operate a subscriber's association at the facility; and (b) Meet privately at the facility to conduct business;" COMAR 28A(29).

E. Provider's Religious/Charitable Affiliation.

"Describe any religious or charitable affiliations of the provider;" COMAR 28A(24). "Describe the extent to which an affiliate organization will be responsible for the financial and contractual obligations of the provider;" COMAR 28A(25).

F. Internal Grievance Procedure

"State that there is an internal grievance procedure to investigate the grievances of subscribers;" COMAR 28A(30).

G. Provider's Written Rules.

"State that the subscriber has received, at least 2 weeks before signing the agreement, the current version of the written rules of the provider;" Article 70B, §13(a)(9).

NOTE: Please use the following model provision, with or without either or both of the two parts of the model provision shown in *italics*:

[insert name of Provider] represents and [insert term used in the continuing care agreement to refer to the subscriber, typically "Resident"] acknowledges that [insert term used in the continuing care agreement to refer to the subscriber, typically "Resident"] has received at least two weeks before signing this [insert term used to refer to the continuing care agreement, typically "Agreement"] a copy of the current version of the written rules of [insert name of Provider], which are subject to change by [insert name of Provider] from time to time.

VIII. MISCELLANEOUS ART. 70B REQUIREMENTS APPLICABLE TO SOME CONTINUING CARE AGREEMENTS

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Most of the issues addressed in this Part VIII are far more complex than those addressed in Parts I through VII above. It is beyond the scope of this worksheet to discuss these issues in detail, but a limited amount of information is provided below with regard to them so the issues can be identified and addressed.

A. Assisted Living Programs.²

In structuring its continuing care agreement, a provider needs to decide whether it wants to comply with Article 70B, §13(d) or COMAR 10.07.14.12 and .13. Providers who elect to come under Article 70B, §13(d) are to so indicate in the column to the right.

Under §13(d)?
-Yes _____
-No _____

Note that some providers who elect to come under §13(d) integrate the assisted living provisions into the main body of the continuing care agreement. Other providers electing to come under §13(d) instead attach their current assisted living addendum (complying with §13(d)) as an addendum to the continuing care agreement, but provide for the subscriber to sign the then current assisted living addendum (which would also need to comply with §13(d) and be approved by the Department before usage) before a move to assisted living.

The following is provided for the use of providers electing to come under Article 70B, §13(d), who are to indicate in the column to the right where each of the following requirements is met in the continuing care agreement:

²In addition to any other requirements of this section, if a provider's continuing care agreement includes a provision to provide assisted living program services and the provider does not execute a separate assisted living agreement, each continuing care agreement executed between a subscriber and a provider shall include with regard to the assisted living program:

(1) A statement of the level of care for which the assisted living program is licensed;

(2) As part of the procedures to be followed under subsection (a)(4) of this section, if the subscriber is transferred to an assisted living program, the procedures to be followed by the provider for notifying the subscriber of the level of care needed by the subscriber;

(3) A statement indicating the options available to a subscriber if the subscriber's level of care, after admission to an

² If the provider's form assisted living agreement/addendum is intended to also be entered into by individuals who are not continuing care subscribers, providers in drafting it need to take into account whether or not the provider is relying on a certificate of need exemption for its comprehensive care beds, which greatly limits the extent, if any, to which such individuals may use the comprehensive care beds. See Health General Article, Sections 19-114(d), 19-123 and 19-124 and COMAR 10.24.01.03K.

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assisted living program, exceeds the level of care for which the provider is licensed;

(4) Based on a sample list of assisted living program services maintained by the Department of Health and Mental Hygiene, a statement of those services provided by the assisted living program and those services not provided by the assisted living program;

(5) A statement of the obligations of the provider and the subscriber or the subscriber's agent as to handling the finances of the subscriber;

(6) A statement of the obligations of the provider and the subscriber or the subscriber's agent as to disposition of the subscriber's property upon discharge or death of the subscriber; and

(7) The applicable rate structure and payment provisions covering: (i) All rates to be charged to the subscriber, including: 1. Service packages; 2. Fee-for-service rates; and 3. Any other nonservice-related charges; (ii) Criteria to be used for imposing additional charges for the provision of additional services, if the subscriber's service and care needs change; (iii) Payment arrangements and fees, if known, for third-party services not covered by the continuing care agreement, but arranged for by either the subscriber, the subscriber's agent, or the assisted living program; (iv) Identification of the persons responsible for payment of all fees and charges and a clear indication of whether the person's responsibility is or is not limited to the extent of the subscriber's funds; (v) A provision for at least 45 days' notice of any rate increase, except if necessitated by a change in the subscriber's medical condition; and (vi) Fair and reasonable billing and payment policies." Art. 70B, §13(d).

The following is the "sample list of assisted living program services maintained by the Department of Health and Mental Hygiene" described in Art. 70B, §13(d)(4) above:

**"THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE'S
ART. 70B §13(D)(4) Sample List of Services
Provided by Assisted Living Programs**

1. Room
2. Furniture for the subscriber's room (unless the subscriber brings personal furniture)
3. Three well balanced meals and additional snacks each day
4. Special diets
5. Housekeeping

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6.	Laundry	
7.	Personal care services (consistent with subscriber's needs and service plan), including: <ul style="list-style-type: none">* Assistance with and/or supervision of activities of daily living, including: eating, personal hygiene, mobility, toileting, and dressing* Provision and/or facilitating access to appropriate health care and social services, including: social work services, rehabilitative services, home health services, hospice services, skilled nursing services, physician services, oral health care, dietary consultation and services, counseling, psychiatric services, and other specialty health and social work services.* Provision and/or facilitating access to social and recreational services, including facilitating access to spiritual and religious activities consistent with subscriber's background and preferences.	
8.	Initial assessment and periodic reassessment of subscriber's ability to self-administer medications	
9.	Assistance with and/or administration of medications (consistent with subscriber's needs and service plan)	
10.	Hand/hube feeding	
11.	Catheter care	
12.	Colostomy care	
13.	Pressure sore or other wound care	
14.	Incontinent care	
15.	TV therapy	
16.	Oxygen therapy	
17.	Suctioning	
18.	Tracheotomy care	
19.	Transportation to medical appointments	
20.	Radiology (X-ray services)	
21.	On-site laboratory	
22.	On-site pharmacy	
23.	Health equipment	

VIII. MISCELLANEOUS ART. 70B REQUIREMENTS APPLICABLE TO SOME CONTINUING CARE AGREEMENTS

Where
(§ and page)

- Walker
 - Geriatric chair
 - Wheelchair
 - Pressure mattress
 - Trapeze
24. Beauty and barber services”

VIII. MISCELLANEOUS ART. 70B REQUIREMENTS APPLICABLE TO SOME CONTINUING CARE AGREEMENTS

Where
(§ and page)

B. Comprehensive Care Program.

Many providers utilize a contract structure whereby certain subscribers enter into comprehensive care agreements based upon DHMH's two form comprehensive care agreements, which are entitled "Resident Admission Contract of [Name of Facility]" and "Resident's Agent Financial Agreement With [Name of Facility]". The Department has noted that, for most providers electing to use these two form DHMH agreements, the following two changes need to be made to conform them to the Article 70B continuing care laws.

First, see the sixth paragraph of Section 3.B of the DHMH form Resident Admission Contract. This paragraph informs the resident that if the resident is no longer able of pay for care and is not eligible for Medical Assistance, the provider will notify the resident of its intention to discharge the resident for non-payment. For most providers, this provision is not in accord with the possibility of charitable care set forth in the continuing care agreement pursuant to COMAR 28A(13). If charitable care is a possibility in comprehensive care, this DHMH form agreement needs to be revised to reflect that fact. For example, a provider could, e.g., insert the following at the end of the first sentence of the sixth paragraph " , unless we decide to wholly or partly subsidize you pursuant to the terms of your [insert title of continuing care agreement]." Note that a similar change would also be needed in the sixth paragraph of Section 3.B of the DHMH form Resident's Agent Financial Agreement.

Second, see Section 4.F of the DHMH form Resident Admission Contract, which conflicts with the continuing care laws. The following is a suggested revision to the first paragraph of Section 4.F and the first sentence of the second paragraph of Section 4.F, which several communities have used and which the Department finds acceptable:

You have the right to remain here, and you may not be transferred or discharged against your will, unless both (i) the transfer or discharge is permitted under the terms of your [insert title of continuing care agreement] and (ii) one of the following reasons exists for the transfer or discharge: (a) your condition has improved so that you no longer need the services we provide in this comprehensive care facility; (b) the transfer or discharge is necessary for your welfare and your needs cannot be met by this comprehensive care facility; (c) the health or safety of an individual in the Facility is endangered; (d) you, after reasonable and appropriate notice, have failed to pay (or through your insurers have failed to pay) for a stay at the Facility; or (e) this comprehensive care facility ceases to operate.

If the Facility determines that the transfer or discharge is permitted under the terms of your [insert title of continuing care agreement] and identifies one of the reasons listed in (a) through (e) above for the transfer or discharge, we will (i) comply with the terms of your [insert title of continuing care agreement] with respect to the transfer or discharge and (ii) notify you and your family member, guardian, or representative by letter sixty (60) days in advance.

Note that a similar change would also be needed in Section 4.F of the DHMH form Resident's Agent Financial Agreement.

VIII. MISCELLANEOUS ART. 70B REQUIREMENTS APPLICABLE TO SOME CONTINUING CARE AGREEMENTS

Where
(§ and page)

C. Subordination.

The issue of subordination is complex. This is partly due to Article 70B, Section 16, which does not allow waivers of statutory provisions intended for the benefit or protection of the subscriber. It is also complex due to Article 70B deposit, entrance fee, escrow and refund laws. The Department has been willing to allow providers who wish to include a subordination provision in their continuing care agreements to do so if they also suitably provide that rights arising under Article 70B may take precedence over the subordination provision. For example, a number of subordination provisions approved by the Department begin with the phrase: *“Except as may be limited by rights arising under Article 70B of the Annotated Code of Maryland.”*

D. Startup CCRGs, CCRG Conversions and Adding “New Units” at Existing CCRGs.

The development of startup CCRGs, the conversion of existing nonCCRC facilities into CCRGs, and the development of “new units” (as defined in Regulation 01A(26)) at existing CCRGs all raise special continuing care agreement issues, particularly with regard to deposits and the escrow of funds, that are beyond the scope of this worksheet. Providers intending to use the continuing care agreement for such uses are to list the intended use (i.e. startup CCRG, conversion, or “new units” at an existing CCRG) in the column to the right.

Special Intended Use?

Former Provision	Revised Provision	Former Provision	Revised Provision
Art. Sec.	Art. Sec.	Art. Sec.	Art. Sec.
49D 6-101(b)	HU	8-803	70B 4(a)(8) HU 10-204(c)
49D 6-101(c)		8-804	70B 4(a)(9) 10-204(d)
49D 6-101(d)		8-805	70B 4(a)(10) 10-204(d)
49D 6-101(e)		8-806	70B 4(a)(11) Deleted
49D 6-101(f)		8-805	10-303
49D 6-101(g)		8-807	70B 4(a)(12) 10-204(c)
49D 6-101(h)		8-711	70B 4(a)(13) 10-204(b)
49D 6-101(i)		8-712	70B 4(a)(14) 10-204(d)
49D 6-102		8-710	70B 4(a)(15) 10-204(b)
49D 7-101(a)	8-701(a)	70B 4(a)(16)	10-205(b)
49D 7-101(b)	8-701(b)	70B 4(a)(17)	10-205(a)
49D 7-101(c)	8-701(c)	70B 4(a)(18)	10-206
49D 7-101(d)	8-101(k)	70B 4(a)(19)	10-207
49D 7-101(e)	8-701(d)	70B 4(b)(1)	10-209(a)
49D 7-101(f)	8-701(e)	70B 4(b)(2)	10-209(c)
49D 7-101(g)(1)	8-101(m)	70B 4(b)(3)	10-209(c)
49D 7-101(g)(2)	8-101(m)	70B 4(b)(4)	10-209(c)
49D 7-101(g)(3)	8-701(f)	70B 4(b)(5)	10-209(c)
49D 7-101(h)	8-705	70B 4(b)(6)	10-209(d)
49D 7-102	8-702	70B 4(b)(7)	10-209(e)
49D 7-103	8-703	70B 4(b)(8)	10-209(d)
49D 7-104	8-704	70B 4(b)(9)	10-209(f)
49D 7-105	8-705	70B 4(b)(10)	10-209(f)
49D 7-106	8-706	70B 4(b)(11)	10-210
70B 1(a)	10-101(a)	70B 4(c)(1)	Transferred to
70B 1(b)	10-101(b)		SP § 8-308
70B 1(c)	(part)	70B 4(c)(2)	Deleted
	10-101(c)	70B 4(d)	10-211
70B 1(c)	(part)	70B 4A	10-301
	10-209(a)	70B 4B(a)	10-302(a)
70B 1(c)	(part)	70B 4B(b)	10-302(b)
	10-209(b)	70B 4B(c)	10-303
70B 1(d)	10-101(d)	70B 4B(d)	10-304
70B 1(e)	10-101(e)	70B 4C(a)	Deleted
70B 1(f)	10-101(f)		10-306
70B 1(g)	10-101(g)	70B 4C(b)	10-306
70B 2(a)	10-201	70B 4C(c)	10-305
70B 2(b)	10-202(a)	70B 4C(d)	10-306
70B 2(c)(1)	10-202(c)	70B 4D	10-310
70B 2(c)(2)	10-203	70B 4E	10-307
70B 2(d)	10-202(d)	70B 4F	10-307
70B 3(a)	(part)	70B 4G	10-308
	10-208(a)	70B 4H	10-309
70B 3(a)	(part)	70B 4I	10-210
	10-208(f)	70B 5(a)	10-212
70B 3(b)	(part)	70B 5(a)	(part)
	10-208(b)		10-213(a)
70B 3(b)	(part)	70B 5(b)	10-212
	10-208(c)	70B 5(c)	(part)
70B 3(b)	(part)		10-213(b)
	10-208(d)	70B 5(c)	(part)
70B 3(c)	10-208(e)		10-213(c)
70B 3(d)	10-208(f)	70B 5(d)(1)	10-213(c)
70B 4(a)(1)	10-204(a)	70B 5(d)(2)	10-213(d)
70B 4(a)(2)	10-204(c)	70B 5(d)(3)	10-213(e)
70B 4(a)(3)	10-204(c)	70B 5(e)(1)	10-213(f)
70B 4(a)(4)	10-204(c)	70B 5(e)(2)	10-213(d)
70B 4(a)(5)	10-204(d)	70B 5(f)	10-213(g)
70B 4(a)(6)	10-204(d)	70B 5A	10-214
70B 4(a)(7)	10-204(d)	70B 7(a)	10-401(a)

TABLES OF COMPARABLE SECTIONS

Former Provision		Revised Provision		Former Provision		Revised Provision	
Art.	Sec.	Art.	Sec.	Art.	Sec.	Art.	Sec.
70B	7(b)	HU	10-401(b)	70B	11A(c)	HU	10-427
70B	7(c)		10-401(c)	70B	11A(d)		10-429
70B	7(d)		10-401(g)	70B	11B(a)		1st sent.
70B	7(e)		10-401(e)				10-419
70B	7(f)		10-401(h)	70B	11B(a)		2nd sent.
70B	7(f-1)		10-401(i)				10-420
70B	7(g)		10-472(b)	70B	11B(b)		10-420
70B	7(h)		10-472(c)	70B	11B(c)		10-421
70B	7(i)		10-401(j)	70B	11B(d)		10-421
70B	7(j)		10-401(k)	70B	11B(e)		10-421
70B	7(k)		10-401(l)	70B	11B(f)		10-422
70B	7(l)		10-447	70B	11B(g)		10-420
70B	7(m)		10-401(m)	70B	11B(h)		10-423
70B	7(n)		10-401(n)	70B	11C(a)		10-424
70B	7(o)		10-472(d)	70B	11C(b)		10-424
70B	7(p)		10-401(o)	70B	11C(c)		10-425
70B	7(q)		10-401(p)	70B	11C(d)		10-425
70B	7(r)		10-401(g)	70B	11C(e)		10-424
70B	7(s)		10-447	70B	11C(f)		10-425
70B	7(t)		10-401(q)	70B	11D(a)		10-432
70B	7(u)		10-401(r)	70B	11D(b)(1)		10-433
70B	7(v)		10-401(s)	70B	11D(b)(2)		10-433
70B	7(w)		10-472(e)	70B	11D(b)(3)		10-433
70B	7(x)		10-401(t)	70B	11D(b)(4)		10-433
70B	7(y)		10-401(u)	70B	11D(b)(5)		10-434
70B	7(z)		10-472(f)	70B	11D(b)(6)		10-434
70B	7(aa)		10-472(g)	70B	11D(b)(7)		10-434
70B	7(bb)		10-401(v)	70B	11D(c)		10-485
70B	7(cc)		10-401(w)	70B	11D(d)		10-435
70B	7(dd)		10-472(h)	70B	11D(e)		10-435
70B	7(ee)		(part)	70B	11D(f)		10-435
			10-402(a)	70B	11E(a)		10-436
			(part)	70B	11E(b)		10-436
70B	7(ee)		10-402(c)	70B	11E(c)		10-437
70B	7A		10-404	70B	11E(d)		10-438
70B	8		10-408	70B	11E(e)		10-438
70B	9		10-408	70B	11E(f)		10-438
70B	10(a)		10-409	70B	11E(g)		10-438
70B	10(b)		10-409	70B	11E(h)		10-438
70B	10(c)		10-410	70B	11F		10-439
70B	10(c-1)		10-410	70B	11G		10-428
70B	10(d)		10-409	70B	12		10-440
70B	10(d)		10-411	70B	13(a)		10-444
70B	10(e)		10-411	70B	13(b)		10-444
70B	10(f)		10-411	70B	13(c)		10-445
70B	10(g)		10-411	70B	13(d)		10-444
70B	10(h)		10-411	70B	13(e)		10-445
70B	11(a)		10-412	70B	13(e)		10-445
70B	11(b)		10-412	70B	14		10-446
70B	11(c)		10-412	70B	14A		10-447
70B	11(d)		10-412	70B	15		10-448
70B	11(e)		10-413	70B	15A		10-449
70B	11(f)		10-413	70B	16		10-450
70B	11(g)		10-413	70B	17		10-441
70B	11(h)		10-414	70B	17A(a)		10-464
70B	11(i)		10-414	70B	17A(b)		10-465
70B	11(j)		10-415	70B	17A(c)		10-466
70B	11(k)		10-415	70B	17A(d)		10-467
70B	11(l)		10-403	70B	17A(e)		10-468
70B	11A(a)		10-426	70B	17A(f)		10-468
70B	11A(b)		10-427	70B	17A(g)		10-468

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Former Provision		Revised Provision		Former Provision		Revised Provision	
Art.	Sec.	Art.	Sec.	Art.	Sec.	Art.	Sec.
70B	17A(h)	HU	10-489	70B	26(e)	HU	10-501(i)
70B	18		10-496	70B	26(f)		10-501(d)
70B	18A		10-497	70B	26(g)		Deleted
70B	19		10-498				10-501(i)
70B	20(a)		10-498	70B	26(h)		10-501(e)
70B	20(b)		10-499	70B	26(i)		10-501(f)
70B	20(c)		10-499	70B	26(j)		10-501(h)
70B	20(d)		10-499	70B	26(k)		10-501(i)
70B	20(e)		10-499	70B	26(l)		10-501(b)
70B	20A		10-473	70B	27(a)		10-502(a)
70B	20B		10-474	70B	27(b)		10-502(b)
70B	20C		10-475	70B	27(c)		10-510
70B	20D		10-476	70B	28		10-503
70B	20E		10-477	70B	28		10-502(a)
70B	20F		10-478	70B	29		10-504
70B	20G		10-479	70B	30(a)		10-507(a)
70B	20H		10-480	70B	30(b)		10-507(a)
70B	20-I		10-481	70B	30(c)		10-507(b)
70B	20J		10-482	70B	30(d)		10-506
70B	20K		10-483	70B	31(a)		10-508(a)
70B	20L		10-484	70B	31(b)		10-508(b)
70B	20M		10-485	70B	31(c)		10-508(c)
70B	20N		10-486	70B	31(d)		10-508(d)
70B	20-O		10-487	70B	31(e)		10-509(a)
70B	20P		10-488	70B	31(f)		10-509(b)
70B	20Q		10-489	70B	31(g)		10-509(c)
70B	20R		10-490	70B	31(h)		10-509(d)
70B	20S		10-491	70B	31(i)		10-509(e)
70B	20T		10-492	70B	31(j)		10-509(b)
70B	21		10-493	70B	31(k)		10-509(f)
70B	22		10-416	70B	31(l)		10-509(g)
70B	22		10-460	70B	32		10-505
70B	22A(a)		10-401(f)	70B	33(a)		10-513(a)
70B	22A(b)		10-454	70B	33(b)		10-516(c)
70B	22A(c)		10-454	70B	33(c)		10-513(c)
70B	22A(d)		10-455(b)	70B	34(a)		10-514(a)
70B	22A(e)(1)		10-455(a)	70B	34(b)		10-516(a)
70B	22A(e)(2)		10-455(c)	70B	34(c)		10-516(b)
70B	22A(f)		10-455(d)	70B	34(d)		10-514(b)
70B	22A(g)		10-456	70B	34(e)		10-516(d)
70B	22A(h)		10-457	70B	35(a)		10-515(a)
70B	22A(i)		10-457	70B	35(b)		10-516(c)
70B	22A(j)		10-458	70B	35(c)		10-516(c)
70B	22A(k)		10-458	70B	35(d)		10-515(b)
70B	22A(l)		10-458	70B	36(a)(1)		10-601(a)
70B	22A(m)		10-458	70B	36(a)(2)		10-601(b)
70B	22A(n)		10-459	70B	36(a)(3)		10-601(c)
70B	22A(o)		10-402(a)	70B	36(b)		10-602(a)
70B	22A(p)		10-402(b)	70B	36(c)		10-602(b)
70B	23(a)		(part)	70B	36(d)		10-604
			10-402(b)	70B	36(e)		10-603(a)
70B	23(a)		(part)	70B	36(f)		10-605(a)
			10-402(e)	70B	36(g)		10-605(b)
70B	23(b)		10-402(d)	70B	36(h)		10-605(c)
70B	25		Deleted	70B	36(i)		10-603(b)
			10-214	70B	36(j)		10-606
70B	26(a)		10-501(a)	70B	36(k)		10-607
70B	26(b)		10-501(c)	70B	45(a)(1)		10-701(a)
70B	26(c)		10-501(b)	70B	45(a)(2)		10-701(b)
70B	26(d)		10-501(c)	70B	45(a)(3)		(part)

TABLES OF COMPARABLE SECTIONS

Former Provision		Revised Provision		Former Provision		Revised Provision	
Art.	Sec.	Art.	Sec.	Art.	Sec.	Art.	Sec.
70	45(a)(3)	HU	10-701(b)	83C	2-115(b)	HU	9-220
70B	45(a)(3)		(part)	83C	2-115(c)		9-219(a)
			10-701(c)	83C	2-115(d)		9-219(b)
70B	45(a)(4)		10-701(d)	83C	2-115(e)		9-219(c)
70B	45(a)(5)		10-701(e)	83C	2-115(f)		9-219(d)
70B	45(b)		10-702	83C	2-115(g)		9-219(e)
70B	45(c)		10-702	83C	2-115(h)		9-219(f)
70B	45(d)		10-703	83C	2-116		9-218(a)
70B	45(e)		10-704	83C	2-117(a)		9-226
70B	45(f)		10-704	83C	2-117(b)		9-228
70B	45(g)		10-705	83C	2-118(a)		9-227(a)
70B	45(h)		10-706	83C	2-118(b)(1)		9-227(b)
78A	55		Deleted	83C	2-118(b)(2)		9-227(e)
			GRN	83C	2-118(c)		9-227(b)
83C	1-101(a)		9-101(a)	83C	2-118(d)		9-227(c)
83C	1-101(b)		9-101(b)	83C	2-118(e)		9-227(d)
83C	1-101(c)		Deleted	83C	2-118(f)		9-227(b)
			9-101(d)	83C	2-118(g)		9-221(b)
83C	1-101(d)		9-101(c)	83C	2-118(h)		9-221(b)
83C	1-101(e)		Deleted	83C	2-118(i)		9-221(c)
			9-101(d)	83C	2-118.1		9-229
83C	1-101(f)		Deleted	83C	2-119		9-230
			9-101(d)	83C	2-119.1		Deleted
			9-101(d)				GRN
83C	1-101(g)		9-201	83C	2-120		9-231
83C	2-101(a)		9-223	83C	2-121		9-232
83C	2-101(b)		9-202(a)	83C	2-122		9-233
83C	2-102(a)		9-202(c)	83C	2-123		9-235
83C	2-102(b)(1)		9-203	83C	2-124		9-236
83C	2-102(b)(2)		9-202(d)	83C	2-125		9-234
83C	2-102(c)		9-206	83C	2-126		9-243
83C	2-103(a)		9-206	83C	2-127		9-241
83C	2-103(b)		9-206	83C	2-127.1		9-240
83C	2-103(c)		9-207	83C	2-128		9-244
83C	2-103(d)		9-204(c)	83C	2-129		9-208
83C	2-104(a)		9-204(b)	83C	2-130		9-242
83C	2-104(b)		9-204(d)	83C	2-131		9-245
83C	2-104(c)		9-202(e)	83C	2-132		9-209
83C	2-104(d)		9-204(e)	83C	2-134		9-246
83C	2-104(e)(1)		9-204(e)	83C	2-135		9-237
83C	2-104(e)(2)		9-204(f)	83C	2-136		9-239
83C	2-104(e)(3)		9-205	83C	2-137		9-238
83C	2-104(f)		9-204(h)	83C	3-101		9-301
83C	2-104(g)		9-218(a)	83C	3-102		9-302
83C	2-104(h)		9-218(c)	83C	3-103		9-303
83C	2-104(i)(1)		9-218(b)	83C	3-104		9-304
83C	2-104(i)(2)		9-204(a)	83C	3-105		9-305
83C	2-104(j)		9-204(g)	83C	3-106		9-306
83C	2-104(k)		9-222(b)	83C	3-107		9-307
83C	2-104(l)		9-210	83C	3-108		9-308
83C	2-105		9-211	83C	3-109		9-309
83C	2-106		9-212	83C	3-110		9-310
83C	2-107		9-213	83C	4-101(a)		9-401(a)
83C	2-108		9-214	83C	4-101(b)		Deleted
83C	2-109		9-215				9-401(c)
83C	2-110		9-216	83C	4-101(c)		9-401(b)
83C	2-111		9-222(a)	83C	4-101(d)		9-401(c)
83C	2-112		9-221(a)	83C	4-101(e)		Deleted
83C	2-113		9-217				9-401(c)
83C	2-114		9-219(a)	83C	4-101(f)		9-401(b)
83C	2-115(a)						