

Preliminary Exposure Draft

For Comment and Review

Text of Model CCRC Financial Viability Act

1. This Law shall be known as “The Continuing Care Retirement Community Financial Viability Act” and may be referred to as the CCRC Financial Viability Act.
2. The legislature finds that residents in entrance fee Continuing Care Retirement Communities (CCRCs) or participants in an entrance fee Continuing Care At Home (CAAH) program should have assurance that the promises made to them can be fulfilled, allowing them to remain self-sufficient so as not to be a burden on others including the State.
3. Accordingly the [State or Commonwealth CCRC Regulator] shall have the authority to intervene as follows whenever it is found that such a CCRC or CCAH is in jeopardy of being unable to fulfill its commitments to residents, contractual or otherwise. For the purposes of this Act [State or Commonwealth CCRC Regulator] refers to that State official charged with the licensure and regulatory oversight of CCRCs or CCAHs.
4. The court of primary jurisdiction of the county in which the principal office of a CCRC or CCAH provider organization is located shall, upon the filing by the [State or Commonwealth CCRC Regulator] of the verified application showing any of the following conditions hereinafter enumerated to exist, issue its order vesting title to all of the assets of that organization, wheresoever situated, in the [State or Commonwealth CCRC Regulator] or his or her successor in office, in his or her official capacity as such, and direct the [State or Commonwealth CCRC Regulator] forthwith to take possession of all of its books, records, property, real and organizational, and assets, and to conduct, as conservator, the business of said organization, or so much thereof as to the [State or Commonwealth CCRC Regulator] may seem appropriate, and enjoining said organization and its officers, directors, agents, servants, and employees from the transaction of its business or disposition of its property until the further order of said court:

- (a) That such organization has refused to submit its books, papers, accounts, or affairs to the reasonable inspection of the [State or Commonwealth CCRC Regulator] or his or her deputy or examiner.
 - (b) That such organization has neglected or refused to observe an order of the [State or Commonwealth CCRC Regulator] to make good within the time prescribed by law any deficiency in its capital.
 - (c) That such organization, without first obtaining the consent in writing of the [State or Commonwealth CCRC Regulator], has transferred, or attempted to transfer, substantially its entire property or business or, without such consent, has entered into any transaction the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other organization.
 - (d) That such organization is found, after an examination, to be in such condition that its further transaction of business will be hazardous to its residents, customers, creditors, or to the public.
 - (e) That such organization has violated its charter or any law of the state.
 - (f) That any officer of such organization refuses to be examined under oath, touching its affairs.
 - (g) That any officer or attorney in fact of such organization has embezzled, sequestered, or wrongfully diverted any of the assets of such organization.
 - (h) That a CCRC or CCAH does not comply with the requirements for the issuance to it of a certificate of authority, or that its certificate of authority has been revoked; or
 - (i) That the last report of examination of any organization to whom the provisions of this article apply shows such organization to be insolvent.
5. If at any time after the issuance of an order as described above, it shall appear to the [State or Commonwealth CCRC Regulator] that it would be futile to proceed as conservator with the conduct of the business of such organization,

he may apply to the court for an order to liquidate and wind up the business of said organization. Upon a full hearing of such application, the court may make an order directing the winding up and liquidation of the business of such organization by the [State or Commonwealth CCRC Regulator], as liquidator, for the purpose of carrying out the order to liquidate and wind up the business of such organization.

6. The interests of the residents shall be given precedence in any such liquidation proceedings to facilitate with as little disruptions as possible to the residents such transitions in their circumstances that may be necessary under the circumstances.
7. This Act shall be effective for all on or after an effective date of January 1, 20?? except that a provider organization may prior to 60 days preceding the effective date file with the [State or Commonwealth CCRC Regulator] a plan for correction of impairment and, if such plan is accepted by the [State or Commonwealth CCRC Regulator], the impaired provider shall be allowed to continue subject to the oversight of the [State or Commonwealth CCRC Regulator] to ensure that the impairment is steadily diminished in accordance with the plan.