

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 454, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Delete the title and insert the following:
2 A BILL FOR AN ACT to amend the Indiana Code concerning
3 Medicaid.
4 Page 1, between the enacting clause and line 1, begin a new
5 paragraph and insert:
6 "SECTION 1. IC 23-2-4-1, AS AMENDED BY P.L.27-2007,
7 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
8 JANUARY 1, 2009 (RETROACTIVE)]: Sec. 1. As used in this
9 chapter, the term:
10 "Application fee" means the fee charged an individual, in addition
11 to the entrance fee or any other fee, to cover the provider's reasonable
12 costs in processing the individual's application to become a resident.
13 "Commissioner" means the securities commissioner as provided in
14 IC 23-19-6-1(a).
15 "Continuing care agreement" means an agreement by a provider to
16 furnish to ~~at least one (1)~~ **an** individual, for the payment of an entrance
17 fee **of at least twenty-five thousand dollars (\$25,000)** and periodic
18 charges:
19 **(1) accommodations in a living unit of a home and: continuing**
20 **care retirement community;**

1 (†) (2) meals and related services;
 2 (‡) (3) nursing care services;
 3 (§) (4) medical services;
 4 (¶) (5) other health related services; or
 5 (§) (6) any combination of these services;
 6 for the life of the individual, ~~or for more than one (1) month.~~ **unless the**
 7 **agreement is terminated as specified under this chapter.**

8 **"Continuing care retirement community" includes both of the**
 9 **following:**

10 **(1) An independent living facility.**

11 **(2) A health facility licensed under IC 16-28.**

12 "Contracting party" means a person or persons who enter into a
 13 continuing care agreement with a provider.

14 "Entrance fee" means the sum of money or other property paid or
 15 transferred, or promised to be paid or transferred, to a provider in
 16 consideration for one (1) or more individuals becoming a resident of a
 17 home under a continuing care agreement.

18 "Home" means a facility where the provider undertakes, pursuant to
 19 a continuing care agreement, to provide continuing care to five (5) or
 20 more residents.

21 "Living unit" means a room, apartment, cottage, or other area within
 22 a home set aside for the use of one (1) or more identified residents.

23 "Long term financing" means financing for a period in excess of one
 24 (1) year.

25 "Omission of a material fact" means the failure to state a material
 26 fact required to be stated in any disclosure statement or registration in
 27 order to make the disclosure statement or registration, in light of the
 28 circumstances under which they were made, not misleading.

29 "Person" means an individual, a corporation, a partnership, an
 30 association, a limited liability company, or other legal entity.

31 "Provider" means a person that agrees to provide continuing care ~~to~~
 32 ~~an individual~~ under a continuing care agreement.

33 "Refurbishment fee" means the fee charged an individual, in
 34 addition to the entrance fee or any other fee, to cover the provider's
 35 reasonable costs in refurbishing a previously occupied living unit
 36 specifically designated for occupancy by that individual.

37 "Resident" means an individual who is entitled to receive benefits
 38 under a continuing care agreement.

1 "Solicit" means any action of a provider in seeking to have an
 2 individual residing in Indiana pay an application fee and enter into a
 3 continuing care agreement, including:

- 4 (1) personal, telephone, or mail communication or any other
 5 communication directed to and received by any individual in
 6 Indiana; and
- 7 (2) advertising in any media distributed or communicated by any
 8 means to individuals residing in Indiana.

9 **"Termination" refers to the cancellation of a continuing care**
 10 **agreement under this chapter.**

11 SECTION 2. IC 23-2-4-3 IS AMENDED TO READ AS FOLLOWS
 12 [EFFECTIVE JANUARY 1, 2009 (RETROACTIVE)]: Sec. 3. (a) A
 13 provider shall register each home with the commissioner **if:**

14 **(1) before opening the home, the provider:**

- 15 **(A) enters into;**
- 16 **(B) extends; or**
- 17 **(C) solicits;**

18 **a continuing care agreement; or**

19 **(2) while operating the home, the provider has entered into a**
 20 **continuing care agreement with at least twenty-five percent**
 21 **(25%) of the individuals living in the independent living part**
 22 **of the home.**

23 **(b) If a provider fails to register a home, the provider may not:**

- 24 (1) enter into, or extend the term of, a continuing care agreement
 25 to provide continuing care to any person at that home;
- 26 (2) provide services at that home under a continuing care
 27 agreement; or
- 28 (3) solicit the execution, by persons residing within Indiana, of a
 29 continuing care agreement to provide continuing care at that
 30 home.

31 ~~(b)~~ **(c) The provider's application for registration must be filed with**
 32 **the commissioner by the provider on forms prescribed by the**
 33 **commissioner, and must be accompanied by an application fee of two**
 34 **hundred fifty dollars (\$250). The application must contain the**
 35 **following information:**

- 36 (1) an initial disclosure statement, as described in section 4 of this
 37 chapter; and
- 38 (2) any other information required by the commissioner under

1 rules adopted under this chapter.

2 ~~(c)~~ **(d)** The commissioner may accept, in lieu of the information
3 required by subsection ~~(b)~~; **(c)**, any other registration, disclosure
4 statement, or other document filed by the provider in Indiana, in any
5 other state, or with the federal government if the commissioner
6 determines that such document substantially complies with the
7 requirements of this chapter.

8 ~~(d)~~ **(e)** Upon receipt of the application for registration, the
9 commissioner shall mark the application filed. Within sixty (60) days
10 of the filing of the application, the commissioner shall enter an order
11 registering the provider or rejecting the registration. If no order of
12 rejection is entered within that sixty (60) day period, the provider shall
13 be considered registered unless the provider has consented in writing
14 to an extension of time; if no order of rejection is entered within the
15 time period as extended by consent, the provider shall be considered
16 registered.

17 ~~(e)~~ **(f)** If the commissioner determines that the application for
18 registration complies with all of the requirements of this chapter, the
19 commissioner shall enter an order registering the provider. If the
20 commissioner determines that such requirements have not been met,
21 the commissioner shall notify the provider of the deficiencies and shall
22 inform the provider that it has sixty (60) days to correct them. If the
23 deficiencies are not corrected within sixty (60) days, the commissioner
24 shall enter an order rejecting the registration. The order rejecting the
25 registration shall include the findings of fact upon which the order is
26 based. The provider may petition for reconsideration, and is entitled to
27 a hearing upon that petition.

28 SECTION 3. IC 23-2-4-7.5 IS ADDED TO THE INDIANA CODE
29 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
30 JANUARY 1, 2009 (RETROACTIVE)]: **Sec. 7.5. A continuing care
31 agreement may be terminated for any of the following reasons:**

32 **(1) The provider has determined that the resident is
33 inappropriate for living in the care setting.**

34 **(2) The resident is unable to fully pay the periodic charges
35 because the resident inappropriately divested the assets and
36 income the resident identified at the time of admission to meet
37 the ordinary and customary living expenses for the resident.**

38 **(3) Providing assistance to the resident would jeopardize the**

1 **financial solvency of the provider and the other residents**
 2 **being served by the provider.**

3 **(4) The resident has requested a termination of the agreement**
 4 **as allowed under the agreement.**

5 SECTION 4. IC 23-2-4-13, AS AMENDED BY P.L.2-2006,
 6 SECTION 180, IS AMENDED TO READ AS FOLLOWS
 7 [EFFECTIVE JULY 1, 2009]: Sec. 13. (a) There is established the
 8 Indiana retirement home guaranty fund. The purpose of the fund is to
 9 provide a mechanism for protecting the financial interests of residents
 10 and contracting parties in the event of the bankruptcy of the provider.

11 (b) To create the fund, a guaranty association fund fee of one
 12 hundred dollars (\$100) shall be levied on each contracting party who
 13 enters into a continuing care agreement after August 31, 1982, **and**
 14 **before July 1, 2009.** The fee shall be collected by the provider and
 15 forwarded to the commissioner within thirty (30) days after occupancy
 16 by the resident. Failure of the provider to collect and forward such fee
 17 to the commissioner within that thirty (30) day period shall result in the
 18 imposition by the commissioner of a twenty-five dollar (\$25) penalty
 19 against the provider. In addition, interest payable by the provider shall
 20 accrue on the unpaid fee at the rate of two percent (2%) a month.

21 (c) Any money received by the commissioner under subsection (b)
 22 shall be forwarded to the treasurer of state. The fund, and any income
 23 from it, shall be held in trust, deposited in a segregated account,
 24 invested and reinvested by the treasurer of state in the same manner as
 25 provided in IC 20-49-3-10 for investment of the common school fund.

26 (d) All reasonable expenses of collecting and administering the fund
 27 shall be paid from the fund.

28 (e) Money in the fund at the end of the state's fiscal year shall
 29 remain in the fund and shall not revert to the general fund."

30 Page 1, line 8, delete "requires each resident to provide an average
 31 initial life" and insert "**enters into a continuing care agreement with**
 32 **a resident (as defined in IC 23-2-4-1);**

33 **(3) uses the money described in subdivision (2) to provide**
 34 **services to the resident before the resident may be eligible for**
 35 **Medicaid under IC 12-15; and**

36 **(4) meets the requirements of IC 23-2-4."**

37 Page 1, delete lines 9 through 13.

38 Page 1, line 16, after "(b)" insert "(c)".

- 1 Page 1, line 16, reset in roman "As used in this SECTION, "nursing
2 facility" means a health".
- 3 Page 1, reset in roman lines 17 through 18.
- 4 Page 2, reset in roman line 1.
- 5 Page 2, line 2, strike "(c)" and insert "(d)".
- 6 Page 2, line 7, delete "(d)" and insert "(e)".
- 7 Page 2, line 19, reset in roman "(f)".
- 8 Page 2, line 19, delete "(e)".
- 9 Page 2, line 35, delete "." and insert ", **subject to the following**
10 **conditions:**
- 11 **(A) A nonprofit organization that is:**
- 12 **(i) exempt from federal income taxation under Section**
13 **501(c)(3) of the Internal Revenue Code; and**
- 14 **(ii) registered under IC 23-2-4 before July 1, 2009;**
- 15 **is not required to meet the definition of continuing care**
16 **retirement community in subsection (a).**
- 17 **(B) A continuing care retirement community that does not**
18 **meet the provisions of clause (A)(i) and (A)(ii) must meet**
19 **the definition set forth in subsection (a)."**
- 20 Page 3, line 6, reset in roman "(g)".
- 21 Page 3, line 6, delete "(f)".
- 22 Page 3, line 22, reset in roman "(h)".
- 23 Page 3, line 22, delete "(g)".
- 24 Page 3, line 27, reset in roman "nursing".
- 25 Page 3, line 27, delete "health".
- 26 Page 3, line 28, reset in roman "(i)".
- 27 Page 3, line 28, delete "(h)".
- 28 Page 3, line 39, reset in roman "(j)".
- 29 Page 3, line 39, delete "(i)".
- 30 Page 4, line 3, reset in roman "(k)".
- 31 Page 4, line 3, delete "(j)".
- 32 Page 4, line 7, reset in roman "(l)".
- 33 Page 4, line 7, delete "(k)".
- 34 Page 4, line 16, reset in roman "(m)".
- 35 Page 4, line 16, delete "(l)".
- 36 Page 4, line 20, reset in roman "(n)".
- 37 Page 4, line 20, delete "(m)".
- 38 Page 4, line 25, reset in roman "(o)".

- 1 Page 4, line 25, delete "(n)".
- 2 Page 4, line 25, reset in roman "nursing facility or a".
- 3 Page 4, line 28, reset in roman "(p)".
- 4 Page 4, line 28, delete "(o)".
- 5 Page 4, line 33, reset in roman "(q)".
- 6 Page 4, line 33, delete "(p)".
- 7 Page 4, line 37, reset in roman "(r)".
- 8 Page 4, line 37, delete "(q)".
- 9 Page 4, line 40, reset in roman "nursing".
- 10 Page 4, line 40, after "nursing" insert "**facility and each**".
- 11 Page 5, line 5, reset in roman "(s)".
- 12 Page 5, line 5, delete "(r)".
- 13 Page 5, line 6, reset in roman "nursing facility and each".
- 14 Page 5, line 7, reset in roman "(r)".
- 15 Page 5, line 7, delete "(q)".
- 16 Page 5, line 7, reset in roman "nursing facility's or".
- 17 Page 5, line 10, reset in roman "nursing facility's or".
- 18 Page 5, line 11, reset in roman "nursing facility or the".
- 19 Page 5, line 13, reset in roman "(t)".
- 20 Page 5, line 13, before "An" delete "(s)".
- 21 Page 5, line 13, reset in roman "(s)(2)".
- 22 Page 5, line 13, delete "(r)(2)".
- 23 Page 5, line 16, reset in roman "(u)".
- 24 Page 5, line 16, delete "(t)".
- 25 Page 5, line 32, reset in roman "(v)".
- 26 Page 5, line 32, delete "(u)".

- 1 Page 5, after line 32, begin a new paragraph and insert:
- 2 "SECTION 6. **An emergency is declared for this act.**".
- 3 Renumber all SECTIONS consecutively.
(Reference is to SB 454 as introduced.)

and when so amended that said bill do pass.

Committee Vote: Yeas 9, Nays 0.

Miller

Chairperson