

Preliminary Exposure Draft

For Comment and Review

Text of CCRC Self-Certification Authorization Law

1. This Law shall be known as “The Continuing Care Retirement Community Self-Certification Authorization Act” and may be referred to as the CCRC Self-Certification Act.
2. The Legislature finds that it is in the public interest to facilitate the construction, occupancy, and operation of Continuing Care Retirement Communities as a desirable living option allowing older Citizens of this State to age with dignity in the security of a dedicated campus environment.
3. The Legislature further finds that time is of the essence in the initiation or subsequent vacancy renovation of such facilities since delay in gaining needed regulatory approvals can result in costs which limit the financial ability of Continuing Care Retirement Communities to be able to serve Citizens of this State of limited means.
4. Accordingly, any such Continuing Care Retirement Community (CCRC) may self-certify to its compliance with all requirements of the [State or Commonwealth] applying to such facility in lieu of on-site inspections by official state health care professionals. If there is a Continuing Care At Home (CAAH) program affiliated with the CCRC, it too can be self-certified. Self-certification shall not apply in any case in which Federal laws or regulations require state inspectors except that the applicable state departments are directed to apply to the applicable Federal agency for a waiver of such specific requirements.
5. Self-certification is a privilege to be earned. Only organizations which have been in continuous existence in the management of CCRCs for more than five years without material citation shall be entitled to avail themselves of this accelerated approval process. The judgment whether a citation record is material and whether the privilege of self-certification is warranted shall rest solely within the purview of the [State or Commonwealth CCRC Regulator] who shall consult with other affected [State or Commonwealth] agencies in arriving at a decision. Moreover, a negative net asset position under Generally

Accepted Accounting Practices (GAAP) or a finding of questionable financial standing by the [State or Commonwealth CCRC Regulator] shall void the privilege of self-certification.

6. Self-certification shall require the submission of an affidavit of attestation to the applicable [State or Commonwealth] agency that would otherwise be responsible for inspection and certification. The attesting qualified person shall execute the affidavit of attestation on his or her own recognizance and the attestation shall affirm that the certifying person is at least as qualified as the qualification standards for the corresponding state inspectors and meets the further qualification standards of this law.
7. For health and safety matters a licensed Nursing Home Administrator, or the equivalent, shall be deemed to meet the qualification standard. For financial matters a qualified accountant or actuary with a minimum of five years of CCRC experience shall be deemed to meet the qualification standard.
8. "Qualified accountant" means a person who meets qualifications set by the State in which a CCRC or CCAH contract is issued with due regard to the qualifications established for Certified Public Accountants by the American Institute of Certified Public Accountants.
9. "Qualified actuary" means a person who meets qualifications set by the State in which a CCRC or CCAH contract is issued with due regard to the qualifications established for Associates or Fellows of the Society of Actuaries or standards set by other actuarial organizations found by the [State or Commonwealth] to be equivalent.
10. The form of the required affidavit of attestation shall be as follows with revisions thereto as deemed necessary by the preparer to demonstrate full compliance with the requirements for sound, safe operation of the CCRC.

I, [Name of Attestor], am qualified to self-certify compliance of [enter list of matters to be covered] by [enter name of facility to be self-certified]. I meet the requirements for qualification to provide this affidavit by [enter basis for qualification claim]. I certify that the attestation given in this affidavit reflects

my own investigation and my own findings and that I have not been influenced in reaching my conclusions by any interests other than the truth of the matters attested to.

My relationship with [name of facility to be self-certified] is [describe relationship] and I have been given full access to everything that was needed in my professional judgment to reach the conclusions expressed herein.

I relied upon [list all reliances and why they are deemed to be sufficient for the purpose of informing the self-certification encompassed in the affidavit]. My examination included such review of the [name of facility to be self-certified] and such further tests as I considered necessary in the circumstances.

In my opinion, the [name of facility to be self-certified] is in full conformance with all requirements of law and further meets the standards that a prudent person would assume for the [health and safety/financial security] of those persons to be served by the CCRC or CCAH. I am familiar with the laws of [State or Commonwealth] and other measures applying to the conduct of the operations encompassed in this affidavit and have the following observations:

[Enter list of evidence that compliance has been attained.]

The operations of [name of facility to be self-certified] meet the requirements of the [name of code] laws of the [State or Commonwealth].

11. The [State or Commonwealth CCRC Regulator] and/or applicable [State or Commonwealth] agency shall from time to time review compliance of self-certified facilities with the representations of compliance attested to. Abuse of the self-certification privilege shall be a serious offense. The [State or Commonwealth CCRC Regulator] shall suspend, revoke or otherwise condition the certification privileges of each qualified person and the related CCRC or CCAH if it is found after a hearing that the self-certification was knowingly or negligently submitted for compliance or if the affidavit of attestation is found to contain false information or otherwise to be not in compliance with all applicable provisions of law.

12. If any such review leads to a finding that the determination of abuse is flagrant or continuing then the privilege of self-certification shall permanently be revoked for both the qualified person issuing the certification and for the

facility benefiting from the self-certification. The facility may apply for reconsideration of this permanent disqualification after a period of five years provided there have been material changes in the management and conduct of the facility to indicate that any abuse is unlikely to recur.

13. Any qualified person issuing an affidavit of attestation shall include with the submission evidence of current completion of all training or other ongoing requirements for continued qualification and evidence that the qualified person has an unblemished record of professional good standing.
14. Nothing herein shall be construed to limit the power of the applicable [State or Commonwealth] agency to adopt rules to ensure that the privilege conveyed by this statute is not abused. The [State or Commonwealth CCRC Regulator] shall create and maintain a central registry of all such self-certifications and shall periodically review the self-certification process to ensure that it is achieving its intended aim of facilitating CCRC development and lowering the compliance costs for operating a facility.
15. Facilities that meet the standards for self-certification shall be known as trusted providers but the designation “trusted provider” shall not be used for marketing or other purposes not directly related to the compliance attestation.
16. This law shall be effective for all CCRC or CCAH inspection requirements on or after an effective date of January 1, 20??.