

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 500

H.P. 379 House of Representatives, February 23, 1987
Reference to the Committee on Banking and Insurance
suggested and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative CLARK of Brunswick.

Cosponsored by Senator CLARK of Cumberland,
Representatives MELENDY of Rockland and MANNING of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

1 AN ACT to Regulate Continuing Care Retirement
2 Communities.
3

4 Be it enacted by the People of the State of Maine as
5 follows:

6 24-A MRSA c. 71 is enacted to read:

7 CHAPTER 71

8 CARE RETIREMENT COMMUNITIES

9 §6071. Definitions

10 As used in this chapter, unless the context indi-
11 icates otherwise, the following terms have the follow-
12 ing meanings.

1 1. Bureau. "Bureau" means the Bureau of Insur-
2 ance.

3 2. Continuing care. "Continuing care" means fur-
4 nishing shelter and either health care or supportive
5 services under an agreement that requires an entrance
6 fee, whether or not the shelter and services are pro-
7 vided at the same location, to an older individual
8 not related by blood or marriage to the provider, for
9 the life of the individual or for a period in excess
10 of one year, including, but not limited to, mutually
11 terminable contracts.

12 3. Entrance fee. "Entrance fee" means an initial
13 or deferred payment or payments of a sum of money or
14 any other consideration which assures a subscriber a
15 place in a facility for a term of years or for life.
16 An accommodation fee, admission fee, entrance loan or
17 other fee of similar form and application even, if
18 refundable in whole or part at the termination of the
19 subscriber's contract, shall be considered to be an
20 entrance fee.

21 4. Facility. "Facility" means a physical plant
22 in which continuing care is provided in accordance
23 with this chapter.

24 5. Fiscal year. "Fiscal year" means the
25 provider's fiscal year.

26 6. Health care. "Health care" means the provi-
27 sion of any one or more of the following services:

28 A. Physician services;

29 B. Home health services;

30 C. Access to nursing home care; or

31 D. Hospital care.

32 7. Maintenance fee. "Maintenance fee" means any
33 fee which a subscriber of a continuing care retire-
34 ment community is required to pay to the continuing
35 care retirement community on a regular basis to cover
36 the cost of shelter and health care or supportive
37 services provided to the subscriber by the continuing
38 care retirement community.

1 8. Provider. "Provider" means the owner or oper-
2 ator, whether a natural person, partnership, unincor-
3 porated association, trust or corporation of an in-
4 stitution, building, residence or other place, wheth-
5 er operated for profit or not, in which the owner or
6 operator undertakes to provide continuing care.

7 9. Records. "Records" means the financial infor-
8 mation and personnel data maintained by the provider
9 for the proper operation of the facility pursuant to
10 this chapter.

11 10. Subscriber. "Subscriber" means a purchaser
12 or nominee of a continuing care agreement.

13 11. Supportive services. "Supportive services"
14 means providing assistance in the activities of daily
15 living or other social services.

16 §6072. Certificate of authority required

17 1. Entering into or renewing a contract. No
18 provider may enter into or renew an agreement to pro-
19 vide continuing care in this State without the appro-
20 priate certificate of authority issued by the Bureau
21 of Insurance.

22 2. Existing providers shall be given a reason-
23 able time to comply. Any provider, who is offering
24 continuing care when this chapter takes effect, shall
25 be given a reasonable time to comply with this chap-
26 ter and the rules promulgated pursuant thereto.

27 3. Existing providers who have previously of-
28 fered agreements. Any provider who, as of the effec-
29 tive date of this chapter, has offered continuing
30 care agreements prior thereto and who intends not to
31 offer new continuing care agreements or to renew
32 those agreements shall file a statement to that ef-
33 fect with the bureau.

34 §6073. Requirements for issuance of certificate

35 1. Preliminary certificate of authority. The Bu-
36 reau of Insurance will issue a preliminary certifi-
37 cate of authority, which shall be valid for no more
38 than 12 months, but which the bureau may extend for

1 such reasonable time as necessary, when the provider
2 has submitted to the bureau all materials which the
3 bureau shall, by rule, require to be submitted to ob-
4 tain a preliminary certificate of authority, such ma-
5 terials to include evidence of a preliminary decision
6 to grant a certificate of need from the Department of
7 Human Services, if such certificate of need is neces-
8 sary.

9 2. Final certificate of authority. The bureau
10 will issue a final certificate of authority, which
11 shall be renewed annually, when the provider has sub-
12 mitted all materials which the bureau shall, by rule,
13 prescribe to be submitted and when the bureau has de-
14 termined the provider's plan is financially and actu-
15 arially feasible.

16 3. Authorization. A provider which has been is-
17 sued a preliminary certificate of authority may ad-
18 vertise, solicit and collect deposits, which shall
19 not exceed \$1,000 a subscriber for continuing care
20 agreements, subject to receiving a final certificate
21 of authority from the bureau. The provider shall in-
22 form the subscriber in writing that the provider has
23 a preliminary certificate of authority, that the de-
24 posit is received subject to the issuance by the bu-
25 reau to the provider of a final certificate of au-
26 thority and that if the provider does not receive a
27 final certificate of authority from the bureau, the
28 provider will refund the subscriber's deposit in full
29 within one month of notification of the bureau's de-
30 cision not to issue the final certificate of authori-
31 ty.

32 Any deposit collected must be deposited to an inter-
33 est bearing escrow account. The provider shall fur-
34 nish the bureau with documentation of the name of the
35 institution with which the provider has established
36 the escrow account and the account number.

37 4. Renewal of certificate of authority. Each
38 year the provider shall, within 120 days from the end
39 of the provider's fiscal year, submit an application
40 and all the required materials to the bureau for re-
41 newal of the provider's certificate of authority. The
42 application shall contain the same materials for the
43 provider's fiscal year just ended which the provider

1 is required to submit to the bureau under subsections
2 1 and 2.

3 5. Separate facilities. If the provider intends
4 to provide continuing care at more than one facility,
5 then the provider must obtain a separate certificate
6 of authority for each facility at which the provider
7 intends to provide continuing care. Funds collected
8 by one facility may not be expended for the benefit
9 of any other facility.

10 §6074. Suspension or revocation of certificate of
11 authority

12 1. Grounds. A certificate of authority may be
13 suspended or revoked for cause by the bureau. Grounds
14 for suspension or revocation include violation of any
15 of the provisions of this chapter, violations of any
16 of the rules issued by the bureau pursuant to this
17 chapter, any misrepresentations or submissions of any
18 false financial statements, organizational statements
19 or documents.

20 2. Governing procedure. The proceedings govern-
21 ing the appeal of a revocation or suspension shall be
22 conducted in accordance with the requirements of the
23 Maine Administrative Procedure Act, Title 5, chapter
24 375.

25 §6075. Required provisions of a continuing care
26 agreement

27 The bureau shall, by rule, prescribe certain pro-
28 visions which must be included in each continuing
29 care agreement in order for that agreement to receive
30 the bureau's approval.

31 §6076. Rescission of continuing care agreement

32 The bureau shall, by rule, prescribe the rights
33 of a subscriber or provider to rescind, amend, cancel
34 and obtain a refund under a continuing care agree-
35 ment.

36 §6077. Waiver of certain continuing care agreement
37 provisions prohibited

1 No act, agreement or statement of any subscriber
2 may constitute a valid waiver of this chapter, or any
3 rules under this chapter, intended for the benefit or
4 protection of the subscriber.

5 §6078. Discharge of subscriber prior to expiration
6 of agreement

7 No agreement for continuing care may permit dis-
8 missal or discharge of the subscriber from the facil-
9 ity providing care prior to the expiration of the
10 agreement without just cause for such a removal and
11 without providing at least 60 days advance notice in
12 writing to the subscriber.

13 §6079. Violations

14 1. Maintenance or operation of facility without
15 certificate. No person, association or corporation
16 may maintain or operate a facility offering continu-
17 ing care or enter into a continuing care agreement
18 without first having obtained a certificate of au-
19 thority.

20 2. Punishment. Any person, association or corpo-
21 ration that violates this chapter commits a Class E
22 crime. Each violation of this chapter shall consti-
23 tute a separate offense.

24 §6080. Actions for damages or equitable relief

25 1. Action for damages. Any subscriber injured by
26 a violation of this chapter may bring an action for
27 the recovery of damages in any court of general ju-
28 risdiction. In such cases the court may award reason-
29 able attorneys fees to a subscriber in whose favor a
30 judgment is rendered.

31 2. Equitable relief. Any subscriber injured by a
32 violation of this chapter, or the bureau on behalf of
33 any subscriber injured, may institute an action for
34 an appropriate temporary restraining order or injunc-
35 tion.

36 §6081. Administration; rules

37 1. Administration. The bureau shall administer
38 this chapter and have the power to:

1 A. Prescribe, prepare and furnish all necessary
2 forms;

3 B. Establish and collect reasonable fees under
4 this chapter; and

5 C. Adopt, amend and repeal all necessary rules
6 to implement and interpret this chapter.

7 §6082. Reserve requirements

8 Every provider shall maintain those reserves cov-
9 ering obligations under all continuing care agree-
10 ments which the bureau shall, by rule, prescribe.

11 §6083. Sale or transfer of ownership

12 Any provider desiring to sell or transfer owner-
13 ship of a continuing care facility shall notify the
14 bureau and obtain the bureau's advance approval of
15 the sale or transfer. The certificate of authority is
16 nontransferable. The new owner must apply for a new
17 certificate of authority to continue to provide con-
18 tinuing care at the facility.

STATEMENT OF FACT

2 There exists at least one continuing care retire-
3 ment community in the State at this time and there
4 are others which are in various stages of develop-
5 ment. The large sums of money which these continuing
6 care retirement communities are collecting from sub-
7 scribers and the experience of other states with con-
8 tinuing care retirement communities has shown that
9 nonregulation of these facilities can lead to adverse
10 consequences for the subscribers. This Act seeks to
11 encourage the development of the widest possible
12 range of continuing care retirement communities,
13 while at the same time, providing the citizens of
14 this State with some basic protection and assurance
15 that the continuing care retirement communities de-
16 veloped in this state meet certain mandatory minimums
17 of financial security and feasibility.

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