

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 672

S.P. 241

In Senate, March 9, 1987

Reference to the Committee on Banking and Insurance suggested and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate
Presented by Senator CLARK of Cumberland.
Cosponsored by Senator GAUVREAU of Androscoggin,
Representative HICKEY of Augusta, Representative DIAMOND of
Bangor.

STATE OF MAINE

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

AN ACT to Afford Consumer Protection
in Retirement Communities which Offer
Continuing Care.

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

22 MRSA c. 1457-B is enacted to read:

CHAPTER 1457-B

RETIREMENT COMMUNITIES OFFERING CONTINUING CARE

§5161. Policy

It is the policy of the people of this State that older citizens have a range of housing and lifestyle options from which to choose. At the same time, the

1 State must afford older persons consumer protections
2 that relate to the financing of the housing and ser-
3 vices of which older persons may avail themselves. It
4 is the purpose of this chapter to provide broad con-
5 sumer protections to assure that individuals entering
6 into retirement communities that offer continuing
7 care understand the array of services to be provided
8 under the continuing care agreement and to ensure
9 that a minimum range of services are available and
10 provided.

11 This chapter provides older citizens with the as-
12 urance that retirement communities providing contin-
13 uing care in this State provide residents with a min-
14 imum of financial security.

15 §5162. Definitions

16 As used in this chapter, unless the context indi-
17 cates otherwise, the following terms have the follow-
18 ing meanings.

19 1. Bureau. "Bureau" means the Bureau of Insur-
20 ance, Department of Professional and Financial Regu-
21 lation.

22 2. Continuing care. "Continuing care" means fur-
23 nishing shelter and either health care or supportive
24 services under an agreement that requires an entrance
25 fee, whether or not the shelter and services are pro-
26 vided at the same location, to an older individual
27 not related by blood or marriage to the provider, for
28 the life of the individual or for a period in excess
29 of one year, including, but not limited to, mutually
30 terminable contracts.

31 3. Department. "Department" means the Department
32 of Human Services.

33 4. Entrance fee. "Entrance fee" means an initial
34 or deferred payment of a sum of money or any other
35 consideration the value of which is in excess of
36 \$10,000 which assures a subscriber a place in a fa-
37 cility for a term of years or for life. An accommoda-
38 tion fee, admission fee, entrance loan or other fee
39 of similar form and application, even if refundable
40 in whole or part at the termination of the subscrib-

1 er's contract, shall be considered to be an entrance
2 fee.

3 5. Facility. "Facility" means a physical plant
4 in which continuing care is provided in accordance
5 with this chapter.

6 6. Fiscal year. "Fiscal year" means the
7 provider's fiscal year.

8 7. Health care. "Health care" means the provi-
9 sion of any one or more of the following services:

10 A. Physician services;

11 B. Home health services;

12 C. Access to nursing home care; or

13 D. Hospital care.

14 8. Maintenance fee. "Maintenance fee" means any
15 fee which a subscriber of a continuing care agreement
16 is required to pay to the provider on a regular basis
17 to cover the cost of shelter and health care or sup-
18 portive services.

19 9. Provider. "Provider" means the owner or oper-
20 ator, whether a natural person, partnership, unincor-
21 porated association, trust or corporation of an in-
22 stitution, building, residence or other place, wheth-
23 er operated for profit or not, in which the owner or
24 operator undertakes to provide continuing care.

25 10. Records. "Records" means the financial in-
26 formation and personnel data maintained by the
27 provider for the proper operation of the facility
28 pursuant to this chapter.

29 11. Retirement community. "Retirement community"
30 means a facility that offers continuing care.

31 12. Subscriber. "Subscriber" means a purchaser
32 or nominee of a continuing care agreement.

33 13. Supportive services. "Supportive services"
34 means providing assistance in the activities of daily
35 living and other social services.

1 §5163. Certificate of authority required

2 1. Entering into or renewing a contract. No
3 provider may enter into or renew an agreement to pro-
4 vide continuing care in this State without the appro-
5 priate certificate of authority issued by the depart-
6 ment.

7 2. Use of name. No natural person, partnership,
8 unincorporated association, trust or corporation may
9 use the name "continuing care retirement community"
10 or "life care community" or any combination of those
11 terms unless the appropriate certificate of authority
12 from the department has been issued.

13 3. Existing providers given reasonable time to
14 comply. Any provider who is offering continuing care
15 when this chapter takes effect shall be given one
16 year to comply with this chapter and the rules
17 promulgated pursuant to this chapter.

18 4. Existing providers who have previously of-
19 fered agreements. Any provider who, as of the effec-
20 tive date of this chapter, has offered continuing
21 care agreements prior to that time and who does not
22 intend to offer new continuing care agreements or to
23 renew these agreements shall file a statement to that
24 effect with the department within 3 months of the ef-
25 fective date of this chapter.

26 §5164. Requirements for issuance of certificate

27 1. Preliminary certificate of authority. The de-
28 partment shall issue a preliminary certificate of au-
29 thority within 3 months from submission of a com-
30 pleted application. The certificate shall be valid
31 for not more than 12 months, but may be extended by
32 the department, with the agreement of both parties,
33 when the following conditions have been met:

34 A. The provider has submitted the following ma-
35 terials to the department:

36 (1) A statement of intent to provide con-
37 tinuing care; and

38 (2) A copy of the provider's continuing
39 care agreement;

1 B. The department has determined that the
2 provider is fit, willing and able to operate a
3 retirement community offering continuing care;
4 and

5 C. The provider has met all other requirements
6 for a preliminary certificate of authority which
7 the department may prescribe in its rules promul-
8 gated pursuant to this chapter.

9 The department may entrust the financial analysis of
10 the application to the Bureau of Insurance.

11 2. Final certificate of authority. The depart-
12 ment shall issue a final certificate of authority,
13 which shall be renewed annually, when the provider
14 has submitted all materials which the department
15 shall by rule prescribe to be submitted and when the
16 department has determined that the provider's plan is
17 financially and actuarially feasible.

18 3. Authorization; escrow account. A provider
19 which has not been issued a preliminary certificate
20 of authority may not advertise, solicit or collect
21 deposits for continuing care agreements. A provider
22 which has been issued a preliminary certificate of
23 authority may advertise, solicit and collect depos-
24 its, which shall not exceed \$1,000 per subscriber,
25 for continuing care agreements, subject to receiving
26 a final certificate of authority from the department.
27 A provider shall inform the subscriber in writing
28 that the provider has a preliminary certificate of
29 authority, that the deposit is received subject to
30 the issuance by the department to the provider of a
31 final certificate of authority and that, if the
32 provider does not receive a final certificate of au-
33 thority from the department, the provider will refund
34 the subscriber's deposit in full within one month of
35 notification of the department's decision not to is-
36 sue the final certificate of authority.

37 Any deposit collected must be deposited to an inter-
38 est-bearing escrow account. The provider shall fur-
39 nish the department with documentation of the name of
40 the institution with which the provider has estab-
41 lished the escrow account and the account number.

1 4. Renewal of certificate of authority. Each
2 year the provider shall, within 120 days from the end
3 of the provider's fiscal year, submit an application
4 and all required materials for renewal of the
5 provider's certificate of authority. The application
6 shall contain the same materials for the provider's
7 fiscal year just ended which the provider is required
8 to submit to the department under subsections 1 and
9 2.

10 5. Separate facilities. If the provider intends
11 to provide continuing care at more than one facility,
12 the provider must obtain a separate certificate of
13 authority for each facility at which the provider in-
14 tends to provide continuing care funds. Funds col-
15 lected by one facility may not be expended for the
16 benefit of any other facility.

17 6. Types of certificates. There shall be 3 lev-
18 els of retirement communities.

19 A. To qualify for certification as a life care
20 community, the retirement community must offer a
21 continuing care agreement that explicitly pro-
22 vides all of the following.

23 (1) The retirement community must offer
24 full and lifetime supportive services and
25 nursing care as needed.

26 (2) Except for the maintenance fee, no 3rd
27 party, other than the subscriber's insurer,
28 is liable for the cost of the subscriber's
29 care.

30 (3) The retirement community shall assume
31 the burden of payment of care costs for any
32 resident who has depleted his resources.

33 (4) The retirement community shall provide
34 a true continuum of care from independent
35 living through nursing home care as pre-
36 scribed by the department's rules for certi-
37 fication as a life care community.

38 B. To qualify for certification as a continuum
39 of care community, the retirement community must

1 offer a continuing care agreement which explicit-
2 ly provides the following:

3 (1) Access to a nursing home bed, but only
4 partial coverage of the costs of that care;

5 (2) Provision of nursing services may be
6 time limited or limited by the nature of
7 that care;

8 (3) The retirement community may transfer
9 the resident after he enters the nursing
10 home;

11 (4) The retirement community is responsible
12 for payment of some portion of the cost of
13 the nursing care and the resident is respon-
14 sible for the remaining costs; and

15 (5) Depletion of the resident's personal
16 resources does not affect the contribution
17 of the retirement community.

18 C. To qualify for certification as a retirement
19 care community, the retirement community must of-
20 fer a continuing care agreement that explicitly
21 provides the following.

22 (1) Nursing home services are paid for as
23 they would be in any other nursing home fa-
24 ility.

25 (2) The continuing care agreement does not
26 provide guaranteed access to a nursing home
27 bed nor coverage of the costs of the care.

28 (3) While admission to the nursing home may
29 be implied, no specific contract may exist.

30 §5165. Suspension or revocation of certificate of
31 authority

32 1. Grounds. A certificate of authority may be
33 suspended or revoked for cause by the department.
34 Grounds for suspension or revocation include viola-
35 tion of any of the provisions of this chapter, viola-
36 tions of any of the rules issued by the department

1 pursuant to this chapter, any misrepresentations or
2 the submission of any false financial or organiza-
3 tional statements or documents.

4 2. Governing procedure. The proceedings govern-
5 ing the appeal of a revocation or suspension shall be
6 conducted in accordance with the requirements of the
7 Maine Administrative Procedure Act, Title 5, chapter
8 375.

9 §5166. Financial feasibility determination

10 The provider shall apply to the department for
11 determination of the financial and actuarial feasi-
12 bility of the proposed continuing care retirement
13 community.

14 1. Application for determination of feasibility.
15 To obtain a determination of financial and actuarial
16 feasibility, the provider must submit to the depart-
17 ment the following:

18 A. At least the following certified financial
19 statements:

20 (1) Annual income statements for the previ-
21 ous 5 years, if available;

22 (2) The latest cash balance;

23 (3) A statement of earnings on reserve
24 funds;

25 (4) An estimate of entrance fees;

26 (5) A description of the actuarial basis
27 and assumptions used to project the fee
28 amount and the financial feasibility of the
29 project;

30 (6) A statement of the amounts received in
31 gifts and bequests;

32 (7) A statement of income received through
33 sources other than entrance fees; and

34 (8) Estimated operating expenses for the
35 following fiscal year; and

1 B. A feasibility study which shall contain at
2 least the following:

3 (1) A statement of the purpose and need for
4 the project and the reasons for the proposed
5 construction, expansion or renovation of the
6 facility;

7 (2) A statement of the financial resources
8 of the providers;

9 (3) A statement of the capital expenditures,
10 necessary to accomplish the project;

11 (4) A statement of the financial feasiibili-
12 ty of the project which shall include a
13 statement of future funding sources; and

14 (5) Any other information which the depart-
15 ment may by rule prescribe to be included.

16 2. Approval of study and certification. The de-
17 partment may approve the feasibility study and certi-
18 fy the financial and actuarial feasibility of the
19 project when it has determined that:

20 A. A reasonable financial plan has been devel-
21 oped for constructing the project; and

22 B. A market for the facility appears to exist.

23 §5167. Required provisions of continuing care agree-
24 ment

25 The department shall by rule prescribe certain
26 provisions which must be included in each continuing
27 care agreement in order for that agreement to receive
28 the department's approval. These provisions shall, at
29 the least, require disclosure in the following topic
30 areas:

31 1. Total consideration. Total consideration paid
32 or to be paid;

33 2. Services available. All services available to
34 or provided to the subscriber;

1 3. Procedures. The procedures in deciding whether
2 the subscriber must move to other accommodations
3 or another section of the retirement community and
4 the procedure for appealing that decision and to whom
5 appealed;

6 4. Policy. The policy of the retirement communi-
7 ty if the subscriber becomes incapable of paying the
8 required fees;

9 5. Terms. The terms under which refunds will be
10 given and the terms for rescission or cancellation of
11 the continuing care agreement;

12 6. Rights. State the provider's and subscriber's
13 respective rights regarding the use of the facilities
14 and all other matters; and

15 7. Other information. Any other information
16 which the department determines to be necessary to
17 protect the legal rights of the subscriber or to keep
18 the subscriber sufficiently informed of the nature of
19 the contract into which the subscriber is entering.

20 §5168. Rescission of continuing care agreement

21 The department shall by rule prescribe the rights
22 of a subscriber or provider to rescind, amend, cancel
23 and obtain a refund under a continuing care agreement
24 in each of the following circumstances:

25 1. Prior to occupation. Prior to the date the
26 subscriber occupies the independent living unit;

27 2. Upon death. Upon the death of the subscriber;

28 3. Ineligibility. Ineligible when the subscriber
29 is deemed to enter the facility;

30 4. Change. When there is a significant change in
31 the subscriber's physical, mental or financial condi-
32 tion;

33 5. Cancellation or rescission. When cancellation
34 or rescission of the contract may be had for any rea-
35 son; or

1 6. Withdrawal of application. Upon withdrawal of
2 the subscriber's application for entrance into the
3 facility.

4 §5169. Waiver of certain continuing care agreement
5 provisions prohibited

6 No act, agreement or statement of any subscriber
7 may constitute a valid waiver of any of the provi-
8 sions of this chapter or any rules under this chapter
9 intended for the benefit or protection of the sub-
10 scriber.

11 §5170. Discharge of subscriber prior to expiration
12 of agreement

13 No agreement for continuing care may permit dis-
14 missal or discharge of the subscriber from the facil-
15 ity providing care prior to the expiration of the
16 agreement without just cause for such a removal and
17 without providing at least 60 days' advance notice in
18 writing to the subscriber.

19 §5171. Violations

20 1. Maintenance or operation of facility without
21 certificate. No person, association or corporation
22 may maintain or operate a facility offering continu-
23 ing care or enter into a continuing care agreement
24 without first having obtained a certificate of au-
25 thority.

26 2. Punishment. Any person, association or corpo-
27 ration that violates this chapter is guilty of a
28 Class E crime. Each violation of this chapter shall
29 constitute a separate offense.

30 §5172. Actions for damages or equitable relief

31 1. Action for damages. Any subscriber injured by
32 a violation of this chapter may bring an action for
33 the recovery of damages in any court of general ju-
34 risdiction: In these cases, the court may award rea-
35 sonable attorneys fees to a subscriber in whose favor
36 a judgment is rendered.

1 2. Equitable relief. Any subscriber injured by a
2 violation of this chapter, or the department on be-
3 half of any subscriber, may institute an action for
4 an appropriate temporary restraining order or injunc-
5 tion.

6 §5173. Administration; rules

7 The department shall administer this chapter and
8 may:

9 1. Forms. Prescribe, prepare and furnish all
10 necessary forms;

11 2. Fees. Establish and collect reasonable fees
12 under this chapter;

13 3. Adopt; amend; repeal. Adopt, amend and repeal
14 all necessary rules to implement and interpret this
15 chapter; and

16 4. Information. Prepare and distribute relevant
17 public information and educational materials designed
18 to advise individuals, institutions and organizations
19 of their rights and responsibilities under this chap-
20 ter.

21 §5174. Reserve requirement

22 Every provider shall maintain reserves covering
23 obligations under all continuing care agreements
24 which the department shall by rule prescribe.

25 §5175. Sale or transfer of ownership

26 Any provider desiring to sell or transfer owner-
27 ship of a retirement community shall notify the de-
28 partment and obtain the department's advance approval
29 of the sale or transfer. The certificate of authority
30 is not transferable. The new owner must apply for a
31 new certificate of authority to continue to provide
32 continuing care at the facility.

1

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 may lead to adverse
10 consequences for the subscribers. This bill seeks to
11 encourage the development of continuing care retire-
12 ment communities while at the same time providing the
13 citizens of this State with some basic protections
14 and assurances that the continuing care retirement
15 communities developed in this State meet certain man-
16 datory minimums of financial security and feasibili-
17 ty.

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