

MAINE STATE LEGISLATURE

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(New Draft of S.P. 241, L.D. 672)
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 1859

S.P. 636

In Senate, June 12, 1987

Reported by Senator Theriault of Aroostook for the
Committee on Banking and Insurance and printed under Joint Rule
2. Original Bill sponsored by Senator Clark of Cumberland.
Cosponsored by: Senator Gauvreau of Androscoggin,
Representative Hickey of Augusta, Representative Diamond of
Bangor.

JOY J. O'BRIEN, Secretary of the Senate

STATE OF MAINE

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

1 **AN ACT to Afford Consumer Protection in**
2 **Retirement Communities which Offer**
3 **Continuing Care.**
4

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

7 Sec. 1. 24-A MRSA c. 73 is enacted to read:

8 CHAPTER 73

9 CONTINUING CARE RETIREMENT COMMUNITIES

10 §6201. Definitions

1 As used in this chapter, unless the context indi-
2 cates otherwise, the following terms have the follow-
3 ing meanings.

4 1. Actuary. "Actuary" means a member of the
5 American Academy of Actuaries who is also a member of
6 the Society of Actuaries or the Casualty Actuarial
7 Society and is qualified to sign a statement of actu-
8 arial opinion.

9 2. Continuing care. "Continuing care" means fur-
10 nishing shelter for the life of the individual or for
11 a period in excess of one year and either health
12 care, supportive services, or both, under an agree-
13 ment requiring prepayment as defined in subsection
14 12, whether or not the shelter and services are pro-
15 vided at the same location, to 3 or more older indi-
16 viduals not related by blood or marriage to the
17 providers.

18 3. Continuing care agreement. "Continuing care
19 agreement" means the contract or contracts which cre-
20 ate the obligation to provide continuing care, in-
21 cluding, but not limited to, mutually terminable con-
22 tracts.

23 4. Department. "Department" means the Department
24 of Human Services.

25 5. Entrance fee. "Entrance fee" means an initial
26 payment of a sum of money or any other consideration
27 which assures a subscriber a place in a facility for
28 a term of years or for life. An accommodation fee,
29 admission fee, entrance loan or other fee of similar
30 form and application, even if refundable in whole or
31 in part at the termination of the subscriber's con-
32 tract, shall be considered to be an entrance fee. The
33 purchase price of a condominium, or of a share or
34 shares of or membership in, a consumer cooperative
35 subject to Title 13, chapter 85, subchapter I, shall
36 not be considered an entrance fee.

37 6. Facility. "Facility" means a physical plant
38 in which continuing care is provided in accordance
39 with this chapter.

40 7. Fiscal year. "Fiscal year" means the
41 provider's fiscal year.

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

3 A. Physician services;

4 B. Home health services;

5 C. Access to or provision of nursing home care;
6 or

7 D. Hospital care.

8 9. Home health services. "Home health services"
9 means those services performed by home health care
10 providers required to be licensed under Title 22,
11 chapter 419.

12 10. Maintenance fee. "Maintenance fee" means any
13 fee which a subscriber is required to pay to the
14 provider on a regular basis to cover the cost of
15 shelter and health care or supportive services pro-
16 vided to the subscriber.

17 11. Operational facility. "Operational facility"
18 means a facility for which the provider has obtained
19 a final certificate of authority from the superin-
20 tendent and 60% of the residential units are occupied
21 by subscribers.

22 12. Prepayment. "Prepayment" means funding shel-
23 ter, supportive services or health care entirely or
24 in part by entrance fees or by maintenance fees paid
25 more than one year prior to the time the shelter or
26 service is rendered. Prepayment of health care also
27 includes funding by entrance fees or by maintenance
28 fees which do not vary with the level of care pro-
29 vided.

30 13. Provider. "Provider" means the corporate en-
31 tity which is the owner of an institution, building,
32 residence or other place, whether operated for profit
33 or not, in which the owner undertakes to provide con-
34 tinuing care. If the facility is owned by the sub-
35 scribers, then "provider" means the operator of the
36 facility.

1 14. Records. "Records" means the financial and
2 other information and personnel data maintained by
3 the provider for the proper operation of the facility
4 pursuant to this chapter.

5 15. Subscriber. "Subscriber" means a purchaser
6 or beneficiary of a continuing care agreement.

7 16. Supportive services. "Supportive services"
8 means providing assistance in the activities of daily
9 living and other social services. Supportive services
10 does not refer to services of the type commonly pro-
11 vided to tenants in a conventional apartment build-
12 ing.

13 17. Superintendent. "Superintendent" means the
14 Superintendent of Insurance.

15 §6202. Certificate of authority required

16 1. Requirement. No person or entity may offer
17 continuing care in this State except a provider hav-
18 ing obtained an appropriate certificate of authority
19 issued by the superintendent pursuant to this chapter
20 and then in full force and effect.

21 2. Use of name. No natural person, partnership,
22 unincorporated association, trust or corporation may
23 use the names "continuing care retirement community"
24 or "life-care community" unless the appropriate cer-
25 tificate of authority has been issued by the superin-
26 tendent. A life-care community may use either name or
27 both.

28 3. Types of certificates. There shall be 2 types
29 of certificates of authority.

30 A. To qualify for certification as a life-care
31 community, the provider shall offer a continuing
32 care agreement that explicitly provides all of
33 the following:

34 (1) Full and lifetime prepaid health care,
35 prepaid supportive services and shelter, as
36 prescribed by the department by rule, which
37 shall include a true continuum of care from
38 independent living through nursing home
39 care;

1 (2) The maintenance fee shall not increase,
2 regardless of the level of services provided
3 or a change in accommodations, with the fol-
4 lowing exceptions:

5 (a) Annual increases in the mainte-
6 nance fee applicable to all subscrib-
7 ers; and

8 (b) Any increase in the maintenance
9 fee applicable to a specific subscriber
10 resulting from the voluntary selection
11 of an optional service by that sub-
12 scriber. An optional service is a ser-
13 vice or change in accommodations which
14 is not required to be offered in order
15 to qualify for certification as a
16 life-care community under the depart-
17 ment's rules;

18 (3) With the exception of maintenance fees
19 and insurance premiums, neither the sub-
20 scriber nor any 3rd party, other than the
21 subscriber's insurer, shall be liable for
22 the cost of health care or supportive ser-
23 vices other than optional services as de-
24 fined in subparagraph (2); and

25 (4) The provider shall continue to provide
26 full and lifetime health care, supportive
27 services and shelter without diminution to a
28 subscriber who has not intentionally de-
29 pleted his resources.

30 B. A provider offering a continuing care agree-
31 ment which does not qualify for certification as
32 a life-care community, as defined in paragraph A,
33 shall be certified as a continuing care retire-
34 ment community if it complies with the other ap-
35 plicable provisions of this chapter.

36 4. Reasonable time to comply. Any provider who
37 is providing continuing care when this chapter takes
38 effect shall be given a reasonable time to comply
39 with this chapter and the rules promulgated pursuant
40 to this chapter, but not later than one year after
41 the effective date of this chapter.

1 5. Statement of withdrawal. Any provider who, as
2 of the effective date of this chapter, has offered
3 continuing care agreements prior to that date and in-
4 tends not to offer new continuing care agreements or
5 to renew those agreements shall file a statement to
6 that effect with the superintendent.

7 §6203. Requirements for issuance of certificate

8 1. Preliminary certificate of authority. The su-
9 perintendent shall issue a preliminary certificate of
10 authority, which shall be valid for no more than 12
11 months, but which the superintendent may extend for
12 such reasonable time as necessary when the following
13 conditions have been met.

14 A. The provider has submitted to the department
15 an application for a certificate of need, if re-
16 quired under Title 22, section 304-A, and the de-
17 partment has submitted a preliminary report of a
18 recommendation for approval of a certificate of
19 need and the provider has applied for any other
20 licenses or permits required prior to operation.

21 B. The provider has submitted an application in
22 duplicate to the superintendent. The superintend-
23 ent shall immediately forward one copy to the de-
24 partment. The application shall consist of the
25 following items:

26 (1) A copy of the provider's continuing
27 care agreement;

28 (2) A copy of the disclosure statement re-
29 quired by section 6209;

30 (3) Financial statements of current origin
31 prepared in accordance with generally ac-
32 cepted accounting principles showing the
33 provider's assets, liabilities and surplus
34 position. These financial statements shall
35 include as supplementary data a description
36 of the sources of financial support. A copy
37 of the provider's most recent regular certi-
38 fied financial statement shall be deemed to
39 satisfy this requirement, unless the super-
40 intendent directs that additional or more

1 recent financial information is required for
2 the proper administration of this chapter;

3 (4) A copy of the basic organizational doc-
4 ument of the provider such as articles of
5 incorporation, articles of agreement, cer-
6 tificate of organization or incorporation or
7 charter and all amendments thereto;

8 (5) A copy of the provider's bylaws, certifi-
9 fied by the corporate secretary;

10 (6) A list of the names and addresses and
11 the official positions held by those persons
12 who are responsible for the conduct of the
13 affairs of the provider, including:

14 (a) All members of the board of direc-
15 tors; and

16 (b) Principal officers.

17 Those responsible persons shall consent to
18 the performance of a credit investigation
19 report to be performed by a recognized and
20 established independent investigation and
21 reporting agency. The cost of any such re-
22 ports shall be paid by or on behalf of the
23 provider upon the request of the superin-
24 tendent. The superintendent shall keep con-
25 fidential the contents of any such report;

26 (7) A description of any action within the
27 past 10 years for which the provider or any
28 of the persons described in subparagraph
29 (6):

30 (a) Is presently under indictment or
31 has been convicted of a Class A, B, C
32 or D crime that relates to the business
33 activities, including health care ac-
34 tivities of the provider or that per-
35 son; or

36 (b) Has had any state or federal li-
37 cence or permit related to the business
38 activities, including health care ac-

1 tivities of the provider or that per-
2 son, suspended or revoked as a result
3 of an action brought by a governmental
4 agency or department;

5 (8) All principal officers and directors of
6 the provider shall disclose in statements
7 attested under oath any real or potential
8 conflict of interest. This disclosure shall
9 extend to provider - management relation-
10 ships, although such relationships may be a
11 part of the operational plan. Any employment
12 contracts, deferred compensation contracts
13 or other pecuniary interests shall be listed
14 in this regard;

15 (9) A copy of any management agreement be-
16 tween the provider and the person or persons
17 responsible for the daily management of the
18 facility, if other than the provider;

19 (10) All contracts executed by the provider
20 with 3rd parties which provide for the per-
21 formance of health care or supportive ser-
22 vices for the benefit of subscribers;

23 (11) A descriptive statement of the
24 provider's proposed operation, including an
25 organizational chart setting out the posi-
26 tion classifications of personnel responsi-
27 ble for health care and administration;

28 (12) Proof of fidelity bonding of all indi-
29 viduals who handle the funds of continuing
30 care retirement communities. The actual
31 amount of the fidelity bonding required will
32 be determined by the superintendent, but the
33 face amount of the bond may not be less than
34 \$100,000;

35 (13) A description of the proposed method
36 of marketing the plan for continuing care
37 and a copy of any market research study per-
38 formed;

39 (14) A copy of all advertising materials;

- 1 (15) A description of the mechanism by
2 which subscribers will be afforded partici-
3 pation in policy matters of the organiza-
4 tion;
- 5 (16) A description of the procedures devel-
6 oped by the provider to provide for the res-
7 olution of complaints initiated by subscrib-
8 ers concerning health care services and gen-
9 eral operating procedures;
- 10 (17) A power of attorney duly executed by
11 the provider, if not domiciled in the State,
12 appointing the superintendent as the agent
13 for service of process in any legal action
14 brought;
- 15 (18) An actuarial study, certified by an
16 actuary, demonstrating that the anticipated
17 revenues and other available financial re-
18 sources will be sufficient to provide the
19 services promised by the contract and indi-
20 cating the method by which the reserve re-
21 quired by section 6215 will be calculated;
- 22 (19) A demonstration of the provider's
23 ability to respond to claims for malprac-
24 tice, employer's liability, workers' compen-
25 sation coverages and all property and lia-
26 bility insurance relating to the facility,
27 including fidelity bonds;
- 28 (20) Examined pro forma projected financial
29 statements of the provider for the coming 10
30 years, including notes of those statements,
31 presented in conformity with guidelines for
32 forecasting as prescribed by the American
33 Institute of Certified Public Accountants.
34 The statements shall include a narrative de-
35 scription of the basis of assumptions uti-
36 lized and supporting actuarial utilization
37 statistics relied upon in presenting pro
38 forma projections;
- 39 (21) A copy of any application form which
40 prospective subscribers will be required to
41 complete;

1 (22) A copy of the receipt described in
2 subsection 3, paragraph A, subparagraph (1);

3 (23) A copy of the preliminary deposit
4 agreement described in subsection 3, para-
5 graph B, subparagraph (1); and

6 (24) A copy of the escrow agreement de-
7 scribed in subsection 3, paragraph E.

8 C. The superintendent has determined that the
9 continuing care agreement meets the requirements
10 of section 6206, subsection 1.

11 D. The superintendent has approved the applica-
12 tion form, escrow agreement and the preliminary
13 deposit agreement.

14 E. The provider has met all other requirements
15 for a preliminary certificate of authority which
16 the superintendent may prescribe in rules promul-
17 gated pursuant to this chapter.

18 F. The department has certified that:

19 (1) The advertising materials related to
20 the continuing care agreements are not un-
21 true or misleading;

22 (2) The proposed continuing care agreement
23 meets the requirement of section 6206, sub-
24 section 2; and

25 (3) The disclosure statement meets the re-
26 quirement of section 6209.

27 2. Final certificate of authority. The superin-
28 tendent shall issue a final certificate of authority,
29 subject to annual renewal, when:

30 A. The provider has obtained any required cer-
31 tificate of need or other permits or licenses re-
32 quired prior to construction of the facility;

33 B. The department has approved the adequacy of
34 all services proposed under the continuing care
35 agreement not otherwise reviewed under the cer-
36 tificate of need process;

1 C. The superintendent is satisfied that the
2 provider has demonstrated that it is financially
3 responsible and shall reasonably be expected to
4 meet its obligations to subscribers or prospec-
5 tive subscribers;

6 D. The superintendent has determined that the
7 provider's continuing care agreement meets the
8 requirements of section 6206, subsection 3, and
9 the rules promulgated in this chapter;

10 E. The superintendent finds that the provider
11 has met the requirements under this chapter and
12 that the provider has furnished evidence satis-
13 factory to him that its methods of operation are
14 not such as would render its proposed operation
15 hazardous to the public or its subscribers in
16 this State;

17 F. The department certifies to the superintend-
18 ent that the provider has demonstrated the will-
19 ingness and potential ability to assure that the
20 health care services and supportive services will
21 be provided in a manner to assure both availabil-
22 ity and accessibility of adequate personnel and
23 facilities and in a manner enhancing availabili-
24 ty, accessibility and continuity of service; and

25 G. The provider certifies to the superintendent
26 that preliminary continuing care agreements have
27 been entered and deposits received from subscrib-
28 ers with respect to 60% of the residential units,
29 including names and addresses of those subscrib-
30 ers.

31 Within 120 days after determining that the applica-
32 tion to the superintendent and the department is com-
33 plete, the superintendent shall issue or deny a final
34 certificate of authority to the provider, unless a
35 certificate of need is required, in which case the
36 final certificate of authority shall be issued or de-
37 nyed in accordance with the certificate of need
38 schedule.

39 3. Deposits. Deposits shall apply as follows.

1 A. A provider who has applied for a preliminary
2 certificate of authority may advertise, solicit
3 and collect deposits, not to exceed \$1,000 per
4 prospective subscriber, provided that:

5 (1) The provider shall furnish the prospec-
6 tive subscriber a signed receipt stating
7 that:

8 (a) The deposit will be refunded in
9 full if:

10 (i) The preliminary or final cer-
11 tificate of authority is not
12 granted or if the continuing care
13 retirement community does not be-
14 come operational;

15 (ii) The prospective subscriber
16 requests a refund for any reason;
17 or

18 (iii) The provider determines
19 that the subscriber is ineligible
20 for entrance into the facility be-
21 cause of the subscriber's physi-
22 cal, mental or financial condi-
23 tion;

24 (b) There is a nonrefundable applica-
25 tion fee and the amount of that fee;
26 and

27 (c) Neither the continuing care agree-
28 ment nor the disclosure statement has
29 been approved by the superintendent and
30 both are subject to change;

31 (2) At least 10 days prior to collecting an
32 initial deposit, the provider shall furnish
33 the prospective subscriber:

34 (a) A copy of the proposed continuing
35 care agreement;

36 (b) A copy of the proposed disclosure
37 statement described in section 6209;

1 (c) An unsigned copy of the receipt
2 described in subparagraph (1); and

3 (d) A copy of the escrow agreement re-
4 quired by paragraph E; and

5 (3) The superintendent has approved the re-
6 ceipt required by subparagraph (1) and the
7 escrow agreement required by paragraph E.

8 B. A provider who has been issued a preliminary
9 certificate of authority may advertise, solicit
10 and collect deposits, not to exceed 10% of the
11 entrance fee, provided that:

12 (1) The provider shall furnish the prospec-
13 tive subscriber a signed deposit agreement
14 stating that:

15 (a) The provider has a preliminary
16 certificate of authority and the depos-
17 it is received subject to the issuance
18 by the superintendent to the provider
19 of a final certificate of authority;

20 (b) Both the proposed continuing care
21 agreement and the disclosure statement
22 are subject to change;

23 (c) The provider will refund the pro-
24 spective subscriber's deposit in full:

25 (i) Within one month of notifica-
26 tion of the superintendent's deci-
27 sion not to issue the final cer-
28 tificate of authority;

29 (ii) At the request of the pro-
30 spective subscriber any time 3
31 years or more after the deposit
32 was paid, if the community has not
33 become operational;

34 (iii) If the prospective sub-
35 scriber requests a refund due to a
36 material difference between the
37 proposed continuing care agreement

1 furnished at the time the deposit
2 is paid and the agreement as fi-
3 nally approved by the superintend-
4 ent;

5 (iv) In the event of the death of
6 the prospective subscriber prior
7 to the execution of the continuing
8 care agreement, unless the surviv-
9 ing spouse is also a prospective
10 subscriber and still wishes to oc-
11 cupy the unit; or

12 (v) If the provider determines
13 that the subscriber is ineligible
14 for entrance into the facility be-
15 cause of the subscriber's physi-
16 cal, mental or financial condi-
17 tion;

18 (d) The provider will refund the de-
19 posit, minus a processing fee not to
20 exceed 1% of the entrance fee, if the
21 community becomes operational and the
22 subscriber chooses not to join for any
23 reason other than that listed in divi-
24 sion (c), subdivision (iii); and

25 (e) There is a nonrefundable applica-
26 tion fee and the amount of that fee;
27 and

28 (2) At least 10 days prior to collecting a
29 preliminary deposit, the provider shall fur-
30 nish the prospective subscriber:

31 (a) A copy of the proposed continuing
32 care agreement;

33 (b) A copy of the proposed disclosure
34 statement described in section 6209;

35 (c) An unsigned copy of the prelimi-
36 nary deposit agreement described in
37 subparagraph (1); and

38 (d) A copy of the escrow agreement re-
39 quired by paragraph E.

1 C. After the community is operational, the
2 provider may advertise, solicit and collect de-
3 posits, not to exceed 10% of the entrance fee,
4 provided that:

5 (1) The provider shall furnish the prospec-
6 tive subscriber a signed deposit agreement
7 stating that:

8 (a) The provider will refund the de-
9 posit, minus a processing fee not to
10 exceed 1% of the entrance fee, if the
11 subscriber chooses not to join for any
12 reason;

13 (b) The provider will refund the de-
14 posit in full:

15 (i) In the event of the death of
16 the prospective subscriber prior
17 to the execution of the final con-
18 tinuing care agreement, unless the
19 surviving spouse is also a sub-
20 scriber and still wishes to occupy
21 the unit; or

22 (ii) If the provider determines,
23 prior to occupation by the sub-
24 scriber, that the subscriber is
25 ineligible for entrance into the
26 facility because of the subscrib-
27 er's physical, mental or financial
28 condition; and

29 (c) There is a nonrefundable applica-
30 tion fee and the amount of that fee;
31 and

32 (2) At least 10 days prior to collecting a
33 deposit, the provider shall furnish the pro-
34 spective subscriber:

35 (a) A copy of the continuing care
36 agreement;

37 (b) A copy of the disclosure statement
38 described in section 6209;

1 (c) An unsigned copy of the deposit
2 agreement described in subparagraph
3 (1); and

4 (d) A copy of the escrow agreement re-
5 quired by paragraph E.

6 D. At the time the prospective subscriber first
7 makes an initial, preliminary or other deposit,
8 the provider may also collect a nonrefundable ap-
9 plication fee not to exceed \$500.

10 E. Any deposit must be deposited to an interest-
11 bearing escrow account. The escrow agreement es-
12 tablishing the terms of deposit of funds shall be
13 filed with and approved by the superintendent
14 prior to collection of funds. The provider shall
15 furnish the superintendent with documentation of
16 the name of the institution with which the
17 provider has established the escrow account and
18 the account number. The escrowed money shall not
19 be applied until a final certificate of authority
20 has been issued, the facility is operational and
21 the subscriber has occupied the unit.

22 F. Payments in excess of those deposits and fees
23 under paragraphs A to D may be collected from a
24 subscriber after a final certificate of authority
25 has been issued by the superintendent and the
26 subscriber has occupied the unit. Payments col-
27 lected before the facility is operational must be
28 held in the escrow account until the facility be-
29 comes operational.

30 4. Separate facilities. If the provider intends
31 to provide continuing care at more than one facility,
32 the provider must obtain a separate certificate of
33 authority for each facility at which the provider in-
34 tends to provide continuing care. With the exception
35 of unencumbered surplus funds, funds collected by one
36 facility may not be expended for the benefit of any
37 other facility.

38 5. Material changes. Within 60 days prior to any
39 change in the approved continuing care agreement, any
40 other approved form or the health care or supportive
41 services offered, the provider shall submit the pro-

1 posed change in duplicate to the superintendent for
2 approval. The superintendent shall forward one copy
3 to the department.

4 §6204. Withdrawal plan

5 Any provider who has obtained a certificate of
6 authority from the superintendent and who plans nei-
7 ther to renew existing agreements nor to offer new
8 agreements shall submit a withdrawal plan to the su-
9 perintendent at least 60 days prior to implementing
10 its proposed plan. The plan shall include, but not be
11 limited to, requirements and procedures for meeting
12 the provider's existing contractual obligations,
13 providing security in the event of a subsequent in-
14 solvency and meeting any applicable statutory obliga-
15 tions. The plan shall also comply with any further
16 terms and conditions which are prescribed by rules
17 adopted by the superintendent. The plan shall not be
18 implemented without the approval of the superintend-
19 ent.

20 §6205. Suspension or revocation of certificate of
21 authority

22 1. Complaint to Administrative Court. The super-
23 intendent may file a complaint with the Administra-
24 tive Court seeking the suspension or revocation of
25 any certificate of authority issued to a provider un-
26 der this chapter if he finds, or the department cer-
27 tifies, that any of the following conditions exist:

28 A. The provider is operating significantly in
29 contravention of its basic organizational docu-
30 ment or in a manner contrary to that described in
31 and reasonably inferred from any other informa-
32 tion submitted under this chapter, unless amend-
33 ments to those submissions have been filed with
34 and approved by the superintendent;

35 B. The provider charges an entrance fee, mainte-
36 nance fee or other amount not consistent with the
37 continuing care contract approved pursuant to
38 section 6206;

39 C. The department certifies to the superintend-
40 ent that the provider is unable to fulfill its

1 obligations to furnish shelter, health care or
2 supportive services;

3 D. The provider is no longer financially respon-
4 sible and may not reasonably be expected to meet
5 its obligations to subscribers or prospective
6 subscribers;

7 E. The provider has failed to implement a mecha-
8 nism affording the enrollees an opportunity to
9 participate in matters of policy and operation;

10 F. The provider has failed to implement the com-
11 plaint system in a manner to reasonably resolve
12 valid complaints;

13 G. The provider or any person on its behalf has
14 advertised or merchandised its services in an un-
15 true, misrepresentative, misleading, deceptive or
16 unfair manner;

17 H. The continued operation of the provider will
18 be hazardous to its subscribers;

19 I. The provider has submitted false financial
20 statements, organizational statements or docu-
21 ments; or

22 J. The provider has otherwise failed to substan-
23 tially comply with this chapter or any rules is-
24 ssued by the superintendent or the department pur-
25 suant to this chapter.

26 2. Governing procedure. The proceedings govern-
27 ing the appeal of a revocation or suspension shall be
28 conducted in accordance with the requirements of the
29 Maine Administrative Procedure Act, Title 5, chapter
30 375.

31 3. Suspension. When the certificate of authority
32 of a provider is suspended, the provider shall not,
33 during the period of that suspension, enroll any ad-
34 ditional subscribers and shall not engage in any ad-
35 vertising or solicitation.

36 4. Revocation. When the certificate of authority
37 of a provider is revoked, that organization shall

1 proceed, immediately following the effective date of
2 the order of revocation, to wind up its affairs and
3 shall conduct no further business, except as may be
4 essential to the orderly conclusion of the affairs of
5 that organization. It shall engage in no further ad-
6 vertising or solicitation.

7 §6206. Required provisions of a continuing care
8 agreement

9 1. General provisions. In addition to such other
10 provisions as may be prescribed by rules promulgated
11 under this chapter, each continuing care agreement
12 executed between a subscriber and a provider shall:

13 A. State the name and business address of the
14 provider;

15 B. State the name and address of the facility;

16 C. Show the total consideration paid by the sub-
17 scriber for continuing care, including the value
18 of all property transferred, donations, entrance
19 fees, subscriptions, maintenance fees and any
20 other fees paid or payable by or on behalf of a
21 subscriber;

22 D. Specify all health care or supportive ser-
23 vices which are to be provided by the provider or
24 by a 3rd party to each subscriber, including in
25 detail all items which each subscriber will re-
26 ceive and whether the items will be provided for
27 a designated time period or for life;

28 E. State whether the provider requires the sub-
29 scriber to purchase or maintain supplemental in-
30 surance;

31 F. Provide in clear and understandable language,
32 in print no smaller than the largest type used in
33 the body of the agreement, the terms governing
34 the refund of any portion of the entrance fee in
35 the event of rescission or termination of the
36 agreement by the provider or by the subscriber;

37 G. State the terms under which an agreement is
38 canceled by the death of the subscriber;

- 1 H. Provide in clear and understandable language
2 in print no smaller than the largest type used in
3 the agreement whether or not periodic fees, if
4 charged, will be subject to periodic increases;
- 5 I. State the extent of funeral and burial ser-
6 vices which will be provided by the provider;
- 7 J. Provide a description of the unit which the
8 subscriber will occupy;
- 9 K. State the conditions, if any, under which a
10 unit may be assigned to the use of another by the
11 subscriber;
- 12 L. State the subscriber's and provider's re-
13 spective rights and obligations as to the use of
14 the facility and as to real and personal property
15 of the subscriber placed in the custody of the
16 provider;
- 17 M. State that the subscribers shall have the
18 right to organize and operate a subscriber orga-
19 nization at the facility and to meet privately to
20 conduct business;
- 21 N. State what, if any, fee adjustments will be
22 made if the subscriber is voluntarily absent from
23 the facility for an extended period of time;
- 24 O. Contain in capital letters in print no
25 smaller than the largest type used in the agree-
26 ment and underlined: "A preliminary or final cer-
27 tificate of authority is not an endorsement or
28 guarantee of this facility by the State of Maine.
29 The Superintendent of Insurance urges you to con-
30 sult with an attorney and a suitable financial
31 advisor before signing any documents.";
- 32 P. State that the subscriber will annually re-
33 ceive a financial and organizational disclosure
34 statement; and
- 35 Q. Provide that the provider shall make availa-
36 ble to the subscriber, upon request, any certi-
37 fied financial statement transmitted to the su-
38 perintendent.

1 2. Additional specific provisions. Each continuing
2 care agreement shall contain the following provi-
3 sions:

4 A. A description of the procedures to be fol-
5 lowed by the provider when the provider temporar-
6 ily or permanently changes the subscriber's ac-
7 commodation within the facility or transfers the
8 subscriber to another health facility. A sub-
9 scriber's accommodations shall be changed only
10 for the protection of the health or safety of the
11 subscriber or the general welfare of the resi-
12 dents;

13 B. A description of the policies that will be
14 implemented if the subscriber becomes unable to
15 meet the fees;

16 C. A policy statement of the provider with re-
17 gard to changes in accommodations and the proce-
18 cedure to be followed to implement that policy in
19 the event of an increase or decrease in the num-
20 ber of persons occupying an individual unit, in-
21 cluding a reasonable grievance procedure and a
22 description of the circumstances whereby the
23 provider may cancel the agreement prior to occu-
24 pancy; and

25 D. Specifications of the circumstances, if any,
26 under which the subscriber will be required to
27 apply for Medicare, Social Security or any other
28 state or federal insurance or pension benefits.

29 3. Filing and approval. Continuing care agree-
30 ments must be submitted in duplicate to the superin-
31 tendent, who shall immediately forward one copy to
32 the department. The department shall review the con-
33 tinuing care agreement for compliance with the re-
34 quirements of subsection 2. The superintendent shall
35 review the continuing care agreement for compliance
36 with the requirements of subsection 1.

37 No contract, or amendment to a contract, may be
38 issued or delivered to any person in this State until
39 a copy of the contract, or amendment to the contract,
40 has been filed with and approved by the superintend-
41 ent. A contract shall contain no provisions or state-

1 ments which are untrue, unjust, unfair, inequitable,
2 misleading, deceptive or which encourage misrepresenta-
3 tion.

4 The contract, or amendment to the contract, shall
5 be deemed approved by the superintendent 30 days fol-
6 lowing the date filed with the superintendent unless,
7 prior to that date, it has been affirmatively ap-
8 proved or disapproved by the superintendent or unless
9 the superintendent has not issued a final certificate
10 of authority. The superintendent may not extend the
11 period upon which he may affirmatively approve or
12 disapprove any contract or amendment more than an ad-
13 ditional 30 days.

14 §6207. Continuing care agreement; condominium

15 Pursuant to a continuing care agreement, a sub-
16 scriber may purchase or may be the beneficiary of a
17 purchase of a condominium as defined in Title 33,
18 section 1601-103, subsection 7. With respect to a
19 continuing care agreement pursuant to which a condo-
20 minium will be purchased the following provisions are
21 applicable:

22 1. Copy of declaration; filing. A copy of the
23 declaration prepared pursuant to the Maine Condomini-
24 um Act, Title 33, chapter 31, along with a copy of
25 any registration statement filed with the United
26 States Securities and Exchange Commission or the Bu-
27 reau of Banking, Securities Division, shall be filed
28 with the superintendent prior to the sale of any of
29 the condominium units; and

30 2. Bylaws and rules; filing. The bylaws and
31 rules of the unit owners' association shall be filed
32 with the superintendent for informational purposes.

33 Any materials required to be filed with the su-
34 perintendent pursuant to this chapter and contained
35 in the declaration, public offering statements, by-
36 laws or rules of the unit owners' association may be
37 submitted in that format to the superintendent. Any
38 disclosure requirements contained in this chapter may
39 be satisfied by the timely delivery of the documents
40 described in this section to the subscriber, suppl-
41 mented where necessary by any additional information
42 required pursuant to this chapter.

1 §6208. Continuing care agreement; consumer coopera-
2 tive

3 As part of the continuing care agreement, a sub-
4 scriber may purchase or acquire or be the beneficiary
5 of a purchase or acquisition of a membership interest
6 or share or shares in an incorporated or unincorpor-
7 ated group organized on a cooperative basis subject
8 to the requirements of Title 13, chapter 85, subchap-
9 ter 1, consumer cooperatives.

10 If a registration statement for the cooperative
11 is filed with the Bureau of Banking, Securities Divi-
12 sion, pursuant to the Maine Securities Act, Title 13,
13 chapter 105, a copy shall be simultaneously filed
14 with the superintendent and a copy shall be given to
15 every purchaser of a membership interest or share in
16 the cooperative at least 10 days prior to the sale of
17 the interest or share. Any information required to be
18 filed with the superintendent pursuant to this chap-
19 ter and contained in the referenced registration ma-
20 terials may be filed in that format with the superin-
21 tendent and need not be submitted under separate cov-
22 er. If a registration statement is not filed with the
23 Securities Division, a disclosure statement contain-
24 ing, to the extent applicable, all the information
25 required to register a security by qualification,
26 pursuant to Title 32, section 10404, shall be filed
27 with the superintendent and given to every subscriber
28 at least 10 days prior to the sale. In the alterna-
29 tive, a provider may elect to provide each subscriber
30 a disclosure statement containing those provisions
31 stated in section 6209 determined to be required by
32 the superintendent.

33 §6209. Disclosure statement

34 1. Disclosure statement required. A provider
35 shall provide a disclosure statement to a prospective
36 subscriber or the person with whom the provider shall
37 enter into an agreement to provide continuing care
38 for the benefit of a prospective subscriber at least
39 10 days prior to the transfer of any money or other
40 property to the provider by or on behalf of the pro-
41 spective subscriber. The disclosure statement shall
42 contain the date on which the disclosure was provided
43 to the prospective subscriber and shall be written in

1 a clear and coherent manner using words with common
2 and everyday meanings.

3 2. Required contents. Each disclosure statement
4 shall contain:

5 A. The name, business address and form of orga-
6 nization of the provider; and

7 B. A statement in bold print at the top of the
8 first page which reads:

9 "This matter involves a substantial finan-
10 cial commitment and a legally binding con-
11 tract. In evaluating this disclosure state-
12 ment and this contract prior to any commit-
13 ment being made by you, it is recommended
14 that you consult with an attorney and finan-
15 cial advisor of your choice, who can review
16 these documents with you."

17 3. Conditionally required contents. The disclo-
18 sure statement shall contain the following informa-
19 tion, unless such information is already contained in
20 the continuing care agreement or other materials pro-
21 vided to the subscriber or the person with whom the
22 provider will enter into a continuing care agreement:

23 A. The state or foreign jurisdiction and date of
24 the providers' organization, the general charac-
25 ter and location of its business and a descrip-
26 tion of its physical properties or equipment;

27 B. The names and business addresses of the offi-
28 cers, directors and any persons or entities hav-
29 ing a 10% or greater equity or beneficial inter-
30 est in the provider and a description of that
31 person's interest in or occupation with the
32 provider;

33 C. The identity of any 3rd-party operator if the
34 facility is to be managed on a day-to-day basis
35 by some party other than the provider or a person
36 directly employed by the provider;

37 D. A statement of the extent to which any affil-
38 iated organization is responsible for the finan-

1 cial and contractual obligations of the provider
2 and a statement of the provisions of the United
3 States Internal Revenue Code, if any, under which
4 the provider or an affiliate is exempt from pay-
5 ment of income tax;

6 E. The location and description of the physical
7 property of the facility, both existing and pro-
8 posed, and, with respect to a proposed facility
9 or improvement, the estimated completion date,
10 the date construction began or shall begin and
11 the contingencies subject to which construction
12 may be deferred;

13 F. The provisions that have been made or will be
14 made, if any, to provide any type of reserve
15 funding which will enable the provider to fully
16 perform its obligations under contracts to pro-
17 vide continuing care, including, but not limited
18 to, the establishment of escrow accounts, trusts
19 or reserve accounts, the manner in which the
20 funds shall be invested and the names and experi-
21 ence of persons who will make the investment de-
22 isions on these funds;

23 G. Certified financial statements of current or-
24 igin prepared in accordance with generally ac-
25 cepted accounting principles showing the
26 provider's assets, liabilities and surplus posi-
27 tion. These financial statements shall include as
28 supplementary data a description of the sources
29 of financial support;

30 H. An examined pro forma projected financial
31 statement for the coming 10 years, including
32 notes of that statement, presented in conformity
33 with guidelines for forecasting as prescribed by
34 the American Institute of Certified Public Ac-
35 countants and including a narrative description
36 of the basis of assumptions utilized;

37 I. If the facility is already in operation or,
38 if the provider or operator operates one or more
39 similar facilities within the State, tables show-
40 ing the frequency and average dollar amount of
41 each increase in periodic rates at each facility
42 for the previous 5 years, or as many years as the

1 facility has been operated by the provider or op-
2 erator, whichever is less; and

3 J. Any other material information which the
4 provider wishes to include in the disclosure
5 statement or that the superintendent or depart-
6 ment requires by rule.

7 §6210. Termination of continuing care agreement

8 1. Right to terminate. A subscriber shall have
9 the right to terminate a continuing care agreement
10 for any reason prior to the date of occupancy by the
11 subscriber or up to one year after the date of occu-
12 pancy. The provider may reserve the right to termi-
13 nate the agreement as specified in subsection 3.

14 2. Termination by the subscriber. If, prior to
15 the subscriber occupying a unit or within one year
16 after that date, the subscriber dies and does not
17 have a surviving spouse who is also a subscriber and
18 who still wishes to occupy the unit, or the subscrib-
19 er elects to terminate the continuing care agreement
20 for any reason, the subscriber or the subscriber's
21 legal representative shall receive within 30 days a
22 refund of all money paid to the provider, except:

23 A. Those special additional costs incurred by
24 the provider due to modifications in the struc-
25 ture or furnishings of the unit specifically re-
26 quested by the subscriber and set forth in writ-
27 ing in a separate addendum to the agreement and
28 signed by the subscriber;

29 B. In the case of the death of the subscriber, a
30 processing fee not to exceed 1% of the entrance
31 fee;

32 C. The application fee;

33 D. A maximum of 1% of the entrance fee for each
34 month of occupancy, if any; and

35 E. Costs to the provider of repairing damage
36 caused by the subscriber to the subscriber's
37 unit, other than reasonable wear and tear to the
38 unit.

1 This subsection shall not be construed in a manner
2 inconsistent with the real estate interest acquired
3 by the purchaser of a condominium.

4 3. Termination by the provider. If, prior to oc-
5 cupancy by the subscriber, the provider determines
6 that the subscriber is ineligible for entrance into
7 the facility because of a substantial change in the
8 subscriber's physical, mental or financial condition
9 or because of materially false statements made by the
10 subscriber or for other just cause, the provider may
11 terminate the agreement, provided that:

12 A. The continuing care agreement contains a pro-
13 vision allowing the termination; and

14 B. A refund of all money paid by the subscriber,
15 minus an application fee not to exceed \$100, is
16 made at the time the agreement is terminated.

17 4. Rescission damages. A subscriber may rescind
18 a continuing care agreement at any time if the terms
19 of the agreement are in violation of the terms of
20 this chapter and the subscriber is injured by the vi-
21 olation. In those instances when a violation of this
22 chapter results from the fraudulent actions of the
23 provider, the subscriber shall be entitled to treble
24 damages for injuries arising from the violation.

25 §6211. Waiver of certain continuing care agreement
26 provisions prohibited

27 No act, agreement or statement of any subscriber
28 constitutes a valid waiver of any of the provisions
29 of this chapter, or any rules under this chapter,
30 intended for the benefit or protection of the sub-
31 scriber.

32 §6212. Discharge of subscriber prior to expiration
33 of agreement

34 No agreement for continuing care shall permit
35 dismissal or permanent discharge of the subscriber
36 from the facility providing care prior to the expira-
37 tion of the agreement without just cause for such a
38 removal and without providing at least 60 days' ad-
39 vance notice in writing to the subscriber.

1 §6213. Actions for damages or equitable relief

2 1. Action for damages. Any subscriber injured by
3 a violation of this chapter may bring an action for
4 the recovery of damages in any court of competent ju-
5 risdiction. In those cases, the court may award rea-
6 sonable attorneys fees to a subscriber in whose favor
7 a judgment is rendered.

8 2. Equitable relief. Any subscriber injured by a
9 violation of this chapter may institute an action for
10 an appropriate temporary restraining order or injunc-
11 tion.

12 §6214. Administrative rules

13 The superintendent and the department, as pro-
14 vided in this section, shall administer this chapter
15 and may:

16 1. Forms. Prescribe, prepare and furnish all
17 necessary forms;

18 2. Fees. Establish and collect reasonable fees
19 under this chapter; and

20 3. Rules. Adopt, amend or repeal, as necessary,
21 rules to implement and interpret this chapter.

22 §6215. Reserves

23 The provider shall establish and maintain a re-
24 serve which shall place a sound value on its liabili-
25 ties under its contracts with subscribers. The re-
26 serve shall equal the excess of the present value of
27 future benefits promised under the continuing care
28 agreement over the present value of future revenues
29 and any other available financial resources, based on
30 conservative actuarial assumptions. The superintend-
31 ent may adopt a rule establishing minimum reserve
32 standards. The provider shall provide annually to the
33 superintendent a statement of actuarial opinion as to
34 the adequacy of the reserve, signed by a qualified
35 actuary. The superintendent shall annually cause to
36 be certified, as a condition for renewal of the cer-
37 tificate of authority, that the reserve held as of
38 the end of the provider's prior fiscal year meets the
39 requirements of this section.

1 §6216. Sale or transfer of ownership

2 Any provider desiring to sell or transfer owner-
3 ship of a continuing care facility shall notify the
4 superintendent and the acquiring interest shall ob-
5 tain the superintendent's advance approval of the
6 sale or transfer. The certificate of authority is
7 nontransferable. The new owner must apply for a new
8 certificate of authority to continue to provide con-
9 tinuing care at the facility.

10 §6217. Penalties and enforcement

11 1. Cease and desist order. The superintendent
12 may issue an order directing a provider to cease and
13 desist from engaging in any act or practice in viola-
14 tion of this chapter.

15 2. Superior Court. In the case of any violation
16 under this chapter, if the superintendent elects not
17 to issue a cease and desist order or in the event of
18 noncompliance with a cease and desist order issued
19 pursuant to this section, the superintendent may ap-
20 ply to the Superior Court to issue an injunction re-
21 straining the company in whole or in part from pro-
22 ceeding further with its business or may apply for an
23 order of the court to command performance consistent
24 with contractual obligations of the provider.

25 3. Civil penalties. A person or organization in
26 violation of this chapter shall be subject to a civil
27 penalty of not more than \$1,000 for each violation,
28 payable to the State, to be recovered in a civil ac-
29 tion. If a violation is willful, the person or orga-
30 nization shall be subject to a civil penalty of not
31 more than \$10,000 for each violation, payable to the
32 State, to be recovered in a civil action. These pen-
33 alties may be in addition to any other penalty pro-
34 vided by law. A separate violation may be held to ex-
35 ist for each day that the violation continues.

36 4. Class E crime. Any person that violates any
37 provision of this chapter commits a Class E crime.
38 Each violation of this chapter shall constitute a
39 separate offense.

40 §6218. Financial and organizational disclosure
41 statements

1 Every provider shall provide to its subscribers
2 within 120 days following the close of its first fis-
3 cal year of operation:

4 1. Statement of financial condition. The most
5 recent certified annual statement of financial condi-
6 tion, including a balance sheet and summary of re-
7 ceipts and disbursements, including notes of that
8 statement;

9 2. Description of structure and operation. A de-
10 scription of the organizational structure and opera-
11 tion of the provider, including the kind and extent
12 of subscriber participation and a summary of any ma-
13 terial changes since the issuance of the last report;

14 3. Description of services. A description of
15 services and information as to where and how to se-
16 ecure them; and

17 4. Method of subscriber complaints. A clear and
18 understandable description of the provider's method
19 for resolving subscriber complaints.

20 On an annual basis, material changes in the in-
21 formation required to be provided pursuant to this
22 section shall be furnished to all subscribers.

23 §6219. Investments

24 The provider shall conform its investment strate-
25 gy to the standards adopted by the superintendent by
26 rule.

27 §6220. Filings and reports as public documents

28 All applications, filings and reports required
29 under this chapter shall be treated as public docu-
30 ments, subject to limitations and exceptions provided
31 in Title 1, chapter 13, subchapter I.

32 §6221. Fees

33 Every provider subject to this chapter shall pay
34 to the superintendent the following fees:

1 1. Initial application. For filing an initial
2 application for a certificate of authority, \$1,500;
3 and

4 2. Annual report. For filing each annual report,
5 \$100.

6 §6222. Examinations

7 1. Examination by superintendent. The superin-
8 tendent may make an examination of the affairs of any
9 provider as often as he deems it necessary for the
10 protection of the interests of the people of this
11 State, but not less frequently than once every 3
12 years.

13 2. Examination by department. The department may
14 make an examination concerning the quality of health
15 and supportive services of any provider as often as
16 the department deems it necessary for the protection
17 of the interests of the people of this State, but not
18 less frequently than once every year.

19 3. Records. Every provider shall submit its
20 books and records relating to health and supportive
21 services to such examinations and in every way facil-
22 itate the examination. For the purpose of examina-
23 tions, the superintendent and the department may ad-
24 minister oaths to and examine the officers and agents
25 of the provider.

26 4. Expenses. The reasonable expenses of examina-
27 tions performed by the superintendent under this sec-
28 tion shall be assessed against the organization being
29 examined and remitted to the superintendent.

30 §6223. Annual report

31 The provider shall submit an annual report to the
32 superintendent within 120 days after the end of the
33 provider's fiscal year. The annual report shall in-
34 clude:

35 1. Financial statements. Financial statements of
36 the provider, including, as a minimum, a balance
37 sheet, income statement and a statement of changes in
38 financial position, presented in conformance with

1 generally accepted accounting principles and certi-
2 fied by an independent certified public accountant;

3 2. Material changes. Any material changes in the
4 information submitted pursuant to this chapter; and

5 3. Report. A report of the total number and dis-
6 position of complaints handled through the provider
7 complaint system and a compilation of causes underly-
8 ing the complaints.

9 §6224. Removal of records or assets from the State

10 No records or assets of the provider related to
11 the organization of the facility and the provision of
12 services under the continuing care agreement may be
13 removed from this State by the provider, except that
14 the superintendent may consent in writing to the re-
15 moval of those records.

16 §6225. Rehabilitation, liquidation or conservation
17 of providers

18 Any rehabilitation, liquidation or conservation
19 of a provider shall be deemed to be the rehabilita-
20 tion, liquidation or conservation of an insurance
21 company and shall be conducted under the supervision
22 of the superintendent pursuant to the laws governing
23 the rehabilitation, liquidation or conservation of
24 insurance companies. The superintendent may institute
25 summary proceedings in the same manner as provided in
26 the laws governing delinquent insurers and he may ap-
27 ply for an order directing him to rehabilitate, liq-
28 uidate or conserve a provider when, in his opinion,
29 the continued operation of the provider will be haz-
30 ardous either to the enrollees or to the people of
31 this State.

32 Sec. 2. Allocation. The following funds are al-
33 located from Other Special Revenue funds to carry out
34 the purposes of this Act.

35 1987-88 1988-89

36 PROFESSIONAL AND FINANCIAL
37 REGULATION, DEPARTMENT OF

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 the
7 subscribers and the experience of other states with
8 continuing care retirement communities has shown that
9 nonregulation of these facilities can lead to adverse
10 consequences for the subscribers. This new draft
11 seeks to encourage the development of the widest pos-
12 sible range of continuing care retirement communities
13 while at the same time providing the citizens of this
14 State with some basic protections and assurances that
15 the continuing care retirement communities developed
16 in this State meet certain standards of financial se-
17 curity, feasibility and quality of care.

18 This new draft constitutes a complete revision of
19 the original bill, based on comments received from
20 all parties concerned.

21 3292061287