

MAINE STATE LEGISLATURE

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(Emergency)
(New Draft of S.P. 679, L.D. 1909)
SECOND SPECIAL SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 1924

S.P. 699

In Senate, November 19, 1987

Reported by the Majority for the Committee on Banking and Insurance and printed under Joint Rule 2. Original Bill sponsored by Senator Perkins of Hancock.

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 Exempt the First Certificate of
2 Need Continuing Care Retirement
3 Community Demonstration Project from
4 Certain Requirements.
5

6 Emergency preamble. Whereas, Acts of the Legis-
7 lature do not become effective until 90 days after
8 adjournment unless enacted as emergencies; and

9 Whereas, the Maine Department of Human Services
10 adopted and circulated Continuing Care Retirement
11 Community Demonstration Project Regulations on April
12 16, 1987, to solicit and review Certificate of Need
13 proposals which would result in a continuing care re-
14 tirement community in the State, which would be fi-
15 nancially feasible, have a fit, willing and able op-

1 erator and offer contracts and financial information
2 in the best interest of future residents; and

3 Whereas, after the applicants had already filed
4 applications for a Certificate of Need with the de-
5 partment under these rules and after the department
6 had submitted a set of detailed follow-up questions
7 to the applicants, Public Law 1987, chapter 482, "AN
8 ACT to Afford Consumer Protection in Retirement Com-
9 munities which Offer Continuing Care," went into ef-
10 fect; and

11 Whereas, requiring the Certificate of Need demon-
12 stration project applicants to comply with Public Law
13 1987, chapter 482, in addition to the certificate of
14 need demonstration project rules would cause delay
15 and prohibit collection of deposits in an amount nec-
16 essary to establish the viability of a market for the
17 demonstration project, which would not permit the
18 demonstration project to go forward, a result totally
19 contrary to the purpose and intent of the certificate
20 of need demonstration project; and

21 Whereas, certain specific provisions of Public
22 Law 1987, chapter 482, were found to create practical
23 problems and were in need of adjustment in order to
24 reasonably accomplish the goals of the legislation
25 while permitting the demonstration project to go for-
26 ward; and

27 Whereas, in the judgment of the Legislature,
28 these facts create an emergency within the meaning of
29 the Constitution of Maine and require the following
30 legislation as immediately necessary for the preser-
31 vation of the public peace, health and safety; now,
32 therefore,

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

35 Sec. 1. 24-A MRSA §6203, sub-§3, ¶A, as enacted
36 by PL 1987, c. 482, §1, is amended to read:

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

- 1 (1) The provider shall furnish the prospec-
2 tive subscriber a signed receipt stating
3 that:
- 4 (a) The deposit, with interest earned
5 on it, will be refunded in full if:
- 6 (i) The preliminary or final cer-
7 tificate of authority is not
8 granted or if the continuing care
9 retirement community does not be-
10 come operational;
- 11 (ii) The prospective subscriber
12 requests a refund for any reason;
13 or
- 14 (iii) The provider determines
15 that the subscriber is ineligible
16 for entrance into the facility be-
17 cause of the subscriber's physi-
18 cal, mental or financial condi-
19 tion;
- 20 (b) There is a nonrefundable applica-
21 tion fee and the amount of that fee;
22 and
- 23 (c) Neither the continuing care agree-
24 ment nor the disclosure statement has
25 been approved by the superintendent and
26 both are subject to change;
- 27 (2) At least 10 days prior to collecting an
28 initial deposit, the provider shall furnish
29 the prospective subscriber:
- 30 (a) A copy of the proposed continuing
31 care agreement;
- 32 (b) A copy of the proposed disclosure
33 statement described in section 6209;
- 34 (c) An unsigned copy of the receipt
35 described in subparagraph (1); and
- 36 (d) A copy of the escrow agreement re-
37 quired by paragraph E; and

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

4 Sec. 2. 24-A MRSA §6203, sub-§3, ¶B, as enacted
5 by PL 1987, c. 482, §1, is amended to read:

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

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

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

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

21 (c) The provider will refund the pro-
22 spective subscriber's deposit in full
23 with interest earned on it:

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

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

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

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is paid and the agreement as finally approved by the superintendent;

(iv) In the event of the death of the prospective subscriber prior to the execution of the continuing care agreement, unless the surviving spouse is also a prospective subscriber and still wishes to occupy the unit; or

(v) If the provider determines that the subscriber is ineligible for entrance into the facility because of the subscriber's physical, mental or financial condition;

(d) The provider will refund the deposit, ~~minus a processing fee not to exceed 1% of the entrance fee~~ without interest, if the community becomes operational and the subscriber chooses not to join for any reason other than that listed in division (c), ~~subdivision (iii)~~; and

(e) There is a nonrefundable application fee and the amount of that fee; and

(2) At least 10 days prior to collecting a preliminary deposit, the provider shall furnish the prospective subscriber:

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

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

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

(d) A copy of the escrow agreement required by paragraph E.

1 Sec. 3. 24-A MRSA §6203, sub-§3, ¶C, as enacted
2 by PL 1987, c. 482, §1, is amended to read:

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

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

10 (a) The provider will refund the de-
11 posit, ~~minus a processing fee not to~~
12 ~~exceed 1% of the entrance fee~~ without
13 interest, if the subscriber chooses not
14 to join for any reason;

15 (b) The provider will refund the de-
16 posit ~~in full~~ with interest earned on
17 it:

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

25 (ii) If the provider determines,
26 prior to occupation by the sub-
27 scriber, that the subscriber is
28 ineligible for entrance into the
29 facility because of the subscri-
30 ber's physical, mental or financial
31 condition; and

32 (c) There is a nonrefundable applica-
33 tion fee and the amount of that fee;
34 and

35 (2) At least 10 days prior to collecting a
36 deposit, the provider shall furnish the pro-
37 spective subscriber:

38 (a) A copy of the continuing care
39 agreement;

1 (b) A copy of the disclosure statement
2 described in section 6209;

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

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

8 **Sec. 4. 24-A MRSA §6203, sub-§3, ¶E, as enacted**
9 **by PL 1987, c. 482, §1, is amended to read:**

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. When a sub-
22 scriber's deposit and interest earned on it are
23 applied, the interest shall be credited to reduce
24 the unpaid portion of that subscriber's entrance
25 fee.

26 **Sec. 5. 24-A MRSA §6210, sub-§2, as enacted by**
27 **PL 1987, c. 482, §1, is amended to read:**

28 2. Termination by the subscriber. If, prior to
29 the subscriber occupying a unit or within one year
30 after that date, the subscriber dies and does not
31 have a surviving spouse who is also a subscriber and
32 who still wishes to occupy the unit, or the subscri-
33 ber elects to terminate the continuing care agreement
34 for any reason, the subscriber or the subscriber's
35 legal representative shall receive within 30 days a
36 refund of all money paid to the provider without
37 interest, except:

38 A. Those special additional costs incurred by
39 the provider due to modifications in the struc-

1 ture or furnishings of the unit specifically re-
2 quested by the subscriber and set forth in writ-
3 ing in a separate addendum to the agreement and
4 signed by the subscriber;

5 B. In the case of the death of the subscriber, a
6 ~~processing fee not to exceed 1% of the entrance~~
7 ~~fee~~ interest earned upon funds in escrow;

8 C. The application fee;

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

11 E. Costs to the provider of repairing damage
12 caused by the subscriber to the subscriber's
13 unit, other than reasonable wear and tear to the
14 unit.

15 This subsection shall not be construed in a manner
16 inconsistent with the real estate interest acquired
17 by the purchaser of a condominium.

18 **Sec. 6.** 24-A MRSA §6210, sub-§3, ¶B, as enacted
19 by PL 1987, c. 482, §1, is amended to read:

20 B. A refund of all money paid by the subscriber,
21 ~~minus plus interest earned on escrowed funds~~
22 shall be refunded, less an application fee not to
23 exceed \$100 \$500, is made at the time the agree-
24 ment is terminated.

25 **Sec. 7.** 24-A MRSA §6226 is enacted to read:

26 §6226: Continuing Care Retirement Community - Cer-
27 tificate of Need Demonstration Project

28 The following provisions apply to applicants
29 seeking to obtain a Certificate of Need from the de-
30 partment for the first Continuing Care Retirement
31 Community Demonstration Project, pursuant to Title
32 22, chapter 103, and the Demonstration Project Rules
33 as adopted by the department on April 16, 1987.

34 1. Intitial deposits. The \$1,000 limit on the
35 initial deposit contained in section 6203, subsection
36 3, paragraph A, shall not apply after the stage of

1 the Certificate of Need application procedure when
2 the department has, in writing, deemed the applica-
3 tion complete. After the disclosure statement, the
4 escrow agreement, the receipt and the continuing care
5 agreement have been reviewed on a preliminary basis
6 by the department's Certificate of Need staff, the
7 department shall forward the documents with recommen-
8 dations, if any, to the superintendent. All provi-
9 sions of section 6203, including approval of the re-
10 ceipt and the escrow agreement by the superintendent
11 remain applicable. Thereafter the limit on deposits
12 that may be collected shall not exceed an amount
13 equal to 10% of the entrance fee. Following issuance
14 by the department of a Certificate of Need, any un-
15 successful applicant for the first demonstration
16 project shall refund amounts collected from subscrib-
17 ers with interest earned thereon pursuant to this
18 chapter. The refunds shall be made no later than 10
19 days after notification by the department to the un-
20 successful applicant unless the unsuccessful appli-
21 cant appeals the decision of the department as pro-
22 vided by Title 22, chapter 103. If the applicant ap-
23 peals and the appeal is denied, then refunds shall be
24 made no later than 10 days after notification of the
25 denial.

26 2. Exception. Except as specifically addressed
27 in this section, all other requirements of this chap-
28 ter shall apply.

29 Emergency clause. In view of the emergency cited
30 in the preamble, this Act shall take effect when ap-
31 proved.

1 STATEMENT OF FACT

2 One of the applicants seeking a demonstration
3 project Certificate of Need for a continuing care re-
4 tirement community pursuant to regulations adopted on
5 April 16, 1987, by the Department of Human Services,
6 will, if a Certificate of Need is issued, attempt to
7 develop the first community of this type in the
8 State. Although there is one other facility in the
9 State that already offers continuing care, that fa-
10 cility does not, like the demonstration project, in-
11 clude a health center that is an integral part of the
12 community itself.

13 The Certificate of Need Demonstration Project is
14 governed by Certificate of Need rules that overlap
15 with the provisions of Public Law 1987, chapter 482.
16 The costs of developing the project will increase if
17 the collection of deposits in an amount necessary to
18 establish the viability of the market for the Contin-
19 uing Care Retirement Community Demonstration Project
20 in Maine is prohibited, therefore making it less
21 likely that the demonstration project will be devel-
22 oped at all, even once the Certificate of Need has
23 been issued.

24 This new draft amends the Maine Revised Statutes,
25 Title 24-A, section 6203, subsection 3, paragraph A,
26 to permit the demonstration project applicants to
27 collect not more than 10% of the entry fee after each
28 has filed an application for a Certificate of Need
29 which has been found to be complete by the depart-
30 ment. This would be permitted prior to issuance of a
31 preliminary Certificate of Authority by the Bureau of
32 Insurance. This new draft enables the demonstration
33 project applicants, as well as the State, to verify
34 the existence of a sufficient market for a continuing
35 care retirement community in this State.

36 Certain other adjustments are made to the govern-
37 ing law which represent refinements of the require-
38 ments generally applicable to continuing care retire-
39 ment communities.

40 This new draft provides that a subscriber's de-
41 posit must be refunded with interest should the fa-

1 cility not open. Such revisions impact the terms
2 contained in subscriber contracts and other agree-
3 ments and must be changed on an emergency basis so
4 that these documents can be modified and put into use
5 without the need to change significant terms.

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