

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 186

S.P. 120

In Senate, February 15, 1989

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 24.

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

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator COLLINS of Aroostook.

Cosponsored by Senator THERIAULT of Aroostook, Representative ALLEN of Washington and Representative MARSANO of Belfast.

STATE OF MAINE

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

An Act to Amend the Continuing Care Retirement Law.



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

3 **Sec. 1. 24-A MRSA §6201, sub-§§11 and 13,** as enacted by PL
5 1987, c. 482, §1, are amended to read:

7 **11. Operational facility.** "Operational facility" means a
9 facility for which the provider has obtained a final certificate
11 of authority from the superintendent and--60% , 70% of the
 residential units are occupied by subscribers and all other
 relevant health, safety and building code rules, regulations and
 laws have been satisfied.

13 **13. Provider.** "Provider" means the corporate entity which
15 is the owner of an institution, building, residence or other
17 place, whether operated for profit or not, in which the owner
19 undertakes to provide continuing care. If the facility is owned
 by the subscribers, then "provider" means the operator of the
 facility. Subscribers may organize condominiums or consumer
 cooperatives subject to Title 13, chapter 85, subchapter I.

21 **Sec. 2. 24-A MRSA §6201, sub-§14-A** is enacted to read:

23 **14-A. Residential unit.** "Residential unit" means an
25 apartment, room or other area within a facility set aside for the
 exclusive use of one or more identified subscribers.

27 **Sec. 3. 24-A MRSA §6202, sub-§§3 and 4,** as enacted by PL 1987,
29 c. 482, §1, are amended to read:

31 **3. Kinds of communities.** There shall be 2 types kinds of
 ~~certificates-of-authority~~ communities.

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

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

43 (2) The maintenance fee shall not increase, regardless
45 of the level of services provided or a change in
 accommodations, with the following exceptions:

47 (a) Annual increases in the maintenance fee
49 applicable to all subscribers; and

51 (b) Any increase in the maintenance fee
 applicable to a specific subscriber resulting from
 the voluntary selection of an optional service by

1 that subscriber. An optional service is a service
3 or change in accommodations which is not required
5 to be offered in order to qualify for
certification as a life-care community under the
department's rules;

7 (3) With the exception of maintenance fees and
9 insurance premiums, neither the subscriber nor any 3rd
11 party, other than the subscriber's insurer, shall be
liable for the cost of health care or supportive
13 services other than optional services as defined in
subparagraph (2); and

15 (4) The provider shall continue to provide full and
lifetime health care, supportive services and shelter
17 without diminution to a subscriber who has not
intentionally depleted his the subscriber's resources.

19 B. A provider offering a continuing care agreement which
does not qualify for certification as a life-care community,
21 as defined in paragraph A, shall be certified as a
continuing care retirement community if it complies with the
23 other applicable provisions of this chapter.

25 4. Reasonable time to comply. Any provider who which is
providing continuing care when this chapter takes effect shall be
27 given a reasonable time to comply with this chapter and the rules
promulgated pursuant to this chapter, but not later than one-year
29 after the effective date of this chapter October 1, 1990. Any
provider not operating as a corporation within the meaning of the
31 Maine Business Corporation Act, Title 13-A, or the Maine
Nonprofit Corporation Act, Title 13-B, may continue to do so up
33 until the time, if any, that the provider discontinues
operation. If the provider wishes to resume operations after
35 October 1, 1990, it must do so as a corporation within the
meaning of Title 13-A or Title 13-B, but that resumption shall
37 not be deemed a continuation of any prior business form.

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

41 B. The provider has submitted an application in duplicate
43 to the superintendent. The superintendent shall immediately
forward one copy to the department. The application shall
45 consist of the following items:

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

49 (2) A copy of the disclosure statement required by
51 section 6209;

1 (3) Financial statements of current origin prepared in
2 accordance with generally accepted accounting
3 principles showing the provider's assets, liabilities
4 and surplus position. These financial statements shall
5 include as supplementary data a description of the
6 sources of financial support. A copy of the provider's
7 most recent regular certified financial statement shall
8 be deemed to satisfy this requirement, unless the
9 superintendent directs that additional or more recent
10 financial information is required for the proper
11 administration of this chapter. The requirement of
12 this subparagraph shall also apply to other continuing
13 care retirement communities to the extent those other
14 communities provide financial support to, or share
15 common management with, the continuing care retirement
16 community seeking permission to operate under this
17 section;

18 (4) A copy of the basic organizational document of the
19 provider such as articles of incorporation, articles of
20 agreement, certificate of organization or incorporation
21 or charter and all amendments thereto;

22 (5) A copy of the provider's bylaws, certified by the
23 corporate secretary;

24 (6) A list of the names and addresses of stockholders
25 and the--official--positions--held--by those persons who
26 are hold official positions responsible for the conduct
27 of the affairs of the provider, including:

28 (a) All members of the board of directors; and

29 (b) Principal officers, ; and

30 (c) Persons having a 10% or greater equity or
31 beneficial interest in the provider.

32 Those responsible persons shall consent to the
33 performance of a credit investigation report to be
34 performed by a recognized and established independent
35 investigation and reporting agency. The cost of any
36 such these reports shall be paid by or on behalf of the
37 provider upon the request of the superintendent. The
38 superintendent shall keep confidential the contents of
39 any such report;

40 (7) A description of any action within the past 10
41 years for which the provider or any of the persons
42 described in subparagraph (6):

43

- 1 (a) Is presently under indictment or has been
3 convicted of a Class A, B, C or D crime that
5 relates to the business activities, including
health care activities of the provider or that
person; or
- 7 (b) Has had any state or federal license or
9 permit related to the business activities,
including health care activities of the provider
11 or that person, suspended or revoked as a result
of an action brought by a governmental agency or
13 department;
- 15 (8) All principal officers and directors of the
17 provider shall disclose in statements attested under
oath any real or potential conflict of interest. This
19 disclosure shall extend to provider - management
relationships, although such relationships may be a
21 part of the operational plan. Any employment contracts,
deferred compensation contracts or other pecuniary
interests shall be listed in this regard;
- 23 (9) A copy of any management agreement between the
25 provider and the person or persons responsible for the
daily management of the facility, if other than the
27 provider;
- 29 (10) All contracts executed by the provider with 3rd
parties which provide for the performance of health
31 care or supportive services for the benefit of
subscribers;
- 33 (11) A descriptive statement of the provider's
35 proposed operation, including an organizational chart
setting out the position classifications of personnel
37 responsible for health care and administration;
- 39 (12) Proof of fidelity bonding of all individuals who
41 handle the funds of continuing care retirement
communities. The actual amount of the fidelity bonding
43 required will be determined by the superintendent, but
the face amount of the bond may not be less than
\$100,000;
- 45 (13) A description of the proposed method of marketing
47 the plan for continuing care and a copy of any market
research study performed;
- 49 (14) A copy of all advertising materials;

1 (15) A description of the mechanism by which
3 subscribers will be afforded participation in policy
matters of the organization;

5 (16) A description of the procedures developed by the
7 provider to ~~provide--for--the--resolution--of~~ resolve
complaints initiated by subscribers concerning health
9 care services and general operating procedures;

11 (17) A power of attorney duly executed by the
13 provider, if not domiciled in the State, appointing the
superintendent as the agent for service of process in
any legal action brought;

15 (18) An actuarial study, certified by an actuary,
17 demonstrating that the anticipated revenues and other
available financial resources will be sufficient to
19 provide the services promised by the contract and
indicating the method by which the reserve required by
21 section 6215 will be calculated;

23 (19) A demonstration of the provider's ability to
25 respond to claims for malpractice, employer's
liability, workers' compensation coverages and all
27 property and liability insurance relating to the
facility, including fidelity bonds;

29 (20) Examined pro forma projected financial statements
of the provider for the coming 10 years, including
31 notes of those statements, presented in conformity with
guidelines for forecasting as prescribed by the
33 American Institute of Certified Public Accountants. The
projection shall contain an estimate of funds deemed
necessary to cover start-up costs. The statements
35 shall include a narrative description of the basis of
assumptions utilized and supporting actuarial
37 utilization statistics relied upon in presenting pro
forma projections. The statement shall also include a
professional biography of the person or persons
preparing the statement. The biography shall include a
summation of relevant experience the person or persons
have in performing similar projections of other
continuing care retirement communities.

45 To the extent actuarial assumptions, reserving
methodologies, revenue recognition and pricing
considerations contained in the actuarial study are
relied upon in the presentation of pro forma financial
projections, the person or persons producing the
projections shall render an opinion, in conformity with
generally accepted accounting principles, whether the
pro forma forecast fairly represents the continuing
care

1 retirement community's earnings and financial position;

3 (21) A copy of any application form which prospective
5 subscribers will be required to complete;

7 ~~(22)--A copy of the receipt described in subsection 3,~~
8 ~~paragraph A, subparagraph (1);~~

9 (23) A copy of the preliminary deposit agreement
11 described in subsection 3, paragraph B, subparagraph
12 (1); and

13 (24) A copy of the escrow agreement described in
14 subsection 3, paragraph E.

15 **Sec. 5. 24-A MRSA §6203, sub-§1, ¶D**, as enacted by PL 1987, c.
17 482, §1, is amended to read:

19 D. The superintendent has approved the application form,
20 escrow agreement and the preliminary deposit agreement.

21 **Sec. 6. 24-A MRSA §6203, sub-§2, ¶C-1** is enacted to read:

23 C-1. The superintendent is satisfied that the aggregate
25 amount of entrance fees received by or pledged to the
26 provider, plus anticipated proceeds from any long-term
27 financing commitment, plus funds from all other sources in
28 the actual possession of the provider, equals not less than
29 100% of the aggregate cost of constructing or purchasing,
30 equipping and furnishing the facility plus 100% of the
31 anticipated start-up costs of the facility;

33 **Sec. 7. 24-A MRSA §6203, sub-§2, ¶D**, as enacted by PL 1987, c.
34 482, §1, is amended to read:

35 D. The superintendent has determined that the provider's
37 continuing care agreement meets the requirements of section
38 6206, subsection 3, and the rules promulgated in pursuant to
39 this chapter;

41 **Sec. 8. 24-A MRSA §6203, sub-§2, ¶G**, as enacted by PL 1987, c.
42 482, §1, is amended to read:

43 G. The provider certifies to the superintendent that
45 preliminary continuing care agreements have been entered and
46 deposits received from subscribers with respect to 60% 70%
47 of the residential units, including names and addresses of
48 those subscribers.

49 **Sec. 9. 24-A MRSA §6203, sub-§3, ¶A**, as amended by PL 1987, c.
51 563, §1, is repealed.

1 Sec. 10. 24-A MRSA §6203, sub-§3, ¶B, as amended by PL 1987, c.
2 563, §2, is further amended to read:

3
4 B. A provider who has been issued a preliminary certificate
5 of authority may advertise, solicit and collect deposits,
6 ~~not to exceed 10% of the entrance fee,~~ provided that:

7 (1) The provider ~~shall~~ furnishes the
8 prospective subscriber a signed deposit agreement
9 stating that:

10 (a) The provider has a preliminary certificate of
11 authority and the deposit is received subject to
12 the issuance by the superintendent to the provider
13 of a final certificate of authority;

14 (b) Both the proposed continuing care agreement
15 and the disclosure statement are subject to
16 change;

17 (c) The provider will refund the prospective
18 subscriber's deposit with interest earned on it:

19 (i) Within one month of notification of the
20 superintendent's decision not to issue the
21 final certificate of authority;

22 (ii) At the request of the prospective
23 subscriber any time 3 years or more after the
24 deposit was paid, if the community has not
25 become operational;

26 (iii) If the prospective subscriber requests
27 a refund due to a material difference between
28 the proposed continuing care agreement
29 furnished at the time the deposit is paid and
30 the agreement as finally approved by the
31 superintendent;

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

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

1 (d) The provider will refund the deposit, without
3 interest, or the deposit with interest minus 2% of
5 the deposit, whichever is less, if the community
7 becomes operational and the subscriber chooses not
to join for any reason other than that those
listed in division (c); and

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

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

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

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

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

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

27 Sec. 11. 24-A MRSA §6203, sub-§3, ¶C, as amended by PL 1987, c.
29 563, §3, is further amended to read:

31 C. ~~--After the community is operational, the provider may~~
33 ~~advertise, solicit and collect deposits, not to exceed 10%~~
~~of the entrance fee, provided that~~ When an operational
community collects deposits:

35 (1) The provider shall furnish the prospective
37 subscriber a signed deposit agreement stating that:

39 (a) The provider will refund the deposit, without
41 interest, or the deposit with interest minus 2% of
43 the deposit, whichever is less, if the subscriber
chooses not to ~~join~~ execute the continuing care
agreement for any reason other than those listed
in division (b);

45 (b) The provider will refund the deposit with
47 interest earned on it:

49 (i) In the event of the death of the
51 prospective subscriber prior to the execution
of the final continuing care agreement,
unless the surviving spouse is also a

- 1 subscriber and still wishes to occupy the
unit; or
- 3 (ii) If the provider determines, prior to
5 occupation by the subscriber, that the
7 subscriber is ineligible for entrance into
the facility because of the subscriber's
physical, mental or financial condition; and
- 9 (c) There is a nonrefundable application fee and
11 the amount of that fee; and
- 13 (2) At least 10 days prior to collecting a deposit,
the provider shall furnish the prospective subscriber:
- 15 (a) A copy of the continuing care agreement;
- 17 (b) A copy of the disclosure statement described
19 in section 6209;
- 21 (c) An unsigned copy of the deposit agreement
described in subparagraph (1); and
- 23 (d) A copy of the escrow agreement required by
25 paragraph E.

27 Sec. 12. 24-A MRSA §6203, sub-§3, ¶D, as enacted by PL 1987, c.
482, §1, is amended to read:

- 29 D. At the time the prospective subscriber first makes an
31 initial, ~~preliminary or other~~ a deposit, the provider may
also collect a nonrefundable application fee not to exceed
33 \$500.

35 Sec. 13. 24-A MRSA §6203, sub-§3, ¶E, as amended by PL 1987, c.
563, §4, is further amended to read:

- 37 E. Any deposit must be deposited to an interest-bearing
39 escrow account. The escrow agreement establishing the terms
of deposit of funds shall be filed with and approved by the
41 superintendent prior to collection of funds. The provider
shall furnish the superintendent with documentation of the
43 name of the institution with which the provider has
established the escrow account and the account number. The
45 ~~escrowed money shall not be applied until a final~~
~~certificate of authority has been issued, the facility is~~
47 ~~operational and the subscriber has occupied the unit. When a~~
~~subscriber's deposit and interest earned on it are applied,~~
49 ~~the interest shall be credited to reduce the unpaid portion~~
51 ~~of that subscriber's entrance fee.~~

1 (1) Up to 25% of the escrowed entrance fees may be
3 included or pledged as security for the facility's
 construction or purchase upon proof, satisfactory to
5 the superintendent, that:

7 (a) The provider has reserved, pursuant to
 written agreements with the subscribers, not less
9 than 60% of the facility's residential units and
 deposits taken represent not less than 10% of each
11 subscriber's entrance fee;

13 (b) The subscriber has agreed in a deposit
 agreement to the forfeiture of an amount equal to
15 the greater of 2% of, or interest earned on, the
 entrance fee collected by the provider pursuant to
17 the preliminary certificate of authority, if the
 reservation is terminated after 30 days for
19 reasons other than those listed in paragraph B,
 subparagraph (1), division (c); and

21 (c) An application for a final certificate of
 authority had been filed with the superintendent
23 which the superintendent has certified in writing
 to be complete.

25 (2) Not less than 75% of the entrance fees collected
27 by the provider from prospective subscribers shall be
 deposited to an interest-bearing escrow account. Those
29 funds may be applied or pledged to the facility's
 construction or purchase upon proof, satisfactory to
31 the superintendent, that:

33 (a) Payments representing the full entrance fee
 of executed continuing care agreements relating to
35 not less than 70% of the residential units
 selected by subscribers have been received;

37 (b) The facility is operational within the
39 meaning of section 6201, subsection 11;

41 (c) The escrowed liquid reserves required by
 section 6215, subsections 2 to 4 have been
43 established; and

45 (d) At least 10% of all initial entrance fees
 collected shall remain in the escrow account for a
47 period of 6 months from the date the facility
 becomes operational, during which time these funds
49 shall be released only for the refund of entrance
 fees due because of the cancellation of a contract.
51

1 (3) When a subscriber's deposit is applied, the
3 interest which has been earned on it shall be credited
5 to reduce any unpaid portion of that subscriber's
 entrance fee or refunded to the subscriber.

7 Sec. 14. 24-A MRSA §6203, sub-§3, ¶F, as enacted by PL 1987, c.
 482, §1, is repealed.

9 Sec. 15. 24-A MRSA §6203, sub-§3, ¶G is enacted to read:

11 G. In lieu of fulfilling the requirements in paragraph E,
13 subparagraph (2), the provider may have sufficient funds in
15 the escrow account to meet all outstanding debts on the
17 facility and equipment. The superintendent may authorize
19 the release of those funds to retire all outstanding debts
21 on the facility and equipment upon application of the
23 provider and upon the provider's showing that the provider
 will grant to the subscriber a first mortgage on the land,
 buildings and equipment that constitute the facility. The
 mortgage shall secure the refund of the entrance fee in the
 amount required by this chapter. The granting of the
 mortgage shall be subject to the following.

25 (1) The first mortgage shall be granted to a trust
27 which is beneficially held by the subscribers. The
29 mortgage shall secure payment on bonds issued to the
31 subscribers. The bonds shall be redeemable after
 termination of the residency agreement in the amount
 and manner required by this chapter for the refund of
 an entrance fee.

33 (2) Before granting a first mortgage to the
35 subscriber, all construction must be substantially
37 completed and substantially all equipment purchased.
 No part of the entrance fees may be pledged as security
 for a construction loan or otherwise used for
 construction expenses before the completion of
 construction.

41 (3) If the provider is leasing the land or buildings
43 used by the facility, the leasehold interest must be
 for a term of at least 30 years.

45 (4) Notwithstanding the provisions of this paragraph,
47 liquid operating reserves, pursuant to section 6215,
 subsection 2, shall be established and maintained under
 escrow conditions.

49 Sec. 16. 24-A MRSA §6203-A is enacted to read:

51 §6203-A. Escrow account

1 1. Deposit of funds. When funds are required to be
2 deposited in an escrow account pursuant to section 6203, the
3 following shall apply.

5 A. The escrow account shall be established in a bank or
6 trust company authorized to do business in this State within
7 the meaning of Title 9-B, section 131, subsection 2 and
8 acceptable to the superintendent. The funds deposited in
9 the escrow account shall be kept and maintained in an
10 account separate from the provider's business accounts.

11 B. An escrow agreement shall be entered into between the
12 bank or trust company and the provider of the facility. The
13 agreement shall state that its purpose is to protect the
14 subscriber or the prospective subscriber. Upon presentation
15 of evidence to the superintendent of compliance with
16 applicable portions of this chapter, or upon order of a
17 court of competent jurisdiction, the escrow agent shall
18 release and pay over the funds or portions of the funds,
19 together with any interest accrued on the funds or earned
20 from investment of the funds, to the provider or subscriber
21 as directed.

23 C. When funds are received from a prospective subscriber,
24 the provider shall deliver to the subscriber a copy of the
25 executed deposit agreement. The deposit agreement shall
26 show the payor's name and address, the date, the price of
27 the care agreement and the amount of money paid. A copy of
28 each agreement together with the funds shall be deposited
29 with the escrow agent.

31 D. Checks, drafts and money orders for deposit from
32 prospective subscribers shall be made payable only to the
33 escrow agent. At the request of a prospective subscriber of
34 a facility, the escrow agent shall issue a statement
35 indicating the status of the subscriber's portion of the
36 escrow account.

39 E. All funds deposited in the escrow account shall remain
40 the property of the subscriber until released to the
41 provider in accordance with this chapter. The funds shall
42 not be subject to any liens or charges by the escrow agent
43 or judgments, garnishments or creditor's claims against the
44 provider or facility.

47 F. At the request of either the provider or the
48 superintendent, the escrow agent shall issue a statement
49 indicating the status of the escrow account.

51 G. When the provider of a facility receives a certificate
52 of authority from the superintendent, as required by section
53 6203, subsection 2, the escrow agent, upon receiving

1 authorization from the superintendent, shall release to the
3 provider the amount of escrowed funds received from
5 prospective subscribers and deposited in the account while
the provider was operating under a preliminary certificate
of authority.

7 2. Reserve funds. Reserve funds required to be held in
9 escrow under section 6215 shall be invested in accordance with
rules promulgated pursuant to section 6219.

11 3. Agreement. Any agreement establishing an escrow account
13 required under the provisions of this chapter shall be subject to
15 approval by the superintendent. The agreement shall be in
writing and contain, in addition to any other provisions required
by law, a provision by which the escrow agent agrees to abide by
the duties imposed under this section.

17 4. Monthly statement; withdrawal of funds. The agreement
19 shall require that the escrow agent furnish the provider with a
21 monthly statement indicating the amount of any disbursements from
23 or deposits to the escrow account and the condition of the
25 account during the monthly period covered by the statement. On
or before the 20th day of the month following the month for which
the monthly statement is due, the provider shall file with the
superintendent a copy of the escrow agent's monthly statement.

27 The escrow agent or the escrow agent's designee and the provider
29 shall notify the superintendent in writing 10 days before the
31 withdrawal of any portion of any funds required to be escrowed
33 under the provisions of this chapter. In the event of an
emergency and upon petition by the provider, the superintendent
may waive the 10-day notification period and allow a withdrawal
of up to 10% of the required minimum liquid reserve.

35 Sec. 17. 24-A MRSA §6205, sub-§1, ¶¶I and J, as enacted by PL
37 1987, c. 482, §1, are amended to read:

39 I. The provider has submitted false financial statements,
organizational statements or documents; or

41 J. The provider has otherwise failed to substantially
43 comply with this chapter or any rules issued by the
superintendent or the department pursuant to this chapter; or
45 or

47 Sec. 18. 24-A MRSA §6205, sub-§1, ¶K is enacted to read:

49 K. The provider has misappropriated funds or otherwise
51 breached the terms of a deposit agreement to the detriment
of a subscriber.

1 **Sec. 19. 24-A MRSA §6210, sub-§2, ¶D**, as enacted by PL 1987, c.
482, §1, is amended to read:

3 D. A maximum of ~~1%~~ 2% of the entrance fee for each month of
5 occupancy, if any; and

7 **Sec. 20. 24-A MRSA §6215**, as enacted by PL 1987, c. 482, §1,
is repealed and the following enacted in its place:

9 **§6215. Reserves**

11 Each provider shall maintain reserves in accordance with the
13 requirements of this section.

15 1. Reserve liabilities; actuarial valuation. Each provider
17 shall establish and maintain reserve liabilities which shall
19 place a sound value on its liabilities under its contracts with
21 subscribers. The reserve shall equal the excess of the present
23 value of future benefits promised under the continuing care
25 agreement over the present value of future revenues and any other
27 available resources, based on conservative actuarial assumptions.
29 The superintendent shall annually make or cause to be made an
31 actuarial valuation of the continuing care retirement community
 as a condition for renewal of the certificate of authority. The
 valuation shall be accompanied by the opinion of a qualified
 actuary that, based on reasonable assumptions and with margins
 specified in this section, the continuing care retirement
 community's assets, including the present value of future
 maintenance fees and any other available resources are at least
 equal to liabilities and any contingency reserves.

33 A. The liabilities of a continuing care retirement
 community shall include, but not be limited to:

35 (1) An amount equal to the present value of future
37 health care expenses guaranteed pursuant to the
 continuing care contract; and

39 (2) The liabilities under this section shall be
41 calculated for the continuing care retirement
43 community population existing on the valuation date
45 under assumptions which, in the actuary's opinion,
 fairly represent the expected value of future costs and
 population decrements adjusted by the margins specified
 in paragraph B.

47 B. Margins required to be included in the valuation
49 assumptions to be added to the actuary's best estimate
 assumptions are as follows.

51 (1) Health care costs per resident or per health care
 facility bed shall be assumed to increase at a rate at

- 1 least one percentage point higher than the general
2 inflation rate.
- 3
- 4 (2) A mortality margin of 5% shall be subtracted from
5 that assumed for active residents and 10% subtracted
6 from those in the health care facilities.
- 7
- 8 (3) A health care utilization margin of 5% shall be
9 added to the assumed rates at which residents require
10 permanent transfer to a health care facility.
- 11
- 12 (4) The discount rate used to calculate present values
13 shall be no more than 2 1/2 percentage points higher
14 than the rate used in the valuation of long-term life
15 insurance contracts to be issued in the year of
16 valuation in this State.
- 17
- 18 (5) All other assumptions shall include margins which
19 are adequate in the opinion of the actuary.

20 The superintendent may adopt reasonable rules further defining
21 the standards contained in this section.

22

23 2. Reserve for mortgage debt. Each provider shall maintain
24 in escrow a minimum liquid reserve in an amount equal to the
25 aggregate amount of all principal and interest payments due
26 during the fiscal year on any mortgage loan or other long-term
27 financing of the facility, including taxes and insurance, and all
28 leasehold payments and related costs. If principal payments are
29 not due during the fiscal year, the provider shall maintain in
30 escrow as a minimum liquid reserve an amount equal to interest
31 payments due during the next 18 months on any mortgage loan or
32 other long-term financing of the facility, including taxes and
33 insurance.

34

35 3. Operating reserve. Each provider shall maintain in
36 escrow an operating reserve in an amount equal to 30% of the
37 total operating costs projected for the first 12 months of
38 operation. Thereafter, each provider shall maintain in escrow an
39 operating reserve in an amount equal to 30% of the total
40 operating costs projected for the 12-month period following the
41 period covered in the most recent annual statement. The
42 projected revenue and expense summary required under section
43 6223, subsection 1-A shall serve as the basis for computing the
44 operating reserve.

45

46 4. Extensive health care guarantee. Each provider which
47 offers an extensive health care guarantee shall maintain an
48 operating reserve in an amount equal to 40% of the total
49 operating costs projected for 12 months of operation. The
50 projected revenue and expense summary required under section
51 6223, subsection 1-A shall serve as the basis for computing the

1 operating reserve. For the purposes of this subsection, the term
2 "extensive health care guarantee" means a term in the continuing
3 care agreement requiring the provision of health care to the
4 subscriber on a prepaid basis for more than one year.

5 5. Fewer than all tenants under continuing care
6 agreements. In facilities where not all tenants are under
7 continuing care agreements, the reserve requirements of
8 subsections 3 and 4 shall be computed only with respect to the
9 proportional share of operating expenses that is applicable to
10 subscribers.

11 6. Trust payments; waiver of escrow requirements. When
12 principal and interest payments are paid to a trust which is
13 beneficially held by the subscribers as described in section
14 6203-A, the superintendent may waive all or any portion of the
15 escrow requirements for mortgage principal and interest contained
16 in subsection 2 if the superintendent finds that a waiver is
17 consistent with the security protections intended by this chapter.

18 7. Extension of time. The superintendent, upon approval of
19 a plan for fulfilling the requirements in subsections 2 to 4 and
20 upon demonstration by the facility of an annual increase in
21 liquid reserves, may extend the time for compliance.

22 Sec. 21. 24-A MRSA §6223, sub-§1, as enacted by PL 1987, c.
23 482, §1, is amended to read:

24 1. Financial statements. Financial statements of the
25 provider, including, as a minimum, a balance sheet, income
26 statement and a statement of changes in financial position,
27 presented in conformance with generally accepted accounting
28 principles and certified by an independent certified public
29 accountant, and including notes to the financial statements
30 considered customary or necessary to full disclosure or adequate
31 understanding of the financial statements, financial condition
32 and operation;

33 Sec. 22. 24-A MRSA §6223, sub-§1-A is enacted to read:

34 1-A. Financial information. The following financial
35 information:

36 A. A listing of the assets maintained in the liquid reserve
37 required in section 6215;

38 B. The level of participation in Medicare or Medicaid
39 programs, or both;

40 C. Other reasonable data, financial statements and
41 pertinent information the superintendent may require with
42 respect to the provider or the facility, or its directors,

1 trustees, members, branches, subsidiaries or affiliates, to
3 determine the financial status of the facility and the
management capabilities of its managers and owners; and

5 D. A computation of the annual long-term debt service and a
7 projected annual revenue and expense summary, on a form
prescribed by the superintendent. This projection shall
9 serve as the basis for determining the amount of the minimum
liquid reserve required by section 6215;

11

STATEMENT OF FACT

13

15 This bill would institute definitive reserving standards for
17 continuing care retirement communities and coordinate the
19 responsibilities of agencies of State Government to avoid
21 duplicative regulatory procedures for applicant continuing care
23 retirement communities. Changes to existing law would maintain
adequate public protection while facilitating review of the
application. The bill also permits providers to utilize a larger
portion of the entrance fees. This would enhance the development
of continuing care retirement communities which in the past may
not have been constructed.