

# MAINE STATE LEGISLATURE

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L.D. 919

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DATE: May 30, 1995

(Filing No. S- 194 )

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**BANKING AND INSURANCE**

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Reported by: Senator ABROMSON of Cumberland for the Committee.

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Reproduced and distributed under the direction of the Secretary of the Senate.

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**STATE OF MAINE  
SENATE  
117TH LEGISLATURE  
FIRST REGULAR SESSION**

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COMMITTEE AMENDMENT " A " to S.P. 338, L.D. 919, Bill, "An Act to Amend the Continuing Care Retirement Community Law"

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Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

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**Sec. 1. 22 MRSA §2053, sub-§3-A,** as amended by PL 1993, c. 661, §1, is further amended to read:

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**3-A. Health care facility.** "Health care facility" means a nursing home that is, or will be upon completion, licensed under chapter 405; a residential care facility that is, or will be upon completion, licensed under chapter 1663; a continuing care retirement community that is, or will be upon completion, licensed under Title 24-A, chapter 73; a hospital; a community mental health facility; or a community health center.

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**Sec. 2. 24-A MRSA §6201, sub-§5,** as enacted by PL 1987, c. 482, §1, is amended to read:

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**5. Entrance fee.** "Entrance fee" means an initial payment of a sum of money or any other consideration ~~which~~ that assures a subscriber a place in a facility for a term of years or for life. An accommodation fee, admission fee, entrance loan or other fee of similar form and application, even if refundable in whole or in part at the termination of the subscriber's contract, ~~shall be~~

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COMMITTEE AMENDMENT "A" to S.P. 338, L.D. 919

2 is considered to be an entrance fee. The purchase price of a  
3 condominium, or of a share or shares of or membership in, a  
4 consumer cooperative subject to Title 13, chapter 85, subchapter  
5 I, ~~shall or a cooperative affordable housing corporation subject~~  
6 to Title 13, chapter 85, subchapter I-A is not be considered an  
7 entrance fee.

8 **Sec. 3. 24-A MRSA §6201, sub-§11-A** is enacted to read:

10 **11-A. Preliminary marketing.** "Preliminary marketing"  
11 means, for the purpose of evaluating market demand for a proposed  
12 facility:

14 A. Advertising of a proposed facility;

16 B. Entering of reservation agreements, which are cancelable  
17 at the option of either the prospective subscriber or the  
18 prospective provider;

20 C. Soliciting, collecting or receiving reservation fees,  
21 which:

22 (1) Are sums of money not in excess of \$1,000 per  
23 prospective resident paid by a prospective resident for  
24 deposit in escrow in an interest-bearing account with  
25 interest accruing for the benefit of the prospective  
26 resident and in accordance with section 6203-B,  
27 subsection 1, paragraphs A, C, D, E and F;

30 (2) Are refundable on request of a prospective  
31 subscriber; and

32 (3) Are not considered deposits for purposes of this  
33 chapter; and

36 D. Constructing and maintaining a sales office and model  
37 units.

38 **Sec. 4. 24-A MRSA §6201, sub-§13**, as amended by PL 1989, c.  
39 343, §1 and affected by §23, is further amended to read:

42 **13. Provider.** "Provider" means the ~~corporate entity~~ which  
43 is the owner of an institution, building, residence or other  
44 place, whether operated for profit or not, in which the owner  
45 undertakes to provide continuing care. If the facility is owned  
46 by the subscribers, then "provider" means the operator of the  
47 facility.

48 **Sec. 5. 24-A MRSA §6201, sub-§14-B** is enacted to read:

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2            14-B. Residential unit. "Residential unit" means an  
3            apartment, room or other area within a facility set aside for the  
4            exclusive and independent living use of one or more identified  
5            subscribers.

6            **Sec. 6. 24-A MRSA §6202, sub-§3,** as amended by PL 1989, c.  
7            343, §3 and affected by §23, is further amended to read:

8            **3. Kinds of communities.** There shall--be are 2 types--of  
9            certificates-of-authority kinds of communities that qualify for  
10            certification.

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

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

19                    (2) The maintenance fee shall may not increase,  
20                    regardless of the level of services provided or a  
21                    change in accommodations, with the following  
22                    exceptions:

23                            (a) Annual increases in the maintenance fee  
24                            applicable to all subscribers; and

25                            (b) Any increase in the maintenance fee  
26                            applicable to a specific subscriber resulting from  
27                            the voluntary selection of an optional service by  
28                            that subscriber. An optional service is a service  
29                            or change in accommodations ~~which~~ that is not  
30                            required to be offered in order to qualify for  
31                            certification as a life-care community under the  
32                            department's rules;

33                    (3) With the exception of maintenance fees and  
34                    insurance premiums, neither the subscriber nor any 3rd  
35                    party, other than the subscriber's insurer, ~~shall-be~~ is  
36                    liable for the cost of health care or supportive  
37                    services other than optional services as defined in  
38                    subparagraph (2); and

39                    (4) The provider shall continue to provide full and  
40                    lifetime health care, supportive services and shelter  
41                    without diminution to a subscriber who has not  
42                    intentionally depleted ~~his~~ that subscriber's resources.

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2 B. A provider offering a continuing care agreement which  
3 that does not qualify for certification as a life-care  
4 community, as defined in paragraph A, shall must be  
5 certified as a continuing care retirement community if it  
6 complies with the other applicable provisions of this  
7 chapter.

8  
9 Sec. 7. 24-A MRSA §6202, sub-§6 is enacted to read:

10 6. Preliminary marketing. Upon written approval by the  
11 superintendent of the proposed forms of the reservation agreement  
12 and the reservation fee escrow agreement referred to in section  
13 6201, subsection 11-A, and prior to applying for a preliminary  
14 certificate of authority or a certificate of authority, a  
15 prospective provider may engage in preliminary marketing.

16  
17 Sec. 8. 24-A MRSA §6203, sub-§1, ¶B, as amended by PL 1989, c.  
18 343, §4 and affected by §23, is further amended by repealing and  
19 replacing sub-¶(6) to read:

20  
21 (6) A list of the names and addresses of stockholders  
22 and those persons who hold official positions  
23 responsible for the conduct of the affairs of the  
24 provider, including all members of the board of  
25 directors, the principal officers and persons having a  
26 10% or greater equity or beneficial interest in the  
27 provider. Section 222, including the requirement of  
28 approval of the superintendent, the submission of  
29 tender offers or acquisitions materials, information as  
30 to acquisitions or tender offers and examination of  
31 accounts, records, documents and transactions, is also  
32 applicable in the event of either:

33  
34 (a) Any tender offer for, or a request or  
35 invitation for tenders of, or an agreement to  
36 exchange securities for, or otherwise acquire any  
37 voting security of a provider or of any person  
38 controlling a provider if, as a result of the  
39 consummation thereof, the person making the tender  
40 offer, request or agreement would directly or  
41 indirectly acquire control of the provider or  
42 controlling person; or

43  
44 (b) Any purchase, exchange, merger or acquisition  
45 of control of a provider;

46  
47 Sec. 9. 24-A MRSA §6203, sub-§1, ¶B, as amended by PL 1989, c.  
48 343, §4 and affected by §23, is further amended by repealing and  
49 replacing sub-¶(20) to read:

AND

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2           (20) Pro forma projected financial statements for the  
4           provider for the coming 10 years, including notes of  
6           the statements, presented in conformity with guidelines  
          for forecasting as prescribed by the American Institute  
          of Certified Public Accountants;

8           **Sec. 10. 24-A MRSA §6203, sub-§1, ¶ B**, as amended by PL 1989,  
10          c. 343, §4 and affected by §23, is further amended by repealing  
          sub-¶(22).

12          **Sec. 11. 24-A MRSA §6203, sub-§1, ¶¶ G, H and I** are enacted to  
14          read:

G. The department has approved the adequacy of all services  
16          proposed under the continuing care agreement not otherwise  
          reviewed under the certificate of need process.

18          H. The superintendent finds that the provider has met the  
20          requirements under this chapter and that the provider has  
22          furnished evidence satisfactory to the superintendent that  
24          the provider's methods of operation do not make its proposed  
          operation hazardous to the public or its subscribers in this  
          State.

26          I. The department certifies to the superintendent that the  
28          provider has demonstrated the willingness and potential  
30          ability to ensure that the health care services or  
          supportive services, or both, will be provided in a manner  
          to ensure availability, accessibility and continuity of  
32          services.

34          **Sec. 12. 24-A MRSA §6203, sub-§2, ¶B**, as enacted by PL 1987, c.  
          482, §1, is repealed.

36          **Sec. 13. 24-A MRSA §6203, sub-§2, ¶D**, as amended by PL 1989,  
38          c. 343, §7 and affected by §23, is further amended to read:

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

44          **Sec. 14. 24-A MRSA §6203, sub-§2, ¶E**, as enacted by PL 1987, c.  
46          482, §1, is repealed.

48          **Sec. 15. 24-A MRSA §6203, sub-§2, ¶F**, as amended by PL 1987,  
          c. 769, Pt. A, §102, is repealed.

50          **Sec. 16. 24-A MRSA §6203, sub-§2, ¶G**, as amended by PL

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1989, c. 343, §8 and affected by §23, is repealed and the following enacted in its place:

G. The provider certifies to the superintendent either:

(1) That preliminary continuing care agreements have been entered and deposits of not less than 10% of the entrance fee have been received either:

(a) From subscribers with respect to 70% of the residential units, including names and addresses of the subscribers, for which entrance fees will be charged; or

(b) From subscribers with respect to 70% of the total entrance fees due or expected at full occupancy of the community; or

(2) That preliminary continuing care agreements have been entered and deposits of not less than 25% of the entrance fee received from either:

(a) Subscribers with respect to 60% of the residential units, including names and addresses of the subscribers, for which entrance fees will be charged; or

(b) Subscribers with respect to 60% of the total entrance fees due or expected at full occupancy of the community.

Sec. 17. 24-A MRSA §6203, sub-§3, ¶B, as amended by PL 1989, c. 343, §10 and affected by §23, is further amended to read:

B. A provider who has been issued a preliminary certificate of authority may advertise, solicit and collect deposits, ~~not to exceed 10%~~ of not less than 10% nor more than 50% of the entrance fee, provided that if:

(1) The provider ~~shall---furnish~~ furnishes the prospective subscriber a signed deposit agreement stating that:

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

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

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

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

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

(iii) If the prospective subscriber requests a refund due to a material difference between the proposed continuing care agreement furnished at the time the deposit 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, without interest, if the community becomes operational and the subscriber chooses not to join for any reason other than that listed in division (c) and the refund will be paid on the receipt by the provider of the same percentage deposit of the entrance fee from another subscriber for a residential unit that is the same as or similar to the residential unit to which the cancelled deposit agreement applied; and

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

(f) The subscriber may cancel the deposit agreement by written notice to the provider within 10 days from the date on which the subscriber signed the deposit agreement, in which event the

**COMMITTEE AMENDMENT**



2                    provider will refund the prospective subscriber's  
3                    deposit in full together with any interest earned  
4                    on the deposit; and

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

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

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

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

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

20                    **Sec. 18. 24-A MRSA §6203, sub-§3, ¶C**, as amended by PL 1989,  
21                    c. 343, §11 and affected by §23, is further amended to read:

24                    C. After the community is operational, the provider may  
25                    advertise, solicit and collect deposits, of not less than  
26                    10% of the entrance fee and not to exceed 10% 50% of the  
27                    entrance fee, provided that:

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

32                    (a) The provider will refund the deposit, without  
33                    interest, if the subscriber chooses not to join  
34                    for any reason other than those listed in division  
35                    (b), and the refund will be paid on the receipt by  
36                    the provider of the same percentage deposit of the  
37                    entrance fee from another subscriber for a  
38                    residential unit that is the same as or similar to  
39                    the residential unit to which the cancelled  
40                    deposit agreement applied;

42                    (b) The provider will refund the deposit with  
43                    interest earned on it:

44                    (i) In the event of the death of the  
45                    prospective subscriber prior to the execution  
46                    of the final continuing care agreement,  
47                    unless the surviving spouse is also a  
48                    subscriber and still wishes to occupy the  
49                    unit; or

- 2 (ii) If the provider determines, prior to
- 4 occupation by the subscriber, that the
- 6 subscriber is ineligible for entrance into
- the facility because of the subscriber's
- physical, mental or financial condition; and
  
- 8 (c) There is a nonrefundable application fee and
- the amount of that fee; and
  
- 10 (d) The subscriber may cancel the deposit
- 12 agreement by written notice to the provider within
- 14 10 days from the date on which the subscriber
- 16 signed the deposit agreement, in which event the
- 18 provider will refund the prospective subscriber's
- 20 deposit in full together with any interest earned
- 22 on the deposit; and
  
- 24 (2) At least 10 days prior to collecting a deposit, the
- provider shall-furnish furnishes the prospective subscriber:
  
- 26 (a) A copy of the continuing care agreement;
  
- 28 (b) A copy of the disclosure statement described
- in section 6209;
  
- 30 (c) An unsigned copy of the deposit agreement
- described in subparagraph (1); and
  
- 32 (d) A copy of the escrow agreement required by
- paragraph E.

Sec. 19. 24-A MRSA §6203, sub-§3, ¶H is enacted to read:

34 H. Notwithstanding paragraph E and section 6203-B, deposits

36 may be released from escrow to a provider that is organized

38 as a nonprofit corporation subject to Title 13-B, as a

40 consumer cooperative subject to Title 13, chapter 85,

42 subchapter I or as a cooperative affordable housing

44 corporation subject to Title 13, chapter 85, subchapter I-A,

and any such provider may pledge the deposits as security

for a loan to acquire, construct and develop a facility or

may use the deposits to pay costs to acquire, construct and

develop a facility, if:

- 46 (1) Either of the following applies:
  
- 48 (a) Deposits for at least 10% of the entrance fee
- 50 have been received from prospective subscribers
- for not less than 70% of the facility's

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residential units for which entrance fees will be charged or not less than 70% of the total entrance fees due or expected at full occupancy and the prospective subscribers have agreed in writing to such use of the deposits; or

(b) Deposits for at least 25% of the entrance fee have been received from prospective subscribers for not less than 60% of the facility's residential units for which entrance fees will be charged or not less than 60% of the total entrance fees due or expected at full occupancy and the prospective subscribers have agreed in writing to such use of the deposits;

(2) The superintendent has issued a final certificate of authority to the provider;

(3) The superintendent is satisfied that the provider has demonstrated an ability to finance and complete construction in a reasonable manner, without limitation, by showing that:

(a) The deposits together with other funds held by or loaned to the provider are reasonably expected to be sufficient to pay for all costs of construction and equipping of the facility; and

(b) The provider has obtained or has the benefit of performance and payment bonds with respect to construction of the facility; and

(4) The superintendent is satisfied that the provider has obtained all necessary governmental permits and approvals necessary to construct the facility in accordance with all applicable laws, regulations, building codes and ordinances.

**Sec. 20. 24-A MRSA §6203, sub-§6 is enacted to read:**

6. Provision of services to nonresidents. The final certificate of authority must state whether any skilled nursing facility that is part of a life-care community or a continuing care retirement community may provide services to persons who have not been bona fide residents of the community prior to admission to the skilled nursing facility. If the life-care community or the continuing care retirement community is a nonprofit corporation that is a Section 501(c)(3) organization under the federal Internal Revenue Code and that admits to its skilled nursing facility only persons who have been bona fide

2 residents of the community prior to admission to the skilled  
3 nursing facility, then the community is exempt from the  
4 provisions of Title 22, chapter 103, but is subject to the  
5 licensing provisions of Title 22, chapter 405, and is entitled to  
6 only one skilled nursing facility bed for every 4 residential  
7 units in the community. However, any community so exempted from  
8 Title 22, chapter 103 may admit nonresidents of the community to  
9 its skilled nursing facility only during the first 3 years of  
10 operation. For purposes of this subsection, a "bona fide  
11 resident" means a person who has been a resident of the community  
12 for a period of not less than 180 consecutive days immediately  
13 preceding admission to the nursing facility or has been a  
14 resident of the community for less than 180 consecutive days but  
15 who has been medically admitted to the nursing facility resulting  
16 from an illness or accident that occurred subsequent to residence  
17 in the community. Any community so exempted from Title 22,  
18 chapter 103 is not entitled to and may not seek any reimbursement  
19 or financial assistance under the Medicaid program from any state  
20 or federal agency and, as a consequence, that community must  
21 continue to provide nursing facility services to any person who  
22 has been admitted to the facility.

23 **Sec. 21. 24-A MRSA §6203-B is enacted to read:**

24 **§6203-B. Escrow account**

25 **1. Deposit of funds.** When funds are required to be  
26 deposited in an escrow account pursuant to section 6203, the  
27 following apply.

28 A. The escrow account must be established in a bank or  
29 trust company authorized to do business in this State within  
30 the meaning of Title 9-B, section 131, subsection 2 and  
31 acceptable to the superintendent. The funds deposited in  
32 the escrow account must be kept and maintained in an account  
33 separate from the provider's business accounts.

34 B. An escrow agreement must be entered into between the  
35 bank or trust company and the provider of the facility. The  
36 agreement must state that its purpose is to protect the  
37 subscriber or the prospective subscriber. Upon presentation  
38 of evidence to the superintendent of compliance with  
39 applicable portions of this chapter, or upon order of a  
40 court of competent jurisdiction, the escrow agent shall  
41 release and pay over the funds or portions of the funds  
42 together with any interest accrued on the funds or earned  
43 from investment of the funds to the provider or subscriber  
44 as directed.

45 C. When funds are received from a prospective subscriber,

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2 the provider shall deliver to the subscriber a copy of the  
3 executed deposit agreement. The deposit agreement must  
4 state the payor's name and address, the date, the price of  
5 the care agreement and the amount of money paid. A copy of  
6 each agreement together with the funds must be deposited  
7 with the escrow agent.

8 D. Checks, drafts and money orders for deposit from  
9 prospective subscribers may be made payable only to the  
10 escrow agent. At the request of a prospective subscriber of  
11 a facility, the escrow agent shall issue a statement  
12 indicating the status of the subscriber's portion of the  
13 escrow account.

14 E. All funds deposited in the escrow account remain the  
15 property of the subscriber until released to the provider in  
16 accordance with this chapter. The funds are not subject to  
17 any liens or charges by the escrow agent or judgments,  
18 garnishments or creditor's claims against the provider or  
19 facility.

20 F. At the request of either the provider or the  
21 superintendent, the escrow agent shall issue a statement  
22 indicating the status of an escrow account.

23 G. Upon determining that the requirements of section 6203,  
24 subsection 3, paragraph E have been met, the superintendent  
25 shall authorize the escrow agent to release, and the escrow  
26 agent shall release, to the provider the amount of escrowed  
27 funds received from prospective subscribers and deposited in  
28 the account while the provider was operating under a  
29 preliminary certificate of authority.

30 2. Agreement. Any agreement establishing an escrow account  
31 required under the provisions of this chapter is subject to  
32 approval by the superintendent. The agreement must be in writing  
33 and contain, in addition to any other provisions required by law,  
34 a provision by which the escrow agent agrees to abide by the  
35 duties imposed under this section.

36 3. Monthly statement; withdrawal of funds. The agreement  
37 must require the escrow agent to furnish the provider with a  
38 monthly statement indicating the amount of any disbursements  
39 from or deposits to the escrow account and the condition of the  
40 account during the monthly period covered by the statement. On  
41 or before the 20th day of the month following the month for which  
42 the monthly statement is due, the provider shall file with the  
43 superintendent a copy of the escrow agent's monthly statement.

44 The escrow agent or the escrow agent's designee and the provider

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2 shall notify the superintendent in writing 10 days before the  
3 payment to the provider of any portion of any funds required to  
4 be escrowed under the provisions of this chapter.

5 **Sec. 22. 24-A MRSA §6206, sub-§2, ¶A,** as enacted by PL 1987,  
6 c. 482, §1, is amended to read:

7 A. A description of the procedures to be followed by the  
8 provider when the provider temporarily or permanently  
9 changes the subscriber's accommodation within the facility,  
10 transfers the subscriber pursuant to section 6228 or  
11 transfers the subscriber to another health facility. A  
12 subscriber's accommodations shall may be changed only for  
13 the protection of the health or safety of the subscriber or  
14 the general welfare of the residents;

15 **Sec. 23. 24-A MRSA §6206, sub-§2, ¶¶C and D,** as enacted by PL  
16 1987, c. 482, §1, are amended to read:

17 C. A policy statement of the provider with regard to  
18 changes in accommodations and the procedure to be followed  
19 to implement that policy in the event of an increase or  
20 decrease in the number of persons occupying an individual  
21 unit, including a reasonable grievance procedure and a  
22 description of the circumstances whereby the provider may  
23 cancel the agreement prior to occupancy; and

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

28 **Sec. 24. 24-A MRSA §6206, sub-§2, ¶E** is enacted to read:

29 E. A statement of the rights of residents of continuing  
30 care retirement communities granted by section 6227.

31 **Sec. 25. 24-A MRSA §6208, first ¶,** as enacted by PL 1987, c.  
32 482, §1, is amended to read:

33 As part of the continuing care agreement, a subscriber may  
34 purchase or acquire or be the beneficiary of a purchase or  
35 acquisition of a membership interest or share or shares in an  
36 incorporated or unincorporated group organized on a cooperative  
37 basis subject to the requirements of Title 13, chapter 85,  
38 subchapter I, governing consumer cooperatives or Title 13,  
39 chapter 85, subchapter I-A, governing cooperative affordable  
40 housing corporations.

41 **Sec. 26. 24-A MRSA §6209, sub-§3, ¶H,** as enacted by PL 1987,  
42 c. 482, §1, is amended to read:

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2 H. An examined pro forma projected financial statement for  
4 the coming 10 5 years, including notes of that statement,  
6 presented in conformity with guidelines for forecasting as  
8 prescribed by the American Institute of Certified Public  
Accountants and including a narrative description of the  
basis of assumptions utilized. The pro forma projected  
financial statement need not be included in the disclosure  
statement after the facility has commenced operations;

10 **Sec. 27. 24-A MRSA §6209, sub-§3, ¶¶I and J,** as enacted by PL  
12 1987, c. 482, §1, are amended to read:

14 I. If the facility is already in operation or, if the  
16 provider or operator operates one or more similar facilities  
within the State, tables showing the frequency and average  
18 dollar amount of each increase in periodic rates at each  
facility for the previous 5 years, or as many years as the  
20 facility has been operated by the provider or operator,  
whichever is less; and

22 J. Any other material information ~~which~~ that the provider  
24 wishes to include in the disclosure statement or that the  
superintendent or department requires by rule; and

26 **Sec. 28. 24-A MRSA §6209, sub-§3, ¶K** is enacted to read:

28 K. Whether the provider has misappropriated funds or  
30 otherwise breached the terms of a deposit agreement to the  
detriment of a subscriber.

32 **Sec. 29. 24-A MRSA §6210, sub-§2, ¶D,** as amended by PL 1989,  
34 c. 343, §19 and affected by §23, is further amended to read:

36 D. A maximum of ~~1%~~ 2% of the entrance fee for each month of  
occupancy, if any, which refund, in the case of a subscriber  
38 who terminates the continuing care agreement for any reason  
40 other than death, will be paid on the receipt by the  
provider of the same percentage deposit of the entrance fee  
42 from another subscriber for a residential unit that is the  
same as or similar to the residential unit to which the  
cancelled continuing care agreement applied; and

44 **Sec. 30. 24-A MRSA §6215,** as repealed and replaced by PL  
46 1989, c. 343, §20 and affected by §23, is repealed and the  
following enacted in its place:

48 **§6215. Reserves**

50 A provider shall establish and maintain the following  
reserves:

2 1. Mortgage debt. A liquid amount equal to the aggregate  
4 amount of all principal and interest payments due during the  
6 fiscal year on any mortgage loan or other long-term financing of  
8 the facility, which reserve may be held by a lender, mortgagee or  
10 trustee for bondholders in a debt service reserve fund or similar  
12 fund, including, without limitation, any reserve fund of the  
14 Maine Health and Higher Educational Facilities Authority  
16 established pursuant to Title 22, chapter 413;

18 2. Operating reserve. A liquid amount equal to 20% of the  
20 total cash operating expenses, other than principal and interest  
22 payments on any mortgage loan or other long-term financing of the  
24 facility, projected for the forthcoming 12-month period, which  
26 reserve may be held by the provider in an operating fund;  
28 provided, however, that the percentage of the total cash  
30 operating expenses must be increased from 20% to 25% in the case  
32 of a provider who offers an extensive health care guarantee. For  
34 purposes of this section, "extensive health care guarantee" means  
36 a term in a continuing care agreement requiring the provision of  
38 health care to the subscriber on a prepaid basis for more than  
40 one year; and

42 3. Reserve liabilities; actuarial value. Each provider  
44 shall establish and maintain reserve liabilities that place a  
46 sound value on the provider's liabilities under its contracts  
48 with subscribers. The reserve must equal the excess of the  
50 present value of future benefits promised under the continuing  
52 care agreement over the present value of future revenues and any  
54 other available resources, based on conservative actuarial  
56 assumptions. The provider shall provide every 3 years to the  
58 superintendent an actuarial valuation or statement of actuarial  
60 opinion as to the adequacy of the reserve, signed by a qualified  
62 actuary, that, based on reasonable assumptions, the continuing  
64 care retirement community's assets, including the present value  
66 of estimated future maintenance fees and any other available  
68 resources, are at least equal to the present value of estimated  
70 future liabilities.

72 Unless otherwise approved by the superintendent, the actuarial  
74 opinion must be based on reasonable assumptions with the  
76 following provisions and margins.

78 A. The liabilities of a continuing care retirement  
80 community must include, but not be limited to:

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



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

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

(1) Health care costs per resident or per health care facility bed must be assumed to increase at a rate at least one percentage point higher than the general inflation rate.

(2) A mortality margin of 5% must be subtracted from that assumed for active residents and 10% subtracted from those in the health care facilities.

(3) A health care utilization margin of 5% must be added to the assumed rates at which residents require permanent transfer to a health care facility.

(4) The discount rate used to calculate present values may not be more than 2 1/2 percentage points higher than the rate used in the valuation of long-term life insurance contracts to be issued in the year of valuation in this State.

(5) All other assumptions must include margins that are adequate in the opinion of the actuary.

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

**Sec. 31. 24-A MRSA §6223, sub-§§2 and 3, as enacted by PL 1987, c. 482, §1, are amended to read:**

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

**3. Report.** A report of the total number and disposition of complaints handled through the provider complaint system and a compilation of causes underlying the complaints; and

**Sec. 32. 24-A MRSA §6223, sub-§4 is enacted to read:**

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2           4. Statement of financial condition. A full and true  
4           statement of the provider's financial condition, transactions and  
6           affairs as of the end of its fiscal year. The report must be in  
8           the general form and context of, and require information as  
10           called for by, the form of the annual statement as currently in  
12           general and customary use in the United States for the type of  
14           provider and kind of community to be reported upon, with any  
          useful or necessary modification or adaptation thereof and as  
          supplemented by additional information required by the  
          superintendent. The statement must be verified by either the  
          provider's president or vice-president, and either the secretary  
          or actuary, as applicable, or in the absence of the foregoing, by  
          2 other principal officers.

16           The superintendent may adopt rules that prescribe accounting  
18           standards applicable to statements filed pursuant to this  
20           section. These rules may permit or require any provider to  
          conform its financial presentations to the standards of  
          preparation prescribed in the accounting practices and procedures  
          manual of the National Association of Insurance Commissioners.

22           Sec. 33. 24-A MRSA §6227 is enacted to read:

24           §6227. Rights of residents

26           1. Individual rights. All residents of continuing care  
28           retirement communities have the following rights:

30           A. The right to self-organize;

32           B. The right to be represented by an individual of their own  
          choice;

34           C. The right to engage in concerted activities for their own  
36           purposes;

38           D. The right, individually and severally, to obtain outside  
40           advice, consultation and services of their own choosing and  
          at their own expense on any matter, including, but not  
          limited to, medical, legal and financial matters; and

42           E. The right to independence, dignity, individuality,  
44           privacy, choice and a home-like environment. These rights  
          also include, but are not limited to, the following:

46                   (1) A recognition of the resident's rights,  
48                   responsibilities, needs and preferences;

50                   (2) Assurances that the resident is free to select or

refuse services and to accept responsibility for the consequences;

(3) Freedom to develop and maintain social ties with opportunities for meaningful interaction and involvement with the community;

(4) Recognition of personal space and the furnishing and decorating of personal space as private;

(5) Recognition that ensuring a resident's well-being does not violate a resident's civil rights;

(6) Freedom of a resident to set the resident's own schedule, have visitors and leave the facility;

(7) Acknowledgment that a resident is entitled to a "bill of rights" including methods of resolving resident complaints and freedom from abuse, neglect and the use of chemical and physical restraints;

(8) Assurances that methods of preventing and responding to incidents involving injury, loss of property, abuse and neglect will be identified and implemented; and

(9) Recognition of a resident's transfer rights under section 6228.

The department may adopt reasonable rules further defining the rights contained in this subsection. Nothing in this subsection affects the rights of nursing facility residents or residential care residents as currently provided by state or federal law or regulation.

2. Meetings with provider. A provider must be available for meetings with residents and their representatives at least once every 3 months. These meetings are for the purpose of providing a forum for free and open discussion of any point the residents or the provider wishes to discuss. At least 2 weeks' notice of each meeting must be given to residents.

Sec. 34. 24-A MRSA §6228 is enacted to read:

**§6228. Transfer of residents**

A resident of a continuing care retirement community may be transferred to a residential care unit or a bed within the skilled nursing facility under the following conditions:

2           1. Written consent. With the written consent of the  
resident or the resident's authorized representative; or

4           2. Health or safety danger. Upon a finding that the  
6           resident poses a health or safety danger to other residents or a  
change in a resident's health status or abilities necessitates a  
8           move to a higher level of care. A decision to transfer or change  
a resident's accommodations may be made only after extended  
10           consultation between the provider's interdisciplinary team,  
including, but not limited to, medical personnel, social workers  
12           and therapists of the community, and the resident, the resident's  
treating physician and the resident's family or other  
14           representative. The decision may also consider all reasonable  
care alternatives. A written decision to transfer or change a  
16           resident's accommodations must describe why the resident's health  
care needs can not be met at the resident's present location.  
18           The resident may appeal this determination to the department  
pursuant to rules prescribed by the department.

20           **Sec. 35. Application.** Any provider holding a preliminary or  
22           final certificate of authority or both as of the effective date  
of this Act is subject only to the provisions of the law in  
24           effect prior to October 1, 1994.'

26           Further amend the bill by inserting at the end before the  
statement of fact the following:

28  
30           **FISCAL NOTE**

32           The Bureau of Insurance will incur some minor additional  
costs to administer certain requirements of the continuing care  
34           retirement community laws. These costs can be absorbed within  
the bureau's existing budgeted resources.

36           This bill has the potential to increase future Medicaid  
38           costs. The exact impact on that program can not be determined.'

40           **STATEMENT OF FACT**

42           The amendment replaces the original bill and amends the  
44           Maine Revised Statutes, Title 24-A, chapter 73, which governs  
continuing care retirement communities. The amendment makes  
46           several changes in current law, including the following.

48           1. It allows a prospective provider to engage in  
preliminary marketing of continuing care retirement communities  
50           and collect reservation fees on forms approved by the  
Superintendent of Insurance.

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- 2           2. It amends the requirements for the issuance of a  
preliminary certificate of authority.
- 4
- 6           3. It regulates the collection of deposits from prospective  
residents, the formation of escrow accounts by the provider and  
the maintenance of adequate financial reserve accounts by the  
8 provider.
- 10           4. It exempts continuing care retirement communities from  
the certificate of need process and any Medicaid reimbursement,  
12 provided the community is a nonprofit organization and only  
admits bona fide residents of the community to its skilled  
14 nursing facility.
- 16           5. It provides for residents' rights and requires  
disclosure of these rights in every contract.
- 18
- 20           6. It provides for the transfer of residents under certain  
conditions and requires specific contractual disclosure of the  
transfer procedures.
- 22
- The amendment also adds a fiscal note to the bill.