

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 919

S.P. 338

In Senate, March 21, 1995

An Act to Amend the Continuing Care Retirement Community Law.

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

A handwritten signature in cursive script that reads "May M. Ross".

MAY M. ROSS
Secretary of the Senate

Presented by Senator ABROMSON of Cumberland.

2
3 **Be it enacted by the People of the State of Maine as follows:**

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

6 **3-A. Health care facility.** "Health care facility" means a
7 nursing home that is, or will be upon completion, licensed under
8 chapter 405; a residential care facility that is, or will be upon
9 completion, licensed under chapter 1663; a continuing care
10 retirement community that is, or will be upon completion,
11 licensed under Title 24-A, chapter 73; a hospital; a community
12 mental health facility; or a community health center.

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

16 **5. Entrance fee.** "Entrance fee" means an initial payment of
17 a sum of money or any other consideration which that assures a
18 subscriber a place in a facility for a term of years or for life.
19 An accommodation fee, admission fee, entrance loan or other fee
20 of similar form and application, even if refundable in whole or
21 in part at the termination of the subscriber's contract, ~~shall be~~
22 is considered to be an entrance fee. The purchase price of a
23 condominium, or of a share or shares of or membership in, a
24 consumer cooperative subject to Title 13, chapter 85, subchapter
25 I, ~~shall or a cooperative affordable housing corporation subject~~
26 to Title 13, chapter 85, subchapter I-A is not be considered an
27 entrance fee.

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

32 **11-A. Preliminary marketing.** "Preliminary marketing"
33 means, for the purpose of evaluating market demand for a proposed
34 facility:

36 A. Advertising of a proposed facility;

38 B. Entering of reservation agreements, which are cancelable
39 at the option of either the prospective subscriber or the
40 prospective provider;

42 C. Soliciting, collecting or receiving reservation fees,
43 which:

44 (1) Are sums of money paid by a prospective resident
45 for deposit in escrow;

46 (2) Are refundable on request of a prospective
47 subscriber; and

2 (3) Are not considered deposits for purposes of this
4 chapter; and

6 D. Constructing and maintaining a sales office and model
8 units.

10 **Sec. 4. 24-A MRSA §6201, sub-§13**, as amended by PL 1989, c.
12 343, §1, and as affected by §23, is further amended to read:

14 **13. Provider.** "Provider" means ~~the corporate entity which~~
16 is the owner of an institution, building, residence or other
18 place, whether operated for profit or not, in which the owner
20 undertakes to provide continuing care. If the facility is owned
22 by the subscribers, then "provider" means the operator of the
24 facility.

26 **Sec. 5. 24-A MRSA §6202, sub-§6** is enacted to read:

28 **6. Preliminary marketing.** Upon written notice to the
30 superintendent, and prior to applying for a preliminary
32 certificate of authority or a certificate of authority, a
34 prospective provider may engage in preliminary marketing.

36 **Sec. 6. 24-A MRSA §6203, sub-§2, ¶G**, as amended by PL 1989, c.
38 343, §8 and as affected by §23, is repealed and the following
40 enacted in its place:

42 G. The provider certifies, including names and addresses of
44 the subscribers, to the superintendent that preliminary
46 continuing care agreements have been entered into and
48 deposits received either from subscribers:

50 (1) For 50% of the residential units for which
 entrance fees will be charged; or

(2) For 50% of the total entrance fees due or expected
 at full occupancy of the community.

Sec. 7. 24-A MRSA §6203, sub-§3, ¶¶B and C, as amended by PL
1989, c. 343, §10 and as affected by §23, are 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% 50% of the entrance fee, provided that:

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

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(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;

(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 and less a cancellation or processing fee of not more than 4% of the entrance fee, if the community becomes operational and the subscriber chooses not to join for any reason other than that listed in division (c). The refund must be paid on the receipt by the provider of the full entrance fee from another subscriber for the same residential unit to which the canceled deposit agreement applied; and

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(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~~ furnishes 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.

C. After the community is operational, the provider may advertise, solicit and collect deposits, not to exceed ~~10%~~ 50% of the entrance fee, provided that:

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

(a) The provider will refund the deposit, without interest and less a cancellation or processing fee of not more than 4% of the entrance fee, if the subscriber chooses not to join for any reason. The refund must be paid on the receipt by the provider of the full entrance fee from another subscriber for the same residential unit to which the canceled deposit agreement applied;

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

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

(ii) If the provider determines, prior to occupation by the subscriber, that the subscriber is ineligible for entrance into the facility because of the subscriber's physical, mental or financial condition; and

- 2 (c) There is a nonrefundable application fee and
the amount of that fee; and
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- 6 (2) At least 10 days prior to collecting a deposit,
the provider ~~shall--furnish~~ furnishes the prospective
subscriber:
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- 10 (a) A copy of the continuing care agreement;
- 12 (b) A copy of the disclosure statement described
in section 6209;
- 14 (c) An unsigned copy of the deposit agreement
described in subparagraph (1); and
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- 18 (d) A copy of the escrow agreement required by
paragraph E.

20 **Sec. 8. 24-A MRSA §6203, sub-§3, ¶H** is enacted to read:

22 H. Notwithstanding paragraph E and former section 6203-A,
24 deposits may be released from escrow to a provider that is
26 organized as a nonprofit corporation subject to Title 13-B,
28 as a consumer cooperative subject to Title 13, chapter 85,
30 subchapter I or as a cooperative affordable housing
32 corporation subject to Title 13, chapter 85, subchapter I-A,
34 and any such provider may pledge the deposits as security
36 for a loan to acquire, construct and develop a facility or
38 may use the deposits to pay costs to acquire, construct and
40 develop a facility, if:

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- 34 (1) Prospective subscribers for not less than 50% of
36 the facility's residential units for which entrance
38 fees will be charged or prospective subscribers for not
40 less than 50% of the total entrance fees due or
42 expected at full occupancy agree in writing to such a
44 use of the deposits; and
- 46 (2) The superintendent has issued a preliminary
48 certificate of authority to the provider.

42 **Sec. 9. 24-A MRSA §6203, sub-§6** is enacted to read:

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46 6. Provision of services to nonresidents. The final
48 certificate of authority must state whether any skilled nursing
50 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 admits to

2 its skilled nursing facility only persons who have been bona fide
3 residents of the community prior to admission to the skilled
4 nursing facility, then the community, for purposes of Title 22,
5 chapter 103, is entitled to one skilled nursing facility bed for
6 every 4 residential units in the community. For purposes of this
7 subsection, a bona fide resident means a person who has been a
8 resident of the community for a period of not less than 180
9 consecutive days immediately preceding admission to the nursing
10 facility; has been a resident of the community for less than 180
11 consecutive days but who is medically admitted to the nursing
12 facility because of an illness or accident that occurred
13 subsequent to residence in the community; or is a nonresident
14 spouse of a resident.

15 **Sec. 10. 24-A MRSA §6205, sub-§1, ¶E,** as amended by PL 1989, c.
16 502, Pt. A, §100, is repealed:

17 **Sec. 11. 24-A MRSA §6205, sub-§1, ¶F,** as enacted by PL 1987, c.
18 482, §1, is repealed.

19 **Sec. 12. 24-A MRSA §6208, first ¶,** as enacted by PL 1987, c.
20 482, §1, is amended to read:

21 As part of the continuing care agreement, a subscriber may
22 purchase or acquire or be the beneficiary of a purchase or
23 acquisition of a membership interest or share or shares in an
24 incorporated or unincorporated group organized on a cooperative
25 basis subject to the requirements of Title 13, chapter 85,
26 subchapter 1, governing consumer cooperatives or Title 13,
27 chapter 85, subchapter 1-A, governing cooperative affordable
28 housing corporations.

29 **Sec. 13. 24-A MRSA §6209, sub-§3, ¶H,** as enacted by PL 1987, c.
30 482, §1, is repealed.

31 **Sec. 14. 24-A MRSA §6210, sub-§2, ¶D,** as amended by PL 1989, c.
32 343, §19 and as affected by §23, is further amended to read:

33 D. A maximum of ~~1%~~ 2% of the entrance fee for each month of
34 occupancy, if any, except as provided in paragraph D-1; and

35 **Sec. 15. 24-A MRSA §6210, sub-§2, ¶D-1** is enacted to read:

36 D-1. In the case of a subscriber who terminates the
37 continuing care agreement for any reason other than death, a
38 cancellation or processing fee of not more than 4% of the
39 entrance fee. The refund must be paid on the receipt by the
40 provider of the full entrance fee from another subscriber
41 for the same residential unit to which the canceled
42 continuing care agreement applied; and

2 **Sec. 16. 24-A MRSA §6215**, as repealed and replaced by PL
4 following enacted in its place:

6 **§6215. Reserves**

8 A provider shall establish and maintain the following
10 reserves:

12 **1. Mortgage debt.** An amount equal to the aggregate amount
14 of all principal and interest payments due during the fiscal year
16 on any mortgage loan or other long-term financing of the
facility, which reserve may be held by a lender, mortgagee or
trustee for bondholders in a debt service reserve fund or similar
fund; and

18 **2. Operating reserve.** An amount equal to 20% of the total
20 operating expenses, other than principal and interest payments on
22 any mortgage loan or other long-term financing of the facility,
projected for the forthcoming 12-month period, which reserve may
be held by the provider in an operating fund.

24 **Sec. 17. 24-A MRSA §6227** is enacted to read:

26 **§6227. Rights of residents**

28 All residents have the right to self-organize, the right to
30 be represented by an individual of their own choice and the right
32 to engage in concerted activities for their own purposes.
34 Residents have the right both individually and severally to
obtain outside advice and consultation of their own choosing on
any matter, including, but not limited to, medical, legal and
financial matters.

36 A provider must be available for meetings at least once each
38 quarter of the year with residents or their representative.
40 These meetings are for the purpose of providing a forum for free
42 and open discussion of any point the residents or the provider
wishes to discuss. Residents must be given at least 2 weeks'
notice of each meeting.

44 **STATEMENT OF FACT**

46 The purpose of this bill is to amend the existing law
48 governing continuing care retirement communities to permit
50 regulated development of such communities in a manner that
properly protects the needs of residents and others, but enables
such communities to be successfully developed and financed.