MAINE STATE LEGISLATURE

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LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND THIRTEENTH LEGISLATURE

FIRST REGULAR SESSION

December 3, 1986 to June 30, 1987

Chapters 1-542

PUBLISHED BY THE REVISOR OF STATUTES
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1987

PUBLIC LAWS

OF THE

STATE OF MAINE

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1987

as that applicable to authorized insurers. Each risk retention group shall file an annual report, on or before March 1st, with the Superintendent of Insurance and the Treasurer of State containing a sworn statement of the gross premiums charged for coverage placed, and the gross return premiums on the insurance canceled, during the year ending on the preceding December 31st. At the time of filing the report, each risk retention group shall pay to the Treasurer of State the applicable percentage of the difference between the gross and return premiums reported for the business transacted during the year.

Effective September 29, 1987.

CHAPTER 482

S.P. 636 — L.D. 1859

AN ACT to Afford Consumer Protection in Retirement Communities which Offer Continuing Care.

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

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

CHAPTER 73

CONTINUING CARE RETIREMENT COMMUNITIES

§6201. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings.

1. Actuary. "Actuary" means a member of the American Academy of Actuaries who is also a member of the Society of Actuaries or the Casualty Actuarial Society and is qualified to sign a statement of actuarial opinion.

2. Continuing care. "Continuing care" means furnishing shelter for the life of the individual or for a period in excess of one year and either health care, supportive services, or both, under an agreement requiring prepayment as defined in subsection 12, whether or not the shelter and services are provided at the same location, to 3 or more older individuals not related by blood or marriage to the providers.

3. Continuing care agreement. "Continuing care agreement" means the contract or contracts which create the obligation to provide continuing care, including, but not limited to, mutually terminable contracts.

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

5. Entrance fee. "Entrance fee" means an initial payment of a sum of money or any other consideration which 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 considered to be an entrance fee. The purchase price of a condominium, or of a share or shares of or membership in, a consumer cooperative subject to Title 13, chapter 85, subchapter I, shall not be considered an entrance fee.

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

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

8. Health care. "Health care" means the provision of any one or more of the following services:

A. Physician services;

B. Home health services;

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

D. Hospital care.

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

10. Maintenance fee. "Maintenance fee" means any fee which a subscriber is required to pay to the provider on a regular basis to cover the cost of shelter and health care or supportive services provided to the subscriber.

11. Operational facility. "Operational facility" means a facility for which the provider has obtained a final certificate of authority from the superintendent and 60% of the residential units are occupied by subscribers.

12. Prepayment. "Prepayment" means funding shelter, supportive services or health care entirely or in part by entrance fees or by maintenance fees paid more than one year prior to the time the shelter or service is rendered. Prepayment of health care also includes funding by entrance fees or by maintenance fees which do not vary with the level of care provided.

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

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

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

16. Supportive services. "Supportive services" means providing assistance in the activities of daily living and other social services. Supportive services does not refer to services of the type commonly provided to tenants in a conventional apartment building.

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

§6202. Certificate of authority required

1. Requirement. No person or entity may offer continuing care in this State except a provider having obtained an appropriate certificate of authority issued by the superintendent pursuant to this chapter and then in full force and effect.

2. Use of name. No natural person, partnership, unincorporated association, trust or corporation may use the names "continuing care retirement community" or "life-care community" unless the appropriate certificate of authority has been issued by the superintendent. A life-care community may use either name or both.

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

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

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

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

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

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

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

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

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

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

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

§6203. Requirements for issuance of certificate

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

A. The provider has submitted to the department an application for a certificate of need, if required under Title 22, section 304-A, and the department has submitted a preliminary report of a recommendation for approval of a certificate of need and the provider has applied for any other licenses or permits required prior to operation.

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

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

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

(3) Financial statements of current origin prepared in accordance with generally accepted accounting principles showing the provider's assets, liabilities and surplus position. These financial statements shall include as supplementary data a description of the sources of financial support. A copy of the provider's most recent regular certified financial statement shall be deemed to satisfy this require-

ment, unless the superintendent directs that additional or more recent financial information is required for the proper administration of this chapter;

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

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

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

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

(b) Principal officers.

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

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

(a) Is presently under indictment or has been convicted of a Class A, B, C or D crime that relates to the business activities, including health care activities of the provider or that person; or

(b) Has had any state or federal license or permit related to the business activities, including health care activities of the provider or that person, suspended or revoked as a result of an action brought by a governmental agency or department;

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

(9) A copy of any management agreement between the provider and the person or persons responsible for the daily management of the facility, if other than the provider;

(10) All contracts executed by the provider with 3rd parties which provide for the performance of health care or supportive services for the benefit of subscribers;

(11) A descriptive statement of the provider's proposed operation, including an organizational chart setting out the position classifications of personnel responsible for health care and administration;

(12) Proof of fidelity bonding of all individuals who handle the funds of continuing care retirement communities. The actual amount of the fidelity bonding required will be determined by the superintendent, but the face amount of the bond may not be less than $100,000;

(13) A description of the proposed method of marketing the plan for continuing care and a copy of any market research study performed;

(14) A copy of all advertising materials;

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

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

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

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

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

(20) Examined pro forma projected financial statements of the provider for the coming 10 years, including notes of those statements, presented in conformity with guidelines for forecasting as prescribed by the American Institute of Certified Public Accountants. The statements shall include a narrative description of the basis of assumptions utilized and supporting actuarial utilization statistics relied upon in presenting pro forma projections;

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

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

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

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

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

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

E. The provider has met all other requirements for a preliminary certificate of authority which the superintendent may prescribe in rules promulgated pursuant to this chapter.

F. The department has certified that:

(1) The advertising materials related to the continuing care agreements are not untrue or misleading;

(2) The proposed continuing care agreement meets the requirement of section 6206, subsection 2; and

(3) The disclosure statement meets the requirement of section 6209.

2. Final certificate of authority. The superintendent shall issue a final certificate of authority, subject to annual renewal, when:

A. The provider has obtained any required certificate of need or other permits or licenses required prior to construction of the facility;

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

C. The superintendent is satisfied that the provider has demonstrated that it is financially responsible and shall reasonably be expected to meet its obligations to subscribers or prospective subscribers;

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

E. The superintendent finds that the provider has met the requirements under this chapter and that the provider has furnished evidence satisfactory to him that its methods of operation are not such as would render its proposed operation hazardous to the public or its subscribers in this State;

F. The department certifies to the superintendent that the provider has demonstrated the willingness and potential ability to assure that the health care services and supportive services will be provided in a manner to assure both availability and accessibility of adequate personnel and facilities and in a manner enhancing availability, accessibility and continuity of service; and

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

Within 120 days after determining that the application to the superintendent and the department is complete, the superintendent shall issue or deny a final certificate of authority to the provider, unless a certificate of need is required, in which case the final certificate of authority shall be issued or denied in accordance with the certificate of need schedule.

3. Deposits. Deposits shall apply as follows.

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

(1) The provider shall furnish the prospective subscriber a signed receipt stating that:

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

(i) The preliminary or final certificate of authority is not granted or if the continuing care retirement community does not become operational;

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

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

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

(c) Neither the continuing care agreement nor the disclosure statement has been approved by the superintendent and both are subject to change;

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

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

(b) A copy of the proposed disclosure statement

described in section 6209;

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

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

(3) The superintendent has approved the receipt required by subparagraph (1) and the escrow agreement required by paragraph E.

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

(1) The provider shall furnish 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;

(c) The provider will refund the prospective subscriber's deposit in full:

(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, minus a processing fee not to exceed 1% 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), subdivision (iii); and

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

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

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

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

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

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

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

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

(a) The provider will refund the deposit, minus a processing fee not to exceed 1% of the entrance fee, if the subscriber chooses not to join for any reason;

(b) The provider will refund the deposit in full:

(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

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

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

(a) A copy of the continuing care agreement;

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

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

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

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

E. Any deposit must be deposited to an interest-bearing escrow account. The escrow agreement establishing the terms of deposit of funds shall be filed with and approved by the superintendent prior to collection of funds. The provider shall furnish the superintendent with documentation of the name of the institution with which the provider has established the escrow account and the account number. The escrowed money shall not be applied until a final certificate of authority has been issued, the facility is operational and the subscriber has occupied the unit.

F. Payments in excess of those deposits and fees under paragraphs A to D may be collected from a subscriber after a final certificate of authority has been issued by the superintendent and the subscriber has occupied the unit. Payments collected before the facility is operational must be held in the escrow account until the facility becomes operational.

4. Separate facilities. If the provider intends to provide continuing care at more than one facility, the provider must obtain a separate certificate of authority for each facility at which the provider intends to provide continuing care. With the exception of unencumbered surplus funds, funds collected by one facility may not be expended for the benefit of any other facility.

5. Material changes. Within 60 days prior to any change in the approved continuing care agreement, any other approved form or the health care or supportive services offered, the provider shall submit the proposed change in duplicate to the superintendent for approval. The superintendent shall forward one copy to the department.

§6204. Withdrawal plan

Any provider who has obtained a certificate of authority from the superintendent and who plans neither to renew existing agreements nor to offer new agreements shall submit a withdrawal plan to the superintendent at least 60 days prior to implementing its proposed plan. The plan shall include, but not be limited to, requirements and procedures for meeting the provider's existing contractural obligations, providing security in the event of a subsequent insolvency and meeting any applicable statutory obligations. The plan shall also comply with any further terms and conditions which are prescribed by rules adopted by the superintendent. The plan shall not be implemented without the approval of the superintendent.

§6205. Suspension or revocation of certificate of authority

1. Complaint to Administrative Court. The superintendent may file a complaint with the Administrative Court seeking the suspension or revocation of any certificate of authority issued to a provider under this chapter if he finds, or the department certifies, that any of the following conditions exist:

A. The provider is operating significantly in contravention of its basic organizational document or in a manner contrary to that described in and reasonably inferred from any other information submitted under this chapter, unless amendments to those submissions have been filed with and approved by the superintendent;

B. The provider charges an entrance fee, maintenance fee or other amount not consistent with the continuing care contract approved pursuant to section 6206;

C. The department certifies to the superintendent that the provider is unable to fulfill its obligations to furnish shelter, health care or supportive services;

D. The provider is no longer financially responsible and may not reasonably be expected to meet its obligations to subscribers or prospective subscribers;

E. The provider has failed to implement a mechanism affording the enrollees an opportunity to participate in matters of policy and operation;

F. The provider has failed to implement the complaint system in a manner to reasonably resolve valid complaints;

G. The provider or any person on its behalf has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive or unfair manner;

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

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

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

2. Governing procedure. The proceedings governing the appeal of a revocation or suspension shall be conducted in accordance with the requirements of the Maine Administrative Procedure Act, Title 5, chapter 375.

3. Suspension. When the certificate of authority of a provider is suspended, the provider shall not, during the period of that suspension, enroll any additional sub-

scribers and shall not engage in any advertising or solicitation.

4. Revocation. When the certificate of authority of a provider is revoked, that organization shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs and shall conduct no further business, except as may be essential to the orderly conclusion of the affairs of that organization. It shall engage in no further advertising or solicitation.

§6206. Required provisions of a continuing care agreement

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

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

B. State the name and address of the facility;

C. Show the total consideration paid by the subscriber for continuing care, including the value of all property transferred, donations, entrance fees, subscriptions, maintenance fees and any other fees paid or payable by or on behalf of a subscriber;

D. Specify all health care or supportive services which are to be provided by the provider or by a 3rd party to each subscriber, including in detail all items which each subscriber will receive and whether the items will be provided for a designated time period or for life;

E. State whether the provider requires the subscriber to purchase or maintain supplemental insurance;

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

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

H. Provide in clear and understandable language in print no smaller than the largest type used in the agreement whether or not periodic fees, if charged, will be subject to periodic increases;

I. State the extent of funeral and burial services which will be provided by the provider;

J. Provide a description of the unit which the subscriber will occupy;

K. State the conditions, if any, under which a unit may be assigned to the use of another by the subscriber;

L. State the subscriber's and provider's respective rights and obligations as to the use of the facility and as to real and personal property of the subscriber placed in the custody of the provider;

M. State that the subscribers shall have the right to organize and operate a subscriber organization at the facility and to meet privately to conduct business;

N. State what, if any, fee adjustments will be made if the subscriber is voluntarily absent from the facility for an extended period of time;

O. Contain in capital letters in print no smaller than the largest type used in the agreement and underlined: "A preliminary or final certificate of authority is not an endorsement or guarantee of this facility by the State of Maine. The Superintendent of Insurance urges you to consult with an attorney and a suitable financial advisor before signing any documents.";

P. State that the subscriber will annually receive a financial and organizational disclosure statement; and

Q. Provide that the provider shall make available to the subscriber, upon request, any certified financial statement transmitted to the superintendent.

2. Additional specific provisions. Each continuing care agreement shall contain the following provisions:

A. A description of the procedures to be followed by the provider when the provider temporarily or permanently changes the subscriber's accommodation within the facility or transfers the subscriber to another health facility. A subscriber's accommodations shall be changed only for the protection of the health or safety of the subscriber or the general welfare of the residents;

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

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

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

3. Filing and approval. Continuing care agreements must be submitted in duplicate to the superintendent, who shall immediately forward one copy to the department. The department shall review the continuing care agreement for compliance with the requirements of subsection 2. The superintendent shall review the continuing care agreement for compliance with the requirements of subsection 1.

No contract, or amendment to a contract, may be issued or delivered to any person in this State until a copy of the contract, or amendment to the contract, has been filed with and approved by the superintendent. A contract shall contain no provisions or statements which are untrue, unjust, unfair, inequitable, misleading, deceptive or which encourage misrepresentation.

The contract, or amendment to the contract, shall be deemed approved by the superintendent 30 days following the date filed with the superintendent unless, prior to that date, it has been affirmatively approved or disapproved by the superintendent or unless the superintendent has not issued a final certificate of authority. The superintendent may not extend the period upon which he may affirmatively approve or disapprove any contract or amendment more than an additional 30 days.

§6207. Continuing care agreement; condominium

Pursuant to a continuing care agreement, a subscriber may purchase or may be the beneficiary of a purchase of a condominium as defined in Title 33, section 1601-103, subsection 7. With respect to a continuing care agreement pursuant to which a condominium will be purchased the following provisions are applicable:

1. Copy of declaration; filing. A copy of the declaration prepared pursuant to the Maine Condominium Act, Title 33, chapter 31, along with a copy of any registration statement filed with the United States Securities and Exchange Commission or the Bureau of Banking, Securities Division, shall be filed with the superintendent prior to the sale of any of the condominium units; and

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

Any materials required to be filed with the superintendent pursuant to this chapter and contained in the declaration, public offering statements, bylaws or rules of the unit owners' association may be submitted in that format to the superintendent. Any disclosure requirements contained in this chapter may be satisfied by the timely delivery of the documents described in this section to the subscriber, supplemented where necessary by any additional information required pursuant to this chapter.

§6208. Continuing care agreement; consumer cooperative

As part of the continuing care agreement, a subscriber may purchase or acquire or be the beneficiary of a purchase or acquisition of a membership interest or share or shares in an incorporated or unincorporated group organized on a cooperative basis subject to the requirements of Title 13, chapter 85, subchapter 1, consumer cooperatives.

If a registration statement for the cooperative is filed with the Bureau of Banking, Securities Division, pursuant to the Maine Securities Act, Title 13, chapter 105, a copy shall be simultaneously filed with the superintendent and a copy shall be given to every purchaser of a membership interest or share in the cooperative at least 10 days prior to the sale of the interest or share. Any information required to be filed with the superintendent pursuant to this chapter and contained in the referenced registration materials may be filed in that format with the superintendent and need not be submitted under separate cover. If a registration statement is not filed with the Securities Division, a disclosure statement containing, to the extent applicable, all the information required to register a security by qualification, pursuant to Title 32, section 10404, shall be filed with the superintendent and given to every subscriber at least 10 days prior to the sale. In the alternative, a provider may elect to provide each subscriber a disclosure statement containing those provisions stated in section 6209 determined to be required by the superintendent.

§6209. Disclosure statement

1. Disclosure statement required. A provider shall provide a disclosure statement to a prospective subscriber or the person with whom the provider shall enter into an agreement to provide continuing care for the benefit of a prospective subscriber at least 10 days prior to the transfer of any money or other property to the provider by or on behalf of the prospective subscriber. The disclosure statement shall contain the date on which the disclosure was provided to the prospective subscriber and shall be written in a clear and coherent manner using words with common and everyday meanings.

2. Required contents. Each disclosure statement shall contain:

A. The name, business address and form of organization of the provider; and

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

"This matter involves a substantial financial commitment and a legally binding contract. In evaluating this disclosure statement and this contract prior to any commitment being made by you, it is recommended that you consult with an attorney and financial advisor of your choice, who can review these documents with you."

3. Conditionally required contents. The disclosure

statement shall contain the following information, unless such information is already contained in the continuing care agreement or other materials provided to the subscriber or the person with whom the provider will enter into a continuing care agreement:

A. The state or foreign jurisdiction and date of the providers' organization, the general character and location of its business and a description of its physical properties or equipment;

B. The names and business addresses of the officers, directors and any persons or entities having a 10% or greater equity or beneficial interest in the provider and a description of that person's interest in or occupation with the provider;

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

D. A statement of the extent to which any affiliated organization is responsible for the financial and contractual obligations of the provider and a statement of the provisions of the United States Internal Revenue Code, if any, under which the provider or an affiliate is exempt from payment of income tax;

E. The location and description of the physical property of the facility, both existing and proposed, and, with respect to a proposed facility or improvement, the estimated completion date, the date construction began or shall begin and the contingencies subject to which construction may be deferred;

F. The provisions that have been made or will be made, if any, to provide any type of reserve funding which will enable the provider to fully perform its obligations under contracts to provide continuing care, including, but not limited to, the establishment of escrow accounts, trusts or reserve accounts, the manner in which the funds shall be invested and the names and experience of persons who will make the investment decisions on these funds;

G. Certified financial statements of current origin prepared in accordance with generally accepted accounting principles showing the provider's assets, liabilities and surplus position. These financial statements shall include as supplementary data a description of the sources of financial support;

H. An examined pro forma projected financial statement for the coming 10 years, including notes of that statement, presented in conformity with guidelines for forecasting as prescribed by the American Institute of Certified Public Accountants and including a narrative description of the basis of assumptions utilized;

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

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

§6210. Termination of continuing care agreement

1. Right to terminate. A subscriber shall have the right to terminate a continuing care agreement for any reason prior to the date of occupancy by the subscriber or up to one year after the date of occupancy. The provider may reserve the right to terminate the agreement as specified in subsection 3.

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

A. Those special additional costs incurred by the provider due to modifications in the structure or furnishings of the unit specifically requested by the subscriber and set forth in writing in a separate addendum to the agreement and signed by the subscriber;

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

C. The application fee;

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

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

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

3. Termination by the provider. If, prior to occupancy by the subscriber, the provider determines that the subscriber is ineligible for entrance into the facility because of a substantial change in the subscriber's physical, mental or financial condition or because of materially false statements made by the subscriber or for other just cause, the provider may terminate the agreement, provided that:

A. The continuing care agreement contains a provision allowing the termination; and

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

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

§6211. Waiver of certain continuing care agreement provisions prohibited

No act, agreement or statement of any subscriber constitutes a valid waiver of any of the provisions of this chapter, or any rules under this chapter, intended for the benefit or protection of the subscriber.

§6212. Discharge of subscriber prior to expiration of agreement

No agreement for continuing care shall permit dismissal or permanent discharge of the subscriber from the facility providing care prior to the expiration of the agreement without just cause for such a removal and without providing at least 60 days' advance notice in writing to the subscriber.

§6213. Actions for damages or equitable relief

1. Action for damages. Any subscriber injured by a violation of this chapter may bring an action for the recovery of damages in any court of competent jurisdiction. In those cases, the court may award reasonable attorneys fees to a subscriber in whose favor a judgment is rendered.

2. Equitable relief. Any subscriber injured by a violation of this chapter may institute an action for an appropriate temporary restraining order or injunction.

§6214. Administrative rules

The superintendent and the department, as provided in this section, shall administer this chapter and may:

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

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

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

§6215. Reserves

The provider shall establish and maintain a reserve which shall place a sound value on its liabilities under its contracts with subscribers. The reserve shall equal the excess of the present value of future benefits promised under the continuing care agreement over the present value of future revenues and any other available financial resources, based on conservative actuarial assumptions. The superintendent may adopt a rule establishing minimum reserve standards. The provider shall provide annually to the superintendent a statement of actuarial opinion as to the adequacy of the reserve, signed by a qualified actuary. The superintendent shall annually cause to be certified, as a condition for renewal of the certificate of authority, that the reserve held as of the end of the provider's prior fiscal year meets the requirements of this section.

§6216. Sale or transfer of ownership

Any provider desiring to sell or transfer ownership of a continuing care facility shall notify the superintendent and the acquiring interest shall obtain the superintendent's advance approval of the sale or transfer. The certificate of authority is nontransferable. The new owner must apply for a new certificate of authority to continue to provide continuing care at the facility.

§6217. Penalties and enforcement

1. Cease and desist order. The superintendent may issue an order directing a provider to cease and desist from engaging in any act or practice in violation of this chapter.

2. Superior Court. In the case of any violation under this chapter, if the superintendent elects not to issue a cease and desist order or in the event of noncompliance with a cease and desist order issued pursuant to this section, the superintendent may apply to the Superior Court to issue an injunction restraining the company in whole or in part from proceeding further with its business or may apply for an order of the court to command performance consistent with contractual obligations of the provider.

3. Civil penalties. A person or organization in violation of this chapter shall be subject to a civil penalty of not more than $1,000 for each violation, payable to the State, to be recovered in a civil action. If a violation is willful, the person or organization shall be subject to a civil penalty of not more than $10,000 for each violation, payable to the State, to be recovered in a civil action. These penalties may be in addition to any other penalty provided by law. A separate violation may be held to exist for each day that the violation continues.

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

§6218. Financial and organizational disclosure statements

Every provider shall provide to its subscribers within

120 days following the close of its first fiscal year of operation:

1. Statement of financial condition. The most recent certified annual statement of financial condition, including a balance sheet and summary of receipts and disbursements, including notes of that statement;

2. Description of structure and operation. A description of the organizational structure and operation of the provider, including the kind and extent of subscriber participation and a summary of any material changes since the issuance of the last report;

3. Description of services. A description of services and information as to where and how to secure them; and

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

On an annual basis, material changes in the information required to be provided pursuant to this section shall be furnished to all subscribers.

§6219. Investments

The provider shall conform its investment strategy to the standards adopted by the superintendent by rule.

§6220. Filings and reports as public documents

All applications, filings and reports required under this chapter shall be treated as public documents, subject to limitations and exceptions provided in Title 1, chapter 13, subchapter I.

§6221. Fees

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

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

2. Annual report. For filing each annual report, $100.

§6222. Examinations

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

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

3. Records. Every provider shall submit its books and records relating to health and supportive services to such examinations and in every way facilitate the examination. For the purpose of examinations, the superintendent and the department may administer oaths to and examine the officers and agents of the provider.

4. Expenses. The reasonable expenses of examinations performed by the superintendent under this section shall be assessed against the organization being examined and remitted to the superintendent.

§6223. Annual report

The provider shall submit an annual report to the superintendent within 120 days after the end of the provider's fiscal year. The annual report shall include:

1. Financial statements. Financial statements of the provider, including, as a minimum, a balance sheet, income statement and a statement of changes in financial position, presented in conformance with generally accepted accounting principles and certified by an independent certified public accountant;

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.

§6224. Removal of records or assets from the State

No records or assets of the provider related to the organization of the facility and the provision of services under the continuing care agreement may be removed from this State by the provider, except that the superintendent may consent in writing to the removal of those records.

§6225. Rehabilitation, liquidation or conservation of providers

Any rehabilitation, liquidation or conservation of a provider shall be deemed to be the rehabilitation, liquidation or conservation of an insurance company and shall be conducted under the supervision of the superintendent pursuant to the laws governing the rehabilitation, liquidation or conservation of insurance companies. The superintendent may institute summary proceedings in the same manner as provided in the laws governing delinquent insurers and he may apply for an order directing him to rehabilitate, liquidate or conserve a provider when, in his opinion, the continued operation of the provider will be hazardous either to the enrollees or to the people of this State.

Sec. 2. Allocation. The following funds are allocated from Other Special Revenue funds to carry out the purposes of this Act.

	1987-88	1988-89
PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF		
Bureau of Insurance		
Positions	(1.0)	(1.0)
Personal Services	$18,750	$25,000
All Other	12,500	
Total	$31,250	$25,000

Effective September 29, 1987.

CHAPTER 483

S.P. 633 — L.D. 1855

AN ACT to Extend the Period of Anticipatory Borrowing by Municipalities.

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

30 MRSA §5152, sub-§1, as amended by PL 1971, c. 254, is further amended to read:

1. Anticipatory borrowing. The municipal officers authorized to issue securities may borrow money in anticipation of their sale by issuing temporary notes and renewal notes, the total face amount of which does not exceed at any one time outstanding the authorized amount of the securities, but the period of such anticipatory borrowing shall not exceed 2 3 years and the time within which such securities are to become due shall not be extended by such anticipatory borrowing beyond the time fixed in the vote authorizing their issue or, if no term is there specified, beyond the term permitted by law.

Effective September 29, 1987.

CHAPTER 484

S.P. 598 — L.D. 1758

AN ACT Creating the Maine Transportation Capital Improvement Planning Commission.

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

Sec. 1. 5 MRSA §12004, sub-§10, ¶A, sub-¶(83-A) is enacted to read:

(83-A)	Transportation	Maine Transportation Capital Improvement Planning Commission	Not Authorized	23 MRSA §4501

Sec. 2. 23 MRSA c. 413 is enacted to read:

CHAPTER 413

MAINE TRANSPORTATION CAPITAL IMPROVEMENT PLANNING COMMISSION

§4501. Commission

The Maine Transportation Capital Improvement Planning Commission, as established in Title 5, section 12004, subsection 10, shall be within the Department of Transportation.

§4502. Composition; appointment; term

1. Membership. The commission shall consist of no more than 17 members. Membership shall include one representative from each of the State's 8 designated planning and economic development regions who shall be appointed by the Governor and who shall serve as representatives of local government or regional planning agencies. In addition to these members, the Governor shall appoint one representative on the commission for each of the following areas: Air passenger or cargo service, rail service, truck service, surface passenger transportation, marine passenger service, marine cargo service and economic or community development. To the extent possible, the Governor shall consider representatives who are active members of established corridor committees. At least 2 members of the commission shall be current members of the joint standing committee of the Legislature having jurisdiction over transportation, consisting of one member from the House of Representatives appointed by the Speaker of the House to serve at his pleasure and one member from the Senate appointed by the President of the Senate to serve at his pleasure.

2. Qualifications. To be qualified to serve, members must have education, training, experience, knowledge, expertise and interest in transportation matters. Members must be residents of different geographical areas of the State who reflect experiential diversity and concern for transportation in the State.

3. Term; vacancy. Members shall be appointed for terms of 3 years, except that, of the members first appointed, 5 shall be appointed for terms of 3 years, 5 shall be appointed for terms of 2 years and 5 shall be appointed for terms of one year, as designated by the Governor at the time of appointment. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which a predecessor was appointed shall be appointed only for the remainder of that term. Members who are members of the current Legislature and who are appointed by the President of the Senate or the Speaker of the House shall serve at their pleasure. Any vacancy in the commission shall not affect its powers, but shall be filled in the same manner by which the original appointment was made.