

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND THIRTEENTH LEGISLATURE

FIRST SPECIAL SESSION

October 9, 1987 to October 10, 1987

SECOND SPECIAL SESSION

October 21, 1987 to November 20, 1987

and the

SECOND REGULAR SESSION

January 6, 1988 to May 5, 1988

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1988

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE
FIRST AND SECOND SPECIAL SESSIONS
and
SECOND REGULAR SESSION
of the
ONE HUNDRED AND THIRTEENTH LEGISLATURE
1987

CHAPTER 563

S.P. 699 — L.D. 1924

AN ACT to Exempt the First Certificate of Need Continuing Care Retirement Community Demonstration Project from Certain Requirements.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Maine Department of Human Services adopted and circulated Continuing Care Retirement Community Demonstration Project Regulations on April 16, 1987, to solicit and review Certificate of Need proposals which would result in a continuing care retirement community in the State, which would be financially feasible, have a fit, willing and able operator and offer contracts and financial information in the best interest of future residents; and

Whereas, after the applicants had already filed applications for a Certificate of Need with the department under these rules and after the department had submitted a set of detailed follow-up questions to the applicants, Public Law 1987, chapter 482, "AN ACT to Afford Consumer Protection in Retirement Communities which Offer Continuing Care," went into effect; and

Whereas, requiring the Certificate of Need demonstration project applicants to comply with Public Law 1987, chapter 482, in addition to the certificate of need demonstration project rules would cause delay and prohibit collection of deposits in an amount necessary to establish the viability of a market for the demonstration project, which would not permit the demonstration project to go forward, a result totally contrary to the purpose and intent of the certificate of need demonstration project; and

Whereas, certain specific provisions of Public Law 1987, chapter 482, were found to create practical problems and were in need of adjustment in order to reasonably accomplish the goals of the legislation while permitting the demonstration project to go forward; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

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

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, with interest earned on it, 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.

Sec. 2. 24-A MRSA §6203, sub-§3, ¶B, as enacted by PL 1987, c. 482, §1, is 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 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 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, ~~minus a processing fee not to exceed 1% of the entrance fee without interest~~, if the community becomes operational and the subscriber chooses not to join for any reason other than that listed in division (c), ~~subdivision (iii)~~; and

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

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

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

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

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

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

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

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 without interest~~, if the subscriber chooses not to join for any reason;

(b) The provider will refund the deposit in full 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

(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.

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

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. When a subscriber's deposit and interest earned on it are applied, the interest shall be credited to reduce the unpaid portion of that subscriber's entrance fee.

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

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 without interest, 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 interest earned upon funds in escrow;

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.

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

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

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

§6226. Continuing Care Retirement Community — Certificate of Need Demonstration Project

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

1. Initial deposits. The \$1,000 limit on the initial deposit contained in section 6203, subsection 3, paragraph A, shall not apply after the stage of the Certificate of Need application procedure when the department has, in writing, deemed the application complete. After the disclosure statement, the escrow agreement, the receipt

and the continuing care agreement have been reviewed on a preliminary basis by the department's Certificate of Need staff, the department shall forward the documents with recommendations, if any, to the superintendent. All provisions of section 6203, including approval of the receipt and the escrow agreement by the superintendent remain applicable. Thereafter the limit on deposits that may be collected shall not exceed an amount equal to 10% of the entrance fee. Following issuance by the department of a Certificate of Need, any unsuccessful applicant for the first demonstration project shall refund amounts collected from subscribers with interest earned thereon pursuant to this chapter. The refunds shall be made no later than 10 days after notification by the department to the unsuccessful applicant unless the unsuccessful applicant appeals the decision of the department as provided by Title 22, chapter 103. If the applicant appeals and the appeal is denied, then refunds shall be made no later than 10 days after notification of the denial.

2. Exception. Except as specifically addressed in this section, all other requirements of this chapter shall apply.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective November 25, 1987.

CHAPTER 564

H.P. 1383 — L.D. 1885

AN ACT Relating to Out-of-court Statements made by Minors.

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

15 MRSA §1205, first ¶, as enacted by PL 1983, c. 411, is amended to read:

A hearsay statement made by a person under the age of ~~14~~ 16 years, describing any incident involving sexual intercourse, a sexual act or sexual contact performed with or on the minor by another, shall not be excluded as evidence in criminal proceedings in courts of this State if:

Effective February 19, 1988.
