LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND SEVENTEENTH LEGISLATURE

FIRST REGULAR SESSION

December 7, 1994 to June 30, 1995

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PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4

J.S. McCarthy Company
Augusta, Maine
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papers of the commission in the possession of a legislative employee are excepted from the definition of public records in accordance with Title 1, section 402, subsection 3, paragraph C.

8. Administration. The Legislative Council shall provide staff support for the commission when the Legislature is not in session.

9. Reimbursement. Notwithstanding Title 5, section 12002-A, members are entitled to reimbursement for actual and necessary expenses related to the travel to and from commission meetings when the expenses are approved by the chair and submitted to the Executive Director of the Legislative Council and are entitled to reimbursement for reasonable expenses incurred in the exercise of their powers under subsection 11 when approved by the Executive Director. The reimbursement must be made from the funds of the administrative office of the court system upon the request of the Executive Director. Other expenses may not be reimbursed by state funds.

10. No compensation. The members of the commission receive no compensation for their services.

11. Directive of commission. The commission shall study and make recommendations with respect to all aspects of judicial compensation in this State so that the judicial compensation structure is adequate to ensure that the most highly qualified lawyers in this State, drawn from diverse life and professional experiences, are not deterred from serving or continuing to serve in the state judiciary and do not become demoralized during service because of compensation levels that do not meet the criteria set forth in subsection 12.

12. Criteria for recommendations. In order to carry out its responsibilities under subsection 13 to make findings, conclusions and recommendations as to the proper salary and benefits for all justices and judges of this State and to fulfill the directive of the commission as set out in subsection 11, the commission may consider the following factors as they apply specifically in this State and where relevant elsewhere:

A. The skill and experience required of the particular judgeship at issue;

B. The time required of the particular judgeship at issue;

C. The value of compensable service performed by justices and judges, as determined by reference to judicial compensation in other states and the Federal Government;

D. The value of comparable service performed in the private sector, including private judging, arbitration and mediation, based on the responsibility and discretion required in the particular judgeship at issue and the demand for those services in the private sector;

E. The compensation of attorneys in the private sector;

F. The Consumer Price Index and changes in that index;

G. The overall compensation presently received by other public officials and employees; and

H. Any other factors that are normally or traditionally taken into consideration in the determination of compensation.

13. Biennial report required. No later than December 1st of each odd-numbered year, the commission shall make its biennial report to the joint standing committees of the Legislature having jurisdiction over appropriations matters and judicial matters. The biennial report must include findings, conclusions and recommendations as to the proper salary and benefits, including retirement, to be paid from the State Treasury and other sources for all justices and judges of this State. The commission is authorized to submit with its report any proposed legislation the commission determines necessary to implement these recommendations.

§1702. Repeal

This chapter is repealed December 31, 1999.

Sec. 2. 5 MRSA §12004-G, sub-§23-A is enacted to read:

23 -A. Judiciary Commission	Judicial Compensation	Expenses Only	4 MRSA §1701

See title page for effective date.

CHAPTER 452

S.P. 338 - L.D. 919

An Act to Amend the Continuing Care Retirement Community Law

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

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

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.

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

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~~ is 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~~ or a cooperative affordable housing corporation subject to Title 13, chapter 85, subchapter I-A is not ~~be~~ considered an entrance fee.

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

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

A. Advertising of a proposed facility;

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

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

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

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

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

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

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

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.

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

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

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

3. Kinds of communities. There ~~shall be~~ are 2 ~~types of certificates of authority~~ kinds of communities that qualify for certification.

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~~ may 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~~ that 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 sub-

scriber nor any 3rd party, other than the subscriber's insurer, ~~shall be~~ is 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~~ that subscriber's resources.

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

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

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

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

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

(a) Any tender offer for, or a request or invitation for tenders of, or an agreement to exchange securities for, or otherwise acquire any voting security of a provider or of any person controlling a provider if, as a result of the consummation thereof, the person making the tender offer, request or agreement would directly or indirectly acquire control of the provider or controlling person; or

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

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

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

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

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

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

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

I. The department certifies to the superintendent that the provider has demonstrated the willingness and potential 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 services.

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

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

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; and

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

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

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

(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 provider will refund the prospective subscriber's deposit in full together with any interest earned on the deposit; 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.

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

C. After the community is operational, the provider may advertise, solicit and collect deposits~~,~~ of not less than 10% of the entrance fee and not to exceed ~~10%~~ 50% 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, without interest, if the subscriber chooses not to join for any reason other than those listed in division (b), 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;

(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~~

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

(d) 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 provider will refund the prospective subscriber's deposit in full together with any interest earned on the deposit; and

(2) At least 10 days prior to collecting a deposit, the provider ~~shall furnish~~ furnishes 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. 19. 24-A MRSA §6203, sub-§3, ¶H is enacted to read:

H. Notwithstanding paragraph E and section 6203-B, deposits may be released from escrow to a provider that is organized as a nonprofit corporation subject to Title 13-B, as a consumer cooperative subject to Title 13, chapter 85, subchapter I or as a cooperative affordable housing 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:

(1) Either of the following applies:

(a) Deposits for at least 10% of the entrance fee have been received from prospective subscribers for not less than 70% of the facility's 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 residents of the community prior to admission to the skilled nursing facility, then the community is exempt from the provisions of Title 22, chapter 103, but is subject to the licensing provisions of Title 22, chapter 405, and is entitled to only one skilled nursing facility bed for every 4 residential units in the community. However, any community so exempted from Title 22, chapter 103 may admit nonresidents of the community to its skilled nursing facility only during the first 3 years of operation. For purposes of this subsection, a "bona fide resident" means a person who has been a resident of the community for a period of not less than 180 consecutive days immediately preceding admission to the nursing facility or has been a resident of the community for less than 180 consecutive days but who has been medically admitted to the nursing facility resulting from an illness or accident that occurred subsequent to residence in the community. Any community so exempted from Title 22, chapter 103 is not entitled to and may not seek any reimbursement or financial assistance under the Medicaid program from any state or federal agency and, as a consequence, that community must continue to provide nursing facility services to any person who has been admitted to the facility.

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

§6203-B. Escrow account

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

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

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

C. When funds are received from a prospective subscriber, the provider shall deliver to the subscriber a copy of the executed deposit agreement. The deposit agreement must state the payor's

name and address, the date, the price of the care agreement and the amount of money paid. A copy of each agreement together with the funds must be deposited with the escrow agent.

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

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

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

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

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

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

The escrow agent or the escrow agent's designee and the provider shall notify the superintendent in writing 10 days before the payment to the provider of any portion of any funds required to be escrowed under the provisions of this chapter.

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

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, transfers the subscriber pursuant to section 6228 or transfers the subscriber to another health facility. A subscriber's accommodations ~~shall~~ may be changed only for the protection of the health or safety of the subscriber or the general welfare of the residents;

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

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.~~;~~ and

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

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

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

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~~ I, governing consumer cooperatives or Title 13, chapter 85, subchapter I-A, governing cooperative affordable housing corporations.

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

H. An examined pro forma projected financial statement for the coming ~~10~~ 5 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. The pro forma projected financial statement need not be included in the disclosure statement after the facility has commenced operations;

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

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~~ that the provider wishes to include in the disclosure statement or that the superintendent or department requires by rule.~~;~~ ; and

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

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

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

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 who terminates the continuing care agreement for any reason other than death, 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 continuing care agreement applied; and

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

§6215. Reserves

A provider shall establish and maintain the following reserves:

1. Mortgage debt. A liquid amount equal to the aggregate amount of all principal and interest payments due during the fiscal year 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, including, without limitation, any reserve fund of the Maine Health and Higher Educational Facilities Authority established pursuant to Title 22, chapter 413;

2. Operating reserve. A liquid amount equal to 20% of the total cash operating expenses, other than principal and interest payments on 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; provided, however, that the percentage of the total cash operating expenses must be increased from 20% to 25% in the case of a provider who offers an extensive health care guarantee. For purposes of this section, "extensive health care guarantee" means a term in a continuing care agreement requiring the provision of health care to the subscriber on a prepaid basis for more than one year; and

3. Reserve liabilities; actuarial value. Each provider shall establish and maintain reserve liabilities that place a sound value on the provider's liabilities under its contracts with subscribers. The reserve must 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 resources, based on conservative actuarial assumptions. The provider shall provide every 3 years to the superintendent an actuarial valuation or statement of actuarial opinion as to the adequacy of the reserve, signed by a qualified actuary, that, based on reasonable assumptions, the continuing care retirement community's assets, including the present value of estimated future maintenance fees and any other available resources, are at least equal to the present value of estimated future liabilities.

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

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

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

(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:

4. Statement of financial condition. A full and true statement of the provider's financial condition, transactions and affairs as of the end of its fiscal year. The report must be in the general form and context of, and require information as called for by, the form of the annual statement as currently in general and customary use in the United States for the type of 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.

The superintendent may adopt rules that prescribe accounting standards applicable to statements filed pursuant to this 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.

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

§6227. Rights of residents

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

A. The right to self-organize;

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

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

D. The right, individually and severally, to obtain outside 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

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

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

(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:

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

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

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

See title page for effective date.

CHAPTER 453

H.P. 1069 - L.D. 1504

An Act to Clarify Terms and Increase Effectiveness of the Lead Poisoning Control Act

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

Sec. 1. 22 MRSA §1315, sub-§1-B, as enacted by PL 1991, c. 810, §3, is repealed.

Sec. 2. 22 MRSA §1315, sub-3-A, as enacted by PL 1991, c. 810, §5, is amended to read:

3-A. Environmental lead hazard. "Environmental lead hazard" means the presence of lead in any form that exceeds the permissible concentration and that exists in an unacceptable condition. "Permissible concentration" and "unacceptable condition" are defined by rules ~~adopted by the department~~ adopted under this Act, using information currently available on environmental lead hazards, including but not limited to information from the federal Environmental Protection Agency or the federal Department of Housing and Urban Development. "Environmental lead hazard" may include, but is not limited to, lead in dust, paint, soil or water.

Sec. 3. 22 MRSA §1315, sub-§3-D is enacted to read:

3-D. Interim controls. "Interim controls" means a set of measures designed to temporarily reduce human exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards and the establishment of management and resident education programs.

Sec. 4. 22 MRSA §1315, sub-§5-A, as enacted by PL 1991, c. 810, §9, is amended to read:

5-A. Lead-free. "Lead-free" means that a ~~children's home,~~ residential child-care facility or preschool facility, dwelling or premises contains no lead that is injurious or that could be injurious in the future.