

## 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. [PL 1987, c. 482, §1 (NEW).]

**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.

[PL 1987, c. 482, §1 (NEW).]

**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.

[PL 1987, c. 482, §1 (NEW).]

**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.

[PL 1987, c. 482, §1 (NEW).]

**4. Department.** "Department" means the Department of Health and Human Services.

[PL 1987, c. 482, §1 (NEW); PL 2003, c. 689, Pt. B, §6 (REV).]

**5. Entrance fee.** "Entrance fee" means an initial payment of a sum of money or any other consideration 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, 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 or a cooperative affordable housing corporation subject to Title 13, chapter 85, subchapter I-A is not considered an entrance fee.

[PL 1995, c. 452, §2 (AMD).]

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

[PL 1987, c. 482, §1 (NEW).]

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

[PL 1987, c. 482, §1 (NEW).]

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

A. Physician services; [PL 1987, c. 482, §1 (NEW).]

B. Home health services; [PL 1987, c. 482, §1 (NEW).]

C. Access to or provision of nursing home care; or [PL 1987, c. 482, §1 (NEW).]

D. Hospital care. [PL 1987, c. 482, §1 (NEW).]

[PL 1987, c. 482, §1 (NEW).]

**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.

[PL 1987, c. 482, §1 (NEW).]

**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, health care or supportive services, or any combination thereof, provided to the subscriber.

[PL 1987, c. 769, Pt. A, §101 (AMD).]

**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.

[PL 1987, c. 482, §1 (NEW); PL 1989, c. 343, §1 (AMD); PL 1989, c. 343, §23 (AFF).]

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

A. Advertising of a proposed facility; [PL 1995, c. 452, §3 (NEW).]

B. Entering of reservation agreements, which are cancelable at the option of either the prospective subscriber or the prospective provider; [PL 1995, c. 452, §3 (NEW).]

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 [PL 1995, c. 452, §3 (NEW).]

D. Constructing and maintaining a sales office and model units. [PL 1995, c. 452, §3 (NEW).]  
[PL 1995, c. 452, §3 (NEW).]

**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.

[PL 1987, c. 482, §1 (NEW).]

**13. Provider.** "Provider" means 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.

[PL 1995, c. 452, §4 (AMD).]

**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.

[PL 1987, c. 482, §1 (NEW).]

**14-A. Residential unit.**

[PL 1989, c. 343, §2 (NEW); PL 1989, c. 343, §23 (RP).]

**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.

[PL 1995, c. 452, §5 (NEW).]

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

[PL 1987, c. 482, §1 (NEW).]

**16. Supportive services.** "Supportive services" means providing assistance in the activities of daily living or other social services, or both. Supportive services does not refer to services of the type commonly provided to tenants in a conventional apartment building.  
[PL 1987, c. 769, Pt. A, §101 (AMD).]

**17. Superintendent.** "Superintendent" means the Superintendent of Insurance.  
[PL 1987, c. 482, §1 (NEW).]

#### SECTION HISTORY

PL 1987, c. 482, §1 (NEW). PL 1987, c. 769, §A101 (AMD). PL 1989, c. 343, §§1,2,23 (AMD). PL 1995, c. 452, §§2-5 (AMD). PL 2003, c. 689, §B6 (REV).

#### §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.  
[PL 1987, c. 482, §1 (NEW).]

**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.  
[PL 1987, c. 482, §1 (NEW).]

**3. Kinds of communities.** There are 2 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 include a true continuum of care from independent living through nursing home care;
- (2) The maintenance fee 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 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 subscriber nor any 3rd party, other than the subscriber's insurer, 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 that subscriber's resources. [PL 1995, c. 452, §6 (AMD).]

B. A provider offering a continuing care agreement that does not qualify for certification as a life-care community, as defined in paragraph A, must be certified as a continuing care retirement community if it complies with the other applicable provisions of this chapter. [PL 1995, c. 452, §6 (AMD).]  
[PL 1995, c. 452, §6 (AMD).]

**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. [PL 1987, c. 482, §1 (NEW); PL 1989, c. 343, §3 (AMD); PL 1989, c. 343, §23 (AFF).]

**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. [PL 1987, c. 482, §1 (NEW).]

**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. [PL 1995, c. 452, §7 (NEW).]

#### SECTION HISTORY

PL 1987, c. 482, §1 (NEW). PL 1989, c. 343, §§3,23 (AMD). PL 1995, c. 452, §§6,7 (AMD).

#### §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 329, 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. [PL 2003, c. 510, Pt. A, §22 (AMD).]

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 requirement, 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 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;
- (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 an 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-A 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) 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;
- (21) A copy of any application form which prospective subscribers will be required to complete;
- (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. [PL 1997, c. 592, §75 (AMD).]
- C. The superintendent has determined that the continuing care agreement meets the requirements of section 6206, subsection 1. [PL 1987, c. 482, §1 (NEW).]
- D. The superintendent has approved the application form, escrow agreement and the preliminary deposit agreement. [PL 1987, c. 482, §1 (NEW); PL 1989, c. 343, §5 (AMD); PL 1989, c. 343, §23 (AFF).]
- 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. [PL 1987, c. 482, §1 (NEW).]
- 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. [PL 1987, c. 482, §1 (NEW).]
- 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. [PL 1995, c. 452, §11 (NEW).]
- 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. [PL 1995, c. 452, §11 (NEW).]
- 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. [PL 1995, c. 452, §11 (NEW).]
- [PL 2003, c. 510, Pt. A, §22 (AMD).]
- 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; [PL 1987, c. 482, §1 (NEW).]
  - B. [PL 1995, c. 452, §12 (RP).]

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; [PL 1987, c. 482, §1 (NEW).]

C-1. [PL 1989, c. 343, §6 (NEW); PL 1989, c. 343, §23 (RP).]

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 [PL 1995, c. 452, §13 (AMD).]

E. [PL 1995, c. 452, §14 (RP).]

F. [PL 1995, c. 452, §15 (RP).]

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. [PL 1995, c. 452, §16 (RPR).]

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.

[PL 1995, c. 452, §§12-16 (AMD).]

**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, 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. [PL 1987, c. 563, §1 (AMD); PL 1989, c. 343, §9 (RP); PL 1989, c. 343, §23 (AFF).]
- B. A provider who has been issued a preliminary certificate of authority may advertise, solicit and collect deposits of not less than 10% nor more than 50% of the entrance fee, if:
- (1) The provider 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;
    - (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 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. [RR 1995, c. 2, §54 (COR).]

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 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;

(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 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. [RR 1995, c. 2, §55 (COR).]

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. [PL 1987, c. 482, §1 (NEW); PL 1989, c. 343, §12 (AMD); PL 1989, c. 343, §23 (AFF).]

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. [PL 1987, c. 563, §4 (AMD); PL 1989, c. 343, §13 (AMD); PL 1989, c. 343, §23 (AFF).]

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. [PL 1987, c. 482, §1 (NEW); PL 1989, c. 343, §14 (RP); PL 1989, c. 343, §23 (AFF).]

G. [PL 1989, c. 343, §15 (NEW); PL 1989, c. 343, §23 (RP).]

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. [PL 1995, c. 452, §19 (NEW).]

[RR 1995, c. 2, §§54, 55 (COR).]

**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.

[PL 1987, c. 482, §1 (NEW).]

**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.

[PL 1987, c. 482, §1 (NEW).]

**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 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-A, 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. Any community exempted under Title 22, chapter 103-A 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 exempted under Title 22, chapter 103-A is not entitled to and may not seek any reimbursement or financial assistance under the MaineCare 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.

Notwithstanding this subsection, a life-care community that holds a final certificate of authority from the superintendent and that was operational on November 18, 2002 and that is barred from seeking reimbursement or financial assistance under the MaineCare program from a state or federal agency may continue to admit nonresidents of the community to its skilled nursing facility after its first 3 years of operation with the approval of the superintendent. A life-care community that admits nonresidents to its skilled nursing facility as permitted under this subsection may continue to admit nonresidents after its first 3 years of operation only for such period as approved by the superintendent after the superintendent's consideration of the financial impact on the life-care community and the impact on the contractual rights of subscribers of the community.

[PL 2003, c. 155, §1 (AMD).]

#### SECTION HISTORY

PL 1987, c. 482, §1 (NEW). PL 1987, c. 563, §§1-4 (AMD). PL 1987, c. 769, §A102 (AMD). PL 1989, c. 343, §§4-15,23 (AMD). RR 1995, c. 2, §54 (COR). RR 1995, c. 2, §55 (COR). PL 1995, c. 452, §§8-20 (AMD). PL 1995, c. 625, §A27 (AMD). PL 1997, c. 478, §1 (AMD). PL 1997, c. 592, §75 (AMD). PL 2003, c. 155, §1 (AMD). PL 2003, c. 510, §A22 (AMD).

#### §6203-A. Escrow account

**(REPEALED)**

#### SECTION HISTORY

PL 1989, c. 343, §16 (NEW). PL 1989, c. 343, §23 (RP).

#### §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. [PL 1995, c. 452, §21 (NEW).]

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. [PL 1995, c. 452, §21 (NEW).]

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. [PL 1995, c. 452, §21 (NEW).]

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. [PL 1995, c. 452, §21 (NEW).]

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. [PL 1995, c. 452, §21 (NEW).]

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. [PL 1995, c. 452, §21 (NEW).]

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. [PL 1995, c. 452, §21 (NEW).]

[PL 1995, c. 452, §21 (NEW).]

**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.

[PL 1995, c. 452, §21 (NEW).]

**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.

[PL 1995, c. 452, §21 (NEW).]

## SECTION HISTORY

PL 1995, c. 452, §21 (NEW).

### §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 contractual 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. [RR 2015, c. 2, §16 (COR).]

## SECTION HISTORY

PL 1987, c. 482, §1 (NEW). RR 2015, c. 2, §16 (COR).

### §6205. Suspension or revocation of certificate of authority

**1. Complaint to District Court.** The superintendent may file a complaint with the District Court seeking the suspension or revocation of any certificate of authority issued to a provider under this chapter if the superintendent 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; [PL 1987, c. 482, §1 (NEW).]

B. The provider charges an entrance fee, maintenance fee or other amount not consistent with the continuing care contract approved pursuant to section 6206; [PL 1987, c. 482, §1 (NEW).]

C. The department certifies to the superintendent that the provider is unable to fulfill its obligations to furnish shelter, health care or supportive services; [PL 1987, c. 482, §1 (NEW).]

D. The provider is no longer financially responsible and may not reasonably be expected to meet its obligations to subscribers or prospective subscribers; [PL 1987, c. 482, §1 (NEW).]

E. The provider has failed to implement a mechanism affording the subscribers an opportunity to participate in matters of policy and operation; [PL 1989, c. 502, Pt. A, §100 (AMD).]

F. The provider has failed to implement the complaint system in a manner to reasonably resolve valid complaints; [PL 1987, c. 482, §1 (NEW).]

G. The provider or any person on its behalf has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive or unfair manner; [PL 1987, c. 482, §1 (NEW).]

H. The continued operation of the provider will be hazardous to its subscribers; [PL 1987, c. 482, §1 (NEW).]

I. The provider has submitted false financial statements, organizational statements or documents; or [PL 1987, c. 482, §1 (NEW); PL 1989, c. 343, §17 (AMD); PL 1989, c. 343, §23 (AFF).]

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. [PL 1987, c. 482, §1 (NEW); PL 1989, c. 343, §17 (AMD); PL 1989, c. 343, §23 (AFF).]

K. [PL 1989, c. 343, §18 (NEW); PL 1989, c. 343, §23 (RP).]

[RR 2021, c. 1, Pt. B, §393 (COR).]

**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.

[PL 1987, c. 482, §1 (NEW).]

**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 subscribers and shall not engage in any advertising or solicitation.

[PL 1987, c. 482, §1 (NEW).]

**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.

[PL 1987, c. 482, §1 (NEW).]

#### SECTION HISTORY

PL 1987, c. 482, §1 (NEW). PL 1989, c. 343, §§17,18,23 (AMD). PL 1989, c. 502, §A100 (AMD). PL 1999, c. 547, §B78 (AMD). PL 1999, c. 547, §B80 (AFF). RR 2021, c. 1, Pt. B, §393 (COR).

#### §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; [PL 1987, c. 482, §1 (NEW).]
- B. State the name and address of the facility; [PL 1987, c. 482, §1 (NEW).]
- 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; [PL 1987, c. 482, §1 (NEW).]
- 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; [PL 1987, c. 482, §1 (NEW).]
- E. State whether the provider requires the subscriber to purchase or maintain supplemental insurance; [PL 1987, c. 482, §1 (NEW).]
- 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; [PL 1987, c. 482, §1 (NEW).]
- G. State the terms under which an agreement is canceled by the death of the subscriber; [PL 1987, c. 482, §1 (NEW).]
- 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; [PL 1987, c. 482, §1 (NEW).]
- I. State the extent of funeral and burial services which will be provided by the provider; [PL 1987, c. 482, §1 (NEW).]
- J. Provide a description of the unit which the subscriber will occupy; [PL 1987, c. 482, §1 (NEW).]
- K. State the conditions, if any, under which a unit may be assigned to the use of another by the subscriber; [PL 1987, c. 482, §1 (NEW).]

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; [PL 1987, c. 482, §1 (NEW).]

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; [PL 1987, c. 482, §1 (NEW).]

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; [PL 1987, c. 482, §1 (NEW).]

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."; [PL 1987, c. 482, §1 (NEW).]

P. State that the subscriber will annually receive a financial and organizational disclosure statement; and [PL 1987, c. 482, §1 (NEW).]

Q. Provide that the provider shall make available to the subscriber, upon request, any certified financial statement transmitted to the superintendent. [PL 1987, c. 482, §1 (NEW).]  
[PL 1987, c. 482, §1 (NEW).]

**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, transfers the subscriber pursuant to section 6228 or transfers the subscriber to another health facility. A subscriber's accommodations may be changed only for the protection of the health or safety of the subscriber or the general welfare of the residents; [PL 1995, c. 452, §22 (AMD).]

B. A description of the policies that will be implemented if the subscriber becomes unable to meet the fees; [PL 1987, c. 482, §1 (NEW).]

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; [PL 1995, c. 452, §23 (AMD).]

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 [PL 1995, c. 452, §23 (AMD).]

E. A statement of the rights of residents of continuing care retirement communities granted by section 6227. [PL 1995, c. 452, §24 (NEW).]  
[PL 1995, c. 452, §§22-24 (AMD).]

**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.

[PL 1987, c. 482, §1 (NEW).]

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. [PL 1987, c. 482, §1 (NEW).]

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. [PL 1987, c. 482, §1 (NEW).]

#### SECTION HISTORY

PL 1987, c. 482, §1 (NEW). PL 1995, c. 452, §§22-24 (AMD).

#### **§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: [PL 1987, c. 482, §1 (NEW).]

**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 Office of Securities, must be filed with the superintendent prior to the sale of any of the condominium units; and [PL 2001, c. 182, §7 (AMD).]

**2. Bylaws and rules; filing.** The bylaws and rules of the unit owners' association shall be filed with the superintendent for informational purposes. [PL 1987, c. 482, §1 (NEW).]

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. [PL 1987, c. 482, §1 (NEW).]

#### SECTION HISTORY

PL 1987, c. 482, §1 (NEW). PL 2001, c. 182, §7 (AMD).

#### **§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 I, governing consumer cooperatives or Title 13, chapter 85, subchapter I-A, governing cooperative affordable housing corporations. [PL 1995, c. 452, §25 (AMD).]

If a registration statement for the cooperative is filed with the Office of Securities, pursuant to the Maine Uniform Securities Act, Title 32, chapter 135, a copy must be simultaneously filed with the superintendent and a copy must 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 Office of Securities, a disclosure statement containing, to the extent applicable, all the information required to register a security by qualification, pursuant to Title 32, section 16304, must 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. [PL 2005, c. 65, Pt. C, §13 (AMD).]

#### SECTION HISTORY

PL 1987, c. 482, §1 (NEW). PL 1995, c. 452, §25 (AMD). PL 2001, c. 182, §8 (AMD). PL 2005, c. 65, §C13 (AMD).

#### §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.

[PL 1987, c. 482, §1 (NEW).]

**2. Required contents.** Each disclosure statement shall contain:

A. The name, business address and form of organization of the provider; and [PL 1987, c. 482, §1 (NEW).]

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." [PL 1987, c. 482, §1 (NEW).]

[PL 1987, c. 482, §1 (NEW).]

**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; [PL 1987, c. 482, §1 (NEW).]

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; [PL 1987, c. 482, §1 (NEW).]

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; [PL 1987, c. 482, §1 (NEW).]

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; [PL 1987, c. 482, §1 (NEW).]

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; [PL 1987, c. 482, §1 (NEW).]

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; [PL 1987, c. 482, §1 (NEW).]

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; [PL 1987, c. 482, §1 (NEW).]

H. An examined pro forma projected financial statement for the coming 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; [PL 1995, c. 452, §26 (AMD).]

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; [PL 1995, c. 452, §27 (AMD).]

J. Any other material information that the provider wishes to include in the disclosure statement or that the superintendent or department requires by rule; and [PL 1995, c. 452, §27 (AMD).]

K. Whether the provider has misappropriated funds or otherwise breached the terms of a deposit agreement to the detriment of a subscriber. [PL 1995, c. 452, §28 (NEW).]

[PL 1995, c. 452, §§26-28 (AMD).]

## SECTION HISTORY

PL 1987, c. 482, §1 (NEW). PL 1995, c. 452, §§26-28 (AMD).

### §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. [PL 1987, c. 482, §1 (NEW).]

**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; [PL 1987, c. 482, §1 (NEW).]

B. In the case of the death of the subscriber, interest earned upon funds in escrow; [PL 1987, c. 563, §5 (AMD).]

C. The application fee; [PL 1987, c. 482, §1 (NEW).]

D. A maximum of 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 [PL 1995, c. 452, §29 (AMD).]

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. [PL 1987, c. 482, §1 (NEW).]

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

[PL 1995, c. 452, §29 (AMD).]

**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 [PL 1987, c. 482, §1 (NEW).]

B. A refund of all money paid by the subscriber, plus interest earned on escrowed funds shall be refunded, less an application fee not to exceed \$500, is made at the time the agreement is terminated. [PL 1987, c. 563, §6 (AMD).]

[PL 1987, c. 563, §6 (AMD).]

**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.

[PL 1987, c. 482, §1 (NEW).]

#### SECTION HISTORY

PL 1987, c. 482, §1 (NEW). PL 1987, c. 563, §§5,6 (AMD). PL 1989, c. 343, §§19,23 (AMD). PL 1995, c. 452, §29 (AMD).

#### **§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. [PL 1987, c. 482, §1 (NEW).]

#### SECTION HISTORY

PL 1987, c. 482, §1 (NEW).

#### **§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. [PL 1987, c. 482, §1 (NEW).]

#### SECTION HISTORY

PL 1987, c. 482, §1 (NEW).

#### **§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.

[PL 1987, c. 482, §1 (NEW).]

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

[PL 1987, c. 482, §1 (NEW).]

#### SECTION HISTORY

PL 1987, c. 482, §1 (NEW).

#### §6214. Administrative rules

The superintendent and the department, as provided in this section, shall administer this chapter and may: [PL 1987, c. 482, §1 (NEW).]

**1. Forms.** Prescribe, prepare and furnish all necessary forms; [PL 1987, c. 482, §1 (NEW).]

**2. Fees.** Establish and collect reasonable fees under this chapter; and [PL 1987, c. 482, §1 (NEW).]

**3. Rules.** Adopt, amend or repeal, as necessary, rules to implement and interpret this chapter. [PL 1987, c. 482, §1 (NEW).]

#### SECTION HISTORY

PL 1987, c. 482, §1 (NEW).

#### §6215. Reserves

**(REPEALED)**

#### SECTION HISTORY

PL 1987, c. 482, §1 (NEW). PL 1989, c. 343, §§20,23 (RPR). PL 1995, c. 452, §30 (RPR). PL 1995, c. 625, §A28 (RP).

#### §6215-A. Reserves

A provider shall establish and maintain the following reserves: [PL 1995, c. 625, Pt. A, §29 (NEW).]

**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; [PL 1995, c. 625, Pt. A, §29 (NEW).]

**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 [PL 1995, c. 625, Pt. A, §29 (NEW).]

**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. [PL 1995, c. 625, Pt. A, §29 (NEW).]
- 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. [PL 1995, c. 625, Pt. A, §29 (NEW).]

[PL 1995, c. 625, Pt. A, §29 (NEW).]

The superintendent may adopt reasonable rules further defining the standards contained in this section. [PL 1995, c. 625, Pt. A, §29 (NEW).]

#### SECTION HISTORY

PL 1995, c. 625, §A29 (NEW).

#### **§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. [PL 1987, c. 482, §1 (NEW).]

#### SECTION HISTORY

PL 1987, c. 482, §1 (NEW).

#### **§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. [PL 1987, c. 482, §1 (NEW).]

**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. [PL 1987, c. 482, §1 (NEW).]

**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. [PL 1987, c. 482, §1 (NEW).]

**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. [PL 1987, c. 482, §1 (NEW).]

#### SECTION HISTORY

PL 1987, c. 482, §1 (NEW).

#### §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: [PL 1987, c. 482, §1 (NEW).]

**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; [PL 1987, c. 482, §1 (NEW).]

**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; [PL 1987, c. 482, §1 (NEW).]

**3. Description of services.** A description of services and information as to where and how to secure them; and [PL 1987, c. 482, §1 (NEW).]

**4. Method of subscriber complaints.** A clear and understandable description of the provider's method for resolving subscriber complaints. [PL 1987, c. 482, §1 (NEW).]

On an annual basis, material changes in the information required to be provided pursuant to this section shall be furnished to all subscribers. [PL 1987, c. 482, §1 (NEW).]

#### SECTION HISTORY

PL 1987, c. 482, §1 (NEW).

#### §6219. Investments

The provider shall conform its investment strategy to the standards adopted by the superintendent by rule. [PL 1987, c. 482, §1 (NEW).]

#### SECTION HISTORY

PL 1987, c. 482, §1 (NEW).

**§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. [PL 1987, c. 482, §1 (NEW).]

## SECTION HISTORY

PL 1987, c. 482, §1 (NEW).

**§6221. Fees**

Every provider subject to this chapter shall pay to the superintendent the following fees: [PL 1987, c. 482, §1 (NEW).]

**1. Initial application.** For filing an initial application for a certificate of authority, \$1,500; and [PL 1987, c. 482, §1 (NEW).]

**2. Annual report.** For filing each annual report, \$100. [PL 1987, c. 482, §1 (NEW).]

## SECTION HISTORY

PL 1987, c. 482, §1 (NEW).

**§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. [PL 1987, c. 482, §1 (NEW).]

**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. [PL 1987, c. 482, §1 (NEW).]

**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. [PL 1987, c. 482, §1 (NEW).]

**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. [PL 1987, c. 482, §1 (NEW).]

## SECTION HISTORY

PL 1987, c. 482, §1 (NEW).

**§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: [PL 1987, c. 482, §1 (NEW).]

**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;

[PL 1987, c. 482, §1 (NEW); PL 1989, c. 343, §21 (AMD); PL 1989, c. 343, §23 (AFF).]

**1-A. Financial information.**

[PL 1989, c. 343, §22 (NEW); PL 1989, c. 343, §23 (RP).]

**2. Material changes.** Any material changes in the information submitted pursuant to this chapter; [PL 1995, c. 452, §31 (AMD).]

**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 [PL 1995, c. 452, §31 (AMD).]

**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.

[PL 1995, c. 452, §32 (NEW).]

SECTION HISTORY

PL 1987, c. 482, §1 (NEW). PL 1989, c. 343, §§21-23 (AMD). PL 1995, c. 452, §§31,32 (AMD).

**§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. [PL 1987, c. 482, §1 (NEW).]

SECTION HISTORY

PL 1987, c. 482, §1 (NEW).

**§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. [PL 1987, c. 482, §1 (NEW).]

SECTION HISTORY

PL 1987, c. 482, §1 (NEW).

**§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. [PL 1987, c. 563, §7 (NEW).]

**1. Initial deposits.** 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 may 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 must 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 former Title 22, chapter 103. If the applicant appeals and the appeal is denied, then refunds must be made no later than 10 days after notification of the denial. [PL 2003, c. 510, Pt. A, §23 (AMD).]

**2. Exception.** Except as specifically addressed in this section, all other requirements of this chapter shall apply. [PL 1987, c. 563, §7 (NEW).]

#### SECTION HISTORY

PL 1987, c. 563, §7 (NEW). PL 2003, c. 510, §A23 (AMD).

#### §6227. Rights of residents

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

- A. The right to self-organize; [PL 1995, c. 452, §33 (NEW).]
- B. The right to be represented by an individual of their own choice; [PL 1995, c. 452, §33 (NEW).]
- C. The right to engage in concerted activities for their own purposes; [PL 1995, c. 452, §33 (NEW).]
- 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 [PL 1995, c. 452, §33 (NEW).]
- 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. [PL 1995, c. 452, §33 (NEW).]

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.  
[PL 1995, c. 452, §33 (NEW).]

**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.  
[PL 1995, c. 452, §33 (NEW).]

#### SECTION HISTORY

PL 1995, c. 452, §33 (NEW).

#### §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: [PL 1995, c. 452, §34 (NEW).]

**1. Written consent.** With the written consent of the resident or the resident's authorized representative; or  
[PL 1995, c. 452, §34 (NEW).]

**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.  
[PL 1995, c. 452, §34 (NEW).]

#### SECTION HISTORY

PL 1995, c. 452, §34 (NEW).

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