

**§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).

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