

# CHAPTER 319hh

## MANAGEMENT OF CONTINUING CARE FACILITIES

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**Sec. 17b-520. (Formerly Sec. 17a-360). Definitions.** As used in sections 17b-520 to 17b-535, inclusive;

(a) "Continuing-care contract" means an agreement pursuant to which a provider undertakes to furnish to a person not related by consanguinity or affinity to the provider, care and shelter in a facility or care at home with the right to future access to care and shelter in such facility and medical or nursing services or other health-related benefits for the life of a person or for a period in excess of one year, and which requires a present or future transfer of assets or an entrance fee in addition to or instead of periodic charges, and the amount of the assets required to be transferred or the entrance fee is equal to or in excess of the amount set by the commissioner in regulations adopted pursuant to section 17b-533;

(b) "Entrance fee" means the total of any initial or deferred transfer to, or for the benefit of, a provider of a sum of money or other property made or promised to be made as full or partial consideration for acceptance or maintenance of a person as a resident pursuant to a continuing-care contract;

(c) "Facility" means the place in which a provider undertakes to furnish shelter and care to a person pursuant to a continuing-care contract;

(d) "Provider" means any person, corporation, limited liability company, business trust, trust, partnership, unincorporated association or other legal entity, or any combination of such entities, undertaking to furnish care and shelter in a facility or care at home with the right to future access to care and shelter in such facility and medical or nursing

services or other health-related benefits pursuant to a continuing-care contract;

(e) "Resident" means any person entitled to receive present or future shelter, care and medical or nursing services or other health-related benefits pursuant to a continuing-care contract, provided nothing in sections 17b-520 to 17b-535, inclusive, shall affect rights otherwise afforded to residents while they are patients in health care facilities as defined in subsections (a), (b) and (c) of section 19a-490;

(f) "Affiliate of a provider" means any person, corporation, limited liability company, business trust, trust, partnership, unincorporated association or other legal entity directly or indirectly controlling, controlled by or in common control with a provider;

(g) "Offer" means an offer through either personal, telephone or mail contact or other communication directed to or received by a person at a location within this state as an inducement, solicitation or attempt to encourage a person to enter into a continuing-care contract and shall include any paid advertisement published or broadcast within this state, except for advertisements in periodicals where more than two-thirds of the circulation is outside this state but shall not include marketing or feasibility studies;

(h) "Shelter" means a room, apartment, cottage or other living area in a facility set aside for the exclusive use of one or more persons pursuant to a continuing-care contract;

(i) "Medical or nursing services or other health-related benefits" means services or benefits which shall include care in a nursing facility, priority admission to a nursing facility, home health care or assistance with activities of daily living, to which a resident becomes contractually entitled;

(j) "Department" means the Department of Social Services;

(k) "Commissioner" means the Commissioner of Social Services

(P.A. 86-252, S. 1, 17; P.A. 93-262, S. 1, 87; P.A. 94-236, S. 7, 10; P.A. 95-79, S. 55, 56, 189; P.A. 08-36, S. 1.)

History: Sec. 17-535 transferred to Sec. 17a-360 in 1991; P.A. 93-262 authorized substitution of commissioner and department of social services for commissioner and department on aging, effective July 1, 1993; P.A. 94-236 redefined "medical or nursing services or other health-related benefits" to include care in a nursing facility, priority admission to a facility or home health care or assistance with activities of daily living, effective June 7, 1994; Sec. 17a-360 transferred to Sec. 17b-520 in 1995; P.A. 95-79 redefined "provider" and "affiliate of a provider" to include a limited liability company, effective May 31, 1995; P.A. 08-36 redefined "continuing-care contract" and "provider" to include provision of continuing care at home with right to future access, redefined "facility" by substituting "and" for "or" and redefined "resident" by adding "care".

**Sec. 17b-521. (Formerly Sec. 17a-361). Registration. Fee.** No provider shall offer or enter into a continuing-care contract in this state or with any resident of this state or regarding any facility in this state and no change in ownership of such a facility shall be completed unless the provider or proposed owner, as the case may be, has registered with the department by filing a current disclosure statement that meets the requirements of section 17b-522, financial information that meets the requirements of

section 17b-527, and a sworn statement of the escrow agent to the effect that the escrows required by sections 17b-524 and 17b-525 have been established, has received acknowledgment of such filing and has paid an annual filing fee of twenty-four dollars per residential unit operated by such provider. Acknowledgment of filing shall be furnished to the provider by the commissioner within ten business days of the date of filing. The commissioner may waive the requirements of this section if a change of ownership is proposed pursuant to section 17b-532 or a federal bankruptcy proceeding.

(P.A. 86-252, S. 2, 17; May Sp. Sess. P.A. 92-6, S. 5, 117; P.A. 94-236, S. 8, 10.)

History: Sec. 17-536 transferred to Sec. 17a-361 in 1991; May Sp. Sess. P.A. 92-6 provided for an annual filing fee of \$24 per residential unit; P.A. 94-236 added change in ownership to requirement for disclosure registration and authorized commissioner to waive the requirements if the change in ownership is pursuant to Sec. 17a-372 or federal bankruptcy proceedings, effective June 7, 1994; Sec. 17a-361 transferred to Sec. 17b-521 in 1995.

**Sec. 17b-522. (Formerly Sec. 17a-362). Disclosure statement.** (a) Before the execution of a contract to provide continuing care, or before the transfer of any money or other property to a provider by or on behalf of a prospective resident, whichever shall occur first, the provider shall deliver to the person with whom the contract is to be entered into, or to that person's legal representative, a conspicuous statement notifying the prospective resident that;

(1) A continuing-care contract is a financial investment and his investment may be at risk;

(2) The provider's ability to meet its contractual obligations under such contract depends on its financial performance;

(3) He is advised to consult an attorney or other professional experienced in matters relating to investments in continuing-care facilities before he signs a contract for continuing care; and

(4) The department does not guarantee the security of his investment.

(b) Before the execution of a contract to provide continuing care, or before the transfer of any money or other property to a provider by or on behalf of a prospective resident, whichever shall occur first, the provider shall deliver to the person with whom the contract is to be entered into, or to that person's legal representative, a disclosure statement. The text of the disclosure statement shall contain, to the extent not clearly and completely set forth in the contract for continuing care attached as an exhibit thereto, at least the following information;

(1) The name and business address of the provider and a statement of whether the provider is a partnership, corporation or other legal entity;

(2) The names of the officers, directors, trustees, or managing and general partners of the provider, the names of persons having a five per cent or greater ownership interest in the provider, and a description of each such person's occupation with the provider;

(3) A description of the business experience of the provider and of the manager of the facility if the facility will be managed on a day-to-day basis by an organization other than the provider, in the administration of continuing-care contracts or in the administration of similar contractual arrangements;

(4) A description of any matter in which the provider, any of the persons described in subdivision (2) of this subsection, or the manager has been convicted of a felony or pleaded nolo contendere to a felony charge, or held liable or enjoined in a civil action by final judgment, if the felony or civil action involved fraud, embezzlement, fraudulent conversion or misappropriation of property; or is subject to a currently effective injunction or restrictive or remedial order of a court of record, within the past five years has had any state or federal license or permit suspended or revoked as a result of an action brought by a governmental agency or department, rising out of or relating to business activity or health care, including, but not limited to, actions affecting the operation of a foster care facility, nursing home, retirement home, residential care home, or any facility subject to sections 17b-520 to 17b-535, inclusive, or a similar statute in another state or country;

(5) A statement as to whether or not the provider is, or is affiliated with, a religious, charitable, nonprofit, or for-profit organization; the extent of the affiliation, if any; the extent to which the affiliate organization will be responsible for the financial and contractual obligations of the provider; and the provision of the federal Internal Revenue Code, if any, under which the provider or affiliate is exempt from the payment of income tax;

(6) The location and a description of the physical property or properties of the provider, existing or proposed; and, if proposed, the estimated completion date or dates, whether or not construction has begun, and the contingencies subject to which construction may be deferred;

(7) The goods and services provided or proposed to be provided without additional charge under the contract for continuing care including the extent to which medical or nursing care or other health-related benefits are furnished;

(8) The disposition of interest earned on entrance fees or other deposits held in escrow;

(9) A description of the conditions under which the continuing-care contract may be terminated, whether before or after occupancy, by the provider or by the resident. In the case of termination by the provider, a description of the manner and procedures by which a decision to terminate is reached by the provider, including grounds for termination, the participation of a resident's council or other group, if any, in reaching such a decision, and any grievance, appeal or other similar procedures available to a resident whose contract has been terminated by the provider;

(10) A statement setting forth the rights of a surviving spouse who is a resident of the facility and the effect of the continuing-care contract on the rights of a surviving spouse who is not a resident of the facility, in the event of the death of a resident, subject to any limitations imposed upon such rights by statute or common law principles;

(11) A statement of the effect of a resident's marriage or remarriage while in the facility on the terms of such resident's continuing-care contract;

(12) Subject to the provisions of subsection (g) of this section, a statement of the provider's policy regarding disposition of a resident's personal property in the event of death, temporary or permanent transfer to a nursing facility, or termination of the contract by the provider;

(13) A statement that payment of an entrance fee or other transfer of assets pursuant to a continuing-care contract may have significant tax consequences and that any person considering such a payment or transfer may wish to consult a qualified advisor;

(14) The provisions that have been made or will be made by the provider for reserve funding and any other security to enable the provider to perform fully its obligations under continuing-care contracts, including, but not limited to, escrow accounts established in compliance with sections 17b-524 and 17b-525, trusts or reserve funds, together with the manner in which such funds will be invested and the names and experience of the persons making or who will make investment decisions. Disclosure shall include a summary of the information contained in the five-year financial information filed with the commissioner pursuant to section 17b-527; such summary shall set forth by year any anticipated excess of future liabilities over future revenues and shall describe the manner in which the provider plans to meet such liabilities;

(15) Audited and certified financial statements of the provider, including (A) a balance sheet as of the end of the most recent fiscal year, and (B) income statements for the three most recent fiscal years of the provider or such shorter period of time as the provider shall have been in existence;

(16) Subject to the provisions of subsection (g) of this section, if the operation of the facility has not yet commenced, or if the construction of the facility is to be completed in stages, a statement of the anticipated source and application of the funds used or to be used in the purchase or construction of the facility or each stage of the facility, including:

(A) An estimate of such costs as financing expense, legal expense, land costs, marketing costs, and other similar costs which the provider expects to incur or become obligated for prior to the commencement of operations of each stage of the facility;

(B) A description of any mortgage loan or any other financing intended to be used for the financing of the facility or each stage of the facility, including the anticipated terms and costs of such financing;

(C) An estimate of the total entrance fees to be received from or on behalf of residents at or prior to commencement of operation of each stage of the facility; and

(D) An estimate of the funds, if any, which are anticipated to be necessary to fund start-up losses and provide reserve funds to assure full performance of the obligations of the provider under continuing-care contracts;

(17) Pro forma annual income statements for the facility for the next five fiscal years;

(18) A description of all entrance fees and periodic charges, if any, required of residents and a record of past increases in such fees and charges during the previous seven years;

(19) For each facility operated by the provider, the total actuarial present value of prepaid healthcare obligations assumed by the provider under continuing-care contracts as calculated on an actuarially sound basis using reasonable assumptions for mortality and morbidity;

(20) A statement that all materials required to be filed with the department are on file, a brief description of such materials, and the address of the department at which such materials may be reviewed;

(21) The cover page of the disclosure statement shall state, in a prominent location and type face, the date of the disclosure statement and that registration does not constitute approval, recommendation, or endorsement by the department or state, nor does such registration evidence the accuracy or completeness of the information set out in the disclosure statement;

(22) If the construction of the facility is to be completed in stages, a statement as to whether all services will be provided at the completion of each stage and, if not, the services that will not be provided listed in bold print.

(c) (1) Not more than sixty nor less than ten days before the execution of a contract to provide continuing care, the provider shall deliver a current disclosure statement to the person with whom the contract is to be entered into or to that person's legal representative.

(2) Not more than sixty nor less than ten days before a person occupies a continuing care facility, the provider shall deliver a revised and up-to-date disclosure statement to the prospective resident or to that person's legal representative, except that if there have been no revisions to the disclosure statement previously delivered pursuant to subdivision (1) of this subsection, the provider shall deliver a statement to the prospective resident or representative that there have been no revisions to the original disclosure statement.

(d) The statement required under subsections (a) and (b) of this section shall be signed and dated by the prospective resident before the execution of a contract to provide continuing care or before the transfer of any money or other property to a provider by or on behalf of the prospective resident. Each such statement shall contain an acknowledgment that such statement and the continuing-care contract have been reviewed by the prospective resident or his legal representative. Such signed statements shall be kept on file by the provider for a period of not less than the term of the contract.

(e) Each statement required under subsections (a) and (b) of this section and the continuing-care contract shall be in language easily readable and understandable in accordance with the provisions of subsections (a) and (b) of section 42-152. (f) A copy of the standard form or forms of the continuing-care contract used by the provider shall be attached as an exhibit to each disclosure statement.

(g) The provisions of subdivisions (12) and (16) of subsection (b) of this section shall not apply to a continuing-care contract for the provision of care in a person's home.

(h) The commissioner may adopt regulations in accordance with the provisions of chapter 54 to specify any additional information required in the disclosure statement.

(P.A. 86-252, S. 3, 17; P.A. 90-159, S. 1; P.A. 97-112, S. 2; P.A. 98-250, S. 23, 39; June Sp. Sess. P.A. 98-1, S. 12, 121; P.A. 99-282, S. 1, 4; P.A. 08-36, S. 2; P.A. 10-32, S. 70.)

History: P.A. 90-159 amended Subsec. (a) extending requirements of Subdiv. (16) to facilities to be completed in stages and adding Subdiv. (22) re disclosure by such facilities of services to be provided at completion of each stage; Sec. 17-537 transferred to Sec. 17a-362 in 1991; Sec. 17a-362 transferred to Sec. 17b-522 in 1995; P.A. 97-112 replaced "home for the aged" with "residential care home"; P.A. 98-250 added new Subsec. (a) re disclosure statement, added new Subsecs. (c) and (d) re delivery and content of disclosure statement, added new Subsec. (g) re regulations and relettered remaining Subsecs. accordingly, effective July 1, 1998; June Sp. Sess. P.A. 98-1 amended Subsec. (d) to make a technical change, effective July 1, 1998; P.A. 99-282 amended Subsec. (c) to designate existing language as Subdiv. (1) and add new Subdiv. (2) to require delivery of a revised and up-to-date disclosure statement to a prospective resident not more than sixty or less than ten days before that person occupies a continuing care facility except in cases when the original disclosure statement has not been revised, effective July 1, 1999; P.A. 08-36 amended Subsec. (b)(12) and (16) by adding "Subject to the provisions of subsection (g) of this section", added new Subsec. (g) to exempt continuing-care contracts for care at home from provisions of Subsec. (b)(12) and (16) and redesignated existing Subsec. (g) as Subsec. (h); P.A. 10-32 made technical changes in Subsec. (b), effective May 10, 2010.

**Sec. 17b-523. (Formerly Sec. 17a-363). Continuing-care contract requirements.** (a) Each continuing-care contract shall provide;

(1) That the party contracting with the provider may rescind the contract by notifying the provider in writing by registered or certified mail of such rescission within thirty days following the execution of the contract; that in the event of such rescission, any money or property transferred to the provider shall be refunded, less (A) those costs specifically incurred by the provider or facility at the request of the resident and described in the contract or in an addendum thereto signed by the resident; and (B) a reasonable service charge, not to exceed the greater of one thousand dollars or two per cent of the entrance fees; and, if applicable, that the resident to whom the contract pertains shall not be required to move into the facility before the expiration of the thirty-day period;

(2) That if, after the thirty-day period, a resident dies before occupying a contracted-for living unit, or on account of illness, injury or incapacity is precluded from occupying a contracted-for living unit under the terms of the continuing-care contract, or a resident dies before the commencement of care under a continuing-care contract to provide care in such person's home, upon notice to the provider by registered or certified mail, the contract is automatically cancelled and the resident or the resident's legal representative shall receive a refund of all money or property transferred to the provider, less (A) those costs specifically incurred by the provider or facility at the request of the resident and described in the contract or in an addendum thereto signed by the resident; (B) a reasonable service charge not to exceed the greater of one thousand dollars, or two per cent of the entrance fee, and (C) if the contract includes occupying a living unit in a facility and the unit was actually available for occupancy, the usual monthly charge for that unit, prorated on a per diem basis, for the period beginning seven days after the execution of the contract and ending on the last day of the month in which the provider receives notice that the resident will not occupy the unit;



(3) That if construction of the facility has not yet begun, construction will not begin until a minimum number of living units, which shall not be less than one-half of the units in the facility or if the construction is to be completed in stages, one-half of the units evidencing financial feasibility in accordance with section 17b-526, have been presold, and a minimum deposit of five per cent of the entrance fee per unit for all presold units or ten thousand dollars per unit for all presold units, whichever is less, has been received by the provider. The requirements of this subdivision shall not apply to any continuing-care contract for the provision of care in a person's home.

(b) Each continuing-care contract shall also specify:

(1) The circumstances under which the resident will be permitted to continue to receive care and shelter in a facility or care at home with the right to future access to care and shelter in such facility and medical or nursing services or other health-related benefits, and other benefits under the continuing-care contract in the event of possible financial difficulties on the part of the resident;

(2) The terms and conditions under which a contract for continuing care may be cancelled by the provider or by the resident; and the conditions, if any, under which all or any portion of the entrance fee will be refunded in the event of cancellation of the contract by the provider or by the resident or in the event of the death of the resident prior to or following occupancy of a living unit;

(3) The conditions under which a living unit occupied by a resident may be made available by the provider to a different or new resident other than on the death of the original resident;

(4) The manner in which the provider may adjust periodic charges or other recurring fees and the limitations of such adjustments, if any, and, if there is no such limitation, a clear statement that such increases may be made at the discretion of the provider.

(P.A. 86-252, S. 4, 17; P.A. 90-159, S. 2; P.A. 08-36, S. 3.)

History: P.A. 90-159 in Subsec. (a) required a minimum number of living units to be sold prior to construction of a facility to be completed in stages and a minimum deposit to have been received by the provider for all presold units prior to construction of any facility; Sec. 17-538 transferred to Sec. 17a-363 in 1991; Sec. 17a-363 transferred to Sec. 17b-523 in 1995; P.A. 08-36 amended Subsec. (a)(2) by adding provision re automatic cancellation of contract if resident dies before commencement of home care and making conforming changes, amended Subsec. (a)(3) by adding exemption for continuing-care contracts for care at home, and amended Subsec. (b)(1) to require each continuing-care contract to specify circumstances under which resident in financial difficulties who is receiving care at home can continue such care.

**Sec. 17b-524. (Formerly Sec. 17a-364). Entrance fee escrow account.** (a) Prior to soliciting or entering into any contract for the provision of continuing care, the provider shall establish with a bank or trust company as an escrow agent, an entrance fee escrow pursuant to which the provider shall deposit with the escrow agent, within seventy-two hours of receipt by the provider, each entrance fee or portion of an entrance fee received by the provider from or on behalf of a resident prior to the date the resident is permitted to occupy a living unit in the facility. If the prospective resident, as defined in



section 17b-520, is a resident of this state at the time the continuing-care contract is signed, the bank or trust company serving as escrow agent for such fees received from such a resident shall have its principal place of business in this state. The entrance fee escrow shall be subject to release as follows:

(1) If the entrance fee applies to a living unit that has been previously occupied in the facility, the entrance fee shall be released to the provider at the time the living unit becomes available for occupancy by the new resident, or shall be returned to the resident or the resident's personal representative under the conditions described in section 17b-523, if the escrow agent has received written demand by registered or certified mail for return of the entrance fee prior to the release thereof to the provider;

(2) If the entrance fee applies to a living unit which has not previously been occupied by any resident, the entrance fee shall be returned to the resident or the resident's legal representative under the conditions described in section 17b-523, if the escrow agent receives written demand by registered or certified mail for return of the entrance fee prior to release thereof to the provider, or the entrance fee shall be released to the provider at the time all of the following conditions have been met:

(A) The sum of the entrance fees received or receivable by the provider pursuant to binding contracts for continuing care, plus the anticipated proceeds of any first mortgage loan or other long-term financing commitment, plus funds from other sources in the actual possession of the provider, equals or exceeds the sum of seventy-five per cent of the aggregate cost of constructing or purchasing, equipping and furnishing the facility plus seventy-five per cent of the funds estimated in the statement of anticipated source and application of funds submitted by the provider as part of its disclosure statement to be necessary to fund start-up losses of the facility plus seventy-five per cent of the amount of the reserve fund escrow required to be maintained by the provider pursuant to section 17b-525;

(B) A commitment has been received by the provider for any permanent mortgage loan or other long-term financing described in the statement of anticipated source and application of funds included in the current disclosure statement on file pursuant to section 17b-522, and any conditions of the commitment prior to disbursement of funds thereunder, other than completion of the construction or closing of the purchase of the facility, have been substantially satisfied; and

(C) If construction of the facility has not been substantially completed, all governmental permits or approvals necessary prior to the commencement of construction have been obtained; and a maximum price contract has been entered into between the provider and a general contractor responsible for construction of the facility; a bond covering the faithful performance of the construction contract by the general contractor and the payment of all obligations arising thereunder has been issued by an insurer authorized to do business in this state with the provider as obligee; a loan agreement has been entered into by the provider for an interim construction loan in an amount, when combined with the amount of entrance fees then held in escrow under the provisions of this section plus the amount of funds from other sources then in the actual possession of the provider, that will equal or exceed the estimated cost of constructing, equipping and furnishing the facility; not less than ten per cent of the amount of the construction loan has been disbursed by the lender for physical construction or site preparation work completed; and orders at firm prices have been placed by the provider for not less than fifty per cent in value, including installation charges if applicable, of items necessary for

equipping and furnishing the facility in accordance with the description set forth in the disclosure statement required by section 17b-522; or if construction or purchase of the facility has been substantially completed, an occupancy permit covering the living unit has been issued by the local government having authority to issue these permits.

(b) The aggregate amount of entrance fees which may be released to the provider pursuant to subparagraph (A) of subdivision (2) of subsection (a) of this section prior to the date on which any reserve fund escrow required to be established under section 17b-525 is established shall not exceed the aggregate amount of entrance fees then received or receivable by the provider pursuant to binding contracts for continuing care less the amount of the entrance fees received or receivable which may be required to be initially maintained in the reserve fund escrow.

(c) The provider shall provide each prospective resident who has signed a contract for continuing care with the name, address, and telephone number of the escrow agent and shall file a copy of the escrow agreement with the department.

(d) The provisions of this section shall not apply to any continuing-care contract for the provision of care in a person's home.

(P.A. 86-252, S. 5, 17; P.A. 08-36, S. 4.)

History: Sec. 17-539 transferred to Sec. 17a-364 in 1991; Sec. 17a-364 transferred to Sec. 17b-524 in 1995; P.A. 08-36 added Subsec. (d) re exemption for continuing-care contracts for care at home.

**Sec. 17b-525. (Formerly Sec. 17a-365). Reserve fund escrow account.** (a) Except as provided in section 17b-534, on and after the date any facility located in this state is first occupied by any resident, the provider shall establish and maintain on a current basis, in escrow with a bank, trust company, or other escrow agent having its principal place of business in this state, a portion of all entrance fees received by the provider in an aggregate amount sufficient to cover: (1) All principal and interest, rental or lease payments due during the next twelve months on account of any first mortgage loan or any other long-term financing of the facility; and (2) the total cost of operations of the facility for a one-month period, excluding debt service, rental or lease payments as described in subdivision (1) of this subsection and excluding capital expenditures. The escrow agent may release up to one-twelfth of the required principal balance of funds held in escrow pursuant to said subdivision not more than once during any calendar month, if the provider so requests in writing. The commissioner may authorize the escrow agent to release additional funds held in escrow pursuant to subdivisions (1) and (2) of this subsection, upon application by the provider setting forth the reasons for the requested release and a plan for replacing these funds within one year; the commissioner shall respond within fifteen business days. If any escrow funds so released are not replaced within one year the escrow agent shall so notify the commissioner. A provider shall promptly notify the commissioner in the event such provider uses funds held in escrow pursuant to subdivisions (1) and (2) of this subsection. Upon written application by a provider, the commissioner may authorize a facility to maintain a reserve escrow or escrows in an amount less than the amounts set forth in this section, if the commissioner finds that the contractual liabilities of the provider and the best interests of the residents may be adequately protected by a reserve escrow or escrows in a lesser amount.

(b) No entrance fee escrows established or maintained under section 17b-524 shall be subordinated to other loans or commitments of any kind. No reserve fund escrows established or maintained under this section shall be subordinated to other loans or commitments, other than first mortgage loans or other long-term financing obligations of the facility. No entrance fee escrows or reserve fund escrows shall be (1) pledged as collateral, (2) invested in any building or healthcare facility of any kind, (3) used for capital construction or improvements or for the purchase of real estate, or (4) removed from the state if required to be maintained within this state. Interest on the reserve fund required under this section shall be payable to the provider.

(c) Any affiliate of a provider that controls any part of the reserve escrow funds is liable for the debts of the provider up to the amount of the provider's contribution to the fund plus any prorated interest the fund may earn.

(P.A. 86-252, S. 6, 17; P.A. 90-159, S. 3; P.A. 98-250, S. 24, 39.)

History: P.A. 90-159 in Subsec. (b) prohibited entrance fee escrows from being subordinated to other loans or commitments of any kind; Sec. 17-540 transferred to Sec. 17a-365 in 1991; Sec. 17a-365 transferred to Sec. 17b-525 in 1995; P.A. 98-250 amended Subsec. (a) to require notification of use of escrow funds, effective July 1, 1998.

**Sec. 17b-526. (Formerly Sec. 17a-366). Preconstruction requirements.** (a) Construction of any facility or, if the construction of the facility is to be completed in stages, construction of any stage of the facility shall not begin until (1) fifty per cent of all the living units within the planned facility, or fifty per cent of any designated part or parts thereof determined by the commissioner as evidencing financial feasibility in accordance with subdivision (2) of subsection (b) of this section, have been presold, (2) a minimum deposit of five per cent of the entrance fee per unit for all presold units or ten thousand dollars per unit for all presold units, whichever is less, has been received by the provider, and (3) the thirty-day rescission period set forth in subdivision (1) of subsection (a) of section 17b-523 has expired.

(b) When the construction of a facility is to be completed in stages, construction of any stage shall not begin until (1) the financial feasibility of the designated part of the project to be constructed, maintained and operated as a facility prior to the construction, maintenance and operation of the remaining planned part or parts has been demonstrated to the commissioner by the filing of proof of committed construction financing or other documentation of financial feasibility deemed sufficient by the commissioner, and (2) the commissioner has issued a written notice stating that proof of committed construction financing or other documentation of financial feasibility deemed sufficient by the commissioner has been filed. The commissioner shall issue a written notice as to whether the proof or other documentation submitted is sufficient within twenty days of the filing of such proof or other documentation.

(c) Upon receipt of a notice of the commissioner stating that proof of committed construction financing or other documentation of financial feasibility filed pursuant to subsection (b) of this section is deemed insufficient, the provider shall have thirty days from the date of the issuance of such notice to file a written request for a hearing in accordance with chapter 54. The final decision of the commissioner after a hearing shall be subject to appeal in accordance with section 4-183. Notwithstanding the provisions of subsection (f) of section 4-183, no stay of the final decision of the commissioner shall

be granted pending the outcome of any appeal of such decision.

(P.A. 86-252, S. 7, 17; P.A. 90-159, S. 4.)

History: P.A. 90-159 replaced prior provisions with Subsecs. (a), (b) and (c) re preconstruction requirements incorporating requirements for facilities to be completed in stages; Sec. 17-541 transferred to Sec. 17a-366 in 1991; Sec. 17a-366 transferred to Sec. 17b-526 in 1995.

**Sec. 17b-527. (Formerly Sec. 17a-367). Information to be filed with department. Information to be made available to residents. Regulations.** (a) A provider operating a facility located in this state shall file with the department annually, in a form and manner prescribed by the commissioner, financial and actuarial information for each facility located in this state and operated by the provider or by a manager under contract to the provider. The commissioner shall prescribe the information to be filed which shall include but is not limited to the following: Financial statements including certified current balance sheets and certified income statements and pro forma statements for the next five years as provided in section 17b-522 and such information as is necessary to assess the actuarial soundness thereof; the basis for amortization assumptions for the provider's capital costs; the facility's current rate schedule; a statement of source and application of funds for the five-year period beginning the year of initial filing pursuant to section 17b-521 or subsequent filing pursuant to section 17b-529; current and anticipated residential turnover rates; the average age of the residents for the next five years; healthcare utilization rates, including admission rates and days per one hundred residents by level of care; occupancy rates; the number of healthcare admissions per year; the days of care per year; and the number of permanent transfers. Financial and actuarial projections contained in such studies shall be determined on an actuarially sound basis using reasonable assumptions for mortality, morbidity and interest. Each provider operating a facility in this state shall make the information filed with the department pursuant to this subsection available to each such resident for viewing during regular business hours and, upon request, shall provide such resident with a copy of the most recent filing with the department. Each provider shall notify each resident, at least annually, of the right to view the filings and of the right to a copy of the most recent filing. The commissioner may adopt regulations in accordance with chapter 54 to prescribe financial and actuarial information to be filed pursuant to this subsection.

b) A provider operating a facility in this state shall notify the commissioner in writing prior to refinancing its existing indebtedness or making any material change in its business or corporate structure.

(c) The commissioner may require a provider operating a facility in this state to submit such information as the commissioner requests if the commissioner has reason to believe that such facility is in financial distress. The commissioner may require a provider constructing a facility in this state to submit such information as the commissioner requests if the commissioner has reason to believe that such facility is at risk of being in financial distress. "Financial distress" means the issuance of a negative going concern opinion, or failure to meet debt service payments, or drawing down on debt service reserve.

(d) The commissioner may adopt regulations in accordance with chapter 54 to prescribe

additional conditions that constitute financial distress.

(P.A. 86-252, S. 8, 17; P.A. 98-250, S. 25, 39; P.A. 99-282, S. 2, 4.)

History: Sec. 17-542 transferred to Sec. 17a-367 in 1991; Sec. 17a-367 transferred to Sec. 17b-527 in 1995; P.A. 98-250 added new Subsec. (b) re regulations, effective July 1, 1998; P.A. 99-282 amended Subsec. (a) to require providers to make information filed with the department pursuant to the subsection available to residents during regular business hours, to provide a copy of the most recent filing upon request and to notify residents of the right to view filings and receive such copy, and authorized the commissioner to adopt regulations re financial and actuarial information to be filed, inserted new Subsec. (b) re written notice to the commissioner prior to refinancing existing indebtedness or material change in business or corporate structure, inserted new Subsec. (c) re commissioner's authority to require additional information if the commissioner finds the facility is in financial distress, or at risk of being in financial distress, and defined "financial distress", and redesignated former Subsec. (b) as Subsec. (d) and substituted "additional conditions that constitute financial distress" for "financial and actuarial information to be filed by a provider ..." re criteria the commissioner may prescribe by regulation, effective July 1, 1999.

**Sec. 17b-528. (Formerly Sec. 17a-368). Documents required to be filed after first year of operation.** The registration of a facility pursuant to section 17b-521 shall remain effective unless withdrawn by the provider or unless the provider fails to file the documents specified in this section within one hundred and fifty days following the end of the first fiscal year of the provider in which such registration is filed. The provider shall file a revised disclosure statement including financial statements for its most recently ended fiscal year as required in section 17b-527, and its most recent entrance fees, occupancy charges and other charges as required in said section; and verification of the maintenance of escrow accounts as required pursuant to sections 17b-524 and 17b-525. The provider shall also file a narrative describing any material differences between the pro forma income statements filed pursuant to section 17b-522 and the actual results of operations during the most recently concluded fiscal year and describing any material differences between any estimates or projections made in the financial and actuarial information filed pursuant to section 17b-527 and the actual results of operations during the most recently concluded fiscal year. The fee for filings subsequent to an initial filing shall be prescribed by the commissioner in an amount not to exceed one hundred dollars. A provider, may, upon payment of said filing fee, revise its previously filed disclosure statement at any time if, in the opinion of the provider, revision is necessary to prevent the disclosure statement from containing a material misstatement of fact or from omitting to state a material fact required to be stated therein. Only the most recently filed statements shall be deemed current for purposes of sections 17b-520 to 17b-535, inclusive. The provider shall make any revised disclosure statement, whether filed pursuant to the requirements of this section or at the option of the provider, available at the facility for inspection by current residents of the facility during regular business hours.

(P.A. 86-252, S. 9, 17.)

History: Sec. 17-543 transferred to Sec. 17a-368 in 1991; Sec. 17a-368 transferred to Sec. 17b-528 in 1995.



**Sec. 17b-529. (Formerly Sec. 17a-369). Liability for violation, misstatement or omission.** (a) Any person who as, or on behalf of, a provider, enters into a contract for continuing care at a facility without having first delivered a disclosure statement meeting the requirements of section 17b-522 to the person contracting for the continuing care, or enters into a contract for continuing care at a facility with a person who has relied on a disclosure statement that omits to state a material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they are made, not misleading, is liable to the person contracting for the continuing care for damages and repayment of all fees paid to the provider, facility or person, less the reasonable value of care and lodging provided to the resident by or on whose behalf the contract for continuing care was entered into prior to discovery of the violation, misstatement or omission or to the time the violation, misstatement or omission should reasonably have been discovered, together with interest thereon at the legal rate for judgments, and court costs and reasonable attorneys fees. An action to enforce liability pursuant to this section shall not be maintained unless brought within six years after the execution of the contract for continuing care giving rise to the liability.

(b) Liability under this section for any violation, misstatement or omission exists only if the provider or person liable knew or should have known of the violation, misstatement or omission.

(c) Nothing contained in sections 17b-520 to 17b-535, inclusive, shall be construed to limit the remedies a person has under any other provision of law.

(P.A. 86-252, S. 10, 17; P.A. 03-19, S. 47.)

History: Sec. 17-544 transferred to Sec. 17a-369 in 1991; Sec. 17a-369 transferred to Sec. 17b-529 in 1995; P.A. 03-19 made a technical change in Subsec. (b), effective May 12, 2003.

**Sec. 17b-530. (Formerly Sec. 17a-370). Penalty.** Any person who wilfully and knowingly violates any provision of sections 17b-520 to 17b-535, inclusive, shall be fined not more than ten thousand dollars or imprisoned for a period not to exceed one year, or both.

(P.A. 86-252, S. 11, 17.)

History: Sec. 17-545 transferred to Sec. 17a-370 in 1991; Sec. 17a-370 transferred to Sec. 17b-530 in 1995.

**Sec. 17b-531. (Formerly Sec. 17a-371). Investigations. Hearings. Injunctions. Action by Attorney General.** (a) The commissioner, or any agent authorized by the commissioner, may conduct investigations within or outside of this state as the commissioner deems necessary to determine whether any person has violated any provision regarding the registration, disclosure and escrow provisions relating to continuing-care contracts or any regulation adopted pursuant to section 17b-533 or to aid in the enforcement of sections 17b-520 to 17b-535, inclusive, or in the prescribing of regulations under said sections. The commissioner, or any agent authorized by the commissioner, shall have the power to conduct any inquiry, investigation or hearing pursuant to the provisions of this section relating to continuing-care contracts and shall have the power to



administer oaths and take testimony under oath relative to the matter of inquiry or investigation. At any hearing ordered by the commissioner, the commissioner or such agent having authority by law to issue such process may subpoena witnesses and require the production of records, papers and documents pertinent to such inquiry. If any person disobeys such process or, having appeared in obedience thereto, refuses to answer any pertinent question put to him by the commissioner or his authorized agent or to produce any records and papers pursuant thereto, the commissioner or his agent may apply to the superior court for the judicial district of Hartford or for the judicial district wherein the person resides or wherein the provider or the facility is located, or to any judge of said court if the same is not in session, setting forth such disobedience to process or refusal to answer, and said court or such judge shall cite such person to appear before said court or such judge, and upon appropriate order, to show cause why answer to such question or production of such records should not be made.

(b) If as the result of any investigation relating to continuing-care contracts, the commissioner determines that any provider has violated any provision of sections 17b-520 to 17b-535, inclusive, the commissioner may, notwithstanding the provisions of chapter 54, request the Attorney General to seek a temporary or permanent injunction and such other relief as may be appropriate to enjoin such provider from continuing such violation or violations. If the court determines that such violation or violations exist, it may grant such injunctive relief and such other relief as justice may require and may set a time period within which a provider shall comply with any such order. Any appeal taken from any permanent injunction granted under this section shall not stay the operation of such injunction unless the court is of the opinion that great and irreparable injury will be done by not staying the operation of such injunction. If the commissioner determines that any person has violated the provisions of sections 17b-520 to 17b-535, inclusive, the commissioner may request the Attorney General to seek restitution or damages and such other relief as may be appropriate on behalf of any person injured by such violation.

(P.A. 86-252, S. 12, 17; P.A. 88-230, S. 1, 12; P.A. 90-98, S. 1, 2; P.A. 93-142, S. 4, 7, 8; P.A. 95-220, S. 4-6; P.A. 99-282, S. 3, 4.)

History: P.A. 88-230 replaced "judicial district of Hartford-New Britain" with "judicial district of Hartford", effective September 1, 1991; P.A. 90-98 changed the effective date of P.A. 88-230 from September 1, 1991, to September 1, 1993; Sec. 17-546 transferred to Sec. 17a-371 in 1991; P.A. 93-142 changed the effective date of P.A. 88-230 from September 1, 1993, to September 1, 1996, effective June 14, 1993; Sec. 17a-371 transferred to Sec. 17b-531 in 1995; P.A. 95-220 changed the effective date of P.A. 88-230 from September 1, 1996, to September 1, 1998, effective July 1, 1995; P.A. 99-282 amended Subsec. (b) to allow the Attorney General to seek restitution, damages or other relief on behalf of any person injured by a violation of any provision of sections 17b-520 to 17b-535, inclusive, if the commissioner finds that any person has violated said provisions, effective July 1, 1999, and applicable to violations occurring on or after that date.

**Sec. 17b-532. (Formerly Sec. 17a-372). Appointment of receiver. Order to liquidate.** (a)

If at any time the commissioner determines after notice to the provider and an opportunity for the provider to be heard, that: (1) A provider has failed to maintain the reserves required under sections 17b-524 and 17b-525, or has requested release of reserves held in escrow pursuant to section 17b-525 in an amount in excess of the amount permitted thereunder or authorized by the commissioner, or has failed to replace reserve funds as prescribed in section 17b-525, or (2) a provider has been or will

be unable to meet the pro forma income or cash flow projections it previously filed which may endanger its ability to fully perform its obligations pursuant to contracts for continuing care, or (3) a provider is bankrupt or insolvent or in imminent danger of becoming bankrupt or insolvent; the commissioner may apply to the Superior Court for an order appointing a receiver to rehabilitate or liquidate a facility.

(b) An order to rehabilitate a facility shall direct the receiver to take possession of the property of the provider and to conduct the business thereof, including the employment of such managers or agents as the receiver may deem necessary, and to take such steps as the court may direct toward removal of the causes and conditions which made rehabilitation necessary.

(c) If, at any time, the court finds, upon petition of the commissioner or receiver or the provider, or on its own motion, that the objectives of an order to rehabilitate a provider have been accomplished and that the facility can be returned to the provider's management without further jeopardy to the residents of the facility, creditors, owners of the facility, and to the public, the court may, upon a full report and accounting of the conduct of the facility's affairs during the rehabilitation and of the facility's current financial condition, terminate the rehabilitation and by order return the facility and its assets and affairs to the provider's management.

(d) If, at any time, the receiver determines that further efforts to rehabilitate the provider would be useless, it may apply to the court for an order of liquidation.

(e) An order to liquidate a facility may be issued upon application of the commissioner or of the receiver whether or not there has been issued a prior order to rehabilitate the facility, shall act as a revocation of the registration of the facility under section 17b-521 and shall order the receiver to marshal and liquidate all of the provider's assets located within this state.

(f) In applying for an order to rehabilitate or liquidate a facility, the commissioner shall give due consideration in the application to the manner in which the welfare of persons who have previously contracted with the provider for continuing care may be best served.

(g) An application for an order for rehabilitation under this section shall be denied or an order for rehabilitation vacated if the provider posts a bond, by a recognized surety authorized to do business in this state and executed in favor of the commissioner on behalf of persons who may be found entitled to a refund of entrance fees from the provider or other damages in the event the provider is unable to fulfill its contracts to provide continuing care at the facility, in an amount determined by the court to be equal to the reserve funding which would otherwise need to be available to fulfill such obligations.

(h) Subject to the approval of the court, the commissioner may assess reasonable costs and expenses incurred in the rehabilitation or liquidation of a facility against the provider.

(P.A. 86-252, S. 13, 17; P.A. 98-250, S. 26, 39.)

History: Sec. 17-547 transferred to Sec. 17a-372 in 1991; Sec. 17a-372 transferred to Sec.

17b-532 in 1995; P.A. 98-250 added Subsec. (h) re assessing costs and expenses, effective July 1, 1998.

**Sec. 17b-533. (Formerly Sec. 17a-373). Regulations.** The commissioner shall adopt regulations in accordance with the provisions of chapter 54 to carry out the provisions of sections 17b-520 to 17b-535, inclusive, including the prescribing of the minimum amount of assets to be transferred or entrance fee which shall subject a continuing-care contract to the provisions of said sections.

(P.A. 86-252, S. 14, 17.)

History: Sec. 17-548 transferred to Sec. 17a-373 in 1991; Sec. 17a-373 transferred to Sec. 17b-533 in 1995.

**Sec. 17b-534. (Formerly Sec. 17a-374). Exemption from reserve escrow provisions for certain providers.** Any provider operating a facility in this state for which construction commenced prior to January 1, 1987, or which was constructed prior to said date shall not be obligated to meet the reserve escrow provisions of section 17b-525, or disclosure thereof, until January 1, 1988. Prior to June 30, 1987, such providers shall file with the commissioner a statement setting forth a plan to meet the provisions of said section by January 1, 1988.

(P.A. 86-252, S. 15, 17.)

History: Sec. 17-549 transferred to Sec. 17a-374 in 1991; Sec. 17a-374 transferred to Sec. 17b-534 in 1995.

**Sec. 17b-535. (Formerly Sec. 17a-375). Advisory committee.** There shall be an Advisory Committee on Continuing Care appointed by the commissioner. The advisory committee shall be comprised of professionals such as accountants, actuaries, and insurance representatives; representatives of the continuing-care industry; and others knowledgeable in the field of continuing care and familiar with the provisions of sections 17b-520 to 17b-535, inclusive. The advisory committee shall assist the continuing-care staff in its review and registration of functions, shall report to the commissioner on developments in the field, any special problems associated with continuing care, and concerns of providers and residents, and, when appropriate, shall recommend changes in relevant statutes and regulations.

(P.A. 86-252, S. 16, 17.)

History: Sec. 17-550 transferred to Sec. 17a-375 in 1991; Sec. 17a-375 transferred to Sec. 17b-535 in 1995.