

# New Jersey Continuing Care Community Regulation and Financial Disclosure Act

**52:27D-330. Short title** This act shall be known and may be cited as the "Continuing Care Retirement Community Regulation and Financial Disclosure Act." L. 1986, c. 103, s. 1.

**52:27D-331. Findings, declarations** The Legislature finds and declares that: continuing care retirement communities are becoming an important and increasingly preferred alternative for the long-term residential, social and health care needs of New Jersey's senior citizens; because senior citizens often expend a significant portion of their savings in order to purchase care in the retirement community and thereby expect to receive care at the retirement community for the rest of their lives, tragic consequences can result to senior citizens when a continuing care provider becomes insolvent or unable to provide responsible care; and there is a need for full disclosure concerning the terms of agreements made between prospective residents and the continuing care providers and the operations of the providers; therefore, it is the policy of this State that providers of continuing care shall register with and be monitored by the State Department of Community Affairs and that a Continuing Care Advisory Council be established to advise and assist the Commissioner of Community Affairs in the monitoring of these providers and the regulation of continuing care retirement facilities.

L. 1986, c. 103, s. 2.

**52:27D-332. Definitions** As used in this act:

- a. "Application fee" means the fee an individual is charged, in addition to an entrance fee or any other fee, to cover the provider's reasonable cost for processing the individual's application to become a resident at the facility. A reasonable application fee shall be established pursuant to regulations adopted by the department.
- b. "Commissioner" means the Commissioner of the Department of Community Affairs.
- c. "Continuing care" means the provision of lodging and nursing, medical or other health related services at the same or another location to an individual pursuant to an agreement effective for the life of the individual or for a period greater than one year, including mutually terminable contracts, and in consideration of the payment of an entrance fee with or without other periodic charges. An individual who is provided continuing care is not related by consanguinity or affinity to the person who provides the care.
- d. "Department" means the State Department of Community Affairs.
- e. "Entrance fee" means a transfer to a provider of a sum of money or other property made or promised to be made as full or partial consideration for acceptance of a specified person as a resident in a facility and includes a fee which is refundable upon the death, departure or option of the resident. A fee which is less than the sum

of the regular periodic charges for one year of residency is not considered an entrance fee for the purposes of this act. A transfer of a sum of money or other property, by or on behalf of a resident, to a trust account which is managed by the facility or an independent trustee for the benefit of the resident is not considered an entrance fee for the purposes of this act if the transfer is not a condition of admission or of continued stay and the principal amount and any interest thereon are the exclusive and sole property of the resident or the individual acting on behalf of the resident.

f. "Facility" means the place or places in which a person undertakes to provide continuing care to an individual.

g. "Living unit" means a room, apartment, cottage or other area within a facility set aside for the exclusive use or control of one or more persons.

h. "Operator or administrator" means a person who operates or manages a facility for the provider.

i. "Provider" means a person who undertakes to provide continuing care in a facility.

j. "Resident" means a person entitled to receive continuing care in a facility.

L. 1986, c. 103, s. 3.

### **52:27D-333. Certificate of authority**

a. A person shall not establish, operate or administer a continuing care facility in this State without obtaining and maintaining a certificate of authority pursuant to this act. A certificate of authority granted pursuant to this act is not transferable.

b. A person shall file an application for a certificate of authority with the department on forms prescribed by the commissioner. The application shall include a disclosure statement prepared pursuant to section 7 of this act and other information as required by the commissioner.

c. Upon receipt of the application for a certificate of authority, the department shall, within 10 business days, issue a notice of filing to the applicant. Within 90 days of the notice of filing, the commissioner shall issue the certificate of authority or reject the application pursuant to subsection d. of this section.

d. If the commissioner determines that any of the requirements of this act has not been met, the commissioner shall notify the applicant in writing and specify those particulars which need to be corrected. The applicant has 30 days from the date of notification to correct the application as specified by the commissioner. If the requirements are not met within the time allowed, the commissioner may reject the application and notify the applicant in writing of the reason for the rejection. The rejection shall be effective 20 days after the foregoing 30 day period. During the 20 day period, the applicant may request reconsideration of the commissioner's action and is entitled to a hearing conducted pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.).

e. In the case of a provider who has offered continuing care agreements to existing or prospective residents in a facility established prior to the effective date of this act and which has one or more residents living there pursuant to agreements entered into prior to the effective date of this act, if the provider is unable to comply with section 10 of this act within the time required, the commissioner may, upon the written request of the provider, issue a temporary certificate of authority to the provider. The provider may then enter into continuing care agreements which are in compliance with all other applicable provisions of this act until the permanent certificate is issued. The temporary certificates shall be issued only to those existing providers who shall be able to comply with the provisions of section 10 of this act within a period of time determined by the commissioner but which does not exceed two years.

If a provider is not in compliance on or before the expiration date of the temporary certificate, the provider may request an extension from the commissioner. The commissioner may grant an extension of up to three years to a provider who shall be able to comply with section 10 of this act in that time period.

f. If an existing provider is granted a permanent certificate of authority, the provider shall give a resident who entered into an agreement before the certificate of authority was granted, a copy of the initial disclosure statement and any amendments thereto.

g. If a facility is accredited by a process approved by the commissioner as equivalent to or more stringent than the requirements of this section, the facility is deemed to have met the requirements of this section and the commissioner shall issue a certificate of authority to the facility.

h. A person who establishes, operates or administers a continuing care facility in this State without obtaining or maintaining a certificate of authority pursuant to this act is guilty of a crime of the third degree.

L. 1986, c. 103, s. 4.

#### **52:27D-334. Revocation of certificates**

a. The certificate of authority or temporary certificate of authority of a provider shall remain in effect until revoked, after notice and hearing conducted pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.), upon the commissioner's written findings of fact that the provider has:

(1) Repeatedly failed to correct violations of this act or any regulation adopted hereunder;

(2) Failed to file an annual disclosure statement or resident agreement pursuant to this act;

(3) Failed to deliver to a prospective resident the disclosure statement required pursuant to this act;

(4) Delivered to a prospective resident a disclosure statement which makes an untrue statement or omits a material fact and the provider at the time of the delivery of the

disclosure statement had actual knowledge of the misstatement or omission;

(5) Failed to comply with the terms of a cease and desist order; or

(6) Committed serious violations of any other State or federal law.

b. The commissioner shall include with the findings of fact in support of revocation a concise and explicit statement of the underlying facts supporting the findings.

c. If the commissioner has cause to believe that the provider is guilty of a violation for which revocation may be ordered, the commissioner may issue an order directing the provider or operator to cease and desist from engaging in any practice in violation of this act.

d. If the cease and desist order is not or may not be effective in remedying the violation, the commissioner, after notice and hearing conducted pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.), may revoke the certificate of authority or temporary certificate of authority and order that it be surrendered to the commissioner.

L. 1986, c. 103, s. 5.

#### **52:27D-335. Acquisition of ownership interest**

a. A person who desires to acquire an ownership interest in a continuing care facility shall so notify the department in writing at least 60 days in advance of the acquisition. The person shall obtain the approval of the commissioner for the acquisition prior to the completion of the sale or transfer of the facility's ownership interest.

b. For the purposes of this act, an acquisition of an ownership interest in a continuing care facility shall be deemed to take place if:

(1) The facility is a corporation and there is an acquisition by or a transfer of ownership to an individual, partnership or corporation through purchase, contract, donation, gift or stock option of 25% or more of the corporation's outstanding stock, either preferred or common, or there is acquisition of the physical assets of the facility by a newly formed or existing corporation;

(2) The facility is a partnership and there is an acquisition by or a transfer of ownership to an individual, partnership, or corporation of 10% or more of the existing partnership's total capital interest or there is acquisition of the physical assets of the facility by a newly formed or existing partnership; and

(3) The facility is individually owned and there is a purchase of the physical assets of the facility.

L. 1986, c. 103, s. 6.

#### **52:27D-336. Initial disclosure statement**

The provider shall provide a disclosure statement to a prospective resident of a continuing care facility or the person with whom the provider shall enter into a contract to provide continuing care, prior to the execution of the contract or at the time of or prior to the transfer of any money or other property to the provider by or on behalf of the prospective resident, whichever occurs first. The cover page of the disclosure statement shall state in a prominent location and type face, the date of the disclosure statement. The disclosure statement shall be written in plain English and in language understandable by a layperson.

The provider shall attach a copy of the standard form of contract for continuing care used by the provider as an exhibit to each disclosure statement.

The disclosure statement shall contain the following information unless the information is contained in the contract:

- a. The name and business address of the provider and a statement of whether the provider is a partnership, corporation or other type of legal entity.
- b. The names and business addresses of the officers, directors, trustees, managing or general partners and any person 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.
- c. With respect to the provider, any person named in response to subsection b. of this section and the proposed operator, if the facility is managed on a day-to-day basis by a person other than an individual directly employed by the provider:
  - (1) A description of the person's business experience, if any, in the operation or management of similar facilities;
  - (2) The name and address of any professional service firm, association, trust, partnership or corporation in which the person has a 10% or greater interest and which may provide goods, leases or services to the facility of a value of \$500.00 or more, within any year;
  - (3) A description of the goods, leases or services provided pursuant to paragraph (2) of this subsection and the probable or anticipated cost thereof to the facility or provider;
  - (4) A description of any matter in which the person has been convicted of a felony or pleaded nolo contendere to a felony charge, or has been held liable or enjoined in a civil action which involved fraud, embezzlement, fraudulent conversion or misappropriation of property; and
  - (5) A description of any matter in which the person is subject to a currently effective injunctive or restrictive court order or, within the past five years, had a State or federal license or permit suspended or revoked as a result of an action brought by a governmental agency or department, which arose out of or related to business activity or health care, including actions affecting a license to operate a residential health care facility, nursing home, retirement home, home for the aged or facility registered under this act or a similar act in another state.

d. A statement whether the provider is or ever has been affiliated with a religious, charitable or other nonprofit organization, the nature of the affiliation, if any, the extent to which the affiliate organization is 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.

e. The location and description of the physical property of the facility, both existing and proposed, and with respect to proposed property, the estimated completion date, the date construction began or shall begin and the contingencies subject to which construction may be deferred.

f. The services provided or proposed to be provided under contracts for continuing care at the facility, including the extent to which medical care and other services are furnished under the basic contract and which other care or services are available at or by the facility at extra charge.

g. A description of all fees required of residents, including the application fee, entrance fee and periodic charges, if any, the manner by which the provider may adjust periodic charges or other recurring fees and the limitation on the adjustments, if any, and if the facility is already in operation or if the provider or operator operates one or more similar facilities within this State, tables showing the frequency and average dollar amount of each increase in periodic rates at each facility for the previous five years or as many years as the facility has been operated by the provider or operator, whichever is less.

h. The provisions that have been made or will be made, if any, to provide reserve funding or security which will enable the provider to fully perform its obligation under contracts to provide continuing care at the facility, including the establishment of escrow accounts, trusts or reserve funds, the manner in which the funds shall be invested and the names and experience of persons who will make the investment decisions.

i. Certified financial statements of the provider, which include balance sheets and income statements for the two most recently completed fiscal years or for as long as the provider has been in existence, whichever is less.

j. If operation of the facility has not yet commenced, a statement of the anticipated source and application of the funds used or to be used in the purchase or construction of the facility, including:

(1) An estimate of the cost of purchasing or construction and equipping the facility, which includes related costs such as financing expenses, legal expenses, land costs, marketing and development costs and other similar costs the provider expects to incur or become obligated for prior to the commencement of operations;

(2) A description of any mortgage loan or other long-term financing intended to be used for the financing of the facility and the anticipated terms and costs of the financing;

(3) An estimate of the total amount of entrance fees to be received from or on behalf of residents at or prior to commencement of operation of the facility;

(4) 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 contracts for the provision of continuing care;

(5) A projection of estimated income from fees and charges other than entrance fees, a description of individual rates anticipated to be charged, the assumptions used for calculating the estimated occupancy rate of the facility and the effect on the income of the facility of government subsidies, if any, for health care services provided pursuant to the contracts for continuing care;

(6) A projection of estimated operating expenses of the facility, including a description of the assumptions used in calculating the expenses and separate allowances, if any, the replacement of equipment and furnishings and any anticipated major structural repairs or additions;

(7) Identification of assets pledged as collateral for any purpose; and

(8) An estimate of annual payments of principal and interest required by any mortgage loan or other long-term financing.

k. Other material information concerning the facility or the provider as required by the department or as the provider wishes to include.

l. The provider shall designate and make knowledgeable personnel available to prospective residents to answer questions about any information contained in the disclosure statement or contract. The provider shall also advise prospective residents to seek the independent advice of an attorney and financial advisor of their choice concerning the disclosure statement or contract. The disclosure statement and the contract shall each state on the cover or top of the first page in bold print the following: "This matter involves a substantial financial investment and a legally binding contract. In evaluating the disclosure statement and the contract prior to any commitment, it is recommended that you consult with an attorney and financial advisor of your choice, if you so elect, who can review these documents with you."

L. 1986, c. 103, s. 7.

#### **52:27D-337. Annual disclosure statement**

a. The provider shall file an annual disclosure statement with the commissioner, which contains the information required for the initial disclosure statement pursuant to section 7 of this act. The annual disclosure statement also shall include a narrative describing any material differences between the pro forma income statement filed pursuant to this act either as part of the initial application for a certificate of authority or the most recent annual disclosure statement and the actual results of operations during the fiscal year. The statement also shall contain a revised pro forma income statement for the next fiscal year. The commissioner may request additional income statements if necessary.

The provider shall file the annual disclosure statement within six months following the end of the provider's fiscal year.

b. Prior to the provider's acceptance of part or all of any application or entrance fee or the execution of the continuing care agreement by the resident, whichever occurs first, the provider shall deliver the most current annual disclosure statement to the current or prospective resident and to any other person with whom the continuing care agreement is or may be entered into.

c. A provider shall amend its currently filed annual disclosure statement at any time if, in the opinion of the provider or the department, an amendment is necessary to prevent the disclosure statement from containing any material misstatement of fact or omission to state a material fact as required pursuant to this act. The provider shall file an amendment or amended disclosure statement with the commissioner before the provider provides it to a resident or prospective resident.

L. 1986, c. 103, s. 8.

### **52:27D-338. False, misleading statements**

a. No provider or person acting on behalf of the provider shall make, publish, disseminate, circulate or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated or placed before the public in a newspaper or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement of any sort containing an assertion, representation or statement which is untrue, deceptive or misleading.

b. No provider or person acting on behalf of the provider shall file with the department or make, publish, disseminate, circulate or deliver to any person or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated or delivered to any person, or placed before the public, any disclosure statement, financial statement or continuing care agreement that contains an assertion, representation, or statement which is untrue, deceptive or misleading.

c. A person who willfully and knowingly violates the provisions of this section is guilty of a crime of the third degree.

L. 1986, c. 103, s. 9.

### **52:27D-342. Release from escrow**

The commissioner shall require a provider to establish an interest bearing escrow account with a bank, trust company or other escrow agent approved by the commissioner, as a condition of issuing a certificate of authority. The provider shall place in the escrow account any entrance fees or payments in excess of 5% of the then existing entrance fee for the living unit that are received by the provider prior to the date the resident is permitted to occupy the living unit in the facility. The fees or payments are subject to release from the escrow account in the following manner:

a. If the entrance fee gives the resident the right to occupy a living unit which has been previously occupied, the entrance fee and any interest earned thereon shall be released to the provider when the living unit becomes available for occupancy by the new resident.



b. If the entrance fee applies to a living unit which has not been previously occupied, the entrance fee and any interest earned thereon shall be released to the provider when the commissioner is satisfied that:

(1) Aggregate entrance fees received or receivable by the provider pursuant to executed continuing care agreements equal at least 50% of the sum of the entrance fees due at full occupancy of the portion of the facility under construction, except that entrance fees receivable pursuant to an agreement shall be counted only if the facility has received a deposit of 35% or more of the entrance fee due from the individual signing the contract;

(2) The aggregate entrance fees received or receivable pursuant to the preceding paragraph plus anticipated proceeds of any first mortgage loan or other long-term financing commitment and funds from other sources in the actual possession of the provider are equal to at least 50% of the aggregate cost of constructing or purchasing, equipping and furnishing the facility plus at least 50% of the funds necessary to fund start-up losses as estimated by the provider in the statement of anticipated source and application of funds submitted pursuant to subsection j. of section 7 of this act; and

(3) The provider has received a preliminary commitment for any permanent mortgage loan or other long-term financing described pursuant to subsection j. of section 7 of this act 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, are substantially satisfied.

c. If the funds in the escrow account established pursuant to this section and any interest earned thereon are not released within 36 months, or a greater time if so specified by the provider with the consent of the commissioner, the escrow agent shall return the funds to the individuals who made payments to the provider.

d. Nothing in this section shall require the provider to place any nonrefundable application fees charged to prospective residents in escrow.

e. In lieu of any escrow required pursuant to this section, a provider is entitled to post a letter of credit from a financial institution, negotiable securities or a bond by a surety authorized to do business in this State, in a form approved by the commissioner and in an amount not to exceed the amount required by paragraph (1) of subsection b. of this section. The provider shall execute the letter of credit, negotiable securities or bond in favor of the commissioner on behalf of individuals who are entitled to a refund of entrance fees from the provider.

f. A provider may apply to the commissioner for a waiver of the applicable escrow requirements of this section when a provider constructs additional living units in an amount that does not exceed 10% of the facility's existing living units for continuing care residents.

The provider shall apply for the waiver in writing to the commissioner. The commissioner may grant the waiver, which may be effective for a period of one year or longer, at the discretion of the commissioner, if the construction of additional units meets the requirements of this subsection.

g. Upon receipt of a notice from the provider that an individual is entitled to a refund of an entrance fee, the escrow agent shall return the funds held in the escrow account to the individual.

L. 1986, c. 103, s. 13.

**52:27D-343. Collateral** A provider shall pledge only the unencumbered assets of a continuing care facility as collateral for the purpose of securing loans for other continuing care facilities, whether proposed or existing.

L. 1986, c. 103, s. 14.

**52:27D-344. Continuing care agreement**

a. A continuing care agreement executed on or after the effective date of this act shall be written in plain English and in language understandable by a layperson and shall include, but not be limited to, the following:

(1) A provision for the continuing care of one resident, or two or more residents occupying space designed for multiple occupancy under appropriate procedures established by the provider, and a statement showing the value of all property transferred, including donations, subscriptions, fees and any other amounts payable by, or on behalf of, the resident;

(2) A statement on a form provided by the commissioner specifying all services which are to be provided to the resident by the provider, including, in detail, all items which the resident will receive, such as food, shelter, nursing care, pharmaceuticals and burial, and whether the items will be provided for a designated period of time or for life;

(3) A description of the health and financial conditions upon which the provider may have the resident relinquish his space in the designated facility;

(4) A description of the health and financial conditions required for a person to continue as a resident;

(5) A description of the circumstances under which the resident shall be permitted to remain in the facility in the event of financial difficulties of the resident. The stated policy may not be less than the terms stated in subsection e. of this section;

(6) A statement of the fees that will be charged if the resident marries a person who is not a resident of the facility, the terms concerning the entry of a spouse into the facility and the consequences if the spouse does not meet the requirements for entry;

(7) A statement providing that the agreement may be canceled upon giving at least 60 days' notice by the provider or the resident, except that if an agreement is canceled by the provider because there has been a good faith determination in writing, signed by the medical director and the administrator of the facility, that a resident is a danger to himself or others, only notice that is reasonable under the circumstances is required;

(8) A statement providing 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;

(9) A statement of the terms under which an agreement is canceled by the death of the resident, which statement may contain a provision stating that upon the death of the resident the moneys paid for the continuing care of the resident shall be considered earned and become the property of the provider; and

(10) A statement providing for at least 30 days' advance notice to the resident before any change in fees or changes in the scope of care or services are effective, except for changes required by State or federal assistance programs. b. A resident has the right to rescind a continuing care agreement without penalty or forfeiture, except those costs specifically incurred by the facility at the request of the resident and set forth in writing in a separate addendum signed by both parties to the agreement, within 30 days after making an initial deposit or executing the agreement. A resident shall not be required to move into the facility designated in the agreement before the expiration of the 30 day period.

c. If a resident dies before the occupancy date, or through illness, injury or incapacity is precluded from becoming a resident under the terms of the continuing care agreement, the agreement shall be automatically rescinded and the resident or the resident's legal representative shall receive a full refund of all moneys paid to the facility, except those costs specifically incurred by the facility at the request of the resident and set forth in writing in a separate addendum signed by both parties to the agreement.

d. No agreement for care shall permit dismissal or discharge of the resident from the facility prior to the expiration of the agreement without just cause for the removal. For the purposes of this act, "just cause" means but is not limited to a good faith determination in writing, signed by the medical director and the administrator of the facility, that a resident is a danger to himself or others while remaining in the facility. The written determination shall state: (1) that the determination is made in good faith; (2) the reasons supporting the determination that the resident is a danger to himself or others; (3) the basis for the conclusion that there is no less restrictive alternative to dismissal, discharge or cancellation, as the case may be, for abating the dangerousness of the resident; and (4) the basis for the conclusion that the danger is such that a notice period of less than 60 days is appropriate.

If a facility dismisses a resident for just cause, the resident shall be entitled to a refund of his unearned entrance fee, if any, in the same manner as provided in subsection e. of this section. A resident may request a hearing to contest a facility's decision to dismiss or discharge the resident. The hearing shall be held pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.).

e. It shall not be deemed just cause if the resident is unable to pay monthly maintenance fees until the entire unearned entrance fee plus, where applicable, any third-party insurance benefits received, are earned by the facility. For the purpose of this subsection, the unearned portion shall be the difference between the entrance fee paid by, or on behalf of, the resident and the cost of caring for the resident based upon the per capita cost to the facility. In lieu of calculating the actual per capita cost of caring for a resident, a facility may provide, in the agreement for continuing care, that

the per capita cost of caring for the resident shall be calculated as follows:

(1) No more than 2% of the entrance fee for each month the resident occupies, or is entitled to occupy, a bed in the residential unit of the facility;

(2) No more than 4% of the entrance fee for each month the resident occupies, or is entitled to occupy, a bed in the nursing unit of the facility; and

(3) No more than 10% of the entrance fee as a one-time charge for processing and refurbishment.

If these entrance fees are exhausted within 90 days of the date of failure to pay, the facility may not require the resident to leave before 90 days from the date of failure to pay, during which time the resident shall continue to pay the facility a reduced fee based upon the resident's current income.

f. No act, agreement or statement of a resident or of an individual purchasing care for a resident under any agreement to furnish care to the resident shall constitute a valid waiver of any provision of this act intended for the benefit or protection of the resident or the individual purchasing care for the resident.

g. An agreement entered into prior to the effective date of this act or prior to the issuance of a certificate of authority to the provider is valid and binding upon both parties in accordance with the terms of the agreement.

h. The provider shall designate and make knowledgeable personnel available to prospective residents to answer questions about any information contained in the agreement for continuing care. The provider shall also advise prospective residents to seek the independent advice of an attorney or financial advisor of their choice concerning the agreement. The agreement shall state on the cover or top of the first page in bold print the following: "This matter involves a substantial financial investment and a legally binding contract. In evaluating the disclosure statement and the contract prior to any commitment, it is recommended that you consult with an attorney and financial advisor of your choice, if you so elect, who can review these documents with you."

L. 1986, c. 103, s. 15.

**52:27D-345 Residents' organizations; quarterly meeting.**

16. a. Residents living in a facility which holds a certificate of authority issued pursuant to this act have the right of self-organization. No retaliatory conduct shall be permitted against a resident for organization or membership or participation in a residents' organization; for the resident's lawful efforts to secure or enforce his rights under the continuing care agreement, the laws of the State of New Jersey or its governmental subdivisions, or of the United States; or for the resident's good faith complaint to a governmental authority of the provider's alleged violation of any health or safety law, regulation, code or ordinance or State law or regulation which has as its objective the regulation of the facility or the delivery of health care services.

b. The board of directors or other governing body, or a designated representative who is not the chief executive officer or other staff member, of a continuing care facility shall hold quarterly meetings with the residents or their elected representatives of the

facility, for the purpose of free discussion of subjects which may include income, expenditures and financial matters as they apply to the facility and proposed changes in policies, programs and services. Any questions on these subjects may be raised at each quarterly meeting, except for confidential personnel matters, and shall be answered or explained promptly when possible, or within a reasonable period of time. Residents shall be given at least seven days' notice of each quarterly meeting.

c. The provider shall designate and make knowledgeable personnel available to address resident complaints about the operation and management of the facility.

d. The board of directors or other governing body of a facility shall consult and discuss with the representatives of the residents any proposed action that might significantly affect the well-being of the residents or the financial stability of the facility, before taking the proposed action.

e. The board of directors or other governing body of a facility shall include at least one resident as a full voting member of the board or body. Resident members shall be nominated by the elected representatives of the residents and selected by the board of directors or other governing body. If the board of directors or other governing body governs more than one facility, the occupancy of each seat on that body that is reserved for a resident member shall rotate among the facilities governed by that body on a term-by-term basis.

L.1986, c.103, s.16; amended 2007, c.192, s.1.

#### **52:27D-346. Bankruptcy proceedings**

a. The commissioner may apply to a court of competent jurisdiction or to the federal bankruptcy court, if that court had previously taken jurisdiction over the provider or facility, for an order authorizing the commissioner to appoint a trustee to rehabilitate or to liquidate the facility if, after notice and hearing pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.), the commissioner determines that:

(1) A portion of a provider's reserve fund escrow as required pursuant to this act has been or is proposed to be released;

(2) A provider is or will be unable to meet the pro forma income or cash flow projections filed pursuant to section 7 of this act, except in a manner that may endanger the ability of the provider to fully meet its continuing care contract obligations;

(3) A provider has failed to maintain the reserves required under this act; or

(4) A provider is bankrupt or insolvent, or in imminent danger of becoming bankrupt or insolvent.

b. An order to rehabilitate a facility shall direct the commissioner or trustee to take possession of the property of the provider and to conduct the business thereof, including the employment of managers or agents that the commissioner or trustee deems necessary and to take those steps the court directs toward removal of the causes and conditions which have made rehabilitation necessary.

c. If the court finds, upon petition of the commissioner, trustee or provider, or on its own motion, that the objectives of an order to rehabilitate a facility have been accomplished and that the facility may be returned to the provider's management without further jeopardy to the residents, creditors and 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 the facility's current financial condition, terminate the rehabilitation and order return of the facility and its assets and affairs to the provider's management.

d. If the commissioner determines that further efforts to rehabilitate the provider would be useless, the commissioner may apply to the court for an order of liquidation.

e. The court may issue an order of liquidation upon application to the commissioner, whether or not a prior order to rehabilitate the facility had been issued. The order shall act as a revocation of the certificate of authority issued to the facility pursuant to this

act. The order shall direct the commissioner or a trustee to marshal and liquidate all of the provider's assets located within the 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.

In furtherance of this objective, the proceeds of any lien obtained by the commissioner pursuant to this act may be:

- (1) Used in full or partial payment of entrance fees;
- (2) Used on behalf of residents of a facility that is being liquidated; or
- (3) Paid, on behalf of those persons, to other facilities operated by providers who hold a certificate of authority issued pursuant to this act.

g. The court shall refuse or vacate an order for rehabilitation if the provider posts a bond by a 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 the terms of its contracts to provide continuing care at the facility. The amount of the bond shall be equal to the reserve funding which would otherwise need to be available to fulfill the provider's obligations, as determined by the court.

h. The commissioner or his designee shall attempt to keep residents of the community informed about his actions to rehabilitate or liquidate the facility and, when appropriate, the commissioner or his designee shall meet with residents of the facility.

L. 1986, c. 103, s. 17.

#### **52:27D-347. Liability for damages**

a. A provider or person acting on behalf of the provider is liable to the person who contracts for the continuing care for damages, including repayment of all fees paid to the provider, facility or person who violates this act plus interest thereon at the legal rate, court costs and reasonable attorney's fees, if the provider or person acting on behalf of the provider:

- (1) Enters into a contract for continuing care at a facility which does not have a certificate of authority issued pursuant to this act;
- (2) Enters into a contract for continuing care at a facility without having first delivered a disclosure statement to a person contracting for continuing care pursuant to this act; or
- (3) Enters into a contract for continuing care at a facility with a person who has relied on a disclosure statement which omits a material fact required to be stated therein pursuant to this act.

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 the time the violation, misstatement or omission should reasonably have been discovered shall be deducted from the amount of repayment due the person.

b. A provider is liable under this section whether or not the provider has actual knowledge of the violation, misstatement or omission. A person acting on behalf of the provider is liable under this section only if the person has actual knowledge of the violation, misstatement or omission.

c. A person may not file or maintain an action under this section if before filing the action, the person received an offer to refund all amounts paid to the provider, facility or person violating this act plus interest from the date of payment, less the reasonable value of care and lodging provided prior to receipt of the offer, and the person failed to accept the offer within 30 days of its receipt. At the time a provider makes a written offer of rescission, the provider shall file a copy with the commissioner and obtain the

approval of the commissioner for the offer. The offer shall be written in clear and understandable language and shall explain the limitation on court action provided pursuant to this subsection. Subject to the provisions of this subsection, nothing in this act shall prohibit any person from seeking injunctive or other relief from the provider in a court of law or equity in this State.

d. A person shall not institute an action to enforce a liability created under this act more than six years after the violation is discovered or could have been discovered in the exercise of due diligence.

e. Except as expressly provided in this act, civil liability in favor of a private party shall not arise against a person by implication from or as a result of the violation of this act or an order issued pursuant to this act. This act shall not limit a liability which may exist by virtue of any other law if this act were not in effect.

L. 1986, c. 103, s. 18.

#### **52:27D-348. Investigatory powers**

a. The commissioner or his designee may, as often as he reasonably deems necessary, conduct an investigation to determine whether any person has violated or is about to violate any provision of this act or to aid in the enforcement of this act or in the prescribing of rules and forms hereunder.

b. For the purpose of any investigation or proceeding under this act, the commissioner or his designee may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the commissioner deems relevant or material to the inquiry.

L. 1986, c. 103, s. 19.

#### **52:27D-349. Examination of records**

The commissioner or his designee shall visit each facility offering continuing care in this State to examine its books and records at least once every four years.

L. 1986, c. 103, s. 20.

#### **52:27D-350. Consumers' guide; residents' rights booklet**

a. The commissioner shall prepare and cause to be distributed to the public a consumers' guide to continuing care facilities and an annual directory of continuing care facilities in the State.

b. The commissioner shall prepare and cause to be distributed to the public a residents' rights booklet that describes the rights of residents and obligations of providers under this act.

L. 1986, c. 103, s. 21.

#### **52:27D-354. One year to comply**

A provider who is offering but not providing continuing care on the effective date of this act may be given a reasonable time, not to exceed one year from the date of promulgation of applicable regulations, within which to comply with the requirements of this act and obtain a certificate of authority.

L. 1986, c. 103, s. 25.

#### **52:27D-355. Exclusion**

A facility which has not entered into any agreements for continuing care pursuant to this act since 1965 is not subject to the provisions of this act; but this exclusion shall not apply if that facility enters into one or more agreements for continuing care on or after the effective date of this act.

L. 1986, c. 103, s. 26.

#### **52:27D-356. Fewer than 50 residents**

A facility which has less than 50 residents who are under continuing care agreements on the date of enactment of this act is not subject to the provisions of this act, but this exclusion shall not apply if that facility increases the number of its residents under continuing care agreements to 50 or more, after the date of enactment of this act.

L. 1986, c. 103, s. 27.

#### **52:27D-357 Continuing Care Advisory Council.**

28. a. There is created a Continuing Care Advisory Council which consists of 13 members as follows: the Commissioners of Human Services, Health, and Banking and Insurance, or their designees, who shall serve ex officio and shall be non-voting members; 10 public members appointed by the Governor, with the advice and consent of the Senate, who are residents of the State and two of whom are administrators of continuing care facilities in this State, one of whom is a representative of the business community and knowledgeable in the area of management, one of whom is a certified public accountant, one of whom is an attorney licensed to practice in this State, three of whom are residents of continuing care retirement communities in this State who are recommended by the Organization of Residents Associations of New Jersey, one of whom is a trustee or director of a continuing care retirement community in this State and one of whom is a representative of the New Jersey Association of Non-Profit Homes for the Aging.

b. The term of office for each public member is three years, or until the member's successor has been appointed; except that of the public members first appointed, two shall be appointed for a term of one year, two for a term of two years and three for a term of three years. A vacancy in the membership of the council shall be filled in the same manner as the original appointment, but for the unexpired term. A member of the council is eligible for reappointment. The members of the council shall serve without compensation, but the council shall reimburse the members for the reasonable expenses incurred in the performance of their duties.



c. The council shall hold an organizational meeting within 30 days after the appointment of its members. The members of the council shall elect from among them a chairperson, who shall be the chief executive officer of the council, and the members shall elect a secretary, who need not be a member of the council.

d. The council shall meet at least four times a year but may meet more frequently at the discretion of the chairperson or the commissioner.

e. The council may call to its assistance and avail itself of the services and assistance of any officials and employees of the Department of Community Affairs or other State agency and political subdivisions and their departments, boards, bureaus, commissions, and agencies as it requires and as is available to it for this purpose and may expend any funds that are appropriated or otherwise made available to it pursuant to this act.

f. The council shall:

(1) Advise and provide information to the commissioner on matters pertaining to the operation and regulation of continuing care retirement facilities, upon request of the commissioner;

(2) Review and comment upon, as appropriate, any proposed rules and regulations and legislation pertaining to continuing care retirement facilities;

(3) Make recommendations to the commissioner about any needed changes in rules and regulations and State and federal laws pertaining to continuing care retirement facilities; and

(4) Assist in the rehabilitation of a continuing care retirement facility, upon request of the commissioner.

g. The commissioner shall report annually to the Governor and the Legislature, the commissioner's and the council's findings and recommendations concerning continuing care retirement communities and the implementation of this act.

L. 1986, c. 103, s. 28; amended 2007, c. 192, s. 2; 2012, c. 17, s. 423.

#### **52:27D-358. Rules, regulations**

The commissioner shall adopt rules and regulations necessary to carry out the provisions of this act, pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.). The commissioner shall adopt the regulations within six months of the effective date of this act.

L. 1986, c. 103, s. 29.

#### **52:27D-359. Health Department authority**

Nothing in this act shall be construed to limit the licensing and regulatory authority of the Department of Health, pursuant to P.L. 1971, c. 136 (C. 26:2H-1 et seq.), concerning health care services provided by a facility subject to this act.

L. 1986, c. 103, s. 30.

**52:27D-360. Community Affairs authority**

Nothing in this act shall be construed to limit the authority of the Department of Community Affairs to enforce any otherwise applicable statute, code, or regulation in a facility subject to this act.

L. 1986, c. 103, s. 31.