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2011-2012 Regular Sessions

I N   S E N A T E

May 3, 2011

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Introduced by Sen. RANZENHOFER -- read twice and ordered printed, and  
when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to ability of continuing care retirement communities to offer seniors additional service options

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Subdivisions 2-a, 2-b, 3, 8, 9, 10 and 10-a of section 4601  
2     of the public health law, subdivisions 2-a and 2-b as added and subdivisions 3, 8 and 9 as amended by chapter 659 of the laws of 1997, subdivision 10 as added by chapter 689 of the laws of 1989, subdivision 10-a as added and paragraph a of subdivision 2-b as amended by chapter 401 of the laws of 2003, are amended and two new subdivisions 7-a and 7-b are added to read as follows:

8     2-a. "Continuing care retirement contract" shall mean a single contract to provide a person the services provided by a continuing care retirement community INCLUDING LIFE CARE OR LIFE CARE AT HOME.

11    2-b. "Continuing care retirement community" or "community" shall mean a facility or facilities established to provide a comprehensive, cohesive living arrangement for the elderly, oriented to the enhancement of the quality of life and which, pursuant to the terms of the continuing care RETIREMENT contract OFFERED BY THE COMMUNITY, at a minimum:

16    a. provides, OR SUPPORTS THROUGH LIFE CARE AT HOME, independent living units, and [provides a] meal plan OPTIONS. The independent living unit can be made available either through a non-equity arrangement or through an equity arrangement including, but not limited to a cooperative or condominium. For purposes of this article, the purchase price of an independent living unit in an equity arrangement, regardless of the form of the purchase agreement, shall not be considered an entry fee for purposes of calculating reserve liabilities, but shall be considered an entry fee for escrow purposes;

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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b. provides a range of health care and social services, subject to such terms as may be included within the contract, which shall include home health care, nursing care, and at a minimum, sixty days of prepaid services of an on-site or affiliated nursing facility;

c. provides access to health services as defined in the contract, prescription drugs, and rehabilitation services; and

d. nothing in this article shall eliminate the obligation of a continuing care retirement community to provide at least sixty days of prepaid nursing facility services to all residents. The prepaid days must include the first sixty days of nursing facility services, whether or not consecutive, not covered by Title XVIII of the federal social security act.

3. "Contracts" or "agreements" shall mean LIFE CARE AT HOME OR continuing care retirement contracts as defined in this article.

7-A. "LIFE CARE AT HOME" SHALL MEAN AN ESTABLISHED SEPARATE 501 (C) 3 CORPORATION AFFILIATED WITH THE EXISTING CCRC CAMPUS PROVIDER THROUGH WHICH CONTRACT HOLDERS PAY AN ENTRANCE FEE AND A MONTHLY FEE, BOTH OF WHICH WOULD CORRESPOND TO THE LEVEL OF SERVICE CHOSEN BY THE CONTRACT HOLDER. A LIFE CARE AT HOME CONTRACT INCLUDES SERVICES COORDINATED BY A CASE MANAGER BASED UPON INDIVIDUALS' NEEDS. SERVICES OFFERED INCLUDE, BUT ARE NOT LIMITED TO, PERSONAL HEALTH COORDINATION, EMERGENCY RESPONSE SYSTEM, HEALTH AND WELLNESS PROGRAMS, HOME NURSE VISITS, COMPANION SERVICES, HOME INSPECTIONS, TRANSPORTATION, MEALS, ON-CAMPUS ACTIVITIES AND CULTURAL EVENTS. LIFE CARE AT HOME SERVICES SHALL INCLUDE, BASED UPON INDIVIDUAL CONTRACTS, SERVICES OF AN ON-SITE OR AFFILIATED NURSING FACILITY AND AN ON-SITE OR AFFILIATED ADULT CARE FACILITY.

7-B. "LIFE CARE AT HOME CONTRACT" SHALL MEAN A SINGLE CONTRACT TO PROVIDE A PERSON, FOR THE DURATION OF SUCH PERSON'S LIFE, SUCH SERVICES SELECTED BY THE INDIVIDUAL WHICH MAY INCLUDE SERVICES PROVIDED TO THE INDIVIDUAL IN HIS OR HER RESIDENCE.

8. "Life care contract" shall mean a single continuing care retirement contract to provide a person, for the duration of such person's life, the services provided by the continuing care retirement community, which services shall include unlimited services of an on-site or affiliated nursing facility AND UNLIMITED SERVICES OF AN ON-SITE OR AFFILIATED ADULT CARE FACILITY. Such term also shall mean a single continuing care retirement contract to provide a person, for the duration of such person's life, the services provided by the continuing care retirement community under an arrangement in which the costs of the residents' unlimited nursing home or home health care services are paid for in whole or in part by a long term care insurance policy approved by the superintendent in accordance with applicable regulations or by long term care insurance or medical assistance payments in accordance with the partnership for long term care program pursuant to the provisions of section three hundred sixty-seven-f of the social services law, section three thousand two hundred twenty-nine of the insurance law and section four thousand six hundred twenty-three of this chapter.

9. "Life care" shall mean those services provided pursuant to a ["life care contract"] "CONTINUING CARE RETIREMENT CONTRACT".

10. "Living unit" shall mean an apartment, room, cottage, or other area within a community set aside for the exclusive use of one or more residents, OR THE CONTRACT HOLDER'S PRIVATE RESIDENCE.

10-a. "Meal plan" shall mean an arrangement whereby the person entering into the continuing care retirement contract is provided with [no fewer than five meals per month. Additional meals shall be available on

1 a fee-for-service basis] OPTIONS REGARDING THE INCLUSION OF MEALS WITHIN  
2 THE CONTRACT.

3 S 2. The opening paragraph of subdivision 2 of section 4602 of the  
4 public health law, as amended by chapter 659 of the laws of 1997, is  
5 amended to read as follows:

6 The council shall meet as often as may be deemed necessary to fulfill  
7 its responsibilities[, but in no event less than four times per year].  
8 The council shall have the following powers and duties:

9 S 3. Subdivision 1 of section 4603-a of the public health law, as  
10 added by chapter 393 of the laws of 1991, is amended to read as follows:

11 1. The commissioner, upon approval of the [life care] CONTINUING CARE  
12 RETIREMENT community council and the public health council shall issue a  
13 certificate of incorporation of up to three residential health care  
14 demonstration facilities. Notwithstanding any provision of article twenty-  
15 eight of this chapter or any other provisions of law to the contrary,  
16 the public health council may approve without regard to the requirement  
17 of public need as set forth in subdivision three of section twenty-eight  
18 hundred one-a of this chapter, a certificate of incorporation or appli-  
19 cation for establishment of such facilities.

20 S 4. Paragraphs d and e and clause (C) of subparagraph (iv) of para-  
21 graph j of subdivision 2 of section 4604 of the public health law, para-  
22 graph d as added by chapter 689 of the laws of 1989 and paragraph e and  
23 clause (C) of subparagraph (iv) of paragraph j as amended by chapter 659  
24 of the laws of 1997, are amended to read as follows:

25 d. a copy of the proposed forms of CONTINUING CARE RETIREMENT  
26 contracts to be entered into with residents of the community;

27 e. complete details of any agreements with a licensed insurer, includ-  
28 ing copies of proposed contracts, requiring the insurer to assume, whol-  
29 ly or in part, the cost of medical or health related services to be  
30 provided to a resident pursuant to a continuing care retirement  
31 [contract] CONTRACTUAL AGREEMENT;

32 (C) is or was subject to a currently effective injunctive or restric-  
33 tive order or federal or state administrative order relating to business  
34 activity or health care as a result of an action brought by a public  
35 agency or department, including, without limitation, actions affecting a  
36 license to operate a hospital as defined by section twenty-eight hundred  
37 one of this chapter, or a facility required to be licensed or certified  
38 by the department of [social services] HEALTH. The statement shall set  
39 forth the court or agency, date of conviction or judgment, the penalty  
40 imposed or damages assessed, or the date, nature and issuer of the  
41 order;

42 S 5. Paragraph b of subdivision 4 and subdivisions 5 and 8 of section  
43 4604 of the public health law, paragraph b of subdivision 4 as amended  
44 by chapter 659 of the laws of 1997, subdivision 5 as amended by chapter  
45 700 of the laws of 2006 and subdivision 8 as added by chapter 689 of the  
46 laws of 1989, are amended to read as follows:

47 b. the commissioner [of social services] as to those aspects of the  
48 application relating to adult care facility beds, if any;

49 5. Up to two thousand residential health care facility beds, as  
50 authorized herein, that may be approved as components of continuing care  
51 retirement communities shall not be considered by the department and the  
52 health systems agencies in the determination of public need for residen-  
53 tial health care facility services; provided, however, that if the  
54 community seeking to construct such beds does not provide A life care OR  
55 LIFE CARE AT HOME CONTRACT to all residents, it must adequately make the

1 assurances required by subdivision two of section forty-six hundred  
2 twenty-four of this article.

3 8. The operator shall designate and make knowledgeable personnel  
4 available to prospective residents to answer questions about any infor-  
5 mation contained in the disclosure statement or contract. The disclosure  
6 statement and the CONTINUING CARE RETIREMENT contract shall each state  
7 on the cover or top of the first page in bold twelve point print the  
8 following "This matter involves a substantial financial investment and a  
9 legally binding contract. In evaluating the disclosure statement and the  
10 contract prior to any commitment, it is recommended that you consult  
11 with an attorney and financial advisor of your choice, if you so elect,  
12 who can review these documents with you."

13 S 6. Paragraph g of subdivision 2 of section 4604-a of the public  
14 health law, as added by chapter 659 of the laws of 1997, is amended to  
15 read as follows:

16 g. Unless all residents have EITHER life care OR LIFE CARE AT HOME  
17 contracts, the operator has adequately made the assurances required by  
18 subdivision two of section forty-six hundred twenty-four of this article  
19 and has agreed to fund the liability in the event that resident assets  
20 are insufficient to pay for nursing facility services for a one year  
21 period.

22 S 7. Paragraph d of subdivision 1 of section 4605 of the public health  
23 law, as amended by chapter 659 of the laws of 1997, is amended to read  
24 as follows:

25 d. to offer and execute CONTINUING CARE RETIREMENT contracts, includ-  
26 ing the collection of entrance fees and deposits pursuant to section  
27 forty-six hundred eight of this article.

28 S 8. The opening paragraph, paragraph d of subdivision 11 and subdivi-  
29 sion 13 of section 4606 of the public health law, the opening paragraph  
30 as amended by chapter 120 of the laws of 1993, paragraph d of subdivi-  
31 sion 11 as added by chapter 689 of the laws of 1989 and subdivision 13  
32 as added by chapter 659 of the laws of 1997, are amended to read as  
33 follows:

34 Prior to the execution of a CONTINUING CARE RETIREMENT contract, or  
35 before the transfer of any money, other than a refundable priority  
36 reservation fee or non-refundable priority reservation agreement appli-  
37 cation fee, to an operator by or on behalf of a prospective resident,  
38 whichever occurs first, the operator shall deliver to the person with  
39 whom the contract is to be entered into or the person's legal represen-  
40 tative the most recent annual statement as required by section forty-six  
41 hundred seven of this article, and an initial disclosure statement which  
42 contains the following:

43 d. an estimate of any funds which are anticipated to be necessary to  
44 fund start-up losses and to assure full performance of the obligations  
45 of the operator pursuant to [life care] CONTINUING CARE contracts  
46 including, but not limited to, any reserves required pursuant to section  
47 forty-six hundred eleven of this article;

48 13. The initial disclosure statement and marketing materials of a  
49 continuing care retirement community must clearly include a description  
50 of the services offered as part of its contract, including, but not  
51 limited to, any limitations on nursing facility services. The initial  
52 disclosure statement and marketing materials of a continuing care  
53 retirement community which offers various types of contracts, which may  
54 include life care, MODIFIED AND LIFE CARE AT HOME contracts, must clear-  
55 ly differentiate among the various types of contracts which it may  
56 offer.

1 S 9. Paragraphs e, f and g of subdivision 14 of section 4606 of the  
2 public health law are relettered paragraphs f, g and h and a new para-  
3 graph e is added to read as follows:

4 E. THE TYPES OF MEAL PLANS AVAILABLE;

5 S 10. Section 4608 of the public health law, as added by chapter 689  
6 of the laws of 1989, the section heading, the opening paragraph and  
7 subdivision 6 as amended and subdivision 17 as added by chapter 659 of  
8 the laws of 1997, subdivision 2 as amended by chapter 120 of the laws of  
9 1993 and subdivision 8 as amended by chapter 66 of the laws of 1994, is  
10 amended to read as follows:

11 S 4608. Continuing care retirement contract. A LIFE CARE, MODIFIED OR  
12 LIFE CARE AT HOME continuing care retirement contract shall contain all  
13 of the following information in no less than twelve point type and in  
14 plain language, in addition to any other terms or matter as may be  
15 required by regulations adopted by the council and issued by the super-  
16 intendent, EXCEPT WHEN SPECIFICALLY NOTED:

17 1. The amount of all money transferred, including, but not limited to,  
18 donations, subscriptions, deposits, fees, and any other amounts paid or  
19 payable by, or on behalf of, the resident or residents;

20 2. A description of all services which are to be furnished by the  
21 operator, a description of any fees in addition to the entrance fee and  
22 periodic charges provided for in the contract, and the conditions under  
23 which the fees may be adjusted, provided that an operator shall not  
24 charge any non-refundable application fee to a prospective resident who  
25 has paid a non-refundable priority reservation agreement application  
26 fee;

27 3. The procedures of the community relating to a resident's failure to  
28 pay the required monthly fees;

29 4. A statement of the figures and terms concerning the entry of a  
30 spouse to the community and the consequences if the spouse does not meet  
31 the requirements for entry;

32 5. A statement of the terms and conditions under which a contract may  
33 be cancelled by the operator or by a resident and the conditions under  
34 which all or any portion of the entrance fee will be refunded by the  
35 operator, including the mandatory refund provisions set forth in  
36 sections forty-six hundred nine and forty-six hundred ten of this arti-  
37 cle;

38 6. a. [The] FOR LIFE CARE AND MODIFIED CONTRACTS ONLY THE procedures  
39 and conditions under which a resident may be transferred from his or her  
40 living unit including a statement that, at the time of transfer, the  
41 resident will be given the reasons for the transfer; the process by  
42 which a transfer decision is made; the persons with the authority to  
43 make the decision to transfer; a description of any change in charges to  
44 be paid by the resident for services not covered by the contract fees as  
45 a result of the transfer; and a statement regarding the disposition of  
46 and the right to return to the living unit in cases of temporary and  
47 permanent transfers.

48 b. [The] FOR LIFE CARE AND MODIFIED CONTRACTS ONLY THE circumstances  
49 under which a living unit may be considered vacant and eligible for  
50 transfer or resale to a new resident, either due to the permanent trans-  
51 fer of a resident to the community's nursing or other specialized facil-  
52 ity or due to the permanent transfer of a resident to a hospital or  
53 other facility outside of the community; provided, however, that nothing  
54 therein shall relieve a community from its obligations to provide or to  
55 insure provision of all contractually required care pursuant to the  
56 terms of a continuing care retirement contract. Should a resident's

1 chronic condition require placement in a more specialized chronic care  
2 facility that provides services beyond those provided through the commu-  
3 nity's nursing facility, the liability of THE community pursuant to the  
4 terms of a continuing care retirement contract shall be equal to the  
5 current per diem rate of the nursing facility minus the pro rata appor-  
6 tionment of the resident's monthly fee for the period of care required  
7 by the contract. Nothing herein shall obligate a continuing care  
8 retirement community which does not have a life care contract with a  
9 resident to provide or pay for a level of nursing facility services nor  
10 for any duration beyond what is specifically described in its continuing  
11 care retirement contract with that resident. This section shall not  
12 affect the operator's obligation under subdivision two of section  
13 forty-six hundred twenty-four of this article;

14 7. [A] FOR LIFE CARE AND MODIFIED CONTRACTS ONLY A statement that, if  
15 the resident dies prior to occupancy date or, through illness, injury,  
16 or incapacity is precluded from becoming a resident under the terms of  
17 the contract, the contract is automatically rescinded and the resident  
18 or his or her legal representative shall receive a full refund of all  
19 moneys paid to the facility, except for those costs specifically  
20 incurred by the facility at the request of the resident and set forth in  
21 writing in a separate addendum, signed by the parties to the contract;

22 8. FOR LIFE CARE AT HOME CONTRACTS THE CIRCUMSTANCES UNDER WHICH THE  
23 CONTRACT HOLDER MAY MOVE INTO A CAMPUS INDEPENDENT LIVING UNIT;

24 9. A statement of the conditions under which all or any portion of the  
25 entrance fee will be released to the operator before the living unit  
26 becomes available for occupancy, and a statement of the conditions under  
27 which all or any portion of that fee will be refunded in the event of  
28 the death of the resident and/or spouse following occupancy of a living  
29 unit, including the mandatory refund provisions set forth in section  
30 forty-six hundred nine of this article;

31 [9.] 10. A statement of the advance notice to be provided the resi-  
32 dent, of not less than sixty days, of any change in fees or charges or  
33 scope of care or services;

34 [10.] 11. A statement that no act, agreement, or statement of any  
35 resident, or of an individual purchasing care for a resident under any  
36 agreement to furnish care to the resident, shall constitute a valid  
37 waiver of any provision of this article or of any regulation enacted  
38 pursuant thereto intended for the benefit or protection of the resident  
39 or the individual purchasing care for the resident;

40 [11. A] 12. FOR LIFE CARE AND MODIFIED CONTRACTS A description of the  
41 reinstatement policies if a resident leaves the facility or the contract  
42 is cancelled;

43 [12.] 13. FOR LIFE CARE AT HOME CONTRACTS A DESCRIPTION OF POLICIES IF  
44 THE CONTRACT IS CANCELLED.

45 14. A statement that internal procedures to resolve disputes and  
46 grievances have been established, and residents notified of them;

47 [13.] 15. A statement of the grace period, if any, for the payment of  
48 periodic fees without a penalty, and the extent of any penalty for the  
49 late payment thereof;

50 [14.] 16. A statement that: a. the resident shall, if eligible, enroll  
51 in medicare parts a and b or the equivalent and shall continue to main-  
52 tain that coverage, together with medicare supplement coverage at least  
53 equivalent in benefits to those established by the superintendent as  
54 minimum benefits for medicare supplement policies;

55 b. if the resident fails to maintain medicare coverage and a medicare  
56 supplement coverage, or is ineligible for such coverage and fails to

1 purchase the equivalent of such coverage, the community shall purchase  
2 the coverage or equivalent coverage on behalf and at the expense of the  
3 resident and shall have the authority to require an appropriate adjust-  
4 ment in payments by the resident to the community;

5 c. if the community cannot purchase medicare coverage and medicare  
6 supplement coverage or the equivalent, the community shall have the  
7 authority to require an adjustment in monthly fees, subject to the  
8 approval of the superintendent, to fund the additional risk to the  
9 facility; and

10 d. if the resident fails to purchase or maintain medicare coverage and  
11 medicare supplement coverage or the equivalent, and the community has  
12 not purchased such coverage, the community will be responsible for any  
13 expenses which would have been covered by medicare and medicare supple-  
14 ment coverage. The community may add the amount of such expenses to the  
15 resident's monthly fees.

16 [15.] 17. A statement that any amendment to the contract and any  
17 change in fees or charges, other than those within the guidelines of an  
18 approved rating system, must be approved by the superintendent of insur-  
19 ance; and

20 [16.] 18. A statement that property shall not be substituted as  
21 payment for either the entrance fee or monthly fee.

22 [17.] 19. A statement whether the continuing care retirement contract  
23 includes any ownership, beneficial or trust interest in the assets of  
24 the operator, the assets of the facility, or both. Assets shall include,  
25 but are not limited to, property, trusts, reserves, interest and other  
26 assets.

27 S 11. Subdivision 1 of section 4612 of the public health law, as added  
28 by chapter 689 of the laws of 1989, is amended to read as follows:

29 1. Residents [living] in a community authorized by this article shall  
30 have the right of self-organization, the right to be represented by one  
31 or more individuals of their own choosing, and the right to engage in  
32 concerted activities for the purpose of keeping informed of the opera-  
33 tion of the community in which they live.

34 S 12. Subdivisions 1 and 2 of section 4614 of the public health law,  
35 as amended by chapter 659 of the laws of 1997, are amended to read as  
36 follows:

37 1. The commissioner, or designee; AND the superintendent, or designee;  
38 [and, with regard to communities for which the department of social  
39 services has regulatory responsibility, the commissioner of social  
40 services, or designee,] may at any time, and shall at least once every  
41 three years, visit each community and examine the business of any appli-  
42 cant for a certificate of authority and any operator engaged in the  
43 execution of continuing care retirement contracts or engaged in the  
44 performance of obligations under such contracts. Routine examinations  
45 may be conducted by having documents designated by and submitted to such  
46 commissioners or superintendent, which shall include financial documents  
47 and records conforming to commonly accepted accounting principles and  
48 practices. The final written report of each such examination conducted  
49 by such commissioners or superintendent shall be filed with the commis-  
50 sioner and, when so filed, shall constitute a public record. A copy of  
51 each report shall be provided to members of the continuing care retire-  
52 ment community council. Any operator being examined shall, upon request,  
53 give reasonable and timely access to all of its records. The represen-  
54 tative or examiner designated by the commissioners or superintendent,  
55 respectively, may, at any time, examine the records and affairs and

1 inspect the community's facilities, whether in connection with a formal  
2 examination or not.

3 2. Any duly authorized officer, employee, or agent of the health  
4 department, [social services department,] or insurance department may,  
5 upon presentation of proper identification, have access to, and inspect,  
6 any records maintained by the community relevant to the respective agen-  
7 cy's regulatory authority, with or without advance notice, to secure  
8 compliance with, or to prevent a violation of, any provision of this  
9 article.

10 S 13. Paragraph k of subdivision 1 of section 4615 of the public  
11 health law, as amended by chapter 659 of the laws of 1997, is amended to  
12 read as follows:

13 k. The commissioner [or the commissioner of social services] has found  
14 violations of applicable statutes, rules or regulations which threaten  
15 to affect directly the health, safety, or welfare of a resident of a  
16 continuing care retirement community.

17 S 14. The section heading of section 4623 of the public health law, as  
18 amended by chapter 659 of the laws of 1997, is amended to read as  
19 follows:

20 Long term care insurance [for] AND continuing care retirement  
21 contracts.

22 S 15. This act shall take effect on the one hundred eightieth day  
23 after it shall have become a law; provided, however, that effective  
24 immediately the department of health is authorized to take such steps in  
25 advance of such effective date, including the addition, amendment and/or  
26 repeal of any rule or regulation as may be necessary to ensure the time-  
27 ly implementation of this act on such effective date.