S T A T E O F N E W Y O R K

8405--A

2011-2012 Regular Sessions

I N A S S E M B L Y

June 15, 2011

Introduced by M. of A. SCHIMMINGER -- read once and referred to the Committee on Health -- recommitted to the Committee on Health in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

Section 1. Subdivisions 2-a, 2-b, 3, 8, 9, 10 and 10-a of section 4601 of the public health law, subdivision 2-a as added and subdivisions 3, 8 and 9 as amended by chapter 659 of the laws of 1997, subdivision 2-b as amended by chapter 523 of the laws of 2011, subdivision 10 as added by chapter 689 of the laws of 1989, and subdivision 10-a as added 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:

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.

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:

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

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

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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;

b. provides a range of health care and social services, subject to such terms as may be included within the contract, which shall include adult care facility services of an on-site or affiliated adult care facility, and at a minimum, sixty days of prepaid services of an on-site or affiliated nursing facility for residents not receiving services under a fee-for-service contract;

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

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, with the exception of residents receiving services under the terms of a fee-for-service continuing care contract as defined in this section. 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; and

e. communities established under this article and offering fee-for-service continuing care contracts must offer, along with such fee-for-service continuing care contracts, life care and/or continuing care contracts as defined in subdivision eight-a of this section.

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

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

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

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

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

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

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

e. complete details of any agreements with a licensed insurer, including copies of proposed contracts, requiring the insurer to assume, wholly or in part, the cost of medical or health related services to be provided to a resident pursuant to a continuing care retirement [contract] CONTRACTUAL AGREEMENT;

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

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

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

5. Up to two thousand residential health care facility beds, as authorized herein, that may be approved as components of continuing care retirement communities shall not be considered by the department and the health systems agencies in the determination of public need for residential health care facility services; provided, however, that if the community seeking to construct such beds does not provide A life care OR LIFE CARE AT HOME CONTRACT to all residents, it must adequately make the assurances required by subdivision two of section forty-six hundred twenty-four of this article.

8. The operator shall designate and make knowledgeable personnel available to prospective residents to answer questions about any information contained in the disclosure statement or contract. The disclosure statement and the CONTINUING CARE RETIREMENT contract shall each state on the cover or top of the first page in bold twelve point 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."

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

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

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

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

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

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

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

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

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

E. THE TYPES OF MEAL PLANS AVAILABLE;

S 10. Section 4608 of the public health law, as added by chapter 689 of the laws of 1989, the section heading, the opening paragraph and subdivision 6 as amended and subdivision 17 as added by chapter 659 of the laws of 1997, subdivision 2 as amended by chapter 120 of the laws of 1993, subdivision 8 as amended by chapter 66 of the laws of 1994 and subdivision 15 as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

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

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

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

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

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

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

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

and the right to return to the living unit in cases of temporary and permanent transfers.

b. [The] FOR LIFE CARE AND MODIFIED CONTRACTS ONLY THE circumstances under which a living unit may be considered vacant and eligible for transfer or resale to a new resident, either due to the permanent transfer of a resident to the community's nursing or other specialized facility or due to the permanent transfer of a resident to a hospital or other facility outside of the community; provided, however, that nothing therein shall relieve a community from its obligations to provide or to insure provision of all contractually required care pursuant to the terms of a continuing care retirement contract. Should a resident's chronic condition require placement in a more specialized chronic care facility that provides services beyond those provided through the community's nursing facility, the liability of THE community pursuant to the terms of a continuing care retirement contract shall be equal to the current per diem rate of the nursing facility minus the pro rata apportionment of the resident's monthly fee for the period of care required by the contract. Nothing herein shall obligate a continuing care retirement community which does not have a life care contract with a resident to provide or pay for a level of nursing facility services nor for any duration beyond what is specifically described in its continuing care retirement contract with that resident. This section shall not affect the operator's obligation under subdivision two of section forty-six hundred twenty-four of this article;

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

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

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

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

[10.] 11. A statement that no act, agreement, or statement of any 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 article or of any regulation enacted pursuant thereto intended for the benefit or protection of the resident or the individual purchasing care for the resident;

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

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

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

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

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

b. if the resident fails to maintain medicare coverage and a medicare supplement coverage, or is ineligible for such coverage and fails to purchase the equivalent of such coverage, the community shall purchase the coverage or equivalent coverage on behalf and at the expense of the resident and shall have the authority to require an appropriate adjustment in payments by the resident to the community;

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

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

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

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

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

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

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

S 12. Subdivisions 1 and 2 of section 4614 of the public health law, as amended by chapter 659 of the laws of 1997 and subdivision 2 as further amended by section 104 of part A of chapter 62 of the laws of 2011, are amended to read as follows:

1. The commissioner, or designee; AND the superintendent, or designee; [and, with regard to communities for which the department of social services has regulatory responsibility, the commissioner of social services, or designee,] may at any time, and shall at least once every three years, visit each community and examine the business of any applicant for a certificate of authority and any operator engaged in the execution of continuing care retirement contracts or engaged in the

performance of obligations under such contracts. Routine examinations may be conducted by having documents designated by and submitted to such commissioners or superintendent, which shall include financial documents and records conforming to commonly accepted accounting principles and practices. The final written report of each such examination conducted by such commissioners or superintendent shall be filed with the commissioner and, when so filed, shall constitute a public record. A copy of each report shall be provided to members of the continuing care retirement community council. Any operator being examined shall, upon request, give reasonable and timely access to all of its records. The representative or examiner designated by the commissioners or superintendent, respectively, may, at any time, examine the records and affairs and inspect the community's facilities, whether in connection with a formal examination or not.

2. Any duly authorized officer, employee, or agent of the health department, [social services department,] or department of financial services may, upon presentation of proper identification, have access to, and inspect, any records maintained by the community relevant to the respective agency's regulatory authority, with or without advance notice, to secure compliance with, or to prevent a violation of, any provision of this article.

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

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

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

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

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