

2118--A

Cal. No. 50

2013-2014 Regular Sessions

I N S E N A T E

January 11, 2013

Introduced by Sens. RANZENHOFER, DeFRANCISCO, LIBOUS -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

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, 10 and 10-a of section 4601 of
2 the public health law, subdivision 2-a as added and subdivisions 3 and 8
3 as amended by chapter 659 of the laws of 1997, subdivision 2-b as
4 amended by chapter 523 of the laws of 2011, subdivision 10 as added by
5 chapter 689 of the laws of 1989, and subdivision 10-a as added by chap-
6 ter 401 of the laws of 2003, are amended and three new subdivisions 7-a,
7 7-b and 7-c are added to read as follows:
8 2-a. "Continuing care retirement COMMUNITY contract" shall mean a
9 single contract to provide a person the services provided by a continu-
10 ing care retirement community.
11 2-b. "Continuing care retirement community" or "community" shall mean
12 a facility or facilities established to provide a comprehensive, cohe-
13 sive living arrangement for the elderly, oriented to the enhancement of
14 the quality of life and which, pursuant to the terms of the continuing
15 care RETIREMENT COMMUNITY contract, at a minimum:
16 a. provides, OR SUPPORTS THROUGH CONTINUING CARE AT HOME, independent
17 living units, and [provides a] meal plan OPTIONS. The independent
18 living unit can be made available either through a non-equity arrange-
19 ment or through an equity arrangement including, but not limited to a

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

LBD05244-03-3

1 cooperative or condominium. For purposes of this article, the purchase
2 price of an independent living unit in an equity arrangement, regardless
3 of the form of the purchase agreement, shall not be considered an entry
4 fee for purposes of calculating reserve liabilities, but shall be
5 considered an entry fee for escrow purposes;

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

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

14 d. nothing in this article shall eliminate the obligation of a contin-
15 uing care retirement community to provide at least sixty days of prepaid
16 nursing facility services to all residents, with the exception of resi-
17 dents receiving services under the terms of a fee-for-service continuing
18 care contract as defined in this section. The prepaid days must include
19 the first sixty days of nursing facility services, whether or not
20 consecutive, not covered by Title XVIII of the federal social security
21 act; and

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

26 3. "Contracts" or "agreements" shall mean CONTINUING CARE AT HOME OR
27 continuing care retirement COMMUNITY contracts as defined in this arti-
28 cle.

29 7-A. "CONTINUING CARE AT HOME CORPORATION" SHALL MEAN AN ESTABLISHED
30 SEPARATE 501 (C) 3 CORPORATION AFFILIATED WITH AN EXISTING CONTINUING
31 CARE RETIREMENT COMMUNITY CAMPUS PROVIDER THROUGH WHICH CONTRACT HOLDERS
32 PAY AN ENTRANCE FEE AND A MONTHLY FEE, BOTH OF WHICH WOULD CORRESPOND TO
33 THE LEVEL OF SERVICE CHOSEN BY THE CONTRACT HOLDER.

34 7-B. "CONTINUING CARE AT HOME CONTRACT" SHALL MEAN A SINGLE CONTRACT
35 TO PROVIDE A PERSON WITH LONG TERM CARE SERVICES AND SUPPORTS BASED UPON
36 AN INDIVIDUAL'S NEEDS AND COORDINATED BY A CASE MANAGER, WHICH SHALL
37 INCLUDE SERVICES PROVIDED TO THE INDIVIDUAL IN HIS OR HER RESIDENCE AND
38 SERVICES OF THE AFFILIATED COMMUNITY'S NURSING FACILITY AND ADULT CARE
39 FACILITY, OR AFFILIATED FACILITIES.

40 7-C. A. "CONTINUING CARE AT HOME" CORPORATIONS PROVIDING SERVICES IN A
41 NURSING HOME AS DEFINED IN SECTION TWENTY-EIGHT HUNDRED ONE OF THIS
42 CHAPTER MUST BE LICENSED UNDER ARTICLE TWENTY-EIGHT AND SHALL BE SUBJECT
43 TO THE PROVISIONS AND STANDARDS OF SUCH ARTICLE.

44 B. "CONTINUING CARE AT HOME" CORPORATIONS PROVIDING HOME CARE SERVICES
45 AS DEFINED IN SECTION THIRTY-SIX HUNDRED TWO OF THIS CHAPTER MUST BE
46 LICENSED UNDER ARTICLE THIRTY-SIX AND SHALL BE SUBJECT TO THE PROVISIONS
47 AND STANDARDS OF SUCH ARTICLE.

48 8. "Life care contract" shall mean a single continuing care retirement
49 COMMUNITY contract OR A CONTINUING CARE AT HOME CONTRACT to provide a
50 person, for the duration of such person's life, the services provided by
51 the continuing care retirement community OR THE CONTINUING CARE AT HOME
52 CORPORATION, which services shall include unlimited services of [an
53 on-site or affiliated nursing facility] THE AFFILIATED COMMUNITY'S NURS-
54 ING FACILITY OR AFFILIATED NURSING HOME. Such term also shall mean a
55 single continuing care retirement COMMUNITY contract to provide a
56 person, for the duration of such person's life, the services provided by

1 the continuing care retirement community under an arrangement in which
2 the costs of the residents' unlimited nursing home or home [health] care
3 services are paid for in whole or in part by a long term care insurance
4 policy approved by the superintendent in accordance with applicable
5 regulations or by long term care insurance or medical assistance
6 payments in accordance with the partnership for long term care program
7 pursuant to the provisions of section three hundred sixty-seven-f of the
8 social services law, section three thousand two hundred twenty-nine of
9 the insurance law and section four thousand six hundred twenty-three of
10 this chapter.

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

14 10-a. "Meal plan" shall mean an arrangement whereby the person enter-
15 ing into the continuing care retirement contract is provided with [no
16 fewer than five meals per month. Additional meals shall be available on
17 a fee-for-service basis] OPTIONS REGARDING THE INCLUSION OF MEALS WITHIN
18 THE CONTRACT.

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

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

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

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

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

41 d. a copy of the proposed forms of contracts to be entered into with
42 residents of the community OR CONTINUING CARE AT HOME CONTRACT HOLDERS;

43 e. complete details of any agreements with a licensed insurer, includ-
44 ing copies of proposed contracts, requiring the insurer to assume, whol-
45 ly or in part, the cost of medical or health related services to be
46 provided to a resident OR CONTINUING CARE AT HOME CONTRACT HOLDERS
47 pursuant to a continuing care retirement COMMUNITY OR CONTINUING CARE AT
48 HOME contract;

49 (C) is or was subject to a currently effective injunctive or restric-
50 tive order or federal or state administrative order relating to business
51 activity or health care as a result of an action brought by a public
52 agency or department, including, without limitation, actions affecting a
53 license to operate a hospital as defined by section twenty-eight hundred
54 one of this chapter, or a facility required to be licensed or certified
55 by the department of [social services] HEALTH. The statement shall set
56 forth the court or agency, date of conviction or judgment, the penalty

1 imposed or damages assessed, or the date, nature and issuer of the
2 order;

3 S 5. Paragraph b of subdivision 4 of section 4604 of the public health
4 law, as amended by chapter 659 of the laws of 1997, is amended to read
5 as follows:

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

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

11 g. Unless all residents OR CONTINUING CARE AT HOME CONTRACT HOLDERS
12 have life care contracts, the operator has adequately made the assur-
13 ances required by subdivision two of section forty-six hundred twenty-
14 four of this article and has agreed to fund the liability in the event
15 that [resident] SUCH RESIDENT'S OR CONTRACT HOLDER'S assets are insuffi-
16 cient to pay for nursing facility services for a one year period.

17 S 7. Subdivision 13 of section 4606 of the public health law, as added
18 by chapter 659 of the laws of 1997, is amended to read as follows:

19 13. The initial disclosure statement and marketing materials of a
20 continuing care retirement community AND CONTINUING CARE AT HOME CORPO-
21 RATION must clearly include a description of the services offered as
22 part of its contract, including, but not limited to, any limitations on
23 nursing facility services. The initial disclosure statement and market-
24 ing materials of a continuing care retirement community OR CONTINUING
25 CARE AT HOME CORPORATION which offers various types of contracts, which
26 may include life care contracts, must clearly differentiate among the
27 various types of contracts which it may offer.

28 S 8. Paragraphs e, f and g of subdivision 14 of section 4606 of the
29 public health law are relettered paragraphs f, g and h and a new para-
30 graph e is added to read as follows:

31 E. THE TYPES OF MEAL PLANS AVAILABLE;

32 S 9. Section 4608 of the public health law, as added by chapter 689 of
33 the laws of 1989, the section heading, the opening paragraph and subdi-
34 vision 6 as amended and subdivision 17 as added by chapter 659 of the
35 laws of 1997, subdivision 2 as amended by chapter 120 of the laws of
36 1993, subdivision 8 as amended by chapter 66 of the laws of 1994 and
37 subdivision 15 as further amended by section 104 of part A of chapter 62
38 of the laws of 2011, is amended to read as follows:

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

45 1. The amount of all money transferred, including, but not limited to,
46 donations, subscriptions, deposits, fees, and any other amounts paid or
47 payable by, or on behalf of, the resident or residents OR CONTINUING
48 CARE AT HOME CONTRACT HOLDER OR HOLDERS;

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

1 3. The procedures of the community OR CONTINUING CARE AT HOME CORPO-
2 RATION relating to a resident's OR CONTRACT HOLDER'S failure to pay the
3 required monthly fees;

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

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

13 6. a. The procedures and conditions under which a resident may be
14 transferred from his or her living unit OR HOME including a statement
15 that, at the time of transfer, the resident will be given the reasons
16 for the transfer; the process by which a transfer decision is made; the
17 persons with the authority to make the decision to transfer; a
18 description of any change in charges to be paid by the resident for
19 services not covered by the contract fees as a result of the transfer;
20 and a statement regarding the disposition of and the right to return to
21 the living unit in cases of temporary and permanent transfers.

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

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

53 8. FOR CONTINUING CARE AT HOME CONTRACTS THE CIRCUMSTANCES UNDER WHICH
54 THE CONTRACT HOLDER MAY MOVE INTO A CAMPUS INDEPENDENT LIVING UNIT,
55 ADULT CARE FACILITY OR NURSING HOME;

1 9. [A] FOR CONTINUING CARE RETIREMENT COMMUNITY CONTRACTS ONLY, A
2 statement of the conditions under which all or any portion of the
3 entrance fee will be released to the operator before the living unit
4 becomes available for occupancy, and a statement of the conditions under
5 which all or any portion of that fee will be refunded in the event of
6 the death of the resident and/or spouse following occupancy of a living
7 unit, including the mandatory refund provisions set forth in section
8 forty-six hundred nine of this article;

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

12 [10.] 11. A statement that no act, agreement, or statement of any
13 resident OR CONTRACT HOLDER, or of an individual purchasing care for a
14 resident OR CONTRACT HOLDER under any agreement to furnish care to the
15 resident OR CONTRACT HOLDER, shall constitute a valid waiver of any
16 provision of this article or of any regulation enacted pursuant thereto
17 intended for the benefit or protection of the resident OR CONTRACT HOLD-
18 ER or the individual purchasing care for the resident OR CONTRACT
19 HOLDER;

20 [11. A] 12. FOR CONTINUING CARE RETIREMENT COMMUNITY CONTRACTS A
21 description of the reinstatement policies if a resident leaves the
22 facility or the contract is cancelled;

23 [12.] 13. FOR CONTINUING CARE AT HOME CONTRACTS A DESCRIPTION OF POLI-
24 CIES IF THE CONTRACT IS CANCELLED.

25 14. A statement that internal procedures to resolve disputes and
26 grievances have been established, and residents AND CONTRACT HOLDERS
27 notified of them;

28 [13.] 15. A statement of the grace period, if any, for the payment of
29 periodic fees without a penalty, and the extent of any penalty for the
30 late payment thereof;

31 [14.] 16. A statement that: a. the resident OR CONTRACT HOLDER, AS
32 APPLICABLE shall, if eligible, enroll in medicare parts a and b or the
33 equivalent and shall continue to maintain that coverage, together with
34 medicare supplement coverage at least equivalent in benefits to those
35 established by the superintendent as minimum benefits for medicare
36 supplement policies;

37 b. if the resident OR CONTRACT HOLDER fails to maintain medicare
38 coverage and a medicare supplement coverage, or is ineligible for such
39 coverage and fails to purchase the equivalent of such coverage, the
40 community OR CONTINUING CARE AT HOME CORPORATION shall purchase the
41 coverage or equivalent coverage on behalf and at the expense of the
42 resident OR CONTRACT HOLDER and shall have the authority to require an
43 appropriate adjustment in payments by the resident OR CONTRACT HOLDER to
44 the community OR CONTINUING CARE AT HOME CORPORATION;

45 c. if the community OR CONTINUING CARE AT HOME CORPORATION cannot
46 purchase medicare coverage and medicare supplement coverage or the
47 equivalent, the community shall have the authority to require an adjust-
48 ment in monthly fees, subject to the approval of the superintendent, to
49 fund the additional risk to the facility OR CORPORATION; and

50 d. if the resident OR CONTRACT HOLDER fails to purchase or maintain
51 medicare coverage and medicare supplement coverage or the equivalent,
52 and the community OR CONTINUING CARE AT HOME CORPORATION has not
53 purchased such coverage, the community OR CORPORATION will be responsi-
54 ble for any expenses which would have been covered by medicare and medi-
55 care supplement coverage. The community OR CORPORATION may add the

1 amount of such expenses to the resident's OR CONTRACT HOLDER'S monthly
2 fees.

3 [15.] 17. A statement that any amendment to the contract and any
4 change in fees or charges, other than those within the guidelines of an
5 approved rating system, must be approved by the superintendent of finan-
6 cial services; and

7 [16.] 18. A statement that property shall not be substituted as
8 payment for either the entrance fee or monthly fee.

9 [17.] 19. [A] FOR CONTINUING CARE RETIREMENT COMMUNITY CONTRACTS, A
10 statement whether the continuing care retirement COMMUNITY contract
11 includes any ownership, beneficial or trust interest in the assets of
12 the operator, the assets of the facility, or both. Assets shall include,
13 but are not limited to, property, trusts, reserves, interest and other
14 assets.

15 S 10. Subdivision 1 of section 4612 of the public health law, as added
16 by chapter 689 of the laws of 1989, is amended to read as follows:

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

22 S 11. Subdivisions 1 and 2 of section 4614 of the public health law,
23 as amended by chapter 659 of the laws of 1997 and subdivision 2 as
24 further amended by section 104 of part A of chapter 62 of the laws of
25 2011, are amended to read as follows:

26 1. The commissioner, or designee; AND the superintendent, or designee;
27 [and, with regard to communities for which the department of social
28 services has regulatory responsibility, the commissioner of social
29 services, or designee,] may at any time, and shall at least once every
30 three years, visit each community and examine the business of any appli-
31 cant for a certificate of authority and any operator engaged in the
32 execution of continuing care retirement COMMUNITY contracts OR CONTINU-
33 ING CARE AT HOME CONTRACTS or engaged in the performance of obligations
34 under such contracts. Routine examinations may be conducted by having
35 documents designated by and submitted to such commissioners or super-
36 intendent, which shall include financial documents and records conform-
37 ing to commonly accepted accounting principles and practices. The final
38 written report of each such examination conducted by such commissioners
39 or superintendent shall be filed with the commissioner and, when so
40 filed, shall constitute a public record. A copy of each report shall be
41 provided to members of the continuing care retirement community council.
42 Any operator being examined shall, upon request, give reasonable and
43 timely access to all of its records. The representative or examiner
44 designated by the commissioners or superintendent, respectively, may, at
45 any time, examine the records and affairs and inspect the community's
46 facilities, whether in connection with a formal examination or not.

47 2. Any duly authorized officer, employee, or agent of the health
48 department, [social services department,] or department of financial
49 services may, upon presentation of proper identification, have access
50 to, and inspect, any records maintained by the community OR BY THE
51 CONTINUING CARE AT HOME CORPORATION relevant to the respective agency's
52 regulatory authority, with or without advance notice, to secure compli-
53 ance with, or to prevent a violation of, any provision of this article.

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

1 k. The commissioner [or the commissioner of social services] has found
2 violations of applicable statutes, rules or regulations which threaten
3 to affect directly the health, safety, or welfare of a resident of a
4 continuing care retirement community OR A CONTRACT HOLDER OF A CONTINU-
5 ING CARE AT HOME CONTRACT.

6 S 13. The section heading of section 4623 of the public health law, as
7 amended by chapter 659 of the laws of 1997, is amended to read as
8 follows:

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

11 S 14. This act shall take effect on the one hundred eightieth day
12 after it shall have become a law; provided, however, that effective
13 immediately the department of health is authorized to take such steps in
14 advance of such effective date, including the addition, amendment and/or
15 repeal of any rule or regulation as may be necessary to ensure the time-
16 ly implementation of this act on such effective date.