

4611--B

2013-2014 Regular Sessions

I N A S S E M B L Y

February 6, 2013

Introduced by M. of A. SCHIMMINGER, ABINANTI, PAULIN, BENEDETTO, GALEF, COOK, BOYLAND, SKOUFIS, ROBERTS, HOOPER -- Multi-Sponsored by -- M. of A. BRENNAN, JAFFEE, MAGEE, McDONALD, WEISENBERG -- read once and referred to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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:

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-

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

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

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

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

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

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

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

30 7-A. "CONTINUING CARE AT HOME CORPORATION" SHALL MEAN A NOT-FOR-PROFIT
31 CORPORATION AFFILIATED WITH A CONTINUING CARE RETIREMENT COMMUNITY
32 CAMPUS PROVIDER THROUGH WHICH CONTRACT HOLDERS PAY AN ENTRANCE FEE AND A
33 MONTHLY FEE, BOTH OF WHICH WOULD CORRESPOND TO THE LEVEL OF SERVICE
34 CHOSEN BY THE CONTRACT HOLDER.

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

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

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

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

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

12 10. "Living unit" shall mean an apartment, room, cottage, or other
13 area within a community set aside for the exclusive use of one or more
14 residents, OR IN THE CASE OF A CONTINUING CARE AT HOME CONTRACT, THE
15 CONTRACT HOLDER'S PRIVATE RESIDENCE.

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

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

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

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

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

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

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

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

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

1 the court or agency, date of conviction or judgment, the penalty imposed
2 or damages assessed, or the date, nature and issuer of the order;

3 S 5. Paragraphs b, c and d of subdivision 4 of section 4604 of the
4 public health law, as amended and paragraph d as added by chapter 659 of
5 the laws of 1997, are amended to read 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 c. the public health AND HEALTH PLANNING council under section twen-
9 ty-eight hundred one-a of this chapter as to the establishment of a
10 skilled nursing facility by the applicant and as to such other facili-
11 ties and services as may require the public health AND HEALTH PLANNING
12 council's approval of the application; provided, however, that the
13 recommendations of the [state hospital review and planning council and
14 the] health systems agency having geographical jurisdiction of the area
15 where the continuing care retirement community is located shall not be
16 required with respect to the establishment of an on-site or affiliated
17 residential health care facility to serve residents as part of the
18 continuing care retirement community, for up to the total number of
19 residential health care facility beds provided for in subdivision five
20 of this section in communities statewide;

21 d. the commissioner under section twenty-eight hundred two of this
22 chapter; provided, however, that, the recommendations of the [state
23 hospital review and] PUBLIC HEALTH AND HEALTH planning council and the
24 health systems agency having geographical jurisdiction of the area where
25 the continuing care retirement community is located shall not be
26 required with respect to the construction of an on-site or affiliated
27 residential health care facility to serve residents as part of the
28 continuing care retirement community, for up to the total number of
29 residential health care facility beds provided for in subdivision five
30 of this section in communities statewide; and

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

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

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

42 13. The initial disclosure statement and marketing materials of a
43 continuing care retirement community AND CONTINUING CARE AT HOME CORPO-
44 RATION must clearly include a description of the services offered as
45 part of its contract, including, but not limited to, any limitations on
46 nursing facility services. The initial disclosure statement and market-
47 ing materials of a continuing care retirement community OR CONTINUING
48 CARE AT HOME CORPORATION which offers various types of contracts, which
49 may include life care contracts, must clearly differentiate among the
50 various types of contracts which it may offer.

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

54 E. THE TYPES OF MEAL PLANS AVAILABLE;

55 S 9. Section 4608 of the public health law, as added by chapter 689 of
56 the laws of 1989, the section heading, the opening paragraph and subdi-

1 vision 6 as amended and subdivision 17 as added by chapter 659 of the
2 laws of 1997, subdivision 2 as amended by chapter 120 of the laws of
3 1993, subdivision 8 as amended by chapter 66 of the laws of 1994 and
4 subdivision 15 as further amended by section 104 of part A of chapter 62
5 of the laws of 2011, is amended to read as follows:

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

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

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

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

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

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

35 6. a. The procedures and conditions under which a resident may be
36 transferred from his or her living unit OR HOME including a statement
37 that, at the time of transfer, the resident will be given the reasons
38 for the transfer; the process by which a transfer decision is made; the
39 persons with the authority to make the decision to transfer; a
40 description of any change in charges to be paid by the resident for
41 services not covered by the contract fees as a result of the transfer;
42 and a statement regarding the disposition of and the right to return to
43 the living unit in cases of temporary and permanent transfers.

44 b. [The] FOR CONTINUING CARE RETIREMENT COMMUNITY CONTRACTS, THE
45 circumstances under which a living unit may be considered vacant and
46 eligible for transfer or resale to a new resident, either due to the
47 permanent transfer of a resident to the community's nursing or other
48 specialized facility or due to the permanent transfer of a resident to a
49 hospital or other facility outside of the community; provided, however,
50 that nothing therein shall relieve a community from its obligations to
51 provide or to insure provision of all contractually required care pursu-
52 ant to the terms of a continuing care retirement contract. Should a
53 resident's chronic condition require placement in a more specialized
54 chronic care facility that provides services beyond those provided
55 through the community's nursing facility, the liability of THE community
56 pursuant to the terms of a continuing care retirement contract shall be

1 equal to the current per diem rate of the nursing facility minus the pro
2 rata apportionment of the resident's monthly fee for the period of care
3 required by the contract. Nothing herein shall obligate a continuing
4 care retirement community which does not have a life care contract with
5 a resident to provide or pay for a level of nursing facility services
6 nor for any duration beyond what is specifically described in its
7 continuing care retirement contract with that resident. This section
8 shall not affect the operator's obligation under subdivision two of
9 section forty-six hundred twenty-four of this article;

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

18 8. [A] FOR CONTINUING CARE AT HOME CONTRACTS, THE CIRCUMSTANCES UNDER
19 WHICH THE CONTRACT HOLDER MAY MOVE INTO A CAMPUS INDEPENDENT LIVING
20 UNIT, ADULT CARE FACILITY OR NURSING HOME;

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

29 [9.] 10. A statement of the advance notice to be provided the resident
30 OR CONTRACT HOLDER, of not less than sixty days, of any change in fees
31 or charges or scope of care or services;

32 [10.] 11. A statement that no act, agreement, or statement of any
33 resident OR CONTRACT HOLDER, or of an individual purchasing care for a
34 resident OR CONTRACT HOLDER under any agreement to furnish care to the
35 resident OR CONTRACT HOLDER, shall constitute a valid waiver of any
36 provision of this article or of any regulation enacted pursuant thereto
37 intended for the benefit or protection of the resident OR CONTRACT HOLD-
38 ER or the individual purchasing care for the resident OR CONTRACT
39 HOLDER;

40 [11. A] 12. FOR CONTINUING CARE RETIREMENT COMMUNITY CONTRACTS, A
41 description of the reinstatement policies if a resident leaves the
42 facility or the contract is cancelled;

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

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

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

51 [14.] 16. A statement that: a. the resident OR CONTRACT HOLDER, AS
52 APPLICABLE shall, if eligible, enroll in medicare parts a and b or the
53 equivalent and shall continue to maintain that coverage, together with
54 medicare supplement coverage at least equivalent in benefits to those
55 established by the superintendent as minimum benefits for medicare
56 supplement policies;

1 b. if the resident OR CONTRACT HOLDER fails to maintain medicare
2 coverage and a medicare supplement coverage, or is ineligible for such
3 coverage and fails to purchase the equivalent of such coverage, the
4 community OR CONTINUING CARE AT HOME CORPORATION shall purchase the
5 coverage or equivalent coverage on behalf and at the expense of the
6 resident OR CONTRACT HOLDER and shall have the authority to require an
7 appropriate adjustment in payments by the resident OR CONTRACT HOLDER to
8 the community OR CONTINUING CARE AT HOME CORPORATION;

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

14 d. if the resident OR CONTRACT HOLDER fails to purchase or maintain
15 medicare coverage and medicare supplement coverage or the equivalent,
16 and the community OR CONTINUING CARE AT HOME CORPORATION has not
17 purchased such coverage, the community OR CORPORATION will be responsi-
18 ble for any expenses which would have been covered by medicare and medi-
19 care supplement coverage. The community OR CORPORATION may add the
20 amount of such expenses to the resident's OR CONTRACT HOLDER'S monthly
21 fees.

22 [15.] 17. A statement that any amendment to the contract and any
23 change in fees or charges, other than those within the guidelines of an
24 approved rating system, must be approved by the superintendent of finan-
25 cial services; and

26 [16.] 18. A statement that property shall not be substituted as
27 payment for either the entrance fee or monthly fee.

28 [17.] 19. [A] FOR CONTINUING CARE RETIREMENT COMMUNITY CONTRACTS, A
29 statement whether the continuing care retirement COMMUNITY contract
30 includes any ownership, beneficial or trust interest in the assets of
31 the operator, the assets of the facility, or both. Assets shall include,
32 but are not limited to, property, trusts, reserves, interest and other
33 assets.

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

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

41 S 11. Subdivisions 1 and 2 of section 4614 of the public health law,
42 as amended by chapter 659 of the laws of 1997 and subdivision 2 as
43 further amended by section 104 of part A of chapter 62 of the laws of
44 2011, are amended to read as follows:

45 1. The commissioner, or designee; AND the superintendent, or designee;
46 [and, with regard to communities for which the department of social
47 services has regulatory responsibility, the commissioner of social
48 services, or designee,] may at any time, and shall at least once every
49 three years, visit each community and examine the business of any appli-
50 cant for a certificate of authority and any operator engaged in the
51 execution of continuing care retirement COMMUNITY contracts OR CONTINU-
52 ING CARE AT HOME CONTRACTS or engaged in the performance of obligations
53 under such contracts. Routine examinations may be conducted by having
54 documents designated by and submitted to such commissioners or super-
55 intendent, which shall include financial documents and records conform-
56 ing to commonly accepted accounting principles and practices. The final

1 written report of each such examination conducted by such commissioners
2 or superintendent shall be filed with the commissioner and, when so
3 filed, shall constitute a public record. A copy of each report shall be
4 provided to members of the continuing care retirement community council.
5 Any operator being examined shall, upon request, give reasonable and
6 timely access to all of its records. The representative or examiner
7 designated by the commissioners or superintendent, respectively, may, at
8 any time, examine the records and affairs and inspect the community's
9 facilities, whether in connection with a formal examination or not.

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

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

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

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

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

30 S 14. This act shall take effect immediately.