
By: **Senator Brinkley**
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Assigned to: Finance

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Senate action: Adopted
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CHAPTER 84

1 AN ACT concerning

2 **Elderly Persons - Conversion of Existing Accommodations to a Continuing**
3 **Care Retirement Community**

4 FOR the purpose of altering the continuing care law to allow existing
5 accommodations to convert to a continuing care retirement community;
6 modifying requirements for feasibility studies to include the conversion of an
7 existing accommodation to become a continuing care retirement community;
8 establishing minimum occupancy or reservation requirements in order to
9 qualify for conversion; establishing requirements for deposit agreements;
10 clarifying operating reserve requirements; prohibiting a provider from
11 terminating or failing to renew a lease for an accommodation in order to enter
12 into a continuing care agreement for that accommodation; defining certain
13 terms; and generally relating to the conversion of an existing accommodation to
14 a continuing care retirement community.

15 BY repealing and reenacting, with amendments,
16 Article 70B - Department of Aging
17 Section 10, 11, and 11B
18 Annotated Code of Maryland
19 (1998 Replacement Volume and 2002 Supplement)

20 BY adding to
21 Article 70B - Department of Aging
22 Section 7(f-1) and 11F
23 Annotated Code of Maryland
24 (1998 Replacement Volume and 2002 Supplement)

1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article 70B - Department of Aging**

4 7.

5 (F-1) "CONVERSION" MEANS THE PROCESS OF TAKING A FACILITY THAT
6 PROVIDES HOUSING OR SHELTER AND CONVERTING IT TO A CONTINUING CARE
7 FACILITY WHERE:

8 (1) THE RESIDENTIAL ACCOMMODATIONS EXIST BEFORE A STATEMENT
9 OF INTENT IS FILED UNDER § 10(A) OF THIS SUBTITLE; AND

10 (2) AT LEAST 60% OF THE AVAILABLE RESIDENTIAL ACCOMMODATIONS
11 OF THE FACILITY OWNER WERE OCCUPIED DURING THE 2 PREVIOUS FISCAL YEARS
12 ~~BY THE FACILITY OWNER.~~

13 10.

14 (a) All [providers] PERSONS who intend to [develop a facility] SUBMIT A
15 FEASIBILITY STUDY UNDER SUBSECTION (B) OF THIS SECTION shall file with the
16 Department a statement of intent to provide continuing care at least 30 days prior to
17 submission of a feasibility study for approval by the Department.

18 (b) A provider may not collect deposits for continuing care or begin
19 construction of a new facility without approval BY THE DEPARTMENT of a feasibility
20 study. The feasibility study shall be filed in a form satisfactory to the Department and
21 shall include at least the following information:

22 (1) A statement of the purpose for the proposed construction OR
23 CONVERSION;

24 (2) Documentation of the financial resources of the provider;

25 (3) A statement of the capital expenditures necessary to accomplish the
26 project and the plan for acquiring the necessary capital;

27 (4) A plan demonstrating the financial feasibility of the proposed project
28 that shall include future funding sources;

29 (5) A study that demonstrates the market for the project;

30 (6) An actuarial forecast reviewed by a qualified actuary;

31 (7) A statement of the planned fee structure, including any proposed
32 escalator or other automatic adjustment provision;

33 (8) A description of the facility that is proposed to be used or is being
34 used to furnish continuing care;

1 (9) A copy of the proposed escrow and deposit agreements; and

2 (10) The form and substance of any advertising campaign or proposed
3 advertisement for the facility that is available at the time of filing.

4 (c) The provider may collect deposits from prospective subscribers, provided
5 that a feasibility study has been approved by the Department and that funds collected
6 are maintained in an escrow account.

7 (C-1) (1) EACH DEPOSIT AGREEMENT SHALL COMPLY WITH THE
8 REQUIREMENTS OF THIS SUBSECTION.

9 (2) IF THE DEPOSIT AGREEMENT IS USED FOR A DEPOSIT ON A UNIT FOR
10 WHICH THE PROVIDER HAS NOT RECEIVED WRITTEN APPROVAL TO WITHDRAW
11 DEPOSITS UNDER § 11(C) OF THIS SUBTITLE, THE DEPOSIT AGREEMENT SHALL:

12 (I) STATE THAT ALL DEPOSITS AND ENTRANCE FEES SHALL BE
13 HELD IN ESCROW UNTIL:

14 1. THE ISSUANCE OF AN INITIAL CERTIFICATE OF
15 REGISTRATION FOR THE UNIT;

16 2. CONSTRUCTION IS COMPLETED;

17 3. A CERTIFICATE OF OCCUPANCY, OR ITS EQUIVALENT, HAS
18 BEEN ISSUED BY THE LOCAL JURISDICTION; AND

19 4. THE PROVIDER HAS BEEN ISSUED APPROPRIATE
20 LICENSES OR CERTIFICATES BY THE DEPARTMENT OF HEALTH AND MENTAL
21 HYGIENE, THE MARYLAND HEALTH CARE COMMISSION, AND THE DEPARTMENT;

22 (II) DESCRIBE THE DISPOSITION OF ANY INTEREST EARNED ON
23 DEPOSITS AND ENTRANCE FEES;

24 (III) STATE THE AMOUNT OF ANY PROCESSING FEE AND WHETHER
25 IT WILL BE REFUNDED IF THE DEPOSIT AGREEMENT IS CANCELED; AND

26 (IV) DESCRIBE THE DISPOSITION OF THE DEPOSIT IF THE DEPOSIT
27 AGREEMENT IS CANCELED BEFORE THE CONTINUING CARE AGREEMENT IS
28 EXECUTED.

29 (3) IF THE DEPOSIT AGREEMENT IS USED FOR A DEPOSIT ON A UNIT FOR
30 WHICH THE PROVIDER HAS RECEIVED WRITTEN APPROVAL TO WITHDRAW DEPOSITS
31 UNDER § 11(C) OF THIS SUBTITLE, THE DEPOSIT AGREEMENT SHALL:

32 (I) STATE THAT THE PROVIDER MAY USE ALL DEPOSITS AND
33 ENTRANCE FEES AT ANY TIME; OR

34 (II) DESCRIBE ANY APPLICABLE LIMITATIONS ON THE USE OF
35 DEPOSITS AND ENTRANCE FEES.

1 (d) A feasibility study may be approved by the Department when it determines
2 that:

3 (1) The number of comprehensive or domiciliary beds in the facility, for
4 which licenses are required by the Department of Health and Mental Hygiene, is not
5 inconsistent with the State health plan;

6 (2) A reasonable financial plan has been developed for developing and
7 operating the project;

8 (3) A market for the facility appears to exist;

9 (4) The feasibility study was prepared by a recognized authority;

10 (5) The actuarial forecast supports the projections for the project;

11 (6) The escrow agreement and deposit agreement are approved by the
12 Department [and state that all deposits will be held in escrow until the issuance of a
13 certificate of registration, construction is complete, the provider has been issued a
14 certificate of occupancy or the equivalent by the appropriate local jurisdiction, and
15 the provider has been issued appropriate licenses or certificates by the Department of
16 Health and Mental Hygiene or the Department]; and

17 (7) The approved escrow agreement is executed by the provider and the
18 financial institution.

19 (e) A provider may not enter into a continuing care agreement until the
20 issuance of a preliminary certificate of registration by the Department. The
21 application shall be filed in a form satisfactory to the Department and shall contain at
22 least the following information:

23 (1) The name and address of the facility and the name and address of
24 any affiliate, parent or subsidiary person;

25 (2) The organizational structure and management of the provider,
26 including:

27 (i) If the provider is a corporation or limited liability company, the
28 name of the corporation or limited liability company, the state in which the
29 corporation is incorporated or the limited liability company is formed, and the name
30 of the chief executive officer;

31 (ii) If the provider is a partnership, the names of the general
32 partners, the state governing the formation of the partnership, and the name of the
33 primary individual responsible for managing the partnership;

34 (iii) If the provider is an unincorporated association, the names of
35 the members, the state governing the association's activities, and the name of the
36 primary individual responsible for managing the association;

1 (iv) If the provider is a partnership having a corporation or limited
2 liability company as one or more of its general partners, the name of the corporation
3 or limited liability company, the state in which the corporation is incorporated or the
4 limited liability company is formed, and the name of the chief executive officer;

5 (v) If the provider is a trust, the name of the trustee, the names of
6 the owners of beneficial interests in the trust, the state governing the trust, and the
7 name of the primary individual responsible for overseeing the trust's activities;

8 (vi) The names and occupation of any of the officers, directors,
9 trustees, managing or general partners, and any other person with a 10% or greater
10 financial equity or beneficial interest in the provider and a description of the person's
11 financial interest in or occupation with the provider;

12 (vii) The name and address of any professional service firm,
13 association, trust, partnership, company, or corporation in which a person identified
14 in item (vi) of this paragraph has a 10% or greater financial interest and which is
15 anticipated to provide goods, premises, or services to the facility or provider of a value
16 of \$10,000 or more within any fiscal year and a description of the goods, premises, or
17 services and their anticipated cost to the facility or provider; however, disclosure of
18 salary, wage, or benefit information of employees of the provider is not required; and

19 (viii) A statement regarding whether the provider is qualified, or
20 intends to qualify, as a tax exempt organization under the Internal Revenue Code;

21 (3) A copy of the corporate charter, partnership agreement, articles of
22 association, membership agreement, trust agreement, or similar instrument or
23 agreement pertaining to the legal organization of the provider;

24 (4) A certified financial statement of the provider for as many of the
25 most recent fiscal years, not exceeding 3 years, for which certified financial
26 statements are obtainable under generally accepted accounting principles. If the
27 provider's fiscal year ended more than 90 days prior to the date of filing, there shall
28 also be included an income statement, which need not be certified, covering the period
29 between the date the fiscal year ended and a date not more than 90 days prior to the
30 date the application is filed;

31 (5) A statement as to any affiliation with a religious, charitable, or other
32 nonprofit organization; the extent of any affiliation, and the extent, if any, to which
33 the affiliate organization will be responsible for the financial and contractual
34 obligations of the provider;

35 (6) A copy of the agreement to be entered into between the provider and
36 subscriber for continuing care, and any priority admission agreements between the
37 provider and any health care provider to provide health-related services;

38 (7) A statement of the most current fee structure, including escalator or
39 other automatic adjustment provisions;

1 (8) A statement of the role of any publicly funded benefit or insurance
2 program in the financing of care;

3 (9) The form and substance of any advertising campaign, advertisement,
4 or other promotional material for the facility that has not been previously filed with
5 the Department; and

6 (10) Other reasonable and pertinent data that the Department requires.

7 (f) If the provider plans to advertise before having a certificate of registration
8 issued under § 11 of this subtitle, the form and substance of any advertisement or
9 advertising campaign must be submitted to the Department before the advertisement
10 or advertising campaign may be used.

11 (g) A preliminary certificate of registration shall be issued by the Department
12 if it determines that:

13 (1) The feasibility study has been approved;

14 (2) The continuing care agreement to be used between the provider and
15 the subscriber meets the requirements of §§ 13, 14, and 15 of this subtitle;

16 (3) All of the financial and organizational materials required to be
17 submitted under subsection (e) of this section have been submitted to the
18 Department; and

19 (4) The form and substance of all advertising and other promotional
20 materials filed are not deceptive, misleading, or likely to mislead.

21 (h) If a preliminary certificate of registration is not obtained from the
22 Department within 6 months of the approval of a feasibility study, or such longer time
23 as is allowed by the Department for good cause shown, the provider shall refund all
24 deposits and cease in its attempts to market continuing care under that application.

25 11.

26 (a) A provider may not provide continuing care until the issuance of a
27 certificate of registration by the Department. The application shall be filed in a form
28 satisfactory to the Department. The application shall contain at least the following
29 information:

30 (1) [Verification] FOR A PROJECT OTHER THAN A CONVERSION,
31 VERIFICATION that subscribers' continuing care agreements have been executed for
32 at least 65 percent of the independent living units and at least 10 percent of the total
33 entrance fee for each contracted unit has been collected;

34 (2) FOR A CONVERSION PROJECT, VERIFICATION THAT AT LEAST 80% OF
35 THE ACCOMMODATIONS IN THE FACILITY PROJECT THAT ARE NOT LICENSED AS
36 ASSISTED LIVING OR COMPREHENSIVE CARE BEDS ARE OCCUPIED OR RESERVED IN
37 ACCORDANCE WITH:

1 (I) LEASES;

2 (II) CONTINUING CARE AGREEMENTS EXECUTED WITH
3 SUBSCRIBERS WHO HAVE PROVIDED A DEPOSIT THAT:

4 1. IS EQUAL TO AT LEAST 10% OF THE TOTAL ENTRANCE
5 FEE; AND

6 2. HAS BEEN DEPOSITED BY THE PROVIDER UNDER A
7 PROPER ESCROW AGREEMENT; OR

8 (III) OTHER APPROPRIATE CONTRACTUAL ARRANGEMENTS.

9 [(2)] (3) Verification that the provider has received a written
10 commitment for permanent long-term financing, and, when requested by the
11 permanent financing lender, the Department may issue a letter stating that all
12 requirements of paragraph (1) of this subsection have been met; and

13 [(3)] (4) [Verification] IF CONSTRUCTION FINANCING IS REQUIRED,
14 VERIFICATION that application for construction financing has taken place. When
15 requested by a construction lender, the Department may issue a letter stating that all
16 requirements of paragraphs (1) and [(2)] (3) of this subsection have been met and on
17 closing of the construction loan the certificate of registration shall be issued.

18 (b) (1) A certificate of registration shall be issued by the Department when
19 it determines that:

20 (i) The provider has been issued a preliminary certificate of
21 registration;

22 (ii) The documents required have been filed;

23 (iii) The form and substance of all advertising and other
24 promotional materials filed are not deceptive, misleading, or likely to mislead;

25 (iv) [At] FOR A PROJECT OTHER THAN A CONVERSION, AT least 65
26 percent of the independent living units have been contracted for with a minimum 10
27 percent of the entrance fee paid as a deposit for each contracted unit;

28 (v) FOR A CONVERSION PROJECT, THAT AT LEAST 80% OF THE
29 ACCOMMODATIONS IN THE ~~FACILITY PROJECT~~ THAT ARE NOT LICENSED AS
30 ASSISTED LIVING OR COMPREHENSIVE CARE BEDS ARE OCCUPIED OR RESERVED IN
31 ACCORDANCE WITH:

32 1. LEASES;

33 2. CONTINUING CARE AGREEMENTS EXECUTED WITH
34 SUBSCRIBERS WHO HAVE PROVIDED A DEPOSIT THAT:

35 A. IS EQUAL TO AT LEAST 10% OF THE TOTAL ENTRANCE
36 FEE; AND

- 1 B. HAS BEEN DEPOSITED BY THE PROVIDER PURSUANT TO A
2 PROPER ESCROW AGREEMENT; OR
- 3 3. OTHER APPROPRIATE CONTRACTUAL ARRANGEMENTS.
- 4 (VI) [Closing] IF CONSTRUCTION FINANCING IS REQUIRED, THAT
5 CLOSING on THE construction financing has taken place; and
- 6 [(vi)] (VII) There is a commitment for permanent long-term
7 financing.
- 8 (2) The initial certificate of registration may be issued for a period of up
9 to 18 months at the discretion of the Department.
- 10 (c) A deposit held in escrow may not be used until a certificate of registration
11 has been issued, construction is completed, the provider has been issued a certificate
12 of occupancy, or the equivalent, by the appropriate local jurisdiction, and the provider
13 has been issued appropriate licenses or certificates by the Department of Health and
14 Mental Hygiene or by the Department.
- 15 (d) If a certificate of registration is not issued within 24 months of the
16 issuance of a preliminary certificate of registration or longer time as is allowed by the
17 Department for good cause shown, the provider shall refund all deposits and cease in
18 its attempts to offer continuing care under that application.
- 19 (e) Annually, within 120 days after the end of the fiscal year, the provider
20 shall file an application for a renewal certificate in a form satisfactory to the
21 Department which shall contain the following information:
- 22 (1) Any additions or changes to the information required by § 10 of this
23 subtitle;
- 24 (2) An audited financial statement for the preceding fiscal year prepared
25 in accordance with an audit guide adopted by the Department;
- 26 (3) An operating budget for the current fiscal year, and a projected
27 operating budget for the next succeeding fiscal year;
- 28 (4) A cash flow projection for the current fiscal year and the next 2 fiscal
29 years;
- 30 (5) A projection of the life expectancy and the number of residents who
31 will require nursing home care;
- 32 (6) An actuarial study reviewed by a qualified actuary and submitted
33 every 3 years;
- 34 (7) The form and substance of any advertising campaign or proposed
35 advertisement and other promotional materials not previously filed with the
36 Department; and

1 (8) Any further information that the Department requires.

2 (f) If the application and accompanying information is not received by the
3 Department within the 120-day period, a late fee may be charged. Failure to file the
4 required information within 90 days of the due date shall be a violation of this
5 subtitle.

6 (g) A renewal of a certificate of registration shall be issued by the Department
7 when it determines that:

8 (1) The documents required have been filed;

9 (2) Any revised continuing care agreements meet the requirements of
10 this subtitle;

11 (3) The provider has complied with § 17A of this subtitle if it has been
12 found to be in financial difficulty;

13 (4) When appropriate, the facility has been licensed or certified by the
14 Department of Health and Mental Hygiene or the Department; and

15 (5) The form and substance of all advertising and other promotional
16 materials filed are not deceptive, misleading, or likely to mislead.

17 (h) A provider shall file a request for approval for each renovation in a form
18 satisfactory to the Department. At least 30 days before filing the request, the provider
19 shall submit to the Department a written statement that sets forth the provider's
20 intent to file a renovation approval request. A request for approval shall include:

21 (1) A statement of the purpose of and need for the renovation;

22 (2) A financial plan that demonstrates to the satisfaction of the
23 Department that the renovation will not have an unreasonably adverse effect on the
24 financial ability of the provider to furnish continuing care in accordance with the
25 provider's continuing care agreements and this subtitle at the facility identified in the
26 plan and at each other facility of the provider in the State; and

27 (3) Any other information that the Department requires.

28 (i) The Department shall approve any renovation requested in accordance
29 with this section if the Department determines that the proposed renovation will not
30 have an unreasonably adverse effect on the financial ability of the provider to furnish
31 continuing care in accordance with the provider's continuing care agreements and
32 this subtitle. A provider may not begin construction of the renovation until the
33 provider receives written approval from the Department.

34 (j) A provider shall file a request for approval for each expansion in a form
35 satisfactory to the Department. At least 30 days before filing the request, the provider
36 shall submit to the Department a written statement that sets forth the provider's
37 intent to file an expansion request. The request shall include:

- 1 (1) A statement of the purpose of and need for the expansion;
- 2 (2) If the expansion involves living units, a plan that demonstrates to the
3 satisfaction of the Department that a market exists for the additional living units;
- 4 (3) A financial plan that demonstrates to the satisfaction of the
5 Department that the expansion will not have an unreasonably adverse effect on the
6 financial ability of the provider to furnish continuing care in accordance with the
7 provider's continuing care agreements and this subtitle at the facility identified in the
8 plan and at each other facility of the provider in the State; and
- 9 (4) Any other information that the Department requires.

10 (k) The Department shall approve any expansion requested in accordance
11 with this section and, if appropriate, issue a new certificate of registration if the
12 Department determines that the proposed expansion will not have an unreasonably
13 adverse effect on the financial ability of the provider to furnish continuing care in
14 accordance with the provider's continuing care agreements and this subtitle. A
15 provider may not begin construction of the expansion until the provider receives
16 written approval from the Department.

17 (l) It shall be the responsibility of the Department to make the information
18 required to be provided pursuant to this subtitle available to all interested persons.
19 The Department shall publicize the availability of this information.

20 11B.

21 (a) In this section, "net operating expenses" means the provider's total
22 operating expenses [related to furnishing continuing care] at each facility of the
23 provider, less depreciation, amortization, unusual and infrequent expenses, and
24 changes in the obligation to provide future services. Interest expenses may be
25 excluded from calculation of net operating expenses, if the provider has funded a debt
26 service reserve or other interest reserve under requirements imposed by a financial
27 institution or under applicable financing documents, to the extent and in the amount
28 the fund includes amounts to cover interest for the year in question.

29 (b) Except as otherwise provided in this section, the provider shall set aside
30 for each facility subject to this subtitle operating reserves that equal 15% of the
31 facility's net operating expenses for the most recent fiscal year for which a certified
32 financial statement is available. The reserves shall be maintained in reasonably
33 liquid form in the judgment of the provider.

34 (c) The provider shall compute operating reserves for each facility as of the
35 end of the facility's most recent fiscal year and, simultaneously with submission of its
36 application for a renewal certificate, shall indicate compliance by setting forth in a
37 letter to the Department from a certified public accountant the amount actually set
38 aside or by disclosing the amount in a certified financial statement.

39 (d) A provider may apply toward the reserve required by this section any
40 reserves, other than debt service reserves, maintained under applicable financing

1 document requirements if the reserves are available to the provider to meet the
2 facility's operating expenses.

3 (e) For the purpose of calculating the provider's operating reserves,
4 investments held to the credit of the reserves shall be calculated at their market
5 value as of the end of the provider's most recent fiscal year for which a certified
6 financial statement is available.

7 (f) The provider shall notify the Department in writing simultaneously with
8 drawing any amount from the funds available to satisfy the operating reserve that is
9 required by subsection (b) of this section. Within 30 days of such draw, the provider
10 shall submit to the Department a written plan for restoring the funds in the reserve
11 to the level required by subsection (b) of this section.

12 (g) (1) A provider shall have up to 10 full fiscal years after the later of
13 October 1, 1996 or the date of its initial certificate to meet the requirement of
14 subsection (b) of this section.

15 (2) A provider shall meet the requirement of subsection (b) of this section
16 at a minimum rate of 10% per year as of the end of each fiscal year after the later of
17 October 1, 1996 or the date of its initial certificate, up to a total of 100% as of the end
18 of the 10th fiscal year.

19 (3) The Department may allow any such provider to modify the
20 minimum rate or authorize an additional amount of time to meet the requirement of
21 subsection (b) of this section, if the modification is necessary to maintain the financial
22 viability of the facility.

23 (h) (1) For any facility THAT HAS NOT BEEN THE SUBJECT OF A
24 CONVERSION AND in which some residents are not parties to continuing care
25 agreements, the provider shall [compute the amount of the operating reserve
26 requirement based on the portion of the net operating expenses which bears the same
27 ratio to the total net operating expense as the number of units certified by the
28 Department bears to the total number of living units] SET ASIDE AS ITS OPERATING
29 RESERVES AN AMOUNT EQUAL TO AT LEAST 15% OF THE PRO RATA PROPORTION OF
30 THE NET OPERATING EXPENSES.

31 (2) THE PRO RATA PROPORTION OF THE NET OPERATING EXPENSES
32 SHALL EQUAL THE NUMBER OF UNITS IN THE FACILITY CERTIFIED BY THE
33 DEPARTMENT DIVIDED BY THE TOTAL NUMBER OF ACCOMMODATIONS IN THE
34 FACILITY MULTIPLIED BY THE NET OPERATING EXPENSES FOR THE MOST RECENT
35 FISCAL YEAR FOR WHICH A CERTIFIED FINANCIAL STATEMENT IS AVAILABLE.

36 11F.

37 A PROVIDER WHOSE FACILITY HAS BEEN THE SUBJECT OF A CONVERSION MAY
38 NOT TERMINATE, OR FAIL TO RENEW, A LEASE FOR AN ACCOMMODATION IN ORDER
39 TO ENTER INTO A CONTINUING CARE AGREEMENT FOR THAT ACCOMMODATION.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
2 effect October 1, 2003.