

HOUSE BILL 1001

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J3

2004 Regular Session
(41r2407)

ENROLLED BILL

-- Health and Government Operations/Finance --

Introduced by **Delegates Goldwater, Benson, V. Clagett, Costa, Montgomery, Nathan-Pulliam, and Smigiel Smigiel, Hurson, Hammen, Boteler, Boutin, Bromwell, Donoghue, Elliott, Hubbard, Mandel, McDonough, Morhaim, Murray, Oaks, Pendergrass, Rosenberg, Rudolph, V. Turner, and Weldon**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

Speaker.

CHAPTER 393

1 AN ACT concerning

2 **Continuing Care Facilities - Internal Grievance Procedure**

3 FOR the purpose of requiring a provider of continuing care to include in a certain
4 disclosure statement a description of the facility's internal grievance procedure;
5 requiring a provider of continuing care to establish a certain internal grievance
6 procedure; providing for the components of the internal grievance procedure;
7 requiring certain continuing care agreements to state that there is an internal
8 grievance procedure to investigate subscriber grievances; and generally relating
9 to an internal grievance procedure for continuing care facilities.

10 BY repealing and reenacting, with amendments,
11 Article 70B - Department of Aging
12 Section 11C and 13

1 Annotated Code of Maryland
2 (2003 Replacement Volume)

3 BY adding to

4 Article 70B - Department of Aging
5 Section 11G
6 Annotated Code of Maryland
7 (2003 Replacement Volume)

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

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

11 11C.

12 (a) (1) The provider shall furnish without cost to all prospective subscribers,
13 before payment of any part of the entrance fee or, if earlier, the execution of a
14 continuing care agreement, and annually to all subscribers on request, a disclosure
15 statement for each facility of the provider holding a preliminary certificate of
16 registration or a certificate of registration.

17 (2) The provider shall submit its initial disclosure statement to the
18 Department for review at least 45 days before distributing the statement to any
19 prospective subscribers.

20 (b) (1) The provider shall revise the disclosure statement annually and file
21 the disclosure statement with the Department within 120 days after the end of the
22 provider's fiscal year.

23 (2) The Department shall review the disclosure statement solely to
24 ensure compliance with this section.

25 (c) The disclosure statement shall include:

26 (1) The name, address, and description of the facility and the name and
27 address of any parent or subsidiary person;

28 (2) The organizational structure and management of the provider,
29 including:

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

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

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

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

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

12 (vi) A statement regarding whether the provider is qualified, or
13 intends to qualify, as a tax-exempt organization under the Internal Revenue Code;

14 (3) A statement regarding any affiliation of the provider with a religious,
15 charitable, or other nonprofit organization, and the extent to which the organization
16 is responsible for the financial and contractual obligations of the provider;

17 (4) A description of all basic fees, including entrance fees, fees for health
18 related services, and periodic fees, collected by the provider from subscribers, setting
19 forth the amount and frequency of the fee changes during each of the previous 5
20 years. If the facility has been in operation less than 5 years, then the description shall
21 be for each year that it has been in operation;

22 (5) A statement describing provisions that have been or will be made to
23 comply with the operating reserve requirements as described in § 11B of this subtitle,
24 and a general statement regarding the provider's investment policy related to the
25 required reserves, including how often the reserve fund investment is reviewed and
26 by whom;

27 (6) A copy of the most recent certified financial statement obtainable
28 under generally accepted accounting principles;

29 (7) A description of the long-term financing for the facility;

30 (8) If the facility has not reached 85% occupancy of independent living
31 units, a summary of the feasibility study;

32 (9) A cash flow forecast statement for the current and the next 2 fiscal
33 years;

34 (10) The names and occupations of the officers, directors, trustees,
35 managing or general partners, and any other persons with a 10% or greater equity or
36 beneficial interest in the provider, and a description of the financial interest in or
37 occupation with the provider;

1 (11) The name and address of any professional service firm, association,
2 trust, partnership, company, or corporation in which a person identified in item (10)
3 of this subsection has a 10% or greater financial interest and which is anticipated to
4 provide goods, premises, or services to the facility or provider of a value of \$10,000 or
5 more within any fiscal year, including a description of the goods, premises, or services
6 and their anticipated cost to the facility or provider. However, the disclosure of salary,
7 wage, or benefit information of employees of the provider is not required;

8 (12) The name of the proposed manager or management company if the
9 facility is or will be managed on a day-to-day basis by a person other than an
10 individual directly employed by the provider, and a description of the business
11 experience, if any, of the manager or company in the operation or management of
12 similar facilities;

13 (13) A description of any matter in which an individual identified in item
14 (10) of this subsection:

15 (i) Has been convicted of a felony or pleaded nolo contendere to a
16 felony charge, if the felony involved fraud, embezzlement, fraudulent conversion, or
17 misappropriation of property;

18 (ii) Has been held liable or enjoined in a civil action by final
19 judgment if the civil action involved fraud, embezzlement, fraudulent conversion, or
20 misappropriation as a fiduciary; or

21 (iii) Has been subject to an effective injunctive or restrictive order of
22 a court of record or, within the past 10 years, had any State or federal license or
23 permit suspended or revoked as a result of an action brought by a governmental
24 agency, arising out of or relating to business activity or health care, including actions
25 affecting a license to operate any facility or service for aging, impaired, or dependent
26 persons;

27 (14) A description of the form of governance of the provider, including the
28 composition of the governing body, and a statement that the provider shall satisfy the
29 requirements of § 11A of this subtitle;

30 (15) If applicable, a description of the conditions under which the provider
31 may be issued a certificate of registration and may use escrowed deposits, and a
32 statement of the amount of the subscriber's deposit that may be used;

33 (16) A summary of the basic services provided or proposed to be provided
34 at the facility under the continuing care agreement, including the extent to which
35 health related services are furnished, that clearly states which services are indicated
36 in the agreement as included in the basic fee or fees and which services are or will be
37 made available at or by the facility at an extra charge;

38 (17) A statement that the provider shall amend its disclosure statement if,
39 at any time, in the opinion of the provider or the Department, an amendment is
40 necessary to prevent the disclosure statement from containing any material
41 misstatement of fact required by this section to be stated in the disclosure statement

1 or omission of a material fact required by this section to be stated in the disclosure
2 statement;

3 (18) A description of any activity involving a renovation or an expansion,
4 whether or not subject to Department review, during the preceding fiscal year or
5 proposed for the current fiscal year;

6 (19) A statement if it is the provider's policy to impose a surcharge on
7 some, but not all, subscribers because of some condition or circumstance and that the
8 surcharge will not be considered part of the entrance fee in the statutory refund
9 under § 15 of this subtitle;

10 (20) A description of the existence and role of the resident association;
11 [and]

12 (21) A DESCRIPTION OF THE INTERNAL GRIEVANCE PROCEDURE; AND
13 ~~INCLUDING:~~

14 ~~(I) THE OPPORTUNITY FOR A SUBSCRIBER TO SUBMIT A WRITTEN~~
15 ~~GRIEVANCE IN ANY FORM TO THE PROVIDER;~~

16 ~~(II) PROMPT INVESTIGATION OF A SUBSCRIBER'S GRIEVANCE AND~~
17 ~~A HEARING IN NECESSARY SITUATIONS;~~

18 ~~(III) THE MANNER IN WHICH THE CAUSE OF A GRIEVANCE WILL BE~~
19 ~~OR ATTEMPT TO BE ALLEVIATED OR REMEDIED DURING AN INVESTIGATION OF A~~
20 ~~GRIEVANCE;~~

21 ~~(IV) THE REQUIRED PARTICIPATION OF ONE OR MORE INDIVIDUALS~~
22 ~~AUTHORIZED BY THE PROVIDER TO TAKE CORRECTIVE ACTION TO REMEDY THE~~
23 ~~CAUSE OF A GRIEVANCE;~~

24 ~~(V) THE RIGHT OF THE SUBSCRIBER WHO SUBMITTED THE~~
25 ~~GRIEVANCE AND OF OTHER SUBSCRIBERS ON BEHALF OF THE AGGRIEVED~~
26 ~~SUBSCRIBER TO PARTICIPATE IN THE GRIEVANCE PROCEDURE;~~

27 ~~(VI) THE RIGHT OF A SUBSCRIBER WHO SUBMITTED A GRIEVANCE~~
28 ~~TO BE NOTIFIED OF THE DISPOSITION OF THE SUBSCRIBER'S GRIEVANCE AND ANY~~
29 ~~CORRECTIVE ACTION TAKEN; AND~~

30 ~~(VII) THE RIGHT OF SUBSCRIBERS TO ESTABLISH AND PARTICIPATE~~
31 ~~ON A SUBSCRIBER GRIEVANCE PANEL THAT:~~

32 ~~1. IS COMPOSED OF SUBSCRIBERS ONLY;~~

33 ~~2. PRESENTS GRIEVANCES TO THE PROVIDER, FACILITY~~
34 ~~MANAGERS, ADMINISTRATORS, OR STAFF, PUBLIC OFFICIALS, AND ANY OTHER~~
35 ~~INDIVIDUALS ON BEHALF OF A SUBSCRIBER; AND~~

1 (2) Specify all services such as food, shelter, medical care, nursing care,
2 or other health related services, which are to be provided by the provider to each
3 subscriber, including in detail all items which each subscriber will receive, whether
4 the items will be provided for a designated time period or for life;

5 (3) Designate the classes of subscribers according to types of payment
6 plans;

7 (4) Describe the procedures to be followed by the provider when the
8 provider temporarily or permanently changes the subscriber's accommodation within
9 the facility or transfers the subscriber to another health facility, but a subscriber's
10 accommodations shall be changed only for the protection of the health or safety of the
11 subscriber or the general and economic welfare of the residents;

12 (5) Describe the policies that will be implemented in the event the
13 subscriber becomes unable to meet the monthly fees;

14 (6) State the policy of the provider with regard to changes in
15 accommodations and the procedure to be followed to implement that policy in the
16 event of an increase or decrease in the number of persons occupying an individual
17 unit;

18 (7) Provide in clear and understandable language, boldface type, and in
19 the largest type used in the body of the agreement, the terms governing the refund of
20 any portion of the entrance fee in the event of discharge by the provider or
21 cancellation by the subscriber;

22 (8) State the terms under which an agreement is canceled by the death
23 of the subscriber;

24 (9) Provide in clear and understandable language, boldface type, and in
25 the largest type used in the agreement, whether or not monthly fees, if charged, will
26 be subject to periodic increases;

27 (10) Provide that charges for care paid in advance in 1 lump sum only
28 shall not be increased or changed during the duration of the agreed upon care;

29 (11) State which funeral and burial services, if any, will be provided by the
30 provider;

31 (12) Give a description of the living quarters;

32 (13) State the conditions, if any, under which a unit may be assigned to
33 the use of another by the subscriber;

34 (14) State the religious or charitable affiliations of the provider and the
35 extent, if any, to which the affiliate organization will be responsible for the financial
36 and contractual obligations of the provider;

1 (15) State the subscriber's and provider's respective rights and obligations
2 as to use of the facility and as to real and personal property of the subscriber placed
3 in the custody of the provider;

4 (16) State that the subscribers shall have the right to organize and
5 operate a subscriber association at the facility and to meet privately to conduct
6 business;

7 (17) STATE THAT THERE IS AN INTERNAL GRIEVANCE PROCEDURE TO
8 INVESTIGATE THE GRIEVANCES OF SUBSCRIBERS;

9 [(17)] (18) State what, if any, fee adjustments will be made in the event
10 the subscriber is voluntarily absent from the facility for an extended period of time;

11 [(18)] (19) Specify the circumstances, if any, under which the subscriber
12 will be required to apply for Medicaid, Medicare, public assistance, or any public
13 benefit program and whether or not the facility is a participant in Medicare or
14 medical assistance;

15 [(19)] (20) State that the subscriber has received and reviewed the latest
16 certified financial statement and that a copy of the certified financial statement was
17 received at least 2 weeks before signing the agreement;

18 [(20)] (21) Provide that the facility will make available to the subscriber,
19 upon request, any certified financial statement transmitted to the Department;

20 [(21)] (22) Where applicable, describe the conditions under which the
21 provider may be issued a certificate of registration, describe the conditions under
22 which the provider may use escrowed deposits, and state the amount of the
23 subscriber's deposit that may be used upon issuance of a certificate of registration;

24 [(22)] (23) State that fees collected by a provider under the terms of a
25 continuing care agreement may not be used for purposes other than those set forth in
26 the agreement;

27 [(23)] (24) Allow a subscriber to designate a beneficiary for receipt of
28 any refundable portion of the entrance fee, if:

29 (i) The designation is in writing;

30 (ii) The designation is witnessed by two or more competent
31 witnesses;

32 (iii) The designation is noncontingent; and

33 (iv) The designation is specified in percentages and accounts for 100
34 percent of the refund due; and

35 [(24)] (25) Contain the following statement in boldface type, and in the
36 largest type used in the agreement: "A preliminary certificate of registration or

1 certificate of registration is not an endorsement or guarantee of this facility by the
2 State of Maryland. The Maryland Department of Aging urges you to consult with an
3 attorney and a suitable financial advisor before signing any documents."

4 (b) Except as provided in subsection [(a)(23)] (A)(24) of this section, a
5 requirement of this section shall not apply to any continuing care agreements entered
6 into before the effective date of the requirement.

7 (c) The provider shall maintain the continuing care agreement on site and
8 make it available for inspection by the Department of Health and Mental Hygiene
9 under Title 19, Subtitle 18, of the Health - General Article.

10 (d) In addition to any other requirements of this section, if a provider's
11 continuing care agreement includes a provision to provide assisted living program
12 services and the provider does not execute a separate assisted living agreement, each
13 continuing care agreement executed between a subscriber and a provider shall
14 include with regard to the assisted living program:

15 (1) A statement of the level of care for which the assisted living program
16 is licensed;

17 (2) As part of the procedures to be followed under subsection (a)(4) of this
18 section, if the subscriber is transferred to an assisted living program, the procedures
19 to be followed by the provider for notifying the subscriber of the level of care needed
20 by the subscriber;

21 (3) A statement indicating the options available to a subscriber if the
22 subscriber's level of care, after admission to an assisted living program, exceeds the
23 level of care for which the provider is licensed;

24 (4) Based on a sample list of assisted living program services maintained
25 by the Department of Health and Mental Hygiene, a statement of those services
26 provided by the assisted living program and those services not provided by the
27 assisted living program;

28 (5) A statement of the obligations of the provider and the subscriber or
29 the subscriber's agent as to handling the finances of the subscriber;

30 (6) A statement of the obligations of the provider and the subscriber or
31 the subscriber's agent as to disposition of the subscriber's property upon discharge or
32 death of the subscriber; and

33 (7) The applicable rate structure and payment provisions covering:

34 (i) All rates to be charged to the subscriber, including:

35 1. Service packages;

36 2. Fee-for-service rates; and

