
By: **Chairman, Environmental Matters Committee (Departmental - Aging,
Office on)**

Introduced and read first time: January 28, 1998

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Office on Aging - Continuing Care Contracts**

3 FOR the purpose of specifying that certain escrow agreements are executed by
4 providers and financial institutions; eliminating the requirement that certain
5 advertising be approved by the Office on Aging; altering the requirements
6 regarding the appearance of certain provisions in continuing care contracts;
7 altering certain terminology; clarifying that a provider may withhold a certain
8 amount from a refund under certain circumstances; altering certain
9 requirements regarding the disclosure of certain fees in a certain statement; and
10 generally relating to continuing care.

11 BY repealing and reenacting, with amendments,
12 Article 70B - Office on Aging
13 Section 7(c), 10(d), (e)(6) and (9), and (f), 11C(c)(4) and (15), 11E(b), 13(a), 14,
14 and 22A(a) and (l)
15 Annotated Code of Maryland
16 (1995 Replacement Volume and 1997 Supplement)

17 BY repealing and reenacting, without amendments,
18 Article 70B - Office on Aging
19 Section 10(a), 11C(a), and 11E(a)(1)
20 Annotated Code of Maryland
21 (1995 Replacement Volume and 1997 Supplement)

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

24 **Article 70B - Office on Aging**

25 7.

26 (c) (1) "Continuing care" means furnishing shelter and either medical and
27 nursing services or other health related [benefits] SERVICES to an individual 60

1 years of age or older not related by blood or marriage to the provider for the life of the
2 individual or for a period in excess of 1 year under a written agreement that requires
3 a transfer of assets or an entrance fee notwithstanding periodic charges.

4 (2) "Health related [benefits] SERVICES" means, at a minimum, priority
5 for nursing home admission or assistance in the activities of daily living, exclusive of
6 the provision of meals.

7 (3) Medical and nursing services and other health related [benefits]
8 SERVICES may be covered by the entrance fee, the periodic charges, or may be
9 purchased, at the option of the subscriber, for an additional fee.

10 10.

11 (a) All providers who intend to develop a facility shall file with the Office a
12 statement of intent to provide continuing care at least 30 days prior to submission of
13 a feasibility study for approval by the Office.

14 (d) A feasibility study may be approved by the Office when it determines that:

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

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

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

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

22 (5) The actuarial forecast supports the projections for the project; [and]

23 (6) The [approved] escrow agreement and deposit agreement [are
24 executed by the provider and the financial institution] ARE APPROVED BY THE
25 OFFICE and state that all deposits will be held in escrow until the issuance of a
26 certificate of registration, construction is complete, the provider has been issued a
27 certificate of occupancy or the equivalent by the appropriate local jurisdiction, and
28 the provider has been issued appropriate licenses or certificates by the Department of
29 Health and Mental Hygiene or the Office; AND

30 (7) THE APPROVED ESCROW AGREEMENT IS EXECUTED BY THE
31 PROVIDER AND THE FINANCIAL INSTITUTION.

32 (e) A provider may not enter into a continuing care agreement until the
33 issuance of a preliminary certificate of registration by the Office. The application
34 shall be filed in a form satisfactory to the Office and shall contain at least the
35 following information:

1 (6) A copy of the agreement to be entered into between the provider and
2 subscriber for continuing care, and any priority admission agreements between the
3 provider and any health care provider to provide health-related [benefits]
4 SERVICES;

5 (9) The form and substance of any advertising campaign, advertisement,
6 or other promotional material for the facility THAT HAS not BEEN previously
7 [approved by] FILED WITH the Office; and

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

12 11C.

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

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

21 (c) The disclosure statement shall include:

22 (4) A description of all BASIC fees, including entrance fees, [health care]
23 fees FOR HEALTH RELATED SERVICES, and periodic fees, collected by the provider
24 from subscribers, setting forth the amount and frequency of the fee changes during
25 each of the previous 5 years. If the facility has been in operation less than 5 years,
26 then the description shall be for each year that it has been in operation;

27 (15) If applicable, a description of the conditions under which the provider
28 may be issued a certificate of registration and may use escrowed deposits, and a
29 statement of the amount of the subscriber's deposit that may be used [on issuance of
30 a certificate of registration];

31 11E.

32 (a) (1) A provider that holds a certificate of registration may not sell,
33 transfer, or otherwise dispose of assets in any 12-month period in excess of 10% of its
34 total assets based on its latest certified financial statements that are available at the
35 time the sale, transfer, or other disposition is made, unless the provider obtains the
36 approval of the Office for the sale, transfer, or other disposition in accordance with
37 this section.

38 (b) The following transactions are not considered sales, transfers, or other
39 dispositions of assets for purposes of subsection (a)[(1)] of this section:

- 1 (1) Those undertaken under contractual obligations in effect on October
2 1, 1996;
- 3 (2) Those made in the ordinary course of business of operating the
4 facility;
- 5 (3) Refunds of amounts under contracts entered into in the ordinary
6 course of business;
- 7 (4) Transfers of cash, securities, or other investment properties in
8 connection with ordinary investment transactions;
- 9 (5) Grants of mortgages, deeds of trust, or security interests to unrelated
10 third parties;
- 11 (6) Those involving easements, rights-of-way, road widenings, and
12 similar conveyances for the benefit of public bodies or utilities;
- 13 (7) Those made for an expansion or renovation; and
- 14 (8) Any other sales, transfers, or other dispositions identified by the
15 Office in regulations as appropriate to fall within this subsection.

16 13.

17 (a) In addition to such other provisions as may be considered proper to
18 effectuate the purpose of any continuing care agreement, each agreement executed
19 between a subscriber and a provider shall:

- 20 (1) Show the total consideration paid by the subscriber for continuing
21 care including the value of all property transferred, donations, entrance fees,
22 subscriptions, monthly fees, and any other fees paid or payable by or on behalf of a
23 subscriber;
- 24 (2) Specify all services such as food, shelter, medical care, nursing care,
25 or other health RELATED services, which are to be provided by the provider to each
26 subscriber, including in detail all items which each subscriber will receive, whether
27 the items will be provided for a designated time period or for life;
- 28 (3) Designate the classes of subscribers according to types of payment
29 plans;
- 30 (4) Describe the procedures to be followed by the provider when the
31 provider temporarily or permanently changes the subscriber's accommodation within
32 the facility or transfers the subscriber to another health facility, but a subscriber's
33 accommodations shall be changed only for the protection of the health or safety of the
34 subscriber or the general and economic welfare of the residents;
- 35 (5) Describe the policies that will be implemented in the event the
36 subscriber becomes unable to meet the monthly fees;

1 (6) State the policy of the provider with regard to changes in
2 accommodations and the procedure to be followed to implement that policy in the
3 event of an increase or decrease in the number of persons occupying an individual
4 unit;

5 (7) Provide in clear and understandable language, [and in all capital
6 letters] **BOLDFACE TYPE**, AND in the largest type used in the body of the agreement,
7 the terms governing the refund of any portion of the entrance fee in the event of
8 discharge by the provider or cancellation by the subscriber;

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

11 (9) Provide in clear and understandable language, [and in all capital
12 letters] **BOLDFACE TYPE**, AND in the largest type used in the agreement, whether or
13 not monthly fees, if charged, will be subject to periodic increases;

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

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

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

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

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

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

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

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

32 (18) Specify the circumstances, if any, under which the subscriber will be
33 required to apply for Medicaid, Medicare, public assistance, or any public benefit
34 program and whether or not the facility is a participant in Medicare or medical
35 assistance;

1 (19) State that the subscriber has received and reviewed the latest
2 certified financial statement and that a copy of the certified financial statement was
3 received at least 2 weeks before signing the agreement;

4 (20) Provide that the facility will make available to the subscriber, upon
5 request, any certified financial statement transmitted to the Office;

6 (21) Where applicable, describe the conditions under which the provider
7 may be issued a certificate of registration, describe the conditions under which the
8 provider may use escrowed deposits, and state the amount of the subscriber's deposit
9 that may be used upon issuance of a certificate of registration;

10 (22) State that fees collected by a provider under the terms of a continuing
11 care agreement may not be used for purposes other than those set forth in the
12 agreement; and

13 (23) Contain THE FOLLOWING STATEMENT in [all capital letters]
14 **BOLDFACE TYPE, AND in the largest type used in the agreement: "A preliminary**
15 **certificate of registration or certificate of registration is not an endorsement or**
16 **guarantee of this facility by the State of Maryland. The Maryland Office on Aging**
17 **urges you to consult with an attorney and a suitable financial advisor before signing**
18 **any documents."**

19 14.

20 (a) A subscriber shall have the right to rescind a continuing care agreement
21 for any reason prior to the date of occupancy by the said subscriber.

22 (b) (1) If, prior to the date of occupancy, the subscriber dies, the provider
23 determines that the subscriber is ineligible for entrance into the facility, or the
24 subscriber elects to terminate the continuing care agreement because of a substantial
25 change in the subscriber's physical, mental or financial condition, the agreement
26 shall be automatically canceled, and the subscriber or the subscriber's legal
27 representative shall receive within 30 days thereafter a full refund of all moneys paid
28 to the provider, except:

29 (i) Those special additional costs incurred by the provider due to
30 modifications in the structure or furnishings of the unit specifically requested by the
31 subscriber that do not exceed the [reasonable] costs of modification or REASONABLE
32 COSTS OF restoration actually incurred by the provider and set forth in writing in a
33 separate addendum to the agreement and signed by the subscriber, and

34 (ii) A processing fee approved by the Office.

35 (2) In the event that the subscriber rescinds the continuing care
36 agreement within 90 days after entering into the agreement and prior to the date of
37 occupancy of the unit for any reason other than the reasons specified in subsection
38 (b)(1) of this section, the refund provisions shall be the same as those provided for in
39 subsection (b)(1) of this section. If, prior to the date of occupancy of a unit, the
40 subscriber rescinds the continuing care agreement after the 90-day period for any

1 reason other than the reasons specified in subsection (b)(1) of this section, the
2 provider may require the subscriber to forfeit an amount up to 25% of the subscriber's
3 entrance fee deposit.

4 (c) A subscriber may rescind a continuing care agreement at any time if the
5 terms of the agreement are in violation of the terms of this subtitle and the subscriber
6 is injured by the violation. The subscriber shall be entitled to treble damages for
7 extensive injuries arising from the violations.

8 (d) If an applicant for admission to a continuing care facility withdraws the
9 application prior to execution of a continuing care agreement, the applicant shall
10 receive a full refund of all moneys paid to the provider except a processing fee
11 approved by the Office.

12 22A.

13 (a) In this section:

14 (1) "Continuing care at home" means providing either directly or by
15 contractual arrangement medical, nursing, or other health related [benefits]
16 SERVICES to an individual 60 years of age or older who is not related by blood or
17 marriage to the provider for the life of the individual or for a period in excess of 1 year
18 under a written agreement that requires a transfer of assets or an entrance fee
19 notwithstanding periodic charges; and

20 (2) "Continuing care at home" shall include assistance with the physical
21 maintenance of the dwelling of an individual.

22 (l) If the provider intends to advertise prior to being issued a certificate of
23 registration under subsection (k) of this section, the provider shall submit the
24 advertisement or advertising campaign to the Office [for approval] prior to
25 advertising.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
27 effect October 1, 1998.