

SENATE BILL 785

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2004 Regular Session
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CF HB 1001

By: **Senator Klausmeier**

Introduced and read first time: February 13, 2004

Assigned to: Rules

Re-referred to: Finance, February 18, 2004

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: April 1, 2004

CHAPTER _____

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
13 Annotated Code of Maryland
14 (2003 Replacement Volume)

15 BY adding to
16 Article 70B - Department of Aging
17 Section 11G
18 Annotated Code of Maryland
19 (2003 Replacement Volume)

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

Article 70B - Department of Aging

2 11C.

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

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

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

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

16 (c) The disclosure statement shall include:

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

19 (2) The organizational structure and management of the provider,
20 including:

21 (i) If the provider is a corporation or limited liability company, the
22 name of the corporation or limited liability company, the state in which the
23 corporation is incorporated or the limited liability company is formed, and the name
24 of the chief executive officer;

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

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

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

35 (v) If the provider is a trust, the name of the trustee, the names of
36 the owners of the beneficial interests in the trust, the state governing the trust, and

1 the name of the primary individual responsible for overseeing the trust's activities;
2 and

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

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

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

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

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

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

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

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

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

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

36 (12) The name of the proposed manager or management company if the
37 facility is or will be managed on a day-to-day basis by a person other than an
38 individual directly employed by the provider, and a description of the business

1 experience, if any, of the manager or company in the operation or management of
2 similar facilities;

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

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

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

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

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

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

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

28 (17) A statement that the provider shall amend its disclosure statement if,
29 at any time, in the opinion of the provider or the Department, an amendment is
30 necessary to prevent the disclosure statement from containing any material
31 misstatement of fact required by this section to be stated in the disclosure statement
32 or omission of a material fact required by this section to be stated in the disclosure
33 statement;

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

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

1 (20) A description of the existence and role of the resident association;

2 [and]

3 (21) A DESCRIPTION OF THE INTERNAL GRIEVANCE PROCEDURE; AND
4 ~~INCLUDING:~~

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

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

9 (III) ~~THE MANNER IN WHICH THE CAUSE OF A GRIEVANCE WILL BE~~
10 ~~OR ATTEMPT TO BE ALLEVIATED OR REMEDIED DURING AN INVESTIGATION OF A~~
11 ~~GRIEVANCE;~~

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

15 (V) ~~THE RIGHT OF THE SUBSCRIBER WHO SUBMITTED THE~~
16 ~~GRIEVANCE AND OF OTHER SUBSCRIBERS ON BEHALF OF THE AGGRIEVED~~
17 ~~SUBSCRIBER TO PARTICIPATE IN THE GRIEVANCE PROCEDURE;~~

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

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

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

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

27 3. ~~WORKS WITH THE PROVIDER, FACILITY MANAGERS,~~
28 ~~ADMINISTRATORS, AND STAFF OR ANY OTHER INDIVIDUALS WITHIN OR OUTSIDE~~
29 ~~THE FACILITY TO IMPROVE THE QUALITY OF CARE FOR SUBSCRIBERS; AND~~

30 [(21)] (22) Such other material information concerning the facility or the
31 provider as the Department requires or that the provider wishes to include.

32 (d) The disclosure statement shall contain a cover page that states, in a
33 prominent location and type face, the date of the disclosure statement and that the
34 issuance of a certificate of registration does not constitute approval, recommendation,
35 or endorsement of the facility by the Department, nor is it evidence of, or does it attest
36 to, the accuracy or completeness of the information set out in the disclosure
37 statement.

- 1 (e) Any amended disclosure statement:
- 2 (1) Shall be filed with the Department at the same time that it is
3 delivered to any subscriber or prospective subscriber; and
- 4 (2) Is subject to all the requirements of this subtitle.
- 5 (f) (1) In addition to any other requirements of this section, if a provider's
6 continuing care agreement includes a provision to provide assisted living program
7 services and the provider does not execute a separate assisted living agreement, the
8 disclosure statement shall contain with regard to the assisted living program:
- 9 (i) The name and address and a description of each facility that the
10 provider operates;
- 11 (ii) A statement regarding the relationship of the provider to other
12 providers or services if the relationship affects the care of the resident;
- 13 (iii) A description of any special programming, staffing, and training
14 provided by the program for individuals with particular needs or conditions such as
15 cognitive impairment;
- 16 (iv) Notice of:
- 17 1. The availability of locks for storage;
- 18 2. The availability of locks, if any, for the subscriber's room;
- 19 3. The security procedures which the provider shall
20 implement to protect the subscriber and the subscriber's property; and
- 21 4. The provider's right, if any, to enter a subscriber's room;
- 22 (v) A statement of the obligations of the provider, the subscriber, or
23 the subscriber's agent as to:
- 24 1. Arranging for or overseeing medical care;
- 25 2. Monitoring the health status of the subscriber;
- 26 3. Purchasing or renting essential or desired equipment and
27 supplies; and
- 28 4. Ascertaining the cost of and purchasing durable medical
29 equipment;
- 30 (vi) An explanation of the assisted living program's complaint or
31 grievance procedure; and
- 32 (vii) Notice of any material changes in the assisted living program.

1 (2) The provider shall:

2 (i) Furnish annually without cost to each subscriber revisions to
3 the disclosure statement provisions under paragraph (1) of this subsection;

4 (ii) Ensure that each subscriber, or the subscriber's agent, initials
5 the revised disclosure statement to indicate acknowledgment of the revisions; and

6 (iii) Make available a copy of each initialed disclosure statement for
7 inspection by the Department of Health and Mental Hygiene under Title 19, Subtitle
8 18, of the Health - General Article.

9 11G.

10 (A) A PROVIDER SHALL ESTABLISH AN INTERNAL GRIEVANCE PROCEDURE TO
11 ADDRESS A SUBSCRIBER'S GRIEVANCE.

12 (B) AN INTERNAL GRIEVANCE PROCEDURE SHALL PROVIDE FOR:

13 (1) THE OPPORTUNITY FOR A SUBSCRIBER TO SUBMIT A WRITTEN
14 GRIEVANCE TO THE PROVIDER; AND

15 (2) A RESPONSE FROM THE PROVIDER WITHIN 45 DAYS AFTER RECEIPT
16 OF THE WRITTEN GRIEVANCE AS TO THE INVESTIGATION AND RESOLUTION OF THE
17 SUBSCRIBER'S GRIEVANCE.

18 13.

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

22 (1) Show the total consideration paid by the subscriber for continuing
23 care including the value of all property transferred, donations, entrance fees,
24 subscriptions, monthly fees, and any other fees paid or payable by or on behalf of a
25 subscriber;

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

30 (3) Designate the classes of subscribers according to types of payment
31 plans;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 [(17)] (18) State what, if any, fee adjustments will be made in the event
35 the subscriber is voluntarily absent from the facility for an extended period of time;

1 [(18)] (19) Specify the circumstances, if any, under which the subscriber
2 will be required to apply for Medicaid, Medicare, public assistance, or any public
3 benefit program and whether or not the facility is a participant in Medicare or
4 medical assistance;

5 [(19)] (20) State that the subscriber has received and reviewed the latest
6 certified financial statement and that a copy of the certified financial statement was
7 received at least 2 weeks before signing the agreement;

8 [(20)] (21) Provide that the facility will make available to the subscriber,
9 upon request, any certified financial statement transmitted to the Department;

10 [(21)] (22) Where applicable, describe the conditions under which the
11 provider may be issued a certificate of registration, describe the conditions under
12 which the provider may use escrowed deposits, and state the amount of the
13 subscriber's deposit that may be used upon issuance of a certificate of registration;

14 [(22)] (23) State that fees collected by a provider under the terms of a
15 continuing care agreement may not be used for purposes other than those set forth in
16 the agreement;

17 [(23)] (24) Allow a subscriber to designate a beneficiary for receipt of
18 any refundable portion of the entrance fee, if:

19 (i) The designation is in writing;

20 (ii) The designation is witnessed by two or more competent
21 witnesses;

22 (iii) The designation is noncontingent; and

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

25 [(24)] (25) Contain the following statement in boldface type, and in the
26 largest type used in the agreement: "A preliminary certificate of registration or
27 certificate of registration is not an endorsement or guarantee of this facility by the
28 State of Maryland. The Maryland Department of Aging urges you to consult with an
29 attorney and a suitable financial advisor before signing any documents."

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

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

36 (d) In addition to any other requirements of this section, if a provider's
37 continuing care agreement includes a provision to provide assisted living program

1 services and the provider does not execute a separate assisted living agreement, each
2 continuing care agreement executed between a subscriber and a provider shall
3 include with regard to the assisted living program:

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

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

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

13 (4) Based on a sample list of assisted living program services maintained
14 by the Department of Health and Mental Hygiene, a statement of those services
15 provided by the assisted living program and those services not provided by the
16 assisted living program;

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

19 (6) A statement of the obligations of the provider and the subscriber or
20 the subscriber's agent as to disposition of the subscriber's property upon discharge or
21 death of the subscriber; and

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

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

24 1. Service packages;

25 2. Fee-for-service rates; and

26 3. Any other nonservice-related charges;

27 (ii) Criteria to be used for imposing additional charges for the
28 provision of additional services, if the subscriber's service and care needs change;

29 (iii) Payment arrangements and fees, if known, for third-party
30 services not covered by the continuing care agreement, but arranged for by either the
31 subscriber, the subscriber's agent, or the assisted living program;

32 (iv) Identification of the persons responsible for payment of all fees
33 and charges and a clear indication of whether the person's responsibility is or is not
34 limited to the extent of the subscriber's funds;

35 (v) A provision for at least 45 days' notice of any rate increase,
36 except if necessitated by a change in the subscriber's medical condition; and

1 (vi) Fair and reasonable billing and payment policies.

2 (e) (1) If a provider's feasibility study has been approved under § 10 of this
3 subheading, the Department shall decide whether to approve a continuing care
4 agreement within 180 days of receipt of a complete agreement.

5 (2) If the Department takes no action within 180 days, the agreement is
6 deemed approved.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
8 effect October 1, 2004.