



General Assembly

February Session, 2008

Raised Bill No. 665

LCO No. 2725

* SB00665HS 031408 *

Referred to Committee on Human Services

Introduced by:
(HS)

**AN ACT CONCERNING CONTINUING CARE FACILITIES AND
CONTINUING CARE AT HOME.**

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

1 Section 1. Section 17b-520 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2008*):

3 As used in sections 17b-520 to 17b-535, inclusive, as amended by
4 this act:

5 (a) "Continuing-care contract" means an agreement pursuant to
6 which a provider undertakes to furnish to a person not related by
7 consanguinity or affinity to the provider, care and shelter in a facility
8 or care at home with the right to future access to care and shelter in
9 such facility and medical or nursing services or other health-related
10 benefits for the life of a person or for a period in excess of one year,
11 and which requires a present or future transfer of assets or an entrance
12 fee in addition to or instead of periodic charges, and the amount of the
13 assets required to be transferred or the entrance fee is equal to or in
14 excess of the amount set by the commissioner in regulations adopted
15 pursuant to section 17b-533;

16 (b) "Entrance fee" means the total of any initial or deferred transfer
17 to, or for the benefit of, a provider of a sum of money or other property
18 made or promised to be made as full or partial consideration for
19 acceptance or maintenance of a person as a resident pursuant to a
20 continuing-care contract;

21 (c) "Facility" means the place in which a provider undertakes to
22 furnish shelter [or] and care to a person pursuant to a continuing-care
23 contract;

24 (d) "Provider" means any person, corporation, limited liability
25 company, business trust, trust, partnership, unincorporated association
26 or other legal entity, or any combination of such entities, undertaking
27 to furnish care and shelter in a facility or care at home with the right to
28 future access to care and shelter in such facility and medical or nursing
29 services or other health-related benefits pursuant to a continuing-care
30 contract;

31 (e) "Resident" means any person entitled to receive present or future
32 shelter, care and medical or nursing services or other health-related
33 benefits pursuant to a continuing-care contract, provided nothing in
34 sections 17b-520 to 17b-535, inclusive, as amended by this act, shall
35 affect rights otherwise afforded to residents while they are patients in
36 healthcare facilities as defined in subsections (a), (b) and (c) of section
37 19a-490 of the 2008 supplement to the general statutes;

38 (f) "Affiliate of a provider" means any person, corporation, limited
39 liability company, business trust, trust, partnership, unincorporated
40 association or other legal entity directly or indirectly controlling,
41 controlled by or in common control with a provider;

42 (g) "Offer" means an offer through either personal, telephone or
43 mail contact or other communication directed to or received by a
44 person at a location within this state as an inducement, solicitation or
45 attempt to encourage a person to enter into a continuing-care contract
46 and shall include any paid advertisement published or broadcast
47 within this state, except for advertisements in periodicals where more

48 than two-thirds of the circulation is outside this state but shall not
49 include marketing or feasibility studies;

50 (h) "Shelter" means a room, apartment, cottage or other living area
51 in a facility set aside for the exclusive use of one or more persons
52 pursuant to a continuing-care contract;

53 (i) "Medical or nursing services or other health-related benefits"
54 means services or benefits which shall include care in a nursing
55 facility, priority admission to a nursing facility, home health care or
56 assistance with activities of daily living, to which a resident becomes
57 contractually entitled;

58 (j) "Department" means the Department of Social Services;

59 (k) "Commissioner" means the Commissioner of Social Services.

60 Sec. 2. Section 17b-522 of the general statutes is repealed and the
61 following is substituted in lieu thereof (*Effective October 1, 2008*):

62 (a) Before the execution of a contract to provide continuing care, or
63 before the transfer of any money or other property to a provider by or
64 on behalf of a prospective resident, whichever shall occur first, the
65 provider shall deliver to the person with whom the contract is to be
66 entered into, or to that person's legal representative, a conspicuous
67 statement notifying the prospective resident that:

68 (1) A continuing-care contract is a financial investment and his
69 investment may be at risk;

70 (2) The provider's ability to meet its contractual obligations under
71 such contract depends on its financial performance;

72 (3) He is advised to consult an attorney or other professional
73 experienced in matters relating to investments in continuing-care
74 facilities before he signs a contract for continuing care; and

75 (4) The department does not guarantee the security of his

76 investment.

77 (b) Before the execution of a contract to provide continuing care, or
78 before the transfer of any money or other property to a provider by or
79 on behalf of a prospective resident, whichever shall occur first, the
80 provider shall deliver to the person with whom the contract is to be
81 entered into, or to that person's legal representative, a disclosure
82 statement. The text of the disclosure statement shall contain, to the
83 extent not clearly and completely set forth in the contract for
84 continuing care attached as an exhibit thereto, at least the following
85 information:

86 (1) The name and business address of the provider and a statement
87 of whether the provider is a partnership, corporation or other legal
88 entity;

89 (2) The names of the officers, directors, trustees, or managing and
90 general partners of the provider, the names of persons having a five
91 per cent or greater ownership interest in the provider, and a
92 description of each such person's occupation with the provider;

93 (3) A description of the business experience of the provider and of
94 the manager of the facility if the facility will be managed on a day-to-
95 day basis by an organization other than the provider, in the
96 administration of continuing-care contracts as defined in section 17b-
97 520, as amended by this act, or in the administration of similar
98 contractual arrangements;

99 (4) A description of any matter in which the provider, any of the
100 persons described in subdivision (2) of this subsection, or the manager
101 has been convicted of a felony or pleaded nolo contendere to a felony
102 charge, or held liable or enjoined in a civil action by final judgment, if
103 the felony or civil action involved fraud, embezzlement, fraudulent
104 conversion or misappropriation of property; or is subject to a currently
105 effective injunction or restrictive or remedial order of a court of record,
106 within the past five years has had any state or federal license or permit
107 suspended or revoked as a result of an action brought by a

108 governmental agency or department, rising out of or relating to
109 business activity or health care, including but not limited to actions
110 affecting the operation of a foster care facility, nursing home,
111 retirement home, residential care home, or any facility subject to
112 sections 17b-520 to 17b-535, inclusive, as amended by this act, or a
113 similar statute in another state or country;

114 (5) A statement as to whether or not the provider is, or is affiliated
115 with, a religious, charitable, nonprofit, or for-profit organization; the
116 extent of the affiliation, if any; the extent to which the affiliate
117 organization will be responsible for the financial and contractual
118 obligations of the provider; and the provision of the federal Internal
119 Revenue Code, if any, under which the provider or affiliate is exempt
120 from the payment of income tax;

121 (6) The location and a description of the physical property or
122 properties of the provider, existing or proposed; and, if proposed, the
123 estimated completion date or dates, whether or not construction has
124 begun, and the contingencies subject to which construction may be
125 deferred;

126 (7) The goods and services provided or proposed to be provided
127 without additional charge under the contract for continuing care
128 including the extent to which medical or nursing care or other health-
129 related benefits are furnished;

130 (8) The disposition of interest earned on entrance fees or other
131 deposits held in escrow;

132 (9) A description of the conditions under which the continuing-care
133 contract may be terminated, whether before or after occupancy, by the
134 provider or by the resident. In the case of termination by the provider,
135 a description of the manner and procedures by which a decision to
136 terminate is reached by the provider, including grounds for
137 termination, the participation of a resident's council or other group, if
138 any, in reaching such a decision, and any grievance, appeal or other
139 similar procedures available to a resident whose contract has been

140 terminated by the provider;

141 (10) A statement setting forth the rights of a surviving spouse who
142 is a resident of the facility and the effect of the continuing-care contract
143 on the rights of a surviving spouse who is not a resident of the facility,
144 in the event of the death of a resident, subject to any limitations
145 imposed upon such rights by statute or common law principles;

146 (11) A statement of the effect of a resident's marriage or remarriage
147 while in the facility on the terms of his continuing-care contract;

148 (12) [A] Subject to the provisions of subsection (g) of this section, a
149 statement of the provider's policy regarding disposition of a resident's
150 personal property in the event of death, temporary or permanent
151 transfer to a nursing facility, or termination of the contract by the
152 provider;

153 (13) A statement that payment of an entrance fee or other transfer of
154 assets pursuant to a continuing-care contract may have significant tax
155 consequences and that any person considering such a payment or
156 transfer may wish to consult a qualified advisor;

157 (14) The provisions that have been made or will be made by the
158 provider for reserve funding and any other security to enable the
159 provider to perform fully its obligations under continuing-care
160 contracts, including but not limited to escrow accounts established in
161 compliance with sections 17b-524, as amended by this act, and 17b-525
162 trusts, or reserve funds, together with the manner in which such funds
163 will be invested and the names and experience of the persons making
164 or who will make investment decisions. Disclosure shall include a
165 summary of the information contained in the five-year financial
166 information filed with the commissioner pursuant to section 17b-527;
167 said summary shall set forth by year any anticipated excess of future
168 liabilities over future revenues and shall describe the manner in which
169 the provider plans to meet such liabilities;

170 (15) Audited and certified financial statements of the provider,

171 including (A) a balance sheet as of the end of the most recent fiscal
172 year and (B) income statements for the three most recent fiscal years of
173 the provider or such shorter period of time as the provider shall have
174 been in existence;

175 (16) [If] Subject to the provisions of subsection (g) of this section, if
176 the operation of the facility has not yet commenced, or if the
177 construction of the facility is to be completed in stages, a statement of
178 the anticipated source and application of the funds used or to be used
179 in the purchase or construction of the facility or each stage of the
180 facility, including:

181 (A) An estimate of such costs as financing expense, legal expense,
182 land costs, marketing costs, and other similar costs which the provider
183 expects to incur or become obligated for prior to the commencement of
184 operations of each stage of the facility;

185 (B) A description of any mortgage loan or any other financing
186 intended to be used for the financing of the facility or each stage of the
187 facility, including the anticipated terms and costs of such financing;

188 (C) An estimate of the total entrance fees to be received from or on
189 behalf of residents at or prior to commencement of operation of each
190 stage of the facility; and

191 (D) An estimate of the funds, if any, which are anticipated to be
192 necessary to fund start-up losses and provide reserve funds to assure
193 full performance of the obligations of the provider under continuing-
194 care contracts;

195 (17) Pro forma annual income statements for the facility for the next
196 five fiscal years;

197 (18) A description of all entrance fees and periodic charges, if any,
198 required of residents and a record of past increases in such fees and
199 charges during the previous seven years;

200 (19) For each facility operated by the provider, the total actuarial

201 present value of prepaid healthcare obligations assumed by the
202 provider under continuing-care contracts as calculated on an
203 actuarially sound basis using reasonable assumptions for mortality
204 and morbidity;

205 (20) A statement that all materials required to be filed with the
206 department are on file, a brief description of such materials, and the
207 address of the department at which such materials may be reviewed;

208 (21) The cover page of the disclosure statement shall state, in a
209 prominent location and type face, the date of the disclosure statement
210 and that registration does not constitute approval, recommendation, or
211 endorsement by the department or state, nor does such registration
212 evidence the accuracy or completeness of the information set out in the
213 disclosure statement;

214 (22) If the construction of the facility is to be completed in stages, a
215 statement as to whether all services will be provided at the completion
216 of each stage and, if not, the services that will not be provided listed in
217 bold print.

218 (c) (1) Not more than sixty nor less than ten days before the
219 execution of a contract to provide continuing care, the provider shall
220 deliver a current disclosure statement to the person with whom the
221 contract is to be entered into or to that person's legal representative.

222 (2) Not more than sixty nor less than ten days before a person
223 occupies a continuing care facility, the provider shall deliver a revised
224 and up-to-date disclosure statement to the prospective resident or to
225 that person's legal representative, except that if there have been no
226 revisions to the disclosure statement previously delivered pursuant to
227 subdivision (1) of this subsection, the provider shall deliver a
228 statement to the prospective resident or representative that there have
229 been no revisions to the original disclosure statement.

230 (d) The statement required under subsections (a) and (b) of this
231 section shall be signed and dated by the prospective resident before

232 the execution of a contract to provide continuing care or before the
233 transfer of any money or other property to a provider by or on behalf
234 of the prospective resident. Each such statement shall contain an
235 acknowledgment that such statement and the continuing-care contract
236 have been reviewed by the prospective resident or his legal
237 representative. Such signed statements shall be kept on file by the
238 provider for a period of not less than the term of the contract.

239 (e) Each statement required under subsections (a) and (b) of this
240 section and the continuing-care contract shall be in language easily
241 readable and understandable in accordance with the provisions of
242 subsections (a) and (b) of section 42-152.

243 (f) A copy of the standard form or forms of the continuing-care
244 contract used by the provider shall be attached as an exhibit to each
245 disclosure statement.

246 (g) The provisions of subdivisions (12) and (16) of subsection (b) of
247 this section shall not apply to a continuing-care contract for the
248 provision of care in a person's home.

249 [(g)] (h) The commissioner may adopt regulations in accordance
250 with the provisions of chapter 54 to specify any additional information
251 required in the disclosure statement.

252 Sec. 3. Section 17b-523 of the general statutes is repealed and the
253 following is substituted in lieu thereof (*Effective October 1, 2008*):

254 (a) Each continuing-care contract shall provide:

255 (1) That the party contracting with the provider may rescind the
256 contract by notifying the provider in writing by registered or certified
257 mail of such rescission within thirty days following the execution of
258 the contract; that in the event of such rescission, any money or
259 property transferred to the provider shall be refunded, less (A) those
260 costs specifically incurred by the provider or facility at the request of
261 the resident and described in the contract or in an addendum thereto

262 signed by the resident; and (B) a reasonable service charge, not to
263 exceed the greater of one thousand dollars or two per cent of the
264 entrance fees; and, if applicable, that the resident to whom the contract
265 pertains shall not be required to move into the facility before the
266 expiration of the thirty-day period;

267 (2) That if, after the thirty-day period, a resident dies before
268 occupying a contracted-for living unit, or on account of illness, injury
269 or incapacity is precluded from occupying a contracted-for living unit
270 under the terms of the continuing-care contract, or a resident dies
271 before the commencement of care under a continuing-care contract to
272 provide care in such person's home, upon notice to the provider by
273 registered or certified mail, the contract is automatically cancelled and
274 the resident or the resident's legal representative shall receive a refund
275 of all money or property transferred to the provider, less (A) those
276 costs specifically incurred by the provider or facility at the request of
277 the resident and described in the contract or in an addendum thereto
278 signed by the resident; (B) a reasonable service charge not to exceed
279 the greater of one thousand dollars, or two per cent of the entrance fee,
280 and (C) if the contract includes occupying a living unit in a facility and
281 the unit was actually available for occupancy, the usual monthly
282 charge for that unit, prorated on a per diem basis, for the period
283 beginning seven days after the execution of the contract and ending on
284 the last day of the month in which the provider receives notice that the
285 resident will not occupy the unit;

286 (3) That if construction of the facility has not yet begun, construction
287 will not begin until a minimum number of living units, which shall not
288 be less than one-half of the units in the facility or if the construction is
289 to be completed in stages, one-half of the units evidencing financial
290 feasibility in accordance with section 17b-526, have been presold, and a
291 minimum deposit of five per cent of the entrance fee per unit for all
292 presold units or ten thousand dollars per unit for all presold units,
293 whichever is less, has been received by the provider. The requirements
294 of this subdivision shall not apply to any continuing-care contract for
295 the provision of care in a person's home.

296 (b) Each continuing-care contract shall also specify:

297 (1) The circumstances under which the resident will be permitted to
298 continue to receive care and shelter [] in a facility or care at home with
299 the right to future access to care and shelter in such facility and
300 medical or nursing services or other health-related benefits, and other
301 benefits under the continuing-care contract in the event of possible
302 financial difficulties on the part of the resident;

303 (2) The terms and conditions under which a contract for continuing
304 care may be cancelled by the provider or by the resident; and the
305 conditions, if any, under which all or any portion of the entrance fee
306 will be refunded in the event of cancellation of the contract by the
307 provider or by the resident or in the event of the death of the resident
308 prior to or following occupancy of a living unit;

309 (3) The conditions under which a living unit occupied by a resident
310 may be made available by the provider to a different or new resident
311 other than on the death of the original resident;

312 (4) The manner in which the provider may adjust periodic charges
313 or other recurring fees and the limitations of such adjustments, if any,
314 and, if there is no such limitation, a clear statement that such increases
315 may be made at the discretion of the provider.

316 Sec. 4. Section 17b-524 of the general statutes is amended by adding
317 subsection (d) as follows (*Effective October 1, 2008*):

318 (NEW) (d) The provisions of this section shall not apply to any
319 continuing-care contract for the provision of care in a person's home.

320 Sec. 5. Subsection (g) of section 17b-354 of the 2008 supplement to
321 the general statutes is repealed and the following is substituted in lieu
322 thereof (*Effective October 1, 2008*):

323 (g) (1) A continuing care facility which guarantees life care for its
324 residents, as defined in subsection (b) of this section, (A) shall arrange
325 for a medical assessment to be conducted by an independent physician

326 or an access agency approved by the Office of Policy and Management
327 and the Department of Social Services as meeting the requirements for
328 such agency as defined by regulations adopted pursuant to subsection
329 (e) of section 17b-342, prior to the admission of any resident to the
330 nursing facility and shall document such assessment in the resident's
331 medical file and (B) may transfer or discharge a resident who has
332 intentionally transferred assets in a sum which will render the resident
333 unable to pay the cost of nursing facility care in accordance with the
334 contract between the resident and the facility.

335 (2) A continuing care facility which guarantees life care for its
336 residents, as defined in subsection (b) of this section, may, for the
337 seven-year period immediately subsequent to becoming operational,
338 accept nonresidents directly as nursing facility patients on a
339 contractual basis provided any such contract shall include, but not be
340 limited to, requiring the facility (A) to document that placement of the
341 patient in such facility is medically appropriate; (B) to apply to a
342 potential nonresident patient the financial eligibility criteria applied to
343 a potential resident of the facility pursuant to said subsection (b); and
344 (C) to at least annually screen each nonresident patient to ensure the
345 maintenance of assets, income and insurance sufficient to cover the
346 cost of at least forty-two months of nursing facility care. A facility may
347 transfer or discharge a nonresident patient upon the patient exhausting
348 assets sufficient to pay the costs of his care or upon the facility
349 determining the patient has intentionally transferred assets in a sum
350 which will render the patient unable to pay the costs of a total of forty-
351 two months of nursing facility care from the date of initial admission
352 to the nursing facility. Any such transfer or discharge shall be
353 conducted in accordance with section 19a-535. The commissioner may
354 grant [up to a] one or more three-year [extension] extensions of the
355 period during which a facility may accept nonresident patients,
356 provided the facility is in compliance with the provisions of this
357 section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2008</i>	17b-520
Sec. 2	<i>October 1, 2008</i>	17b-522
Sec. 3	<i>October 1, 2008</i>	17b-523
Sec. 4	<i>October 1, 2008</i>	17b-524
Sec. 5	<i>October 1, 2008</i>	17b-354(g)

HS *Joint Favorable*