

SENATE, No. 1457

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED FEBRUARY 10, 2022

Sponsored by:

Senator RICHARD J. CODEY

District 27 (Essex and Morris)

Senator NIA H. GILL

District 34 (Essex and Passaic)

SYNOPSIS

Requires continuing care retirement community agreements to require refund of refundable entrance fees within one year.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/14/2022)

1 AN ACT concerning continuing care retirement community
2 contracts and amending P.L.1986, c.103 and P.L.2013, c.167.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. Section 15 of P.L.1986, c.103 (C.52:27D-344) is amended to
8 read as follows:

9 15. a. A continuing care agreement executed on or after the
10 effective date of **【this act】** P.L.1986, c.103 (C.52:27D-330 et seq.)
11 shall be written in plain English and in language understandable by
12 a layperson and shall include, but not be limited to, the following:

13 (1) A provision for the continuing care of one resident, or two or
14 more residents occupying space designed for multiple occupancy
15 under appropriate procedures established by the provider, and a
16 statement showing the value of all property transferred, including
17 donations, subscriptions, fees and any other amounts payable by, or
18 on behalf of, the resident;

19 (2) A statement on a form provided by the commissioner
20 specifying all services which are to be provided to the resident by
21 the provider, including, in detail, all items which the resident will
22 receive, such as food, shelter, nursing care, pharmaceuticals and
23 burial, and whether the items will be provided for a designated
24 period of time or for life;

25 (3) A description of the health and financial conditions upon
26 which the provider may have the resident relinquish his space in the
27 designated facility;

28 (4) A description of the health and financial conditions required
29 for a person to continue as a resident;

30 (5) A description of the circumstances under which the resident
31 shall be permitted to remain in the facility in the event of financial
32 difficulties of the resident. The stated policy may not be less than
33 the terms stated in subsection e. of this section;

34 (6) A statement of the fees that will be charged if the resident
35 marries a person who is not a resident of the facility, the terms
36 concerning the entry of a spouse into the facility and the
37 consequences if the spouse does not meet the requirements for
38 entry;

39 (7) A statement providing that the agreement may be canceled
40 upon giving at least 60 days' notice by the provider or the resident,
41 except that if an agreement is canceled by the provider because
42 there has been a good faith determination in writing, signed by the
43 medical director and the administrator of the facility, that a resident
44 is a danger to himself or others, only notice that is reasonable under
45 the circumstances is required;

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (8) A statement providing in clear and understandable language,
2 in print no smaller than the largest type used in the body of the
3 agreement, the terms governing the refund of any portion of the
4 entrance fee;

5 (9) A statement of the terms under which an agreement is
6 canceled by the death of the resident, which statement may contain
7 a provision stating that upon the death of the resident the moneys
8 paid for the continuing care of the resident shall be considered
9 earned and become the property of the provider; **and**

10 (10) A statement providing for at least 30 days' advance notice
11 to the resident before any change in fees or changes in the scope of
12 care or services are effective, except for changes required by State
13 or federal assistance programs; and

14 (11) For an agreement entered into on or after the effective date
15 of P.L. , c. (C.) (pending before the Legislature as this
16 bill), a statement that, notwithstanding any other provision of law or
17 the agreement to the contrary, when the resident is eligible for
18 refund of a refundable entrance fee, the balance of the refundable
19 entrance fee that is owed to the resident shall be refunded within
20 one year after the resident ceases to be a resident of the facility, in
21 the same manner as provided in subsection e. of this section.

22 b. A resident has the right to rescind a continuing care
23 agreement without penalty or forfeiture, except those costs
24 specifically incurred by the facility at the request of the resident and
25 set forth in writing in a separate addendum signed by both parties to
26 the agreement, within 30 days after making an initial deposit or
27 executing the agreement. A resident shall not be required to move
28 into the facility designated in the agreement before the expiration of
29 the 30 day period.

30 c. If a resident dies before the occupancy date, or through
31 illness, injury or incapacity is precluded from becoming a resident
32 under the terms of the continuing care agreement, the agreement
33 shall be automatically rescinded and the resident or the resident's
34 legal representative shall receive a full refund of all moneys paid to
35 the facility, except those costs specifically incurred by the facility at
36 the request of the resident and set forth in writing in a separate
37 addendum signed by both parties to the agreement.

38 d. No agreement for care shall permit dismissal or discharge of
39 the resident from the facility prior to the expiration of the
40 agreement without just cause for the removal. For the purposes of
41 **["this act"]** P.L.1986, c.103 (C.52:27D-330 et seq.), "just cause"
42 means but is not limited to a good faith determination in writing,
43 signed by the medical director and the administrator of the facility,
44 that a resident is a danger to himself or others while remaining in
45 the facility. The written determination shall state: (1) that the
46 determination is made in good faith; (2) the reasons supporting the
47 determination that the resident is a danger to himself or others; (3)
48 the basis for the conclusion that there is no less restrictive

1 alternative to dismissal, discharge or cancellation, as the case may
2 be, for abating the dangerousness of the resident; and (4) the basis
3 for the conclusion that the danger is such that a notice period of less
4 than 60 days is appropriate.

5 If a facility dismisses a resident for just cause, the resident shall
6 be entitled to a refund of **【his】** the resident's unearned entrance fee,
7 if any, in the same manner as provided in subsection e. of this
8 section. A resident may request a hearing to contest a facility's
9 decision to dismiss or discharge the resident. The hearing shall be
10 held pursuant to the "Administrative Procedure Act," P.L.1968,
11 c.410 (C.52:14B-1 et seq.).

12 e. It shall not be deemed just cause if the resident is unable to
13 pay monthly maintenance fees until the entire unearned entrance fee
14 plus, where applicable, any third-party insurance benefits received,
15 are earned by the facility. For the purpose of this subsection, the
16 unearned portion shall be the difference between the entrance fee
17 paid by, or on behalf of, the resident and the cost of caring for the
18 resident based upon the per capita cost to the facility. In lieu of
19 calculating the actual per capita cost of caring for a resident, a
20 facility may provide, in the agreement for continuing care, that the
21 per capita cost of caring for the resident shall be calculated as
22 follows:

23 (1) No more than 2% of the entrance fee for each month the
24 resident occupies, or is entitled to occupy, a bed in the residential
25 unit of the facility;

26 (2) No more than 4% of the entrance fee for each month the
27 resident occupies, or is entitled to occupy, a bed in the nursing unit
28 of the facility; and

29 (3) No more than 10% of the entrance fee as a one-time charge
30 for processing and refurbishment.

31 If these entrance fees are exhausted within 90 days of the date of
32 failure to pay, the facility may not require the resident to leave
33 before 90 days from the date of failure to pay, during which time
34 the resident shall continue to pay the facility a reduced fee based
35 upon the resident's current income.

36 f. No act, agreement or statement of a resident or of an
37 individual purchasing care for a resident under any agreement to
38 furnish care to the resident shall constitute a valid waiver of any
39 provision of **【this act】** P.L.1986, c.103 (C.52:27D-330 et seq.)
40 intended for the benefit or protection of the resident or the
41 individual purchasing care for the resident.

42 g. An agreement entered into prior to the effective date of **【this**
43 **act】** P.L.1986, c.330 (C.52:27D-330 et seq.) or prior to the issuance
44 of a certificate of authority to the provider is valid and binding upon
45 both parties in accordance with the terms of the agreement.

46 h. The provider shall designate and make knowledgeable
47 personnel available to prospective residents to answer questions
48 about any information contained in the agreement for continuing

1 care. The provider shall also advise prospective residents to seek
2 the independent advice of an attorney or financial advisor of their
3 choice concerning the agreement. The agreement shall state on the
4 cover or top of the first page in bold print the following: "This
5 matter involves a substantial financial investment and a legally
6 binding contract. In evaluating the disclosure statement and the
7 contract prior to any commitment, it is recommended that you
8 consult with an attorney and financial advisor of your choice, if you
9 so elect, who can review these documents with you."

10 (cf: P.L.1986, c.103, s.15)

11
12 2. Section 7 of P.L.2013, c.167 (C.52:27D-360.7) is amended
13 to read as follows:

14 7. a. (1) A resident may, upon 60-days' written notice of the
15 intent to vacate, cancel the continuing care agreement for any
16 reason.

17 (2) Upon vacating the unit, a resident or resident's estate
18 cancelling a continuing care agreement also shall provide written
19 notice to the owner or manager of that facility that the unit is
20 vacated. The notice shall declare that all personal property of the
21 resident or estate thereof has been removed.

22 (3) After a unit is vacated, the facility may restore the unit to its
23 original condition. The facility may remove any personal property
24 of the prior resident that remains in the unit beginning on the
25 twenty-first day following the date upon which notice of vacancy
26 was received.

27 (4) In the case of a continuing care agreement that provides for a
28 refundable entrance fee, the facility shall assign the vacated unit a
29 sequential refund number among all the available units with
30 refundable entrance fees once the unit is restored pursuant to
31 paragraph (3) of this subsection, but not later than 60 days after the
32 date that all the conditions for issuing a sequential refund number,
33 as provided in the continuing care agreement, are fulfilled.

34 b. Upon cancellation of the continuing care agreement by either
35 the resident or the facility, the resident shall have the right to
36 receive a refund of the amount of any entrance fee as provided in
37 the continuing care agreement. The amount of the entrance fee
38 shall be set forth in a clear and conspicuous manner in the
39 continuing care agreement. For a continuing care agreement
40 entered into on or after the effective date of P.L. , c. (pending
41 before the Legislature as this bill), the agreement shall provide that
42 the balance of a refundable entrance fee owed to a resident be paid
43 no later than one year after the date the resident ceases to be a
44 resident of the facility, regardless of the sequential refund number
45 assigned to the unit and regardless of whether the unit has been
46 resold.

47 c. A resident shall be provided at least 60-days' written notice
48 from the facility if the resident's continuing care agreement is being

1 cancelled due to a violation of the facility's rules or regulations.
2 Notification may be waived if the facility can demonstrate just
3 cause for terminating the continuing care agreement in accordance
4 with N.J.A.C.5:19-6.5(c). The resident may challenge the facility's
5 notice of continuing care agreement cancellation by requesting a
6 hearing in the same manner as for a hearing in a contested case
7 pursuant to section 9 of P.L.1968, c.410 (C.52:14B-9).

8 d. In a continuing care agreement that provides for a refundable
9 entrance fee, when a resident permanently vacates the facility, or, in
10 the case of two residents occupying the same residence, when both
11 vacate at the same time, the facility shall provide to the resident or
12 residents or the legal representative of the resident's estate,
13 whichever is applicable, a refund of the refundable entrance fee
14 amount without interest, as set forth in the agreement. Any unpaid
15 fees or charges incurred by the resident including unpaid monthly
16 service fees, as well as the amount of any charitable assistance that
17 the facility has provided to the resident, may also be deducted from
18 the remaining balance of the refund of the entrance fee. Any
19 balance to the resident shall be payable based upon the order of the
20 sequential refund number assigned to a unit pursuant to paragraph
21 (4) of subsection a. of this section and the availability of funds from
22 the proceeds of the resale of all vacated units with refundable
23 entrance fees, except that, in the case of agreements entered into on
24 or after the effective date of P.L. , c. (pending before the
25 Legislature as this bill), the refund shall be paid no later than one
26 year after the resident ceases to be a resident of the facility,
27 regardless of the sequential refund number assigned to the unit and
28 regardless of whether the unit has been resold.

29 e. When an entrance fee deposit is refundable, it shall be paid
30 to either the resident, the resident's named beneficiary, or the legal
31 representative of the resident's estate, whichever is applicable. A
32 resident shall have the right to change, in writing, the named
33 beneficiary for the entrance fee refund at any time.

34 f. Notwithstanding the provisions of subsection d. of this
35 section to the contrary, a facility may apply to the Commissioner of
36 Community Affairs for approval to implement an alternative
37 methodology for making refund payments of refundable entrance
38 fees, which approval shall not be granted unless the facility can
39 demonstrate that the use of the alternative methodology is resident-
40 focused and provides for a more equitable and timely payment of
41 refundable entrance fees.

42 (cf: P.L.2018, c.98, s.1)

43
44 3. This act shall take effect 30 days after the date of enactment,
45 and shall apply to all continuing care retirement community
46 agreements entered into on or after the effective date.

STATEMENT

This bill requires continuing care retirement community agreements to include a provision requiring the balance of any refundable entrance fee owed to a resident be paid no later than one year after the date the resident ceases to be a resident of the facility.

Currently, refundable entrance fees are paid out based on the order in which units at the facility become vacant and funds become available to repay the refundable fees from the facility entering into new residency agreements. This process can result in continuing care providers retaining entrance fees running into the hundreds of thousands of dollars for years after a resident has left the facility.

It is the sponsor's intent that continuing care retirement communities not be permitted to retain the assets of former residents for unreasonably long periods of time, as this denies the person access to substantial resources they spent their lives accruing and saving, and can limit the person's options when looking for new housing accommodations.