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LAW/KR

P.L.2013, CHAPTER 167, *approved October 16, 2013*
Senate, No. 2052 (*Fourth Reprint*)

1 AN ACT concerning the rights of residents of continuing care
2 retirement communities and amending and supplementing
3 P.L.1986, c.103.

4

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

7

8 1. (New section) Sections 1 through 7 of this act shall be
9 known and may be cited as the “Bill of Rights for Continuing Care
10 Retirement Community Residents in Independent Living.”

11

12 2. (New section) a. Each prospective resident is entitled to
13 receive a copy of a disclosure statement from the facility ⁴, as well
14 as an explanation written in clear and plain language of the rights
15 and responsibilities of a resident,⁴ prior to the execution of a
16 continuing care agreement. ⁴The prospective resident shall have up
17 to 30 days to review the copy of the disclosure statement and the
18 written explanation prior to executing the continuing care
19 agreement.⁴

20 b. Within 30 days after signing a continuing care agreement, the
21 resident may cancel the agreement and receive a full refund, except
22 for the application fee.

23 c. A resident may wait to occupy a unit until the end of the ⁴**[30**
24 **day]** 30-day⁴ rescission period.

25 d. Each resident shall receive a copy of the rules and regulations
26 regarding the resident’s responsibilities and conduct acceptable to
27 the facility.

28

29 3. (New section) a. Unless a resident has violated the
30 continuing care agreement or facility rules, or the facility has
31 cancelled the agreement with sufficient notice and cause, ²or if the
32 facility for sound business reasons decides to raze or to otherwise
33 cease operating the structure, or the part of it, in which the
34 resident’s unit is located,² a resident may occupy the resident’s
35 chosen unit for as long as the resident can function independently

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SHH committee amendments adopted September 20, 2012.

²Assembly AHE committee amendments adopted February 7, 2013.

³Assembly floor amendments adopted February 21, 2013.

⁴Assembly floor amendments adopted June 20, 2013.

- 1 ⁴₂ with or without the assistance of an aide or aides. ⁴Any
2 determination that the resident can no longer function
3 independently, with or without the assistance of an aide or aides,
4 shall be made by the director of medical services of the facility and
5 be subject to the requirements of section 4 of P.L. , c. (C.)
6 (pending before the Legislature as this bill), and the facility shall
7 notify the resident in writing of any right that the resident may have
8 to appeal that determination.⁴
- 9 b. Each resident shall have privacy within their unit, except
10 that personnel must be admitted for contracted services ²or to
11 respond to an emergency or complaint².
- 12 c. Any resident may serve or participate in a local, State ²₂ or
13 national residents' association, or other similar organization without
14 discrimination or reprisal.
- 15 d. Each resident shall retain and be able to exercise all
16 constitutional, civil, and other rights to which they are entitled by
17 law.
- 18 e. Each resident shall be treated with respect, courtesy,
19 consideration, and dignity.
- 20 f. Any resident or legal representative of the resident may
21 refuse medication or treatment after being fully informed of the
22 possible benefits or risks.
- 23 g. Each resident has the right to express complaints without
24 fear ²of ²interference, discharge ²₂ or reprisal, and the right
25 to contact the Office of the Ombudsman for the Institutionalized
26 Elderly, or any advocate or agency which provides health, social,
27 legal, or other services to advocate on behalf of residents if the
28 resident feels that their rights are being violated.
- 29 h. Each resident has the right to expect the facility to promptly
30 investigate and try to resolve all concerns the resident expresses. A
31 record shall be kept of all written complaints made to the facility's
32 senior management concerning residents' rights. This record shall
33 be available to ²only the particular resident or the resident's legal
34 representative.² immediate family members, the residents'
35 physicians, and agents of the State of New Jersey. Each resident
36 may file a complaint with an appropriate agency, including the
37 appropriate State office, without fear of reprisal from the facility.
- 38 i. The facility shall not modify or reduce the scope of provided
39 services, with the exception of modifications required by State or
40 federal assistance programs, without providing the residents with a
41 minimum of 30-days' prior notice of the modification or reduction.
42 All services to be provided shall be listed in a form designated by
43 the department pursuant to N.J.A.C.5:19-6.4(a)(2).
- 44 j. Each resident is entitled to 30-days' advance written notice
45 prior to the increase of any fees.
- 46 k. A resident may choose any outside physician as their
47 primary care physician.

- 1 l. A resident may hire a private caregiver or companion at the
2 resident's own expense and responsibility, as long as the caregiver
3 or companion complies with the facility's policies and procedures.
- 4 m. Each resident is entitled to view or receive a copy of their
5 own medical record, free of charge.
- 6 n. Each resident may participate personally, or through a legal
7 representative, in all decisions regarding their own health care.
- 8 o. Each resident or legal representative of the resident shall
9 receive, upon request, a complete explanation of their medical
10 condition, any recommended treatment, and the possible benefits or
11 risks involved.
- 12 p. A resident may appoint a legal representative with a durable
13 power of attorney to handle financial matters if the resident is
14 unable to do so.
- 15 q. Pursuant to section 4 of the "New Jersey Advance Directives
16 for Health Care Act," P.L.1991, c.201 (C.26:2H-56), a resident may
17 execute an advance directive concerning the use of ²[life
18 sustaining] life-sustaining² treatment, and may appoint a legal
19 representative with a durable power of attorney to act on behalf of
20 the resident with regard to health care decisions. The resident has
21 the right to expect that the provisions of the advance directive will
22 be executed to the fullest extent possible.
- 23 r. Each resident shall receive every service, as contracted in
24 the continuing care agreement ⁴that was executed upon the
25 resident's admission, unless waived in writing by the resident^{4 2, 2}
26 with the exception of changes required by State or federal law ²or
27 permitted in the continuing care agreement².
- 28 s. A resident shall have the right to receive guests and visitors
29 at the facility, and the right to allow guests to stay for a reasonable
30 temporary period of time in a guest apartment or unit in the facility,
31 subject to reasonable policies and procedures of the facility.
- 32 t. A resident may leave and return to ⁴[their] the resident's⁴
33 independent living unit at will, provided the resident informs the
34 facility if ⁴[they] the resident⁴ will be temporarily absent
35 overnight, or for a longer period of time. ⁴The facility shall notify
36 residents in writing as to whether they will be charged a per diem
37 fee during any such time that they are absent from the facility.⁴
- 38 u. A resident has the right to refuse to perform work or services
39 for the facility without coercion, discrimination, or reprisal by the
40 facility.
- 41 v. Each resident shall not be requested or required to accept
42 any restriction of the rights or privileges of a resident as set forth
43 herein.
- 44 w. A resident may request from the facility, and shall receive
45 without undue delay or cost, a copy of the rights of nursing home
46 residents, as provided in section 5 of P.L.1976, c.120 (C.30:13-5).

1 x. A resident may request from the facility, and shall receive
2 without undue delay or cost, a copy of the rights of residents of
3 assisted living facilities, as provided in section 1 of P.L.2011, c.58
4 (C.26:2H-128).

5 y. A resident may request from the facility, and shall receive
6 without undue delay or cost, a copy of the “Bill of Rights for
7 Continuing Care Retirement Community Residents in Independent
8 Living,” as provided in section 5 of P.L. , c. (C.) (pending
9 before the Legislature as this bill).

10 z. A resident who is insured by a health maintenance
11 organization has the right to be referred by their primary care
12 physician to the nursing care unit that is part of the resident’s
13 facility instead of any other unit, provided that the unit has the
14 capacity to provide the services needed and that it is in the best
15 interests of the resident, and further provided that the facility
16 accepts the applicable reimbursement rate. This right also applies
17 to any resident being discharged from a hospital or similar facility.
18

19 4. (New section) a. A resident may be temporarily or
20 permanently assigned to an assisted living unit or a licensed nursing
21 unit if the facility determines that the resident’s physical or mental
22 health requires that level of care. ²~~Such~~ The² determination shall
23 be made in consultation with the resident’s attending physician ²if
24 available², the medical director, a member of the resident’s
25 immediate family ²but only at the resident’s request², and the
26 resident or legal representative of the resident.

27 b. Transfer of a resident to a hospital of their choice may take
28 place at the request of the resident or legal representative of the
29 resident, or when deemed to be medically necessary by the director
30 of medical services of the facility after consultation with both the
31 resident’s attending physician and the resident or legal
32 representative of the resident.
33

34 5. (New section) Each continuing care retirement facility is
35 required to distribute to each resident ^{2,2} and post in a conspicuous
36 public place in the facility ^{2,2} a statement of residents’ rights,
37 entitled “Bill of Rights for Continuing Care Retirement Community
38 Residents in Independent Living,” as provided in P.L. ,
39 c. (C.) (pending before the Legislature as this bill), to each
40 resident. The statement of residents’ rights shall be prepared,
41 distributed, and posted in a form approved by the department. The
42 facility shall inform each resident, a member of the resident’s
43 immediate family ²but only at the resident’s request², and the
44 resident’s legal representative, if applicable, of the resident’s rights,
45 provide explanations if needed, and ensure that each resident or
46 legal representative of the resident has been encouraged to read the
47 statement of residents’ rights, and sign a copy of the statement to

1 demonstrate that it has been read and understood. The facility shall
 2 also be responsible for making this statement available to any
 3 resident within a reasonable time upon request and without cost.
 4 The facility shall be responsible for undertaking the actions in this
 5 section with respect to all new and existing residents as of the
 6 effective date of P.L. , c. (C.) (pending before the Legislature
 7 as this bill).

8
 9 6. (New section) a. A resident shall receive, upon request, a
 10 fee schedule for any uncovered service before agreeing to the
 11 performance of that service.

12 b. Each resident shall have the right to receive a copy of the
 13 facility's annual disclosure statement, including certified financial
 14 statements, once they have been filed with the department.

15 c. ²~~["If a resident is"]~~ A resident who is² experiencing financial
 16 difficulties ²~~["], the resident"]~~² may thoroughly investigate with the
 17 facility any financial assistance which may be available to allow the
 18 resident to remain ²at the facility². ²~~["It is expected that the facility~~
 19 ~~will"]~~ The facility shall² provide sustaining charitable assistance,
 20 unless ²~~["such"]~~ the facility can demonstrate that³:

21 (1)³ providing this² assistance would ³~~["seriously"]~~ adversely³
 22 affect the financial health of the facility ³~~["or"]~~² it² would
 23 otherwise] ;

24 (2) the resident has violated the terms of the continuing care
 25 agreement or providing this assistance would³ violate the terms of
 26 the continuing care agreement ^{3,3} or²

27 ³(3) providing this assistance would³ cause the facility to violate
 28 a covenant in a loan agreement².

29 d. A resident may remain in a facility despite financial
 30 difficulty until the facility demonstrates to the department that the
 31 entrance fee the resident paid, if applicable, has been fully earned
 32 by the facility, using the formula set forth under the department
 33 regulations for rescission and removal, pursuant to N.J.A.C.5:19-
 34 6.5(f). ²A resident shall not be permitted to remain at the facility if
 35 the financial difficulty is due to the resident's misrepresentation to
 36 the facility about the extent of the resident's assets or income or if
 37 the resident gives away significant assets while residing at the
 38 facility.²

39 e. Each resident shall be informed of Medicare and Medicaid
 40 program benefits and shall receive assistance in accessing these
 41 benefits ²to the extent that they are available at the facility².

42
 43 7. (New section) a. A resident may, upon 60-days' written
 44 notice, cancel the continuing care agreement for any reason
 45 ²~~["whatsoever"]~~².

1 b. Upon cancellation of the continuing care agreement by either
2 the resident or the facility, the resident shall have the right to
3 receive a refund of ²the amount of² any ²**【unearned】**² entrance fee
4 ²as provided in the continuing care agreement². The amount of the
5 entrance fee shall be set forth in a clear and conspicuous manner in
6 the continuing care agreement.

7 c. A resident shall be provided at least 60-days' written notice
8 from the facility if the resident's continuing care agreement is being
9 cancelled due to a violation of the facility's rules or regulations.
10 Notification may be waived if the facility can demonstrate just
11 cause for terminating the continuing care agreement in accordance
12 with N.J.A.C.5:19-6.5(c). The resident may challenge the facility's
13 notice of continuing care agreement cancellation by requesting a
14 hearing in the same manner as for a hearing in a contested case
15 pursuant to section 9 of P.L.1968, c.410 (C.52:14B-9).

16 d. In a continuing care agreement that provides for a refundable
17 entrance fee, when a resident permanently vacates the facility, or, in
18 the case of two residents occupying the same residence, when both
19 vacate at the same time, the facility shall provide to the resident or
20 residents or the legal representative of the resident's estate,
21 whichever is applicable, a refund of the refundable entrance fee
22 amount without interest, as set forth in the agreement. Any unpaid
23 fees ²**【,】**² or charges incurred by the resident including unpaid
24 monthly service fees, ²as well as the amount of any charitable
25 assistance that the facility has provided to the resident,² may also be
26 deducted from the remaining balance of the refund of the entrance
27 fee. Any balance to the resident shall be payable within 60 days
28 from the date the residence is resold and the entrance fee from the
29 new resident has been received.

30 e. When an entrance fee deposit is refundable, it shall be paid
31 to either the resident ²**【or】**² the resident's named beneficiary ²,
32 or the legal representative of the resident's estate, whichever is
33 applicable². A resident shall have the right to change, in writing,
34 the named beneficiary for the entrance fee refund at any time.

35
36 8. Section 3 of P.L.1986, c.103 (C.52:27D-332) is amended to
37 read as follows:

38 3. As used in this act and P.L. , c. (C.) (pending before
39 the Legislature as this bill), unless the context clearly requires a
40 different meaning:

41 a. "Application fee" means the fee an individual is charged, in
42 addition to an entrance fee or any other fee, to cover the provider's
43 reasonable cost for processing the individual's application to
44 become a resident at the facility. A reasonable application fee shall
45 be established pursuant to regulations adopted by the department.

46 b. "Commissioner" means the Commissioner of **【the**
47 **Department of】** Community Affairs.

1 c. "Continuing care" means the provision of lodging and
2 nursing, medical ²₂ or other health related services at the same or
3 another location to an individual pursuant to an agreement effective
4 for the life of the individual or for a period greater than one year,
5 including mutually terminable contracts, and in consideration of the
6 payment of an entrance fee with or without other periodic charges.
7 An individual who is provided continuing care is not related by
8 consanguinity or affinity to the person who provides the care.

9 d. "Department" means the **[State]** Department of Community
10 Affairs.

11 e. "Entrance fee" means a transfer to a provider of a sum of
12 money or other property made or promised to be made as full or
13 partial consideration for acceptance of a specified person as a
14 resident in a facility and includes a fee which is refundable upon the
15 death²**[,]** or² departure ²**[or option]**² of the resident.

16 A fee which is less than the sum of the regular periodic charges
17 for one year of residency is not considered an entrance fee for the
18 purposes of this act. A transfer of a sum of money or other
19 property, by or on behalf of a resident, to a trust account which is
20 managed by the facility or an independent trustee for the benefit of
21 the resident is not considered an entrance fee for the purposes of
22 this act if the transfer is not a condition of admission or of
23 continued stay ²₂ and the principal amount and any interest thereon
24 are the exclusive and sole property of the resident or the individual
25 acting on behalf of the resident.

26 f. "Facility" means the place or places in which a person
27 undertakes to provide continuing care to an **[individual]**
28 individual.

29 g. "Living unit" means a room, apartment, cottage ²₂ or other
30 area within a facility set aside for the exclusive use or control of
31 one or more persons.

32 h. "Operator or administrator" means a person who operates or
33 manages a facility for the provider.

34 i. "Provider" means a person who undertakes to provide
35 continuing care in a facility.

36 j. "Resident" means a person entitled to receive continuing
37 care in a facility.

38 (cf: P.L.1986, c.103, s.3)

39
40 9. Section 22 of P.L.1986, c.103 (C.52:27D-351) is amended to
41 read as follows:

42 22. a. If the commissioner determines or has cause to believe
43 that a person has engaged in any act or practice which constitutes a
44 violation of **[this act]** P.L.1986, c.103 (C.52:27D-330 et seq.) or
45 P.L. , c. (C.) (pending before the Legislature as this bill), the
46 commissioner may take any or all of the following actions, as
47 appropriate:

1 **【a. Issue an order requiring the person to cease and desist from**
2 **engaging in the act or practice】** (1) Issue a temporary cease and
3 desist order upon the determination by the commissioner in writing,
4 and based upon a finding of fact that the public interest will be
5 irreparably harmed by delay in issuing an order, including therein a
6 provision that, upon written request made within five business days
7 following issuance of the order, a hearing will be held within 10
8 days of ²**【such】 that²** request to determine whether or not the
9 temporary cease and desist order shall become permanent. A copy
10 of any temporary or permanent cease and desist order shall be sent
11 to the person by certified mail;

12 **【b.】** (2) Bring an action in 【a court of competent jurisdiction】
13 Superior Court to enjoin the act or practice and to enforce
14 compliance with 【this act】 P.L.1986, c.103 (C.52:27D-330 et seq.)
15 and P.L. , c. (C.) (pending before the Legislature as this bill)
16 if it appears that a person has engaged or is about to engage in an
17 act or practice constituting a violation of a provision of P.L.1986,
18 c.103 (C.52:27D-330 et seq.) or P.L. , c. (C.) (pending before
19 the Legislature as this bill), or a rule or order of the department.
20 Upon a proper showing, the court may grant a permanent or
21 temporary injunction, restraining order ²₁² or writ of mandamus and
22 may appoint a receiver or conservator for the defendant or the
23 defendant's assets. The commissioner shall not be required to post a
24 bond; or

25 **【c.】** (3) Levy and collect civil penalties in the amount of not
26 less than \$250, and not more than \$50,000, for each violation of
27 【this act】 P.L.1986, c.103 (C.52:27D-330 et seq.) or
28 P.L. , c. (C.) (pending before the Legislature as this bill), or
29 any rule adopted pursuant thereto or order issued thereunder, and
30 compromise and settle any claim for a penalty in such amount in the
31 discretion of the commissioner as may appear appropriate and
32 equitable under the circumstances of the violation. Each day during
33 which a violation continues after the effective date of a notice to
34 terminate issued by the commissioner shall constitute an additional,
35 separate ²₁² and distinct violation. If an administrative order
36 levying a civil penalty is not satisfied within 30 days of its issuance,
37 the commissioner may sue for and recover the penalty with costs in
38 a summary proceeding under 【"the penalty enforcement law"
39 (N.J.S.2A:58-1 et seq.)】 the "Penalty Enforcement Law of 1999,"
40 P.L.1999, c.274 (C.2A:58-10 et seq.) in the Superior Court.

41 (a) Except as set forth in subparagraph (b) this paragraph, the
42 initial penalty levied for any violation shall not exceed \$250 per
43 violation, or \$250 per unit in the case of any violation of
44 department rules for facility certification, and a subsequent penalty
45 for the same act or omission shall not exceed 10 times the amount
46 of the last previous penalty or the statutory maximum, whichever is
47 less.

1 **(b) The limitations set forth in subparagraph (a) of this**
2 **paragraph shall not apply to any violation involving either**
3 **dishonesty in dealings with residents or prospective residents, or**
4 **willful disregard of the rights of residents.**

5 **b. For the purposes of actions that the commissioner may take**
6 **under subsection a. of this section, the following shall have the**
7 **same effect as a violation of P.L.1986, c.103 (C.52:27D-330 et seq.)**
8 **or sections 1 through 7 of P.L. , c. (C.) (pending before the**
9 **Legislature as this bill):**

10 **(1) Directly ^{2,2} or through an agent or employee ^{2,2} knowingly**
11 **engaging in false, deceptive ^{2,2} or misleading advertising,**
12 **promotional ^{2,2} or sales methods to offer or dispose of a unit;**

13 **(2) Making any material change in the plan of disposition of the**
14 **continuing care retirement community subsequent to the certificate**
15 **of authority without obtaining prior approval from the department;**

16 **(3) Disposing of any unit ², which is capable of being certified,²**
17 **or interest in a continuing care retirement community which has not**
18 **been certified with the department; and**

19 **(4) Violating any lawful order or rule of the department.**

20 **c.** The commissioner shall promulgate regulations pursuant to
21 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
22 seq.), regarding the implementation of **【subsection c. of】** this
23 section.

24 (cf: P.L.1991, c.314, s.1)

25
26 ¹10. Section 2 of P.L.1977, c.239 (C.52:27G-2) is amended to
27 read as follows:

28 2. As used in this act, unless the context clearly indicates
29 otherwise:

30 a. "Abuse" means the willful infliction of physical pain, injury
31 or mental anguish; unreasonable confinement; or the willful
32 deprivation of services which are necessary to maintain a person's
33 physical and mental health. However, no person shall be deemed to
34 be abused for the sole reason he is being furnished nonmedical
35 remedial treatment by spiritual means through prayer alone, in
36 accordance with a recognized religious method of healing, in lieu of
37 medical treatment;

38 b. An "act" of any facility or government agency shall be
39 deemed to include any failure or refusal to act by such facility or
40 government agency;

41 c. "Administrator" means any person who is charged with the
42 general administration or supervision of a facility, whether or not
43 such person has an ownership interest in such facility, and whether
44 or not such person's functions and duties are shared with one or
45 more other persons;

- 1 d. "Caretaker" means a person employed by a facility to
2 provide care or services to an elderly person, and includes, but is
3 not limited to, the administrator of a facility;
- 4 e. "Exploitation" means the act or process of using a person or
5 his resources for another person's profit or advantage without legal
6 entitlement to do so;
- 7 f. "Facility" means any facility or institution, whether public
8 or private, offering health or health related services for the
9 institutionalized elderly, and which is subject to regulation,
10 visitation, inspection, or supervision by any government agency.
11 Facilities include, but are not limited to, nursing homes, skilled
12 nursing homes, intermediate care facilities, extended care facilities,
13 convalescent homes, rehabilitation centers, residential health care
14 facilities, special hospitals, veterans' hospitals, chronic disease
15 hospitals, psychiatric hospitals, mental hospitals, developmental
16 centers or facilities, continuing care retirement communities,
17 including independent living sections thereof, day care facilities for
18 the elderly and medical day care centers;
- 19 g. "Government agency" means any department, division,
20 office, bureau, board, commission, authority, or any other agency or
21 instrumentality created by the State or to which the State is a party,
22 or by any county or municipality, which is responsible for the
23 regulation, visitation, inspection or supervision of facilities, or
24 which provides services to patients, residents or clients of facilities;
- 25 h. "Guardian" means any person with the legal right to manage
26 the financial affairs and protect the rights of any patient, resident or
27 client of a facility, who has been declared an incapacitated person
28 by a court of competent jurisdiction;
- 29 i. "Institutionalized elderly," "elderly" or "elderly person"
30 means any person 60 years of age or older, who is a patient,
31 resident or client of any facility;
- 32 j. "Office" means the Office of the Ombudsman for the
33 Institutionalized Elderly established herein;
- 34 k. "Ombudsman" means the administrator and chief executive
35 officer of the Office of the Ombudsman for the Institutionalized
36 Elderly;
- 37 l. "Patient, resident or client" means any elderly person who is
38 receiving treatment or care in any facility in all its aspects,
39 including, but not limited to, admission, retention, confinement,
40 commitment, period of residence, transfer, discharge and any
41 instances directly related to such status.¹
42 (cf: P.L 2010, c.50, s.79)

43
44 ¹**[10.] 11.**¹ This act shall take effect ²**[immediately,** but shall
45 remain inoperative until **] on**² the first day of the seventh month
46 next following ²the date of² enactment ², but the Commissioner of
47 Community Affairs may take such anticipatory administrative

1 action in advance thereof as shall be necessary for the
2 implementation of this act².

3

4

5

6

7 Establishes bill of rights for continuing care retirement
8 community residents.

SENATE, No. 2052

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED JUNE 4, 2012

Sponsored by:

Senator ROBERT W. SINGER
District 30 (Monmouth and Ocean)
Senator JENNIFER BECK
District 11 (Monmouth)

Co-Sponsored by:

Senator A.R.Bucco

SYNOPSIS

Establishes bill of rights for continuing care retirement community residents.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 9/21/2012)

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29 or aides.

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45 the Office of the Ombudsman for the Institutionalized Elderly, or

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Matter underlined thus is new matter.

1 any advocate or agency which provides health, social, legal, or
2 other services to advocate on behalf of residents if the resident feels
3 that their rights are being violated.

4 h. Each resident has the right to expect the facility to promptly
5 investigate and try to resolve all concerns the resident expresses. A
6 record shall be kept of all written complaints made to the facility's
7 senior management concerning residents' rights. This record shall
8 be available to immediate family members, the residents'
9 physicians, and agents of the State of New Jersey. Each resident
10 may file a complaint with an appropriate agency, including the
11 appropriate State office, without fear of reprisal from the facility.

12 i. The facility shall not modify or reduce the scope of provided
13 services, with the exception of modifications required by State or
14 federal assistance programs, without providing the residents with a
15 minimum of 30-days' prior notice of the modification or reduction.
16 All services to be provided shall be listed in a form designated by
17 the department pursuant to N.J.A.C.5:19-6.4(a)(2).

18 j. Each resident is entitled to 30-days' advance written notice
19 prior to the increase of any fees.

20 k. A resident may choose any outside physician as their
21 primary care physician.

22 l. A resident may hire a private caregiver or companion at the
23 resident's own expense and responsibility, as long as the caregiver
24 or companion complies with the facility's policies and procedures.

25 m. Each resident is entitled to view or receive a copy of their
26 own medical record, free of charge.

27 n. Each resident may participate personally, or through a legal
28 representative, in all decisions regarding their own health care.

29 o. Each resident or legal representative of the resident shall
30 receive, upon request, a complete explanation of their medical
31 condition, any recommended treatment, and the possible benefits or
32 risks involved.

33 p. A resident may appoint a legal representative with a durable
34 power of attorney to handle financial matters if the resident is
35 unable to do so.

36 q. Pursuant to section 4 of the "New Jersey Advance Directives
37 for Health Care Act," P.L.1991, c.201 (C.26:2H-56), a resident may
38 execute an advance directive concerning the use of life sustaining
39 treatment, and may appoint a legal representative with a durable
40 power of attorney to act on behalf of the resident with regard to
41 health care decisions. The resident has the right to expect that the
42 provisions of the advance directive will be executed to the fullest
43 extent possible.

44 r. Each resident shall receive every service, as contracted in
45 the continuing care agreement with the exception of changes
46 required by State or federal law.

47 s. A resident shall have the right to receive guests and visitors
48 at the facility, and the right to allow guests to stay for a reasonable

1 temporary period of time in a guest apartment or unit in the facility,
2 subject to reasonable policies and procedures of the facility.

3 t. A resident may leave and return to their independent living
4 unit at will, provided the resident informs the facility if they will be
5 temporarily absent overnight, or for a longer period of time.

6 u. A resident has the right to refuse to perform work or services
7 for the facility without coercion, discrimination, or reprisal by the
8 facility.

9 v. Each resident shall not be requested or required to accept
10 any restriction of the rights or privileges of a resident as set forth
11 herein.

12 w. A resident may request from the facility, and shall receive
13 without undue delay or cost, a copy of the rights of nursing home
14 residents, as provided in section 5 of P.L.1976, c.120 (C.30:13-5).

15 x. A resident may request from the facility, and shall receive
16 without undue delay or cost, a copy of the rights of residents of
17 assisted living facilities, as provided in section 1 of P.L.2011, c.58
18 (C.26:2H-128).

19 y. A resident may request from the facility, and shall receive
20 without undue delay or cost, a copy of the “Bill of Rights for
21 Continuing Care Retirement Community Residents in Independent
22 Living,” as provided in section 5 of P.L. , c. (C.) (pending
23 before the Legislature as this bill).

24 z. A resident who is insured by a health maintenance
25 organization has the right to be referred by their primary care
26 physician to the nursing care unit that is part of the resident’s
27 facility instead of any other unit, provided that the unit has the
28 capacity to provide the services needed and that it is in the best
29 interests of the resident, and further provided that the facility
30 accepts the applicable reimbursement rate. This right also applies
31 to any resident being discharged from a hospital or similar facility.

32

33 4. (New section) a. A resident may be temporarily or
34 permanently assigned to an assisted living unit or a licensed nursing
35 unit if the facility determines that the resident’s physical or mental
36 health requires that level of care. Such determination shall be made
37 in consultation with the resident’s attending physician, the medical
38 director, a member of the resident’s immediate family, and the
39 resident or legal representative of the resident.

40 b. Transfer of a resident to a hospital of their choice may take
41 place at the request of the resident or legal representative of the
42 resident, or when deemed to be medically necessary by the director
43 of medical services of the facility after consultation with both the
44 resident’s attending physician and the resident or legal
45 representative of the resident.

46

47 5. (New section) Each continuing care retirement facility is
48 required to distribute to each resident and post in a conspicuous

1 public place in the facility a statement of residents' rights, entitled
2 "Bill of Rights for Continuing Care Retirement Community
3 Residents in Independent Living," as provided in P.L. ,
4 c. (C.) (pending before the Legislature as this bill), to each
5 resident. The statement of residents' rights shall be prepared,
6 distributed, and posted in a form approved by the department. The
7 facility shall inform each resident, a member of the resident's
8 immediate family and the resident's legal representative, if
9 applicable, of the resident's rights, provide explanations if needed,
10 and ensure that each resident or legal representative of the resident
11 has been encouraged to read the statement of residents' rights, and
12 sign a copy of the statement to demonstrate that it has been read and
13 understood. The facility shall also be responsible for making this
14 statement available to any resident within a reasonable time upon
15 request and without cost. The facility shall be responsible for
16 undertaking the actions in this section with respect to all new and
17 existing residents as of the effective date of P.L. , c. (C.)
18 (pending before the Legislature as this bill).

19

20 6. (New section) a. A resident shall receive, upon request, a
21 fee schedule for any uncovered service before agreeing to the
22 performance of that service.

23 b. Each resident shall have the right to receive a copy of the
24 facility's annual disclosure statement, including certified financial
25 statements, once they have been filed with the department.

26 c. If a resident is experiencing financial difficulties, the
27 resident may thoroughly investigate with the facility any financial
28 assistance which may be available to allow the resident to remain.
29 It is expected that the facility will provide sustaining charitable
30 assistance, unless such assistance would seriously affect the
31 financial health of the facility or it would otherwise violate the
32 terms of the continuing care agreement.

33 d. A resident may remain in a facility despite financial
34 difficulty until the facility demonstrates to the department that the
35 entrance fee the resident paid, if applicable, has been fully earned
36 by the facility, using the formula set forth under the department
37 regulations for rescission and removal, pursuant to N.J.A.C.5:19-
38 6.5(f).

39 e. Each resident shall be informed of Medicare and Medicaid
40 program benefits and shall receive assistance in accessing these
41 benefits.

42

43 7. (New section) a. A resident may, upon 60-days' written
44 notice, cancel the continuing care agreement for any reason
45 whatsoever.

46 b. Upon cancellation of the continuing care agreement by either
47 the resident or the facility, the resident shall have the right to
48 receive a refund of any unearned entrance fee. The amount of the

1 entrance fee shall be set forth in a clear and conspicuous manner in
2 the continuing care agreement.

3 c. A resident shall be provided at least 60-days' written notice
4 from the facility if the resident's continuing care agreement is being
5 cancelled due to a violation of the facility's rules or regulations.
6 Notification may be waived if the facility can demonstrate just
7 cause for terminating the continuing care agreement in accordance
8 with N.J.A.C.5:19-6.5(c). The resident may challenge the facility's
9 notice of continuing care agreement cancellation by requesting a
10 hearing in the same manner as for a hearing in a contested case
11 pursuant to section 9 of P.L.1968, c.410 (C.52:14B-9).

12 d. In a continuing care agreement that provides for a refundable
13 entrance fee, when a resident permanently vacates the facility, or, in
14 the case of two residents occupying the same residence, when both
15 vacate at the same time, the facility shall provide to the resident or
16 residents or the legal representative of the resident's estate,
17 whichever is applicable, a refund of the refundable entrance fee
18 amount without interest, as set forth in the agreement. Any unpaid
19 fees, or charges incurred by the resident including unpaid monthly
20 service fees, may also be deducted from the remaining balance of
21 the refund of the entrance fee. Any balance to the resident shall be
22 payable within 60 days from the date the residence is resold and the
23 entrance fee from the new resident has been received.

24 e. When an entrance fee deposit is refundable, it shall be paid
25 to either the resident or the resident's named beneficiary. A
26 resident shall have the right to change, in writing, the named
27 beneficiary for the entrance fee refund at any time.

28

29 8. Section 3 of P.L.1986, c.103 (C.52:27D-332) is amended to
30 read as follows:

31 3. As used in this act and P.L. , c. (C.) (pending before the
32 Legislature as this bill), unless the context clearly requires a different
33 meaning:

34 a. "Application fee" means the fee an individual is charged, in
35 addition to an entrance fee or any other fee, to cover the provider's
36 reasonable cost for processing the individual's application to become a
37 resident at the facility. A reasonable application fee shall be
38 established pursuant to regulations adopted by the department.

39 b. "Commissioner" means the Commissioner of **【**the Department
40 **of】** Community Affairs.

41 c. "Continuing care" means the provision of lodging and nursing,
42 medical or other health related services at the same or another location
43 to an individual pursuant to an agreement effective for the life of the
44 individual or for a period greater than one year, including mutually
45 terminable contracts, and in consideration of the payment of an
46 entrance fee with or without other periodic charges. An individual
47 who is provided continuing care is not related by consanguinity or
48 affinity to the person who provides the care.

1 d. "Department" means the [State] Department of Community
2 Affairs.

3 e. "Entrance fee" means a transfer to a provider of a sum of
4 money or other property made or promised to be made as full or partial
5 consideration for acceptance of a specified person as a resident in a
6 facility and includes a fee which is refundable upon the death,
7 departure or option of the resident.

8 A fee which is less than the sum of the regular periodic charges for
9 one year of residency is not considered an entrance fee for the
10 purposes of this act. A transfer of a sum of money or other property,
11 by or on behalf of a resident, to a trust account which is managed by
12 the facility or an independent trustee for the benefit of the resident is
13 not considered an entrance fee for the purposes of this act if the
14 transfer is not a condition of admission or of continued stay and the
15 principal amount and any interest thereon are the exclusive and sole
16 property of the resident or the individual acting on behalf of the
17 resident.

18 f. "Facility" means the place or places in which a person
19 undertakes to provide continuing care to an [individual] individual.

20 g. "Living unit" means a room, apartment, cottage or other area
21 within a facility set aside for the exclusive use or control of one or
22 more persons.

23 h. "Operator or administrator" means a person who operates or
24 manages a facility for the provider.

25 i. "Provider" means a person who undertakes to provide
26 continuing care in a facility.

27 j. "Resident" means a person entitled to receive continuing care
28 in a facility.

29 (cf: P.L.1986, c.103, s.3)

30

31 9. Section 22 of P.L.1986, c.103 (C.52:27D-351) is amended to
32 read as follows:

33 22. a. If the commissioner determines or has cause to believe that
34 a person has engaged in any act or practice which constitutes a
35 violation of [this act] P.L.1986, c.103 (C.52:27D-330 et seq.) or
36 P.L. , c. (C.) (pending before the Legislature as this bill), the
37 commissioner may take any or all of the following actions, as
38 appropriate:

39 [a. Issue an order requiring the person to cease and desist from
40 engaging in the act or practice] (1) Issue a temporary cease and
41 desist order upon the determination by the commissioner in writing,
42 and based upon a finding of fact that the public interest will be
43 irreparably harmed by delay in issuing an order, including therein a
44 provision that, upon written request made within five business days
45 following issuance of the order, a hearing will be held within 10
46 days of such request to determine whether or not the temporary
47 cease and desist order shall become permanent. A copy of any

1 temporary or permanent cease and desist order shall be sent to the
2 person by certified mail;

3 **【b.】** (2) Bring an action in [a court of competent jurisdiction]
4 Superior Court to enjoin the act or practice and to enforce compliance
5 with [this act] P.L.1986, c.103 (C.52:27D-330 et seq.) and P.L. ,
6 c. (C.) (pending before the Legislature as this bill) if it appears
7 that a person has engaged or is about to engage in an act or practice
8 constituting a violation of a provision of P.L.1986, c.103 (C.52:27D-
9 330 et seq.) or P.L. , c. (C.) (pending before the Legislature as
10 this bill), or a rule or order of the department. Upon a proper
11 showing, the court may grant a permanent or temporary injunction,
12 restraining order or writ of mandamus and may appoint a receiver or
13 conservator for the defendant or the defendant's assets. The
14 commissioner shall not be required to post a bond; or

15 **【c.】** (3) Levy and collect civil penalties in the amount of not less
16 than \$250, and not more than \$50,000, for each violation of [this act]
17 P.L.1986, c.103 (C.52:27D-330 et seq.) or P.L. , c. (C.)
18 (pending before the Legislature as this bill), or any rule adopted
19 pursuant thereto or order issued thereunder, and compromise and settle
20 any claim for a penalty in such amount in the discretion of the
21 commissioner as may appear appropriate and equitable under the
22 circumstances of the violation. Each day during which a violation
23 continues after the effective date of a notice to terminate issued by the
24 commissioner shall constitute an additional, separate and distinct
25 violation. If an administrative order levying a civil penalty is not
26 satisfied within 30 days of its issuance, the commissioner may sue for
27 and recover the penalty with costs in a summary proceeding under
28 **【"the penalty enforcement law" (N.J.S.2A:58-1 et seq.)】** the "Penalty
29 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.) in
30 the Superior Court.

31 (a) Except as set forth in subparagraph (b) this paragraph, the
32 initial penalty levied for any violation shall not exceed \$250 per
33 violation, or \$250 per unit in the case of any violation of department
34 rules for facility certification, and a subsequent penalty for the same
35 act or omission shall not exceed 10 times the amount of the last
36 previous penalty or the statutory maximum, whichever is less.

37 (b) The limitations set forth in subparagraph (a) of this paragraph
38 shall not apply to any violation involving either dishonesty in dealings
39 with residents or prospective residents, or willful disregard of the
40 rights of residents.

41 b. For the purposes of actions that the commissioner may take
42 under subsection a. of this section, the following shall have the same
43 effect as a violation of P.L.1986, c.103 (C.52:27D-330 et seq.) or
44 sections 1 through 7 of P.L. , c. (C.) (pending before the
45 Legislature as this bill):

1 (1) Directly or through an agent or employee knowingly
2 engaging in false, deceptive or misleading advertising, promotional
3 or sales methods to offer or dispose of a unit;

4 (2) Making any material change in the plan of disposition of the
5 continuing care retirement community subsequent to the certificate
6 of authority without obtaining prior approval from the department;

7 (3) Disposing of any unit or interest in a continuing care
8 retirement community which has not been certified with the
9 department; and

10 (4) Violating any lawful order or rule of the department.

11 c. The commissioner shall promulgate regulations pursuant to the
12 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.),
13 regarding the implementation of [subsection c. of] this section.
14 (cf: P.L.1991, c.314, s.1)

15
16 10. This act shall take effect immediately, but shall remain
17 inoperative until the first day of the seventh month next following
18 enactment.

19
20
21 STATEMENT

22
23 This bill would serve as the "Bill of Rights for Continuing Care
24 Retirement Community Residents in Independent Living," to
25 establish and clarify the rights of residents living in continuing care
26 retirement communities. The rights involved cover entry into
27 Continuing Care Retirement Communities (CCRCs), occupancy,
28 transfer from an independent living environment, communication
29 between the facility and the resident, financial issues, termination of
30 service, and penalties for facilities who violate the provisions of this
31 bill and the "Continuing Care Retirement Community Regulation
32 and Financial Disclosure Act," N.J.S.A.52:27D-330 et seq.

33 Upon entry into a CCRC, this bill would require the facility to
34 provide each new resident with a copy of the disclosure statement
35 and a copy of the facility's rules and regulations. Each new
36 resident would also have the option to cancel the continuing care
37 agreement within 30 days of signing, and the option to wait 30 days
38 to occupy the new unit.

39 This bill would limit the circumstances in which a resident could
40 be forced to leave a unit, and guarantees each resident a reasonable
41 amount of privacy in their own unit. Each resident would be
42 guaranteed the right to participate in any residents' association, the
43 right to exercise any constitutional, civil, or other rights entitled by
44 law, and the right to generally be treated with respect and courtesy.
45 Each resident also would be afforded the right to freely express
46 complaints and seek advocacy, and the prompt investigation of
47 complaints. The bill requires the facility to maintain a record of
48 resident complaints, and make the record available for review. This

1 bill would require facilities to give reasonable notice before
2 changing the scope of service or increasing fees. Each resident
3 would be afforded the freedom to select a doctor, and caregiver of
4 their choice. Each resident would be entitled to view their own
5 medical record, participate in medical decisions, and refuse medical
6 treatment. Each resident would have the right to execute an
7 advance directive concerning the use of life sustaining treatment,
8 and the right to expect that the provisions of the advance directive
9 be executed to the fullest extent possible.

10 This bill would afford each resident the ability to leave and
11 return to the facility at-will, the ability to host guests for reasonable
12 amounts of time, and the right to refuse to perform services for the
13 facility without coercion. Each resident would have the right to
14 obtain the services contracted for, and would not be requested nor
15 required to accept any restriction of rights. Upon request, the
16 facility would be required to provide the resident with a copy of the
17 bill of rights, as well as the bill of rights for nursing home residents,
18 as provided in N.J.S.A.30:13-5, and the bill of rights for assisted
19 living residents, as provided in N.J.S.A.26:2H-128. Each resident
20 insured by a health maintenance organization would have the right
21 to be referred by their primary care physician to the nursing care
22 unit associated with the resident's facility, provided the unit has
23 capacity, and accepts the applicable reimbursement rate.

24 As of the effective date of this bill, the facility would be required
25 to distribute a statement of residents' rights to each resident, and
26 ensure that each resident has been given an opportunity to read the
27 statement and sign it to demonstrate understanding. The facility
28 would also be required to post the statement in a conspicuous
29 location in the facility.

30 This bill would require the facility, upon request, to supply a
31 resident with the facility's annual disclosure statement, and with a
32 fee schedule for all uncovered services. With certain exceptions,
33 this bill would allow a resident to remain in a facility regardless of
34 financial difficulties. The bill also requires the facility to offer
35 assistance in accessing Medicare and Medicaid benefits.

36 This bill would enable a resident to cancel a continuing care
37 agreement upon 60-days' written notice for any reason, and the
38 right to receive a refund of any unearned entrance fee upon such
39 cancellation. With exceptions for just cause, a facility would also
40 be required to give 60-days' written notice before cancelling a
41 continuing care agreement. Under this bill, payments for
42 continuing care agreements that provide for refundable entrance
43 fees would be due within 60 days of the resale date, and upon the
44 facility's receipt of an entrance fee from the new resident.

45 Any facility in violation of this bill or N.J.S.A.52:27D-330 et
46 seq. would be subject to penalty in accordance with Department of
47 Community Affairs regulations that may include cease and desist
48 orders and fines of between \$250 and \$50,000. This bill would take

S2052 SINGER, BECK

11

- 1 effect on the first day of the seventh month next following
- 2 enactment.

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO

SENATE, No. 2052

with committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 20, 2012

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with committee amendments Senate Bill No. 2052.

As amended by the committee, this bill establishes a “Bill of Rights for Continuing Care Retirement Community Residents in Independent Living” and enumerates these rights, which pertain to a resident’s entry into a continuing care retirement community (CCRC), occupancy, transfer from an independent living environment, communication between the facility and the resident, financial issues, and termination of services. The bill provides for penalties if a CCRC violates the provisions of the bill.

Specifically, the bill requires that, upon entry into a CCRC, each new resident be provided a copy of the disclosure statement and a copy of the facility’s rules and regulations. Each new resident would also have the option to cancel the continuing care agreement within 30 days of signing, and the option to wait 30 days to occupy the new unit.

This bill would limit the circumstances under which a resident could be forced to leave a unit, and would guarantee each resident a reasonable amount of privacy. Each resident would be guaranteed the right to participate in any residents’ association, to exercise any constitutional, civil, or other rights entitled by law, and to generally be treated with respect and courtesy. Each resident also would be afforded the right to freely express complaints and seek advocacy and the prompt investigation of complaints. The bill requires the facility to maintain a record of resident complaints, and make the record available for review. Facilities would be required to give reasonable notice before changing the scope of service or increasing fees. Each resident would be afforded the freedom to select a doctor, and caregiver of their choice. Each resident would be entitled to view their own medical record, participate in medical decisions, refuse medical treatment, execute an advance directive concerning the use of life sustaining treatment, and the right to expect that the provisions of the advance directive be carried out to the fullest extent possible.

This bill would afford each resident the ability to leave and return to the facility at will, to host guests for reasonable amounts of time, and the right to refuse to perform services for the facility without coercion. Each resident would have the right to obtain the services contracted for, and would not be requested or required to accept any restriction of rights. Upon request, the facility would be required to provide the resident with a copy of the bill of rights, as well as the bill of rights for nursing home residents, as provided in N.J.S.A.30:13-5, and the bill of rights for assisted living residents, as provided in N.J.S.A.26:2H-128. Each resident insured by a health maintenance organization would have the right to be referred by their primary care physician to the nursing care unit associated with the resident's facility, provided the unit has capacity, and accepts the applicable reimbursement rate.

As of the effective date of this bill, the facility would be required to distribute a statement of residents' rights to each resident, and ensure that each resident has been given an opportunity to read the statement and sign it to demonstrate understanding. The facility would also be required to post the statement in a conspicuous location.

This bill would further require the facility, upon request, to supply a resident with the facility's annual disclosure statement, and with a fee schedule for all uncovered services. With certain exceptions, this bill would allow a resident to remain in a facility regardless of financial difficulties. The bill also requires the facility to offer assistance in accessing Medicare and Medicaid benefits.

This bill would enable a resident to cancel a continuing care agreement upon 60-days' written notice for any reason, and the right to receive a refund of any unearned entrance fee upon such cancellation. With exceptions for just cause, a facility would also be required to give 60-days' written notice before cancelling a continuing care agreement. Payments for continuing care agreements that provide for refundable entrance fees would be due within 60 days of the resale date, and upon the facility's receipt of an entrance fee from the new resident.

Any facility in violation of this bill or N.J.S.A.52:27D-330 et seq. would be subject to penalty in accordance with Department of Community Affairs regulations that may include cease and desist orders and fines of between \$250 and \$50,000. This bill would take effect on the first day of the seventh month next following enactment.

The committee amended the bill to clarify that the Ombudsman for the Institutionalized Elderly has authority to advocate on behalf of residents in CCRCs, including independent living sections of CCRCs.

ASSEMBLY HEALTH AND SENIOR SERVICES COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 2052

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 7, 2013

The Assembly Health and Senior Services Committee reports favorably and with committee amendments Senate Bill No. 2052 (1R).

As amended by the committee, this bill establishes a “Bill of Rights for Continuing Care Retirement Community Residents in Independent Living” and enumerates these rights, which pertain to a resident’s entry into a continuing care retirement community (CCRC), occupancy, transfer from an independent living environment, communication between the facility and the resident, financial issues, and termination of services.

Specifically, the bill requires that, upon entry into a CCRC, each new resident be provided a copy of the disclosure statement and a copy of the facility’s rules and regulations. Each new resident would also have the option to cancel the continuing care agreement within 30 days of signing, and the option to wait 30 days to occupy the new unit.

This bill would limit the circumstances under which a resident could be forced to leave a unit, and would guarantee each resident a reasonable amount of privacy. Each resident would be guaranteed the right to participate in any residents’ association, to exercise any constitutional, civil, or other rights entitled by law, and to generally be treated with respect and courtesy. Each resident would also be afforded the right to freely express complaints and seek advocacy and the prompt investigation of complaints. The bill requires the facility to maintain a record of resident complaints, and make the record available for review. Facilities would be required to give reasonable notice before changing the scope of service or increasing fees. Each resident would be afforded the freedom to select a primary care physician and a private caregiver or companion of the resident’s choice. Each resident would be entitled to view the resident’s own medical record, participate in medical decisions, refuse medical treatment, execute an advance directive concerning the use of life-sustaining treatment, and to expect that the provisions of the advance directive will be carried out to the fullest extent possible.

The bill affords each resident the ability to leave and return to the facility at will, to host guests for reasonable amounts of time, and the right to refuse to perform services for the facility without coercion. Each resident would have the right to obtain the services contracted for, and would not be requested or required to accept any restriction of rights. Upon request, the facility would be required to provide the resident with a copy of the bill of rights, as well as the bill of rights for nursing home residents, as provided in N.J.S.A.30:13-5, and the bill of rights for assisted living residents, as provided in N.J.S.A.26:2H-128. Each resident insured by a health maintenance organization would have the right to be referred by the resident's primary care physician to the nursing care unit associated with the resident's facility, provided that the unit has capacity and accepts the applicable reimbursement rate.

As of the effective date of the bill, the facility would be required to distribute a statement of residents' rights to each resident, and ensure that each resident has been given an opportunity to read the statement and sign it to demonstrate that it has been read and understood. The facility would also be required to post the statement in a conspicuous location.

The bill would further require the facility, upon request, to supply a resident with the facility's annual disclosure statement, and with a fee schedule for all uncovered services. With certain exceptions, the bill would allow a resident to remain in a facility regardless of financial difficulties. The bill also requires the facility to offer assistance in accessing Medicare and Medicaid benefits to the extent that they are available at the facility.

The bill would enable a resident to cancel a continuing care agreement upon 60-days' written notice for any reason, and to receive a refund of the amount of any entrance fee upon that cancellation. With exceptions for just cause, a facility would also be required to give 60-days' written notice before cancelling a continuing care agreement. Payments for continuing care agreements that provide for refundable entrance fees would be due within 60 days of the resale of the residence and receipt of an entrance fee from the new resident.

Any facility in violation of this bill or the "Continuing Care Retirement Community Regulation and Financial Disclosure Act" (P.L.1986, c.103; C.52:27D-330 et seq.) would be subject to a cease and desist order issued by the Commissioner of Community Affairs and a civil penalty of between \$250 and \$50,000.

The bill takes effect on the first day of the seventh month following enactment, but authorizes the Commissioner of Community Affairs to take prior administrative action as necessary for its implementation.

As reported by the committee, this bill is identical to Assembly Bill No. 3132 ACA (Vainieri Huttler/Sumter/Angelini), which the committee also reported on this date.

COMMITTEE AMENDMENTS

The committee amendments to the bill clarify several of the rights guaranteed under its provisions to CCRC residents and make a technical change in the effective date.

STATEMENT TO
[Second Reprint]
SENATE, No. 2052

with Assembly Floor Amendments
(Proposed by Assemblywoman VAINIERI HUTTLE)

ADOPTED: FEBRUARY 21, 2013

These amendments require the facility to provide sustaining charitable assistance unless it can demonstrate that:

- (1) providing this assistance would adversely affect the financial health of the facility;
- (2) the resident has violated the terms of the continuing care agreement or providing this assistance would violate the terms of the continuing care agreement; or
- (3) providing this assistance would cause the facility to violate a covenant in a loan agreement.

STATEMENT TO
[Third Reprint]
SENATE, No. 2052

with Assembly Floor Amendments
(Proposed by Assemblywoman VAINIERI HUTTLE)

ADOPTED: JUNE 20, 2013

These amendments provide that each prospective continuing care retirement community resident is to receive a copy of a disclosure statement from the facility prior to the execution of a continuing care agreement, as well as an explanation written in clear and plain language of the rights and responsibilities of a resident, and that the prospective resident will have up to 30 days to review the copy of the disclosure statement and the written explanation prior to executing the continuing care agreement.

The amendments also provide that any determination that the resident can no longer function independently, with or without the assistance of an aide or aides, is to be made by the director of medical services of the facility and will be subject to the applicable requirements of the bill, and that the facility is to notify the resident in writing of any right that the resident may have to appeal that determination.

The amendments further stipulate that each resident is to receive every service, as contracted in the continuing care agreement that was executed upon the resident's admission, unless waived in writing by the resident, with the exception of changes required by State or federal law or permitted in the continuing care agreement.

Finally, the amendments require the facility to notify residents in writing as to whether they will be charged a per diem fee during any time that they are absent from the facility, whether for an overnight absence or a longer period.

ASSEMBLY, No. 3132

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED JUNE 21, 2012

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblywoman SHAVONDA E. SUMTER

District 35 (Bergen and Passaic)

Assemblywoman MARY PAT ANGELINI

District 11 (Monmouth)

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

Co-Sponsored by:

Assemblyman S.Kean and Assemblywoman Handlin

SYNOPSIS

Establishes bill of rights for continuing care retirement community residents.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/8/2013)

A3132 VAINIERI HUTTLE, SUMTER

2

1 AN ACT concerning the rights of residents of continuing care
2 retirement communities and amending and supplementing
3 P.L.1986, c.103.

4

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

7

8 1. (New section) Sections 1 through 7 of this act shall be
9 known and may be cited as the “Bill of Rights for Continuing Care
10 Retirement Community Residents in Independent Living.”

11

12 2. (New section) a. Each prospective resident is entitled to
13 receive a copy of a disclosure statement from the facility prior to
14 the execution of a continuing care agreement.

15 b. Within 30 days after signing a continuing care agreement,
16 the resident may cancel the agreement and receive a full refund,
17 except for the application fee.

18 c. A resident may wait to occupy a unit until the end of the 30
19 day rescission period.

20 d. Each resident shall receive a copy of the rules and
21 regulations regarding the resident’s responsibilities and conduct
22 acceptable to the facility.

23

24 3. (New section) a. Unless a resident has violated the
25 continuing care agreement or facility rules, or the facility has
26 cancelled the agreement with sufficient notice and cause, a resident
27 may occupy the resident’s chosen unit for as long as the resident
28 can function independently with or without the assistance of an aide
29 or aides.

30 b. Each resident shall have privacy within their unit, except
31 that personnel must be admitted for contracted services.

32 c. Any resident may serve or participate in a local, State or
33 national residents’ association, or other similar organization without
34 discrimination or reprisal.

35 d. Each resident shall retain and be able to exercise all
36 constitutional, civil, and other rights to which they are entitled by
37 law.

38 e. Each resident shall be treated with respect, courtesy,
39 consideration, and dignity.

40 f. Any resident or legal representative of the resident may
41 refuse medication or treatment after being fully informed of the
42 possible benefits or risks.

43 g. Each resident has the right to express complaints without
44 fear from interference, discharge or reprisal, and the right to contact
45 the Office of the Ombudsman for the Institutionalized Elderly, or

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 any advocate or agency which provides health, social, legal, or
2 other services to advocate on behalf of residents if the resident feels
3 that their rights are being violated.
- 4 h. Each resident has the right to expect the facility to promptly
5 investigate and try to resolve all concerns the resident expresses. A
6 record shall be kept of all written complaints made to the facility's
7 senior management concerning residents' rights. This record shall
8 be available to immediate family members, the residents'
9 physicians, and agents of the State of New Jersey. Each resident
10 may file a complaint with an appropriate agency, including the
11 appropriate State office, without fear of reprisal from the facility.
- 12 i. The facility shall not modify or reduce the scope of provided
13 services, with the exception of modifications required by State or
14 federal assistance programs, without providing the residents with a
15 minimum of 30-days' prior notice of the modification or reduction.
16 All services to be provided shall be listed in a form designated by
17 the department pursuant to N.J.A.C.5:19-6.4(a)(2).
- 18 j. Each resident is entitled to 30-days' advance written notice
19 prior to the increase of any fees.
- 20 k. A resident may choose any outside physician as their
21 primary care physician.
- 22 l. A resident may hire a private caregiver or companion at the
23 resident's own expense and responsibility, as long as the caregiver
24 or companion complies with the facility's policies and procedures.
- 25 m. Each resident is entitled to view or receive a copy of their
26 own medical record, free of charge.
- 27 n. Each resident may participate personally, or through a legal
28 representative, in all decisions regarding their own health care.
- 29 o. Each resident or legal representative of the resident shall
30 receive, upon request, a complete explanation of their medical
31 condition, any recommended treatment, and the possible benefits or
32 risks involved.
- 33 p. A resident may appoint a legal representative with a durable
34 power of attorney to handle financial matters if the resident is
35 unable to do so.
- 36 q. Pursuant to section 4 of the "New Jersey Advance Directives
37 for Health Care Act," P.L.1991, c.201 (C.26:2H-56), a resident may
38 execute an advance directive concerning the use of life sustaining
39 treatment, and may appoint a legal representative with a durable
40 power of attorney to act on behalf of the resident with regard to
41 health care decisions. The resident has the right to expect that the
42 provisions of the advance directive will be executed to the fullest
43 extent possible.
- 44 r. Each resident shall receive every service, as contracted in
45 the continuing care agreement with the exception of changes
46 required by State or federal law.
- 47 s. A resident shall have the right to receive guests and visitors
48 at the facility, and the right to allow guests to stay for a reasonable

1 temporary period of time in a guest apartment or unit in the facility,
2 subject to reasonable policies and procedures of the facility.

3 t. A resident may leave and return to their independent living
4 unit at will, provided the resident informs the facility if they will be
5 temporarily absent overnight, or for a longer period of time.

6 u. A resident has the right to refuse to perform work or services
7 for the facility without coercion, discrimination, or reprisal by the
8 facility.

9 v. Each resident shall not be requested or required to accept
10 any restriction of the rights or privileges of a resident as set forth
11 herein.

12 w. A resident may request from the facility, and shall receive
13 without undue delay or cost, a copy of the rights of nursing home
14 residents, as provided in section 5 of P.L.1976, c.120 (C.30:13-5).

15 x. A resident may request from the facility, and shall receive
16 without undue delay or cost, a copy of the rights of residents of
17 assisted living facilities, as provided in section 1 of P.L.2011, c.58
18 (C.26:2H-128).

19 y. A resident may request from the facility, and shall receive
20 without undue delay or cost, a copy of the “Bill of Rights for
21 Continuing Care Retirement Community Residents in Independent
22 Living,” as provided in section 5 of P.L. , c. (C.) (pending
23 before the Legislature as this bill).

24 z. A resident who is insured by a health maintenance
25 organization has the right to be referred by their primary care
26 physician to the nursing care unit that is part of the resident’s
27 facility instead of any other unit, provided that the unit has the
28 capacity to provide the services needed and that it is in the best
29 interests of the resident, and further provided that the facility
30 accepts the applicable reimbursement rate. This right also applies
31 to any resident being discharged from a hospital or similar facility.

32

33 4. (New section) a. A resident may be temporarily or
34 permanently assigned to an assisted living unit or a licensed nursing
35 unit if the facility determines that the resident’s physical or mental
36 health requires that level of care. Such determination shall be made
37 in consultation with the resident’s attending physician, the medical
38 director, a member of the resident’s immediate family, and the
39 resident or legal representative of the resident.

40 b. Transfer of a resident to a hospital of their choice may take
41 place at the request of the resident or legal representative of the
42 resident, or when deemed to be medically necessary by the director
43 of medical services of the facility after consultation with both the
44 resident’s attending physician and the resident or legal
45 representative of the resident.

46

47 5. (New section) Each continuing care retirement facility is
48 required to distribute to each resident and post in a conspicuous

1 public place in the facility a statement of residents' rights, entitled
2 "Bill of Rights for Continuing Care Retirement Community
3 Residents in Independent Living," as provided in P.L. ,
4 c. (C.) (pending before the Legislature as this bill), to each
5 resident. The statement of residents' rights shall be prepared,
6 distributed, and posted in a form approved by the department. The
7 facility shall inform each resident, a member of the resident's
8 immediate family and the resident's legal representative, if
9 applicable, of the resident's rights, provide explanations if needed,
10 and ensure that each resident or legal representative of the resident
11 has been encouraged to read the statement of residents' rights, and
12 sign a copy of the statement to demonstrate that it has been read and
13 understood. The facility shall also be responsible for making this
14 statement available to any resident within a reasonable time upon
15 request and without cost. The facility shall be responsible for
16 undertaking the actions in this section with respect to all new and
17 existing residents as of the effective date of P.L. , c. (C.)
18 (pending before the Legislature as this bill).

19

20 6. (New section) a. A resident shall receive, upon request, a
21 fee schedule for any uncovered service before agreeing to the
22 performance of that service.

23 b. Each resident shall have the right to receive a copy of the
24 facility's annual disclosure statement, including certified financial
25 statements, once they have been filed with the department.

26 c. If a resident is experiencing financial difficulties, the
27 resident may thoroughly investigate with the facility any financial
28 assistance which may be available to allow the resident to remain.
29 It is expected that the facility will provide sustaining charitable
30 assistance, unless such assistance would seriously affect the
31 financial health of the facility or it would otherwise violate the
32 terms of the continuing care agreement.

33 d. A resident may remain in a facility despite financial
34 difficulty until the facility demonstrates to the department that the
35 entrance fee the resident paid, if applicable, has been fully earned
36 by the facility, using the formula set forth under the department
37 regulations for rescission and removal, pursuant to N.J.A.C.5:19-
38 6.5(f).

39 e. Each resident shall be informed of Medicare and Medicaid
40 program benefits and shall receive assistance in accessing these
41 benefits.

42

43 7. (New section) a. A resident may, upon 60-days' written
44 notice, cancel the continuing care agreement for any reason
45 whatsoever.

46 b. Upon cancellation of the continuing care agreement by either
47 the resident or the facility, the resident shall have the right to
48 receive a refund of any unearned entrance fee. The amount of the

1 entrance fee shall be set forth in a clear and conspicuous manner in
2 the continuing care agreement.

3 c. A resident shall be provided at least 60-days' written notice
4 from the facility if the resident's continuing care agreement is being
5 cancelled due to a violation of the facility's rules or regulations.
6 Notification may be waived if the facility can demonstrate just
7 cause for terminating the continuing care agreement in accordance
8 with N.J.A.C.5:19-6.5(c). The resident may challenge the facility's
9 notice of continuing care agreement cancellation by requesting a
10 hearing in the same manner as for a hearing in a contested case
11 pursuant to section 9 of P.L.1968, c.410 (C.52:14B-9).

12 d. In a continuing care agreement that provides for a refundable
13 entrance fee, when a resident permanently vacates the facility, or, in
14 the case of two residents occupying the same residence, when both
15 vacate at the same time, the facility shall provide to the resident or
16 residents or the legal representative of the resident's estate,
17 whichever is applicable, a refund of the refundable entrance fee
18 amount without interest, as set forth in the agreement. Any unpaid
19 fees, or charges incurred by the resident including unpaid monthly
20 service fees, may also be deducted from the remaining balance of
21 the refund of the entrance fee. Any balance to the resident shall be
22 payable within 60 days from the date the residence is resold and the
23 entrance fee from the new resident has been received.

24 e. When an entrance fee deposit is refundable, it shall be paid
25 to either the resident or the resident's named beneficiary. A
26 resident shall have the right to change, in writing, the named
27 beneficiary for the entrance fee refund at any time.

28

29 8. Section 3 of P.L.1986, c.103 (C.52:27D-332) is amended to
30 read as follows:

31 3. As used in this act and P.L. , c. (C.) (pending before the
32 Legislature as this bill), unless the context clearly requires a different
33 meaning:

34 a. "Application fee" means the fee an individual is charged, in
35 addition to an entrance fee or any other fee, to cover the provider's
36 reasonable cost for processing the individual's application to become a
37 resident at the facility. A reasonable application fee shall be
38 established pursuant to regulations adopted by the department.

39 b. "Commissioner" means the Commissioner of **【the Department**
40 **of】** Community Affairs.

41 c. "Continuing care" means the provision of lodging and nursing,
42 medical or other health related services at the same or another location
43 to an individual pursuant to an agreement effective for the life of the
44 individual or for a period greater than one year, including mutually
45 terminable contracts, and in consideration of the payment of an
46 entrance fee with or without other periodic charges. An individual
47 who is provided continuing care is not related by consanguinity or
48 affinity to the person who provides the care.

1 d. "Department" means the [State] Department of Community
2 Affairs.

3 e. "Entrance fee" means a transfer to a provider of a sum of
4 money or other property made or promised to be made as full or partial
5 consideration for acceptance of a specified person as a resident in a
6 facility and includes a fee which is refundable upon the death,
7 departure or option of the resident.

8 A fee which is less than the sum of the regular periodic charges for
9 one year of residency is not considered an entrance fee for the
10 purposes of this act. A transfer of a sum of money or other property,
11 by or on behalf of a resident, to a trust account which is managed by
12 the facility or an independent trustee for the benefit of the resident is
13 not considered an entrance fee for the purposes of this act if the
14 transfer is not a condition of admission or of continued stay and the
15 principal amount and any interest thereon are the exclusive and sole
16 property of the resident or the individual acting on behalf of the
17 resident.

18 f. "Facility" means the place or places in which a person
19 undertakes to provide continuing care to an [individual] individual.

20 g. "Living unit" means a room, apartment, cottage or other area
21 within a facility set aside for the exclusive use or control of one or
22 more persons.

23 h. "Operator or administrator" means a person who operates or
24 manages a facility for the provider.

25 i. "Provider" means a person who undertakes to provide
26 continuing care in a facility.

27 j. "Resident" means a person entitled to receive continuing care
28 in a facility.

29 (cf: P.L.1986, c.103, s.3)

30

31 9. Section 22 of P.L.1986, c.103 (C.52:27D-351) is amended to
32 read as follows:

33 22. a. If the commissioner determines or has cause to believe that
34 a person has engaged in any act or practice which constitutes a
35 violation of [this act] P.L.1986, c.103 (C.52:27D-330 et seq.) or
36 P.L. , c. (C.) (pending before the Legislature as this bill), the
37 commissioner may take any or all of the following actions, as
38 appropriate:

39 [a. Issue an order requiring the person to cease and desist from
40 engaging in the act or practice] (1) Issue a temporary cease and
41 desist order upon the determination by the commissioner in writing,
42 and based upon a finding of fact that the public interest will be
43 irreparably harmed by delay in issuing an order, including therein a
44 provision that, upon written request made within five business days
45 following issuance of the order, a hearing will be held within 10
46 days of such request to determine whether or not the temporary
47 cease and desist order shall become permanent. A copy of any

1 temporary or permanent cease and desist order shall be sent to the
2 person by certified mail;

3 **【b.】** (2) Bring an action in [a court of competent jurisdiction]
4 Superior Court to enjoin the act or practice and to enforce compliance
5 with [this act] P.L.1986, c.103 (C.52:27D-330 et seq.) and P.L. ,
6 c. (C.) (pending before the Legislature as this bill) if it appears
7 that a person has engaged or is about to engage in an act or practice
8 constituting a violation of a provision of P.L.1986, c.103 (C.52:27D-
9 330 et seq.) or P.L. , c. (C.) (pending before the Legislature as
10 this bill), or a rule or order of the department. Upon a proper
11 showing, the court may grant a permanent or temporary injunction,
12 restraining order or writ of mandamus and may appoint a receiver or
13 conservator for the defendant or the defendant's assets. The
14 commissioner shall not be required to post a bond; or

15 **【c.】** (3) Levy and collect civil penalties in the amount of not less
16 than \$250, and not more than \$50,000, for each violation of [this act]
17 P.L.1986, c.103 (C.52:27D-330 et seq.) or P.L. , c. (C.)
18 (pending before the Legislature as this bill), or any rule adopted
19 pursuant thereto or order issued thereunder, and compromise and settle
20 any claim for a penalty in such amount in the discretion of the
21 commissioner as may appear appropriate and equitable under the
22 circumstances of the violation. Each day during which a violation
23 continues after the effective date of a notice to terminate issued by the
24 commissioner shall constitute an additional, separate and distinct
25 violation. If an administrative order levying a civil penalty is not
26 satisfied within 30 days of its issuance, the commissioner may sue for
27 and recover the penalty with costs in a summary proceeding under
28 **【"the penalty enforcement law" (N.J.S.2A:58-1 et seq.)】** the "Penalty
29 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.) in
30 the Superior Court.

31 (a) Except as set forth in subparagraph (b) this paragraph, the
32 initial penalty levied for any violation shall not exceed \$250 per
33 violation, or \$250 per unit in the case of any violation of department
34 rules for facility certification, and a subsequent penalty for the same
35 act or omission shall not exceed 10 times the amount of the last
36 previous penalty or the statutory maximum, whichever is less.

37 (b) The limitations set forth in subparagraph (a) of this paragraph
38 shall not apply to any violation involving either dishonesty in dealings
39 with residents or prospective residents, or willful disregard of the
40 rights of residents.

41 b. For the purposes of actions that the commissioner may take
42 under subsection a. of this section, the following shall have the same
43 effect as a violation of P.L.1986, c.103 (C.52:27D-330 et seq.) or
44 sections 1 through 7 of P.L. , c. (C.) (pending before the
45 Legislature as this bill):

- 1 (1) Directly or through an agent or employee knowingly
- 2 engaging in false, deceptive or misleading advertising, promotional
- 3 or sales methods to offer or dispose of a unit;
- 4 (2) Making any material change in the plan of disposition of the
- 5 continuing care retirement community subsequent to the certificate
- 6 of authority without obtaining prior approval from the department;
- 7 (3) Disposing of any unit or interest in a continuing care
- 8 retirement community which has not been certified with the
- 9 department; and
- 10 (4) Violating any lawful order or rule of the department.

11 c. The commissioner shall promulgate regulations pursuant to the
12 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.),
13 regarding the implementation of [subsection c. of] this section.
14 (cf: P.L.1991, c.314, s.1)

15
16 10. This act shall take effect immediately, but shall remain
17 inoperative until the first day of the seventh month next following
18 enactment.

19
20
21 STATEMENT

22
23 This bill would serve as the "Bill of Rights for Continuing Care
24 Retirement Community Residents in Independent Living," to
25 establish and clarify the rights of residents living in continuing care
26 retirement communities. The rights involved cover entry into
27 Continuing Care Retirement Communities (CCRCs), occupancy,
28 transfer from an independent living environment, communication
29 between the facility and the resident, financial issues, termination of
30 service, and penalties for facilities who violate the provisions of this
31 bill and the "Continuing Care Retirement Community Regulation
32 and Financial Disclosure Act," N.J.S.A.52:27D-330 et seq.

33 Upon entry into a CCRC, this bill would require the facility to
34 provide each new resident with a copy of the disclosure statement
35 and a copy of the facility's rules and regulations. Each new
36 resident would also have the option to cancel the continuing care
37 agreement within 30 days of signing, and the option to wait 30 days
38 to occupy the new unit.

39 This bill would limit the circumstances in which a resident could
40 be forced to leave a unit, and guarantees each resident a reasonable
41 amount of privacy in their own unit. Each resident would be
42 guaranteed the right to participate in any residents' association, the
43 right to exercise any constitutional, civil, or other rights entitled by
44 law, and the right to generally be treated with respect and courtesy.
45 Each resident also would be afforded the right to freely express
46 complaints and seek advocacy, and the prompt investigation of
47 complaints. The bill requires the facility to maintain a record of
48 resident complaints, and make the record available for review. This

1 bill would require facilities to give reasonable notice before
2 changing the scope of service or increasing fees. Each resident
3 would be afforded the freedom to select a doctor, and caregiver of
4 their choice. Each resident would be entitled to view their own
5 medical record, participate in medical decisions, and refuse medical
6 treatment. Each resident would have the right to execute an
7 advance directive concerning the use of life sustaining treatment,
8 and the right to expect that the provisions of the advance directive
9 be executed to the fullest extent possible.

10 This bill would afford each resident the ability to leave and
11 return to the facility at-will, the ability to host guests for reasonable
12 amounts of time, and the right to refuse to perform services for the
13 facility without coercion. Each resident would have the right to
14 obtain the services contracted for, and would not be requested nor
15 required to accept any restriction of rights. Upon request, the
16 facility would be required to provide the resident with a copy of the
17 bill of rights, as well as the bill of rights for nursing home residents,
18 as provided in N.J.S.A.30:13-5, and the bill of rights for assisted
19 living residents, as provided in N.J.S.A.26:2H-128. Each resident
20 insured by a health maintenance organization would have the right
21 to be referred by their primary care physician to the nursing care
22 unit associated with the resident's facility, provided the unit has
23 capacity, and accepts the applicable reimbursement rate.

24 As of the effective date of this bill, the facility would be required
25 to distribute a statement of residents' rights to each resident, and
26 ensure that each resident has been given an opportunity to read the
27 statement and sign it to demonstrate understanding. The facility
28 would also be required to post the statement in a conspicuous
29 location in the facility.

30 This bill would require the facility, upon request, to supply a
31 resident with the facility's annual disclosure statement, and with a
32 fee schedule for all uncovered services. With certain exceptions,
33 this bill would allow a resident to remain in a facility regardless of
34 financial difficulties. The bill also requires the facility to offer
35 assistance in accessing Medicare and Medicaid benefits.

36 This bill would enable a resident to cancel a continuing care
37 agreement upon 60-days' written notice for any reason, and the
38 right to receive a refund of any unearned entrance fee upon such
39 cancellation. With exceptions for just cause, a facility would also
40 be required to give 60-days' written notice before cancelling a
41 continuing care agreement. Under this bill, payments for
42 continuing care agreements that provide for refundable entrance
43 fees would be due within 60 days of the resale date, and upon the
44 facility's receipt of an entrance fee from the new resident.

45 Any facility in violation of this bill or N.J.S.A.52:27D-330 et
46 seq. would be subject to penalty in accordance with Department of
47 Community Affairs regulations that may include cease and desist
48 orders and fines of between \$250 and \$50,000. This bill would take

A3132 VAINIERI HUTTLE, SUMTER

11

- 1 effect on the first day of the seventh month next following
- 2 enactment.

ASSEMBLY HEALTH AND SENIOR SERVICES COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3132

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 7, 2013

The Assembly Health and Senior Services Committee reports favorably and with committee amendments Assembly Bill No. 3132.

As amended by the committee, this bill establishes a “Bill of Rights for Continuing Care Retirement Community Residents in Independent Living” and enumerates these rights, which pertain to a resident’s entry into a continuing care retirement community (CCRC), occupancy, transfer from an independent living environment, communication between the facility and the resident, financial issues, and termination of services.

Specifically, the bill requires that, upon entry into a CCRC, each new resident be provided a copy of the disclosure statement and a copy of the facility’s rules and regulations. Each new resident would also have the option to cancel the continuing care agreement within 30 days of signing, and the option to wait 30 days to occupy the new unit.

This bill would limit the circumstances under which a resident could be forced to leave a unit, and would guarantee each resident a reasonable amount of privacy. Each resident would be guaranteed the right to participate in any residents’ association, to exercise any constitutional, civil, or other rights entitled by law, and to generally be treated with respect and courtesy. Each resident would also be afforded the right to freely express complaints and seek advocacy and the prompt investigation of complaints. The bill requires the facility to maintain a record of resident complaints, and make the record available for review. Facilities would be required to give reasonable notice before changing the scope of service or increasing fees. Each resident would be afforded the freedom to select a primary care physician and a private caregiver or companion of the resident’s choice. Each resident would be entitled to view the resident’s own medical record, participate in medical decisions, refuse medical treatment, execute an advance directive concerning the use of life-sustaining treatment, and to expect that the provisions of the advance directive will be carried out to the fullest extent possible.

The bill affords each resident the ability to leave and return to the facility at will, to host guests for reasonable amounts of time, and the right to refuse to perform services for the facility without coercion.

Each resident would have the right to obtain the services contracted for, and would not be requested or required to accept any restriction of rights. Upon request, the facility would be required to provide the resident with a copy of the bill of rights, as well as the bill of rights for nursing home residents, as provided in N.J.S.A.30:13-5, and the bill of rights for assisted living residents, as provided in N.J.S.A.26:2H-128. Each resident insured by a health maintenance organization would have the right to be referred by the resident's primary care physician to the nursing care unit associated with the resident's facility, provided that the unit has capacity and accepts the applicable reimbursement rate.

As of the effective date of the bill, the facility would be required to distribute a statement of residents' rights to each resident, and ensure that each resident has been given an opportunity to read the statement and sign it to demonstrate that it has been read and understood. The facility would also be required to post the statement in a conspicuous location.

The bill would further require the facility, upon request, to supply a resident with the facility's annual disclosure statement, and with a fee schedule for all uncovered services. With certain exceptions, the bill would allow a resident to remain in a facility regardless of financial difficulties. The bill also requires the facility to offer assistance in accessing Medicare and Medicaid benefits to the extent that they are available at the facility.

The bill would enable a resident to cancel a continuing care agreement upon 60-days' written notice for any reason, and to receive a refund of the amount of any entrance fee upon that cancellation. With exceptions for just cause, a facility would also be required to give 60-days' written notice before cancelling a continuing care agreement. Payments for continuing care agreements that provide for refundable entrance fees would be due within 60 days of the resale of the residence and receipt of an entrance fee from the new resident.

Any facility in violation of this bill or the "Continuing Care Retirement Community Regulation and Financial Disclosure Act" (P.L.1986, c.103; C.52:27D-330 et seq.) would be subject to a cease and desist order issued by the Commissioner of Community Affairs and a civil penalty of between \$250 and \$50,000.

The bill takes effect on the first day of the seventh month following enactment, but authorizes the Commissioner of Community Affairs to take prior administrative action as necessary for its implementation.

As reported by the committee, this bill is identical to Senate Bill No. 2052 (1R) ACA (Singer/Beck), which the committee also reported on this date.

COMMITTEE AMENDMENTS

The committee amendments to the bill: clarify several of the rights guaranteed under its provisions to CCRC residents; stipulate that the Ombudsman for the Institutionalized Elderly has authority to advocate on behalf of residents in CCRCs, including independent living sections of CCRCs; and make a technical change in the effective date.