



# House of Representatives

## File No. 743

General Assembly

January Session, 2015

**(Reprint of File No. 511)**

Substitute House Bill No. 5358  
As Amended by House  
Amendment Schedule "A"

Approved by the Legislative Commissioner  
April 24, 2015

### **AN ACT ESTABLISHING A BILL OF RIGHTS FOR RESIDENTS OF CONTINUING-CARE RETIREMENT COMMUNITIES.**

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

1 Section 1. Section 17b-520 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2015*):

3 As used in this section, sections [17b-520] 17b-521 to 17b-535,  
4 inclusive, as amended by this act, and sections 2 to 4, inclusive, of this  
5 act:

6 [(a)] (1) "Continuing-care contract" means an agreement pursuant to  
7 which a provider undertakes to furnish to a person not related by  
8 consanguinity or affinity to the provider, care and shelter in a facility  
9 or care at home with the right to future access to care and shelter in  
10 such facility and medical or nursing services or other health-related  
11 benefits for the life of a person or for a period in excess of one year,  
12 and which requires a present or future transfer of assets or an entrance  
13 fee in addition to or instead of periodic charges, and the amount of the  
14 assets required to be transferred or the entrance fee is equal to or in

15 excess of the amount set by the commissioner in regulations adopted  
16 pursuant to section 17b-533, as amended by this act;

17 [(b)] (2) "Entrance fee" means the total of any initial or deferred  
18 transfer to, or for the benefit of, a provider of a sum of money or other  
19 property made or promised to be made as full or partial consideration  
20 for acceptance or maintenance of a person as a resident pursuant to a  
21 continuing-care contract;

22 [(c)] (3) "Facility" means the place in which a provider undertakes to  
23 furnish shelter and care to a person pursuant to a continuing-care  
24 contract;

25 [(d)] (4) "Provider" means any person, corporation, limited liability  
26 company, business trust, trust, partnership, unincorporated association  
27 or other legal entity, or any combination of such entities, undertaking  
28 to furnish care and shelter in a facility or care at home with the right to  
29 future access to care and shelter in such facility and medical or nursing  
30 services or other health-related benefits pursuant to a continuing-care  
31 contract;

32 [(e)] (5) "Resident" means any person entitled to receive present or  
33 future shelter, care and medical or nursing services or other health-  
34 related benefits pursuant to a continuing-care contract, provided  
35 nothing in [sections 17b-520] this section, sections 2 to 4, inclusive, of  
36 this act or sections 17b-521 to 17b-535, inclusive, as amended by this  
37 act, shall affect rights otherwise afforded to residents while they are  
38 patients in health care facilities as defined in subsections (a), (b) and (c)  
39 of section 19a-490;

40 (6) "Residents council" means a board duly elected by residents at a  
41 facility to advocate for residents' rights and function as an advisory  
42 board to the provider with respect to resident welfare and interests;

43 [(f)] (7) "Affiliate of a provider" means any person, corporation,  
44 limited liability company, business trust, trust, partnership,  
45 unincorporated association or other legal entity directly or indirectly

46 controlling, controlled by or in common control with a provider;

47 [(g)] (8) "Offer" means an offer through either personal, telephone or  
48 mail contact or other communication directed to or received by a  
49 person at a location within this state as an inducement, solicitation or  
50 attempt to encourage a person to enter into a continuing-care contract  
51 and shall include any paid advertisement published or broadcast  
52 within this state, except for advertisements in periodicals where more  
53 than two-thirds of the circulation is outside this state but shall not  
54 include marketing or feasibility studies;

55 [(h)] (9) "Shelter" means a room, apartment, cottage or other living  
56 area in a facility set aside for the exclusive use of one or more persons  
57 pursuant to a continuing-care contract;

58 [(i)] (10) "Medical or nursing services or other health-related  
59 benefits" means services or benefits which shall include care in a  
60 nursing facility, priority admission to a nursing facility, home health  
61 care or assistance with activities of daily living, to which a resident  
62 becomes contractually entitled;

63 [(j)] (11) "Department" means the Department of Social Services;

64 [(k)] (12) "Commissioner" means the Commissioner of Social  
65 Services.

66 Sec. 2. (NEW) (*Effective October 1, 2015*) Each resident of a  
67 continuing-care retirement facility is entitled to:

68 (1) A voice in all decisions affecting the resident's health, welfare  
69 and financial security;

70 (2) Transparency regarding the financial stability of the provider  
71 operating the facility at which the resident resides;

72 (3) Timely notification of developments affecting the facility,  
73 including, but not limited to: (A) Ownership changes of the provider  
74 operating the facility at which the resident resides, (B) a change in the

75 financial condition of the provider operating the facility at which the  
76 resident resides, and (C) construction and renovation at the facility at  
77 which the resident resides;

78 (4) Independence in decisions regarding medical care and assisted  
79 living services; and

80 (5) Reasonable accommodations for persons with disabilities.

81 Sec. 3. (NEW) (*Effective October 1, 2015*) (a) Each provider shall  
82 develop a process for facilitating communication between residents  
83 and the personnel, management, board of directors and owner of the  
84 provider. Such process shall include, but not be limited to:

85 (1) Permitting residents at each facility to form a residents council;

86 (2) Allowing residents, including those who serve on the residents  
87 council, to serve as voting members of the provider's board of directors  
88 or other governing body if the rules applicable to such board or other  
89 governing body allow for resident membership and such board or  
90 other governing body approves such membership; and

91 (3) If the provider does not have a board of directors or similar  
92 governing body, or if a residents council is not established, then a  
93 provider shall seek comments from residents in advance of designing  
94 or adopting policies that affect the provider's ability to avert financial  
95 distress, as defined in section 17b-527 of the general statutes, as  
96 amended by this act.

97 (b) On or before January 1, 2016, and not less than every two years  
98 thereafter, each provider shall conduct a resident satisfaction survey at  
99 each facility. The results of the survey shall be made available to the  
100 residents council at each such facility, or to each resident, if there is no  
101 residents council. A copy of the survey results shall also be posted in a  
102 conspicuous location at each facility.

103 Sec. 4. (NEW) (*Effective October 1, 2015*) (a) A provider shall not  
104 prevent or otherwise infringe upon a resident's right to obtain

105 treatment, care and services, including, but not limited to, home health  
106 and hospice care, from persons providing health care who have not  
107 entered into a contract with or are not affiliated with the provider,  
108 subject to the provider's policies and procedures for protecting the  
109 health and safety of residents.

110 (b) Residents at a continuing-care retirement facility receiving  
111 assisted living or skilled nursing services shall be entitled to all rights  
112 and protections afforded under the law, including the right to refuse  
113 medications and treatments. A provider shall not prevent or otherwise  
114 infringe upon a resident's right to participate, as fully and  
115 meaningfully as the resident is able, in making the decision about a  
116 permanent move to an assisted living facility or skilled nursing care  
117 unit. A provider shall inform family members designated by the  
118 resident of the resident's medical condition and care plan. A provider  
119 shall not prevent or otherwise infringe upon a resident's right to refuse  
120 medications and treatments.

121 (c) Each provider operating a facility shall make reasonable  
122 accommodations, in accordance with the Americans with Disabilities  
123 Act, 42 USC 12101, et seq., the Fair Housing Amendments Act of 1988,  
124 42 USC 3601, et seq., and section 46a-64c of the general statutes to  
125 ensure that services and notices are accessible and communicated to  
126 residents who have hearing loss, low vision or other disabilities.

127 Sec. 5. Section 17b-521 of the general statutes is repealed and the  
128 following is substituted in lieu thereof (*Effective October 1, 2015*):

129 No provider shall offer or enter into a continuing-care contract in  
130 this state or with any resident of this state or regarding any facility in  
131 this state and no change in ownership of such a facility shall be  
132 completed unless the provider or proposed owner, as the case may be,  
133 has (1) registered with the department by filing a (A) current  
134 disclosure statement that meets the requirements of section 17b-522, as  
135 amended by this act, (B) financial information [that meets the  
136 requirements of] as required pursuant to section 17b-527, as amended

137 ~~by this act~~, and (C) a sworn statement of the escrow agent to the effect  
138 that the escrows required by sections 17b-524, ~~as amended by this act~~,  
139 and 17b-525, ~~as amended by this act~~, have been established; [, has] (2)  
140 received acknowledgment of such filing; and [has] (3) paid an annual  
141 filing fee of twenty-four dollars per residential unit operated by such  
142 provider. Acknowledgment of filing shall be furnished to the provider  
143 by the commissioner within ten business days of the date of filing. The  
144 commissioner may waive the requirements of this section if a change  
145 of ownership is proposed pursuant to section 17b-532 or a federal  
146 bankruptcy proceeding.

147 Sec. 6. Section 17b-522 of the general statutes is repealed and the  
148 following is substituted in lieu thereof (*Effective October 1, 2015*):

149 (a) Before the execution of a contract to provide continuing care, or  
150 before the transfer of any money or other property to a provider by or  
151 on behalf of a prospective resident, whichever shall occur first, the  
152 provider shall deliver to the person with whom the contract is to be  
153 entered into, or to that person's legal representative, a conspicuous  
154 statement notifying the prospective resident that:

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

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

159 (3) [He] The prospective contract holder is advised to consult an  
160 attorney or other professional experienced in matters relating to  
161 investments in continuing-care facilities before he signs a contract for  
162 continuing care; and

163 (4) The department does not guarantee the security of his  
164 investment.

165 (b) Before the execution of a contract to provide continuing care, or  
166 before the transfer of any money or other property to a provider by or

167 on behalf of a prospective resident, whichever shall occur first, the  
168 provider shall deliver to the person with whom the contract is to be  
169 entered into, or to that person's legal representative, a disclosure  
170 statement. The text of the disclosure statement shall contain, to the  
171 extent not clearly and completely set forth in the contract for  
172 continuing care attached as an exhibit thereto, at least the following  
173 information:

174 (1) The name and business address of the provider and a statement  
175 of whether the provider is a partnership, corporation or other legal  
176 entity;

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

181 (3) A description of the business experience of the provider and of  
182 the manager of the facility if the facility will be managed on a day-to-  
183 day basis by an organization other than the provider, in the  
184 administration of continuing-care contracts or in the administration of  
185 similar contractual arrangements;

186 (4) A description of any matter in which the provider, any of the  
187 persons described in subdivision (2) of this subsection, or the manager  
188 has been convicted of a felony or pleaded nolo contendere to a felony  
189 charge, or held liable or enjoined in a civil action by final judgment, if  
190 the felony or civil action involved fraud, embezzlement, fraudulent  
191 conversion or misappropriation of property; or is subject to a currently  
192 effective injunction or restrictive or remedial order of a court of record,  
193 within the past five years has had any state or federal license or permit  
194 suspended or revoked as a result of an action brought by a  
195 governmental agency or department, arising out of or relating to  
196 business activity or health care, including, but not limited to, actions  
197 affecting the operation of a foster care facility, nursing home,  
198 retirement home, residential care home, or any facility subject to

199 sections 17b-520 to 17b-535, inclusive, as amended by this act, sections  
200 2 to 4, inclusive, of this act, or a similar statute in another state or  
201 country;

202 (5) A statement as to whether or not the provider is, or is affiliated  
203 with, a religious, charitable, nonprofit, or for-profit organization; the  
204 extent of the affiliation, if any; the extent to which the affiliate  
205 organization will be responsible for the financial and contractual  
206 obligations of the provider; and the provision of the federal Internal  
207 Revenue Code, if any, under which the provider or affiliate is exempt  
208 from the payment of income tax;

209 (6) The location and a description of the physical property or  
210 properties of the provider, existing or proposed; and, if proposed, the  
211 estimated completion date or dates, whether or not construction has  
212 begun, and the contingencies subject to which construction may be  
213 deferred;

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

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

220 (9) A description of the conditions under which the continuing-care  
221 contract may be terminated, whether before or after occupancy, by the  
222 provider or by the resident. In the case of termination by the provider,  
223 a description of the manner and procedures by which a decision to  
224 terminate is reached by the provider, including grounds for  
225 termination, the participation of a resident's council or other group, if  
226 any, in reaching such a decision, and any grievance, appeal or other  
227 similar procedures available to a resident whose contract has been  
228 terminated by the provider;

229 (10) A statement setting forth the rights of a surviving spouse who

230 is a resident of the facility and the effect of the continuing-care contract  
231 on the rights of a surviving spouse who is not a resident of the facility,  
232 in the event of the death of a resident, subject to any limitations  
233 imposed upon such rights by statute or common law principles;

234 (11) A statement of the effect of a resident's marriage or remarriage  
235 while in the facility on the terms of such resident's continuing-care  
236 contract;

237 (12) Subject to the provisions of subsection [(g)] (j) of this section, a  
238 statement of the provider's policy regarding disposition of a resident's  
239 personal property in the event of death, temporary or permanent  
240 transfer to a nursing facility, or termination of the contract by the  
241 provider;

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

246 (14) The provisions that have been made or will be made by the  
247 provider for reserve funding and any other security to enable the  
248 provider to perform fully its obligations under continuing-care  
249 contracts, including, but not limited to, escrow accounts established in  
250 compliance with sections 17b-524, as amended by this act, and 17b-525,  
251 as amended by this act, trusts or reserve funds, together with the  
252 manner in which such funds will be invested and the names and  
253 experience of the persons making or who will make investment  
254 decisions; [. Disclosure shall include a summary of the information  
255 contained in the five-year financial information filed with the  
256 commissioner pursuant to section 17b-527; such summary shall set  
257 forth by year any anticipated excess of future liabilities over future  
258 revenues and shall describe the manner in which the provider plans to  
259 meet such liabilities;]

260 (15) [Audited and certified financial statements of the provider,  
261 including (A) a balance sheet as of the end of the most recent fiscal

262 year, and (B) income statements for the three] The provider's financial  
263 statements, including a balance sheet, income statement and statement  
264 of cash flow, associated notes or comments to these statements,  
265 audited by an independent certified public accounting firm for the two  
266 most recent fiscal years of the provider or such shorter period of time  
267 as the provider shall have been in existence;

268 (16) Subject to the provisions of subsection [(g)] (j) of this section, if  
269 the operation of the facility has not yet commenced, or if the  
270 construction of the facility is to be completed in stages, a statement of  
271 the anticipated source and application of the funds used or to be used  
272 in the purchase or construction of the facility or each stage of the  
273 facility, including:

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

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

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

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

288 (17) Pro forma [annual income] cash flow statements for the facility  
289 for the next [five] three fiscal years, [;] including a summary of  
290 projections used in the assumptions for such pro forma statements,  
291 including, but not limited to, anticipated resident turnover rates,  
292 average age of residents, health care utilization rates, the number of

293 health care facility admissions per year, days of care per year and the  
294 number of permanent transfers;

295 (18) The facility's current rate schedules for entrance fees, monthly  
296 fees, fees for ancillary services and current occupancy rates;

297 ~~[(18)]~~ (19) A description of all entrance fees and periodic charges, if  
298 any, required of residents and a record of past increases in such fees  
299 and charges during the previous [seven] five years;

300 [(19) For each facility operated by the provider, the total actuarial  
301 present value of prepaid healthcare obligations assumed by the  
302 provider under continuing-care contracts as calculated on an  
303 actuarially sound basis using reasonable assumptions for mortality  
304 and morbidity;]

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

308 (21) The cover page of the disclosure statement shall state, in a  
309 prominent location and type face, the date of the disclosure statement  
310 and that registration does not constitute approval, recommendation, or  
311 endorsement by the department or state, nor does such registration  
312 evidence the accuracy or completeness of the information set out in the  
313 disclosure statement;

314 (22) If the construction of the facility is to be completed in stages, a  
315 statement as to whether all services will be provided at the completion  
316 of each stage and, if not, the services that will not be provided listed in  
317 bold print; [.]

318 (23) A sworn statement of the applicable escrow agents to the effect  
319 that the escrows required by sections 17b-524, as amended by this act,  
320 and 17b-525, as amended by this act, have been established and  
321 maintained or an independent certified public accounting firm has  
322 verified such escrow accounts.

323 (c) Each provider operating a facility in this state shall make the  
324 information filed with the department, pursuant to this section,  
325 available to each such resident for viewing during regular business  
326 hours and, upon request, shall provide such resident with a copy of  
327 the most recent filing with the department. Each provider shall notify  
328 each resident, at least annually, of the right to view the filings and of  
329 the right to a copy of the most recent filing.

330 (d) The registration of a facility pursuant to section 17b-521, as  
331 amended by this act, shall remain effective unless withdrawn by the  
332 provider or unless the provider fails to file the documents specified in  
333 this section within one hundred fifty days following the end of the first  
334 fiscal year in which such registration is filed. The provider shall file a  
335 revised disclosure statement at least annually with the commissioner.  
336 The provider shall also file a narrative describing any material  
337 differences between the pro forma income and cash flow statements  
338 filed pursuant to this section and the actual results of operations  
339 during the most recently concluded fiscal year. A provider may revise  
340 its previously filed disclosure statement at any time if, in the opinion  
341 of the provider, revision is necessary to prevent the disclosure  
342 statement from containing a material misstatement of fact or from  
343 omitting a material fact required to be included in the statement. Only  
344 the most recently filed disclosure statement, as amended from time to  
345 time, shall be deemed current for the purposes of sections 17b-520 to  
346 17b-535, inclusive, as amended by this act, and sections 2 to 4,  
347 inclusive, of this act.

348 (e) The facility shall amend the most recently filed disclosure  
349 statement prior to undertaking major facility construction, renovation,  
350 or expansion or change of ownership to avoid a material misstatement  
351 or omission of a material fact.

352 [(c)] (f) (1) Not more than sixty nor less than ten days before the  
353 execution of a contract to provide continuing care, the provider shall  
354 deliver a current disclosure statement to the person with whom the  
355 contract is to be entered into or to that person's legal representative.

356 (2) Not more than sixty nor less than ten days before a person  
357 occupies a continuing care facility, the provider shall deliver a revised  
358 and up-to-date disclosure statement to the prospective resident or to  
359 that person's legal representative, except that if there have been no  
360 revisions to the disclosure statement previously delivered pursuant to  
361 subdivision (1) of this subsection, the provider shall deliver a  
362 statement to the prospective resident or representative that there have  
363 been no revisions to the original disclosure statement.

364 ~~[(d)]~~ (g) The statement required under subsections (a) and (b) of this  
365 section shall be signed and dated by the prospective resident before  
366 the execution of a contract to provide continuing care or before the  
367 transfer of any money or other property to a provider by or on behalf  
368 of the prospective resident. Each such statement shall contain an  
369 acknowledgment that such statement and the continuing-care contract  
370 have been reviewed by the prospective resident or his legal  
371 representative. Such signed statements shall be kept on file by the  
372 provider for a period of not less than the term of the contract.

373 ~~[(e)]~~ (h) Each statement required under subsections (a) and (b) of  
374 this section and the continuing-care contract shall be in language easily  
375 readable and understandable in accordance with the provisions of  
376 subsections (a) and (b) of section 42-152.

377 ~~[(f)]~~ (i) A copy of the standard form or forms of the continuing-care  
378 contract used by the provider shall be attached as an exhibit to each  
379 disclosure statement.

380 ~~[(g)]~~ (j) The provisions of subdivisions (12) and (16) of subsection (b)  
381 of this section shall not apply to a continuing-care contract for the  
382 provision of care in a person's home.

383 ~~[(h)]~~ (k) The commissioner may adopt regulations in accordance  
384 with the provisions of chapter 54 to specify any additional information  
385 required in the disclosure statement.

386 Sec. 7. Section 17b-523 of the general statutes is repealed and the

387 following is substituted in lieu thereof (*Effective October 1, 2015*):

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

389 (1) That the party contracting with the provider may rescind the  
390 contract by notifying the provider in writing by registered or certified  
391 mail of such rescission within thirty days following the execution of  
392 the contract; that in the event of such rescission, any money or  
393 property transferred to the provider shall be refunded, less (A) those  
394 costs specifically incurred by the provider or facility at the request of  
395 the resident and described in the contract or in an addendum thereto  
396 signed by the resident; and (B) a reasonable service charge, not to  
397 exceed the greater of one thousand dollars or two per cent of the  
398 entrance fees; and, if applicable, that the resident to whom the contract  
399 pertains shall not be required to move into the facility before the  
400 expiration of the thirty-day period;

401 (2) That if, after the thirty-day period, a resident dies before  
402 occupying a contracted-for living unit, or on account of illness, injury  
403 or incapacity is precluded from occupying a contracted-for living unit  
404 under the terms of the continuing-care contract, or a resident dies  
405 before the commencement of care under a continuing-care contract to  
406 provide care in such person's home, upon notice to the provider by  
407 registered or certified mail, the contract is automatically cancelled and  
408 the resident or the resident's legal representative shall receive a refund  
409 of all money or property transferred to the provider, less (A) those  
410 costs specifically incurred by the provider or facility at the request of  
411 the resident and described in the contract or in an addendum thereto  
412 signed by the resident; (B) a reasonable service charge not to exceed  
413 the greater of one thousand dollars, or two per cent of the entrance fee,  
414 and (C) if the contract includes occupying a living unit in a facility and  
415 the unit was actually available for occupancy, the usual monthly  
416 charge for that unit, prorated on a per diem basis, for the period  
417 beginning seven days after the execution of the contract and ending on  
418 the last day of the month in which the provider receives notice that the  
419 resident will not occupy the unit;

420 (3) [That] For contracts entered into after October 1, 2015, that if  
421 construction of the facility has not yet begun, construction will not  
422 begin until a minimum number of living units, which shall not be less  
423 than one-half of the units in the facility [or if the construction is to be  
424 completed in stages, one-half of the units evidencing financial  
425 feasibility in accordance with section 17b-526,] or fifty per cent of any  
426 designated part or parts thereof determined by the commissioner have  
427 been presold, and a minimum deposit of [five per cent of the entrance  
428 fee per unit for all presold units or] ten thousand dollars per unit for  
429 all presold units [, whichever is less,] has been received by the  
430 provider. The requirements of this subdivision shall not apply to any  
431 continuing-care contract for the provision of care in a person's home.

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

433 (1) The circumstances under which the resident will be permitted to  
434 continue to receive care and shelter in a facility or care at home with  
435 the right to future access to care and shelter in such facility and  
436 medical or nursing services or other health-related benefits, and other  
437 benefits under the continuing-care contract in the event of possible  
438 financial difficulties on the part of the resident;

439 (2) The terms and conditions under which a contract for continuing  
440 care may be cancelled by the provider or by the resident; and the  
441 conditions, if any, under which all or any portion of the entrance fee  
442 will be refunded in the event of cancellation of the contract by the  
443 provider or by the resident or in the event of the death of the resident  
444 prior to or following occupancy of a living unit, provided for contracts  
445 entered into after October 1, 2015, any refund shall be delivered to the  
446 resident or the resident's estate not later than three years from the date  
447 the contract is terminated or when contractual conditions for releasing  
448 the refund have been met, whichever occurs first;

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

452 (4) The manner in which the provider may adjust periodic charges  
453 or other recurring fees and the limitations of such adjustments, if any,  
454 [and, if there is no such limitation, a clear statement that such increases  
455 may be made at the discretion of the provider] including, but not  
456 limited to, for contracts entered into after October 1, 2015, no periodic  
457 charges on other recurring fees may be increased unless a resident has  
458 been provided not less than thirty days' advance written notice of such  
459 fee increase.

460 Sec. 8. Section 17b-524 of the general statutes is repealed and the  
461 following is substituted in lieu thereof (*Effective October 1, 2015*):

462 (a) Prior to soliciting or entering into any contract for the provision  
463 of continuing care, the provider shall establish with a bank or trust  
464 company as an escrow agent, an entrance fee escrow pursuant to  
465 which the provider shall deposit with the escrow agent, within  
466 seventy-two hours of receipt by the provider, each entrance fee or  
467 portion of an entrance fee received by the provider from or on behalf  
468 of a resident prior to the date the resident is permitted to occupy a  
469 living unit in the facility. [If the prospective resident, as defined in  
470 section 17b-520, is a resident of this state at the time the continuing-  
471 care contract is signed, the] The bank or trust company serving as  
472 escrow agent for such fees received from such a resident shall have [its  
473 principal] a place of business in this state. The entrance fee escrow  
474 shall be subject to release as follows:

475 (1) If the entrance fee applies to a living unit that has been  
476 previously occupied in the facility, the entrance fee shall be released to  
477 the provider at the time the living unit becomes available for  
478 occupancy by the new resident, or shall be returned to the resident or  
479 the resident's personal representative under the conditions described  
480 in section 17b-523, as amended by this act, if the escrow agent has  
481 received written demand by registered or certified mail for return of  
482 the entrance fee prior to the release thereof to the provider;

483 (2) If the entrance fee applies to a living unit which has not

484 previously been occupied by any resident, the entrance fee shall be  
485 returned to the resident or the resident's legal representative under the  
486 conditions described in section 17b-523, as amended by this act, if the  
487 escrow agent receives written demand by registered or certified mail  
488 for return of the entrance fee prior to release thereof to the provider, or  
489 the entrance fee shall be released to the provider at the time all of the  
490 following conditions have been met:

491 (A) The sum of the entrance fees received or receivable by the  
492 provider pursuant to binding contracts for continuing care, plus the  
493 anticipated proceeds of any first mortgage loan or other long-term  
494 financing commitment, plus funds from other sources in the actual  
495 possession of the provider, equals or exceeds the sum of seventy-five  
496 per cent of the aggregate cost of constructing or purchasing, equipping  
497 and furnishing the facility plus seventy-five per cent of the funds  
498 estimated in the statement of anticipated source and application of  
499 funds submitted by the provider as part of its disclosure statement to  
500 be necessary to fund start-up losses of the facility plus seventy-five per  
501 cent of the amount of the reserve fund escrow required to be  
502 maintained by the provider pursuant to section 17b-525, as amended  
503 by this act;

504 (B) A commitment has been received by the provider for any  
505 permanent mortgage loan or other long-term financing described in  
506 the statement of anticipated source and application of funds included  
507 in the current disclosure statement on file pursuant to section 17b-522,  
508 as amended by this act, and any conditions of the commitment prior to  
509 disbursement of funds thereunder, other than completion of the  
510 construction or closing of the purchase of the facility, have been  
511 substantially satisfied; and

512 (C) If construction of the facility has not been substantially  
513 completed, all governmental permits or approvals necessary prior to  
514 the commencement of construction have been obtained; and a  
515 maximum price contract has been entered into between the provider  
516 and a general contractor responsible for construction of the facility; a

517 bond covering the faithful performance of the construction contract by  
518 the general contractor and the payment of all obligations arising  
519 thereunder has been issued by an insurer authorized to do business in  
520 this state with the provider as obligee; a loan agreement has been  
521 entered into by the provider for an interim construction loan in an  
522 amount, when combined with the amount of entrance fees then held in  
523 escrow under the provisions of this section plus the amount of funds  
524 from other sources then in the actual possession of the provider, that  
525 will equal or exceed the estimated cost of constructing, equipping and  
526 furnishing the facility; not less than ten per cent of the amount of the  
527 construction loan has been disbursed by the lender for physical  
528 construction or site preparation work completed; and orders at firm  
529 prices have been placed by the provider for not less than fifty per cent  
530 in value, including installation charges if applicable, of items necessary  
531 for equipping and furnishing the facility in accordance with the  
532 description set forth in the disclosure statement required by section  
533 17b-522, as amended by this act; or if construction or purchase of the  
534 facility has been substantially completed, an occupancy permit  
535 covering the living unit has been issued by the local government  
536 having authority to issue these permits.

537 (b) The aggregate amount of entrance fees which may be released to  
538 the provider pursuant to subparagraph (A) of subdivision (2) of  
539 subsection (a) of this section prior to the date on which any reserve  
540 fund escrow required to be established under section 17b-525, as  
541 amended by this act, is established shall not exceed the aggregate  
542 amount of entrance fees then received or receivable by the provider  
543 pursuant to binding contracts for continuing care less the amount of  
544 the entrance fees received or receivable which may be required to be  
545 initially maintained in the reserve fund escrow.

546 (c) The provider shall provide each prospective resident who has  
547 signed a contract for continuing care with the name, address, and  
548 telephone number of the escrow agent and shall file a copy of the  
549 escrow agreement with the department.

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

552 Sec. 9. Section 17b-525 of the general statutes is repealed and the  
553 following is substituted in lieu thereof (*Effective October 1, 2015*):

554 (a) Except as provided in section 17b-534, on and after the date any  
555 facility located in this state is first occupied by any resident, the  
556 provider shall establish and maintain on a current basis, in escrow  
557 with a bank, trust company, or other escrow agent having [its  
558 principal] a place of business in this state, a portion of all entrance fees  
559 received by the provider in an aggregate amount sufficient to cover: (1)  
560 All principal and interest, rental or lease payments due during the next  
561 [twelve] ~~six~~ months on account of any first mortgage loan or any other  
562 long-term financing of the facility; and (2) the total cost of operations  
563 of the facility for a one-month period, excluding debt service, rental or  
564 lease payments as described in subdivision (1) of this subsection and  
565 excluding capital expenditures. A provider may use funds in an  
566 account established by or pursuant to a mortgage loan, bond indenture  
567 or other long-term financing in its computation of the reserve amounts  
568 required to satisfy the provisions of this section, provided such funds  
569 are available to make payments when operating funds are insufficient  
570 for these purposes. To the extent that a provider is required pursuant  
571 to a mortgage loan, bond indenture or other long-term financing to  
572 maintain a certain number of days of cash on hand, cash amounts held  
573 pursuant to such a requirement may be applied toward the provider's  
574 computation of the operating reserve amount required to satisfy the  
575 provisions of this subsection. Notwithstanding any provision of this  
576 subsection, the commissioner may accept the terms or covenants  
577 regarding the establishment or maintenance of reserve or escrow funds  
578 or financial ratios associated with a mortgage loan, bond indenture or  
579 other long-term financing as an alternative to the reserve provisions set  
580 forth in this subsection. The escrow agent may release up to one-  
581 twelfth of the required principal balance of funds held in escrow  
582 pursuant to said subdivision not more than once during any calendar  
583 month, if the provider so requests in writing. The commissioner may

584 authorize the escrow agent to release additional funds held in escrow  
585 pursuant to subdivisions (1) and (2) of this subsection, upon  
586 application by the provider setting forth the reasons for the requested  
587 release and a plan for replacing these funds within one year; the  
588 commissioner shall respond within fifteen business days. If any escrow  
589 funds so released are not replaced within one year the escrow agent  
590 shall so notify the commissioner. A provider shall promptly notify the  
591 commissioner in the event such provider uses funds held in escrow  
592 pursuant to subdivisions (1) and (2) of this subsection. Upon written  
593 application by a provider, the commissioner may authorize a facility to  
594 maintain a reserve escrow or escrows in an amount less than the  
595 amounts set forth in this section, if the commissioner finds that the  
596 contractual liabilities of the provider and the best interests of the  
597 residents may be adequately protected by a reserve escrow or escrows  
598 in a lesser amount.

599 (b) No entrance fee escrows established or maintained under section  
600 17b-524, as amended by this act, shall be subordinated to other loans or  
601 commitments of any kind. No reserve fund escrows established or  
602 maintained under this section shall be subordinated to other loans or  
603 commitments, other than first mortgage loans or other long-term  
604 financing obligations of the facility. No entrance fee [escrows or  
605 reserve fund escrows] escrow shall be [(1)] pledged as collateral [, (2)]  
606 for any loan or commitment, provided that a reserve fund escrow may  
607 be pledged as collateral for a first mortgage loan or other long-term  
608 financing obligation of the facility. No entrance fee escrows or reserve  
609 fund escrows shall be (1) invested in any building or [healthcare]  
610 health care facility of any kind, [(3)] (2) used for capital construction or  
611 improvements or for the purchase of real estate, or [(4)] (3) removed  
612 from the state if required to be maintained within this state. Interest on  
613 the reserve fund required under this section shall be payable to the  
614 provider.

615 (c) Any affiliate of a provider that controls any part of the reserve  
616 escrow funds is liable for the debts of the provider up to the amount of  
617 the provider's contribution to the fund plus any prorated interest the

618 fund may earn.

619 Sec. 10. Section 17b-526 of the general statutes is repealed and the  
620 following is substituted in lieu thereof (*Effective October 1, 2015*):

621 (a) Construction of any facility or, if the construction of the facility is  
622 to be completed in stages, construction of any stage of the facility shall  
623 not begin until (1) fifty per cent of all the living units within the  
624 planned facility, or fifty per cent of any designated part or parts  
625 thereof determined by the commissioner [as evidencing financial  
626 feasibility in accordance with subdivision (2) of subsection (b) of this  
627 section,] have been presold, (2) a minimum deposit of [five per cent of  
628 the entrance fee per unit for all presold units or] ten thousand dollars  
629 per unit for all presold units [, whichever is less,] has been received by  
630 the provider, and (3) the thirty-day rescission period set forth in  
631 subdivision (1) of subsection (a) of section 17b-523, as amended by this  
632 act, has expired.

633 [(b) When the construction of a facility is to be completed in stages,  
634 construction of any stage shall not begin until (1) the financial  
635 feasibility of the designated part of the project to be constructed,  
636 maintained and operated as a facility prior to the construction,  
637 maintenance and operation of the remaining planned part or parts has  
638 been demonstrated to the commissioner by the filing of proof of  
639 committed construction financing or other documentation of financial  
640 feasibility deemed sufficient by the commissioner, and (2) the  
641 commissioner has issued a written notice stating that proof of  
642 committed construction financing or other documentation of financial  
643 feasibility deemed sufficient by the commissioner has been filed. The  
644 commissioner shall issue a written notice as to whether the proof or  
645 other documentation submitted is sufficient within twenty days of the  
646 filing of such proof or other documentation.

647 (c) Upon receipt of a notice of the commissioner stating that proof of  
648 committed construction financing or other documentation of financial  
649 feasibility filed pursuant to subsection (b) of this section is deemed

650 insufficient, the provider shall have thirty days from the date of the  
651 issuance of such notice to file a written request for a hearing in  
652 accordance with chapter 54. The final decision of the commissioner  
653 after a hearing shall be subject to appeal in accordance with section 4-  
654 183. Notwithstanding the provisions of subsection (f) of section 4-183,  
655 no stay of the final decision of the commissioner shall be granted  
656 pending the outcome of any appeal of such decision.]

657 (b) A provider shall give a resident, individually or through a  
658 residents council, not less than one hundred twenty days' advance  
659 written notice of any major construction, modification, renovation or  
660 expansion project. Such notice shall include, but not be limited to, (1) a  
661 project schedule and areas to be impacted, (2) funding needed for the  
662 project, (3) financing plans, (4) the expected amount of debt to be  
663 incurred, and (5) projected income from the project. If the provider  
664 plans to use any incurred debt to fund a project at a location other than  
665 the facility, the provider shall hold at least one meeting with residents  
666 to discuss the project and advise residents in writing of any impact on  
667 the resident's monthly service fee. The notice provisions in this section  
668 shall not apply to immediate renovation or construction necessary to  
669 address a public safety or health issue or issue related to a natural  
670 disaster, provided reasonable written notice of such project is provided  
671 to the residents council or to each resident.

672 Sec. 11. Section 17b-527 of the general statutes is repealed and the  
673 following is substituted in lieu thereof (*Effective October 1, 2015*):

674 [(a) A provider operating a facility located in this state shall file with  
675 the department annually, in a form and manner prescribed by the  
676 commissioner, financial and actuarial information for each facility  
677 located in this state and operated by the provider or by a manager  
678 under contract to the provider. The commissioner shall prescribe the  
679 information to be filed which shall include but is not limited to the  
680 following: Financial statements including certified current balance  
681 sheets and certified income statements and pro forma statements for  
682 the next five years as provided in section 17b-522 and such information

683 as is necessary to assess the actuarial soundness thereof; the basis for  
684 amortization assumptions for the provider's capital costs; the facility's  
685 current rate schedule; a statement of source and application of funds  
686 for the five-year period beginning the year of initial filing pursuant to  
687 section 17b-521 or subsequent filing pursuant to section 17b-529;  
688 current and anticipated residential turnover rates; the average age of  
689 the residents for the next five years; healthcare utilization rates,  
690 including admission rates and days per one hundred residents by level  
691 of care; occupancy rates; the number of healthcare admissions per  
692 year; the days of care per year; and the number of permanent transfers.  
693 Financial and actuarial projections contained in such studies shall be  
694 determined on an actuarially sound basis using reasonable  
695 assumptions for mortality, morbidity and interest. Each provider  
696 operating a facility in this state shall make the information filed with  
697 the department pursuant to this subsection available to each such  
698 resident for viewing during regular business hours and, upon request,  
699 shall provide such resident with a copy of the most recent filing with  
700 the department. Each provider shall notify each resident, at least  
701 annually, of the right to view the filings and of the right to a copy of  
702 the most recent filing. The commissioner may adopt regulations in  
703 accordance with chapter 54 to prescribe financial and actuarial  
704 information to be filed pursuant to this subsection.]

705 [(b)] (a) A provider operating a facility in this state shall notify the  
706 commissioner in writing prior to refinancing its existing indebtedness  
707 or making any material change in its business or corporate structure.

708 (b) A provider shall notify the commissioner and the residents at all  
709 facilities it operates not less than three months in advance of any  
710 changes in ownership of the provider. The commissioner may excuse a  
711 provider from the requirements of this section, on a case-by-case basis,  
712 if reasonable written notice of the change in ownership is also  
713 provided to each residents council at each facility operated by the  
714 provider or, if no residents council exists, to each resident.

715 (c) A provider shall provide residents at all facilities it operates not

716 less than thirty days' advance written notice of increases in any  
717 monthly service fees charged to the residents, along with an  
718 explanation of such increases and an opportunity for dialogue and  
719 comments from residents concerning such increases.

720 [(c)] (d) The commissioner may require a provider operating a  
721 facility in this state to submit such information as the commissioner  
722 requests if the commissioner has reason to believe that such facility is  
723 in financial distress. The commissioner may require a provider  
724 constructing a facility in this state to submit such information as the  
725 commissioner requests if the commissioner has reason to believe that  
726 such facility is at risk of being in financial distress. "Financial distress"  
727 means the issuance of a negative going concern opinion, or failure to  
728 meet debt service payments, or drawing down on debt service reserve.

729 [(d)] (e) The commissioner may adopt regulations in accordance  
730 with chapter 54 to prescribe additional conditions that constitute  
731 financial distress. To the extent that a provider seeks modification,  
732 waiver or extension of any of the provider's material financial  
733 covenants or material payment terms under a mortgage loan, bond  
734 indenture or other long-term financing agreement, the provider shall  
735 report such requests in writing to the commissioner with a copy to the  
736 applicable residents council of the facility or facilities operated by the  
737 provider in this state, not later than seven business days after making  
738 such requests. If the commissioner determines that a facility is in  
739 financial distress, the provider of that facility shall propose a  
740 remediation plan to improve the provider's financial health. Such  
741 remediation plan shall be submitted to the commissioner and shall be  
742 disclosed to the residents council of the provider. The provider shall  
743 file regular reports with the commissioner and the provider's residents  
744 council, regarding its progress in meeting its submitted remediation  
745 plan. Such reports shall be filed on a quarterly basis or on an  
746 alternative schedule established by the commissioner.

747 Sec. 12. Subsection (c) of section 17b-529 of the general statutes is  
748 repealed and the following is substituted in lieu thereof (*Effective*

749 October 1, 2015):

750 (c) Nothing contained in sections 17b-520 to 17b-535, inclusive, as  
751 amended by this act, or sections 2 to 4, inclusive, of this act shall be  
752 construed to limit the remedies a person has under any other provision  
753 of law.

754 Sec. 13. Section 17b-530 of the general statutes is repealed and the  
755 following is substituted in lieu thereof (*Effective October 1, 2015*):

756 Any person who wilfully and knowingly violates any provision of  
757 sections 17b-520 to 17b-535, inclusive, as amended by this act, or  
758 sections 2 to 4, inclusive, of this act shall be fined not more than ten  
759 thousand dollars or imprisoned for a period not to exceed one year, or  
760 both.

761 Sec. 14. Section 17b-531 of the general statutes is repealed and the  
762 following is substituted in lieu thereof (*Effective October 1, 2015*):

763 (a) The commissioner, or any agent authorized by the  
764 commissioner, may conduct investigations within or outside of this  
765 state as the commissioner deems necessary to determine whether any  
766 person has violated any provision regarding the registration,  
767 disclosure and escrow provisions relating to continuing-care contracts  
768 or any regulation adopted pursuant to section 17b-533, as amended by  
769 this act, or to aid in the enforcement of sections 17b-520 to 17b-535,  
770 inclusive, as amended by this act, sections 2 to 4, inclusive, of this act  
771 or in the prescribing of regulations under said sections. The  
772 commissioner, or any agent authorized by the commissioner, shall  
773 have the power to conduct any inquiry, investigation or hearing  
774 pursuant to the provisions of this section relating to continuing-care  
775 contracts and shall have the power to administer oaths and take  
776 testimony under oath relative to the matter of inquiry or investigation.  
777 At any hearing ordered by the commissioner, the commissioner or  
778 such agent having authority by law to issue such process may  
779 subpoena witnesses and require the production of records, papers and  
780 documents pertinent to such inquiry. If any person disobeys such

781 process or, having appeared in obedience thereto, refuses to answer  
782 any pertinent question put to [him] such person by the commissioner  
783 or [his] the commissioner's authorized agent or to produce any records  
784 and papers pursuant thereto, the commissioner or [his] the  
785 commissioner's agent may apply to the superior court for the judicial  
786 district of Hartford or for the judicial district wherein the person  
787 resides or wherein the provider or the facility is located, or to any  
788 judge of said court if the same is not in session, setting forth such  
789 disobedience to process or refusal to answer, and said court or such  
790 judge shall cite such person to appear before said court or such judge,  
791 and upon appropriate order, to show cause why answer to such  
792 question or production of such records should not be made.

793 (b) If as the result of any investigation relating to continuing-care  
794 contracts, the commissioner determines that any provider has violated  
795 any provision of sections 17b-520 to 17b-535, inclusive, as amended by  
796 this act, or sections 2 to 4, inclusive, of this act the commissioner may,  
797 notwithstanding the provisions of chapter 54, request the Attorney  
798 General to seek a temporary or permanent injunction and such other  
799 relief as may be appropriate to enjoin such provider from continuing  
800 such violation or violations. If the court determines that such violation  
801 or violations exist, it may grant such injunctive relief and such other  
802 relief as justice may require and may set a time period within which a  
803 provider shall comply with any such order. Any appeal taken from  
804 any permanent injunction granted under this section shall not stay the  
805 operation of such injunction unless the court is of the opinion that  
806 great and irreparable injury will be done by not staying the operation  
807 of such injunction. If the commissioner determines that any person has  
808 violated the provisions of sections 17b-520 to 17b-535, inclusive, as  
809 amended by this act, or sections 2 to 4, inclusive, of this act, the  
810 commissioner may request the Attorney General to seek restitution or  
811 damages and such other relief as may be appropriate on behalf of any  
812 person injured by such violation.

813 Sec. 15. Section 17b-533 of the general statutes is repealed and the  
814 following is substituted in lieu thereof (*Effective October 1, 2015*):

815 The commissioner [shall] may adopt regulations in accordance with  
 816 the provisions of chapter 54 to carry out the provisions of sections 2 to  
 817 4, inclusive, of this act, and sections 17b-520 to 17b-535, inclusive, as  
 818 amended by this act, including the prescribing of the minimum  
 819 amount of assets to be transferred or entrance fee which shall subject a  
 820 continuing-care contract to the provisions of said sections.

821 Sec. 16. Section 17b-535 of the general statutes is repealed and the  
 822 following is substituted in lieu thereof (*Effective October 1, 2015*):

823 There shall be an Advisory Committee on Continuing Care  
 824 appointed by the commissioner that shall meet not later than August 1,  
 825 2015, and at least quarterly thereafter. The advisory committee shall be  
 826 comprised of professionals such as accountants, actuaries, and  
 827 insurance representatives; representatives of the continuing-care  
 828 industry; a designee of the Commissioner of Social Services, who shall  
 829 report to the commissioner after every meeting on actions taken and  
 830 recommendations made at the meeting; and others knowledgeable in  
 831 the field of continuing care and familiar with the provisions of sections  
 832 17b-520 to 17b-535, inclusive, as amended by this act, and sections 2 to  
 833 4, inclusive, of this act. The advisory committee shall assist the  
 834 continuing-care staff in its review and registration of functions, shall  
 835 report to the commissioner on developments in the field, any special  
 836 problems associated with continuing care, and concerns of providers  
 837 and residents, and, when appropriate, shall recommend changes in  
 838 relevant statutes and regulations.

839 Sec. 17. Section 17b-528 of the general statutes is repealed. (*Effective*  
 840 *October 1, 2015*)

|   |                        |             |
|---|------------------------|-------------|
| This act shall take effect as follows and shall amend the following sections: |                        |             |
| Section 1   | <i>October 1, 2015</i> | 17b-520     |
| Sec. 2  | <i>October 1, 2015</i> | New section |
| Sec. 3  | <i>October 1, 2015</i> | New section |
| Sec. 4  | <i>October 1, 2015</i> | New section |

|         |                        |                  |
|---------|------------------------|------------------|
| Sec. 5  | <i>October 1, 2015</i> | 17b-521          |
| Sec. 6  | <i>October 1, 2015</i> | 17b-522          |
| Sec. 7  | <i>October 1, 2015</i> | 17b-523          |
| Sec. 8  | <i>October 1, 2015</i> | 17b-524          |
| Sec. 9  | <i>October 1, 2015</i> | 17b-525          |
| Sec. 10 | <i>October 1, 2015</i> | 17b-526          |
| Sec. 11 | <i>October 1, 2015</i> | 17b-527          |
| Sec. 12 | <i>October 1, 2015</i> | 17b-529(c)       |
| Sec. 13 | <i>October 1, 2015</i> | 17b-530          |
| Sec. 14 | <i>October 1, 2015</i> | 17b-531          |
| Sec. 15 | <i>October 1, 2015</i> | 17b-533          |
| Sec. 16 | <i>October 1, 2015</i> | 17b-535          |
| Sec. 17 | <i>October 1, 2015</i> | Repealer section |

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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### ***OFA Fiscal Note***

***State Impact:*** None

***Municipal Impact:*** None

### ***Explanation***

The bill makes various changes for continuing care providers, including disclosure requirements for continuing care providers to the Department of Social Services and facility residents, which do not result in a fiscal impact to the state or municipalities.

House "A" made the following changes (1) changes the effective date of sections 1 to 17 of the underlying bill from July 1, 2015 to October 1, 2015, (2) changes the terms by which an entrance fee is refunded to a client in the event the contract for services at a continuing care retirement community is cancelled, (3) changes the procedures for certain financial disclosures for continuing care retirement communities, and (4) makes other technical and conforming changes which did not result in a fiscal impact.

### ***The Out Years***

***State Impact:*** None

***Municipal Impact:*** None

**OLR Bill Analysis****sHB 5358 (as amended by House "A")*****AN ACT ESTABLISHING A BILL OF RIGHTS FOR RESIDENTS OF CONTINUING-CARE RETIREMENT COMMUNITIES.*****SUMMARY:**

This bill requires continuing care facility providers to give residents advance notice of major construction, ownership change, and increases in monthly service fees. It allows residents of continuing care facilities to form residents councils, defined in the bill as boards elected by residents to advocate for their rights and advise the provider on resident welfare and interests. The bill also stipulates rights and entitlements for continuing care residents.

The bill adds to continuing care contracts new requirements regarding refunds, new construction, and periodic charges and fees.

The bill also decreases the amount of funds continuing care providers must keep in escrow and allows providers to use funds in accounts for mortgage loans, bond indentures, or other long-term financing in their computation of required reserve amounts for the escrow account, in certain circumstances.

The bill also makes several changes to required information providers must (1) file with the Department of Social Services (DSS) and (2) include in the disclosure statement a person entering into a continuing care contract must receive.

The bill extends current penalties for providers that violate continuing care facility laws to also apply to providers who violate the bill's requirements on residents' rights, residents councils, and provider communications.

The bill also makes minor, technical, and conforming changes.

\*House Amendment "A" (1) delays the effective date of the bill from July 1, 2015 to October 1, 2015; (2) changes the refund deadline for residents' cancelled contracts from two years from the date the unit is vacated to three years from the date the contract is terminated; (3) eliminates a requirement that DSS approve and supervise providers' remediation plans and establish a process for proposing such plans; and (4) allows, rather than requires, DSS to adopt certain regulations concerning continuing care facilities and contracts.

EFFECTIVE DATE: October 1, 2015

### **§§ 2 & 4 — RESIDENT PROTECTIONS**

Under the bill, residents of continuing care facilities are entitled to:

1. a voice in all decisions affecting their health, welfare, and financial security;
2. transparency regarding the financial stability of the provider operating the facility;
3. timely notification about developments affecting the facility, including (a) ownership changes to the provider operating the resident's facility; (b) changes to the provider's financial condition; and (c) facility construction and renovation;
4. independence in decisions about medical care and assisted living services; and
5. reasonable accommodations for persons with disabilities.

The bill prohibits providers from infringing upon a resident's right to obtain treatment, care, and services, including home health and hospice care, from those providing health care who are not under contract or affiliated with the provider. This prohibition is subject to the provider's policies and procedures for protecting residents' health and safety. It stipulates that residents receiving assisted living or

skilled nursing services are entitled to all rights and protections by law, including the right to refuse medications and treatments. The bill also prohibits providers from infringing on a resident's right to participate, as much as he or she is able, in decision making about permanent moves to an assisted living facility or skilled care unit. Providers must inform designated family members of the resident's medical condition and care plan.

The bill requires providers to make reasonable accommodations in accordance with the federal Americans with Disabilities Act and other federal and state laws to ensure that services and notices are accessible and communicated to residents who have hearing loss, low vision, or other disabilities. (By law, these accommodations are already required.)

### **§§ 3, 10, & 11 — PROVIDER COMMUNICATION WITH RESIDENTS**

The bill requires each provider to develop a process for facilitating communication between residents and the personnel, management, board of directors, and owner of the provider. This process must include:

1. permitting residents at each facility to form a residents council, defined as a board elected by residents to advocate for residents' rights and function as an advisory board to the provider with respect to resident welfare and interests and
2. allowing residents, including those who serve on the council, to serve as voting members of the provider's board of directors or other governing body, if that body's rules allow for resident membership and the board or governing body approves.

If the provider has no board of directors or similar governing body, or if a resident council is not established, then the provider must seek comments from residents before designing or adopting policies affecting its ability to avert financial distress.

The law defines "financial distress" as failure to meet debt service

payments, drawing down on debt service reserve, or the issuance of a negative going concern opinion (i.e., a report from an auditor or accountant expressing doubts about the company's ability to stay in business).

### ***Major Construction***

The bill also requires providers to give residents, individually or through the residents council, at least 120 days advance written notice of any major construction, modification, renovation, or expansion project. The notice must include at least: (1) a project schedule and areas to be impacted, (2) funding needed for the project, (3) financing plans, (4) the expected amount of debt to be incurred, and (5) projected income from the project.

Under the bill, if the provider plans to use any incurred debt to fund a project at a location other than the facility, the provider must hold at least one meeting with residents to discuss the project and advise them in writing of any impact on their monthly service fee.

Under the bill, these notice requirements do not apply to immediate renovation or construction necessary to address a public safety or health issue or natural disaster, except that the provider must give reasonable written notice about these projects to the resident council or each resident.

### ***Change in Ownership***

The bill requires a provider to notify DSS and residents at all facilities the provider operates at least three months before any changes in ownership. The bill allows DSS to excuse providers from this requirement on a case-by-case basis, if reasonable written notice of the ownership change is also provided to each resident council or, if no resident council exists, to each resident.

### ***Monthly Service Fee Increases***

The bill requires a provider to give residents at all facilities it operates at least 30 days advance written notice of increases in any

monthly service fees charged to residents, along with an explanation for such increases and an opportunity for dialogue and comments from residents concerning the increases.

### ***Resident Satisfaction Surveys***

By January 1, 2016, and at least every two years thereafter, the bill requires providers to (1) conduct resident satisfaction surveys at each facility, (2) make survey results available to the facility's resident council (or to each resident if there is no council), and (3) post a copy of the results at a conspicuous location at each facility.

### **§§ 5, 6, 10, 11, & 17 — PROVIDER FILING REQUIREMENTS**

By law, providers cannot offer or enter into continuing-care contracts or complete a change of facility ownership until the provider or proposed owner has registered with DSS by filing, among other things, a disclosure statement. By law, providers must file revised disclosure statements within 150 days of the end of their first fiscal year registered with DSS. The bill also requires providers to file revised disclosure statements at least annually and amend the most recently filed disclosure statement before (1) undertaking major facility construction, renovation, or expansion or (2) changing ownership. By law, providers may also revise disclosure statements if they believe revision is necessary to prevent the disclosure statement from containing a material misstatement or omission.

### ***Financial Information***

Current law also requires providers to file certain financial information with DSS and (1) in their initial disclosure statements to potential residents, summarize the financial information and set forth by year any anticipated excess of future liabilities over future revenues with a description of how the provider intends to meet such liabilities; and (2) include the financial information in revised disclosure statements. The bill eliminates the requirements for the summary of the financial information and instead requires much of the financial information in all disclosure statements.

Under current law, such financial information includes the provider's audited and certified financial statements, including a balance sheet for the end of the most recent fiscal year and income statements for the three most recent fiscal years. The bill instead requires disclosure statements to include the provider's financial statements for its two most recent fiscal years. Under the bill, such statements must include (a) a balance sheet, income statement, and statement of cash flow and (b) associated notes or comments to these statements.

Under current law, disclosure statements also include pro forma annual income statements for the facility for the next five years. The bill instead requires pro forma cash flow statements for three years.

The bill requires certain information currently in annual filings to instead be included in the disclosure statement. This includes such things as anticipated resident turnover rates, average age of residents, and health care utilization rates.

Under current law, financial information also includes the facility's current rate schedule. The bill instead requires this information in disclosure statements and specifies that it includes current rate schedules for entrance fees, monthly fees, and fees for ancillary services. It reduces the required disclosure of past entrance fee increases and periodic charges from the previous seven years to the previous five years.

While the bill eliminates the requirement to file a statement of source and application of funds for the five-year period beginning the year of initial filing or, in some cases, subsequent filings, it maintains a requirement that, if the operation of the facility has not yet commenced or construction is to be completed in stages, the provider must include the anticipated source and application of funds involved with such construction or purchase in the disclosure statement.

The bill eliminates a requirement that the provider file the basis for amortization assumptions for its capital costs. It also eliminates an

explicit requirement that financial and actuarial projections be determined on an actuarially sound basis using reasonable assumptions for mortality, morbidity, and interest.

The bill also eliminates a requirement that the provider include in disclosure statements obligations assumed by the provider under continuing-care contracts for each facility the provider operates, as calculated on an actuarially sound basis, using reasonable assumptions for mortality and morbidity.

### ***Confirmation of Required Escrow Accounts***

Current law requires providers to include verification of the maintenance of required escrow accounts in their revised disclosure statement. The bill instead requires all disclosure statements to include a sworn statement of the applicable escrow agents that (1) such required escrows have been established or maintained or (2) an independent certified public accounting firm has verified such accounts.

### ***Viewing and Copies***

Under current law, each provider operating a facility in the state must make financial information and revised disclosure statements filed with DSS available to its residents for viewing during regular business hours. Current law also requires providers to (1) provide them with a copy of the most recently filed financial information upon request and (2) notify residents at least annually of their right to view financial filings and receive a copy of the most recent filing. The bill extends these requirements to apply to all disclosure statements and other information the provider must deliver to prospective residents.

### ***Filing Fees***

The bill eliminates a provision requiring the DSS commissioner to prescribe fees of up to \$100 for filings, excluding the initial filing. By law, unchanged by the bill, a provider must pay an annual filing fee of \$24 for each resident unit it operates to remain registered with DSS.

**§§ 7 & 10 — REQUIREMENTS BEFORE CONSTRUCTION**

For providers that have not yet begun constructing facilities, the law prohibits construction from beginning until a minimum number of living units have been presold. Current law sets the minimum number at (1) one-half of the units in the facility or (2) if the construction is to be completed in stages, one-half of the units in the designated part of the planned facility that show financial feasibility. Under the bill, the minimum number is at least (1) one-half of the units in the facility or (2) 50% of any designated part or parts thereof as determined by DSS.

The bill eliminates the requirement that such units evidence feasibility through a written notice from the DSS commissioner stating that the provider has filed proof of committed construction financing or other documentation of financial feasibility deemed sufficient by the commissioner.

The law also requires the provider to have received a minimum deposit for all presold units before commencing construction. Under current law, the minimum deposit is the lesser of 5% of the entrance fee per unit for all presold units or \$10,000 per unit for all presold units. The bill instead requires the latter amount (\$10,000 for each presold unit).

Under the bill, these new requirements apply to contracts entered into after October 1, 2015.

**§ 7 — ADDITIONAL CONTRACT SPECIFICATIONS*****Refunds***

By law, continuing care facility contracts must specify (1) the terms and conditions under which the contracts may be cancelled by the provider or the resident and (2) the conditions for any refunds. The bill requires that, for contracts entered into after October 1, 2015, any refund be delivered to the resident or his or her estate within three years of the date the contract is terminated or sooner if contractual conditions for the refund have been met.

***Periodic Charges and Recurring Fees***

By law, the provider must include in the contract the manner in which it may adjust periodic charges or other recurring fees and any limitations of these adjustments. Current law requires that if there are no limits on these adjustments, the provider must include a clear statement that such increases may be made at the provider's discretion. For contracts entered into after October 1, 2015, the bill instead prohibits providers from increasing periodic charges or other recurring fees without providing the resident with 30 days advance written notice.

**§§ 8, 9, & 11 — ESCROW REQUIREMENTS AND FINANCIAL DISTRESS*****Connecticut Place of Business Requirement***

By law, providers must establish an entrance fee escrow with a bank or trust company as escrow agent before soliciting or entering into any continuing care contract. Current law requires that if a prospective resident is a Connecticut resident when signing the contract, the bank or trust must be one that has its principal place of business in Connecticut. The bill instead requires all providers to use banks or trusts with a place of business in Connecticut.

***Funds in Escrow and Reserve Requirement Calculations***

The bill decreases the required amount providers must maintain in escrow. Current law requires providers to maintain enough funds in escrow to cover all principal and interest, rental, or lease payments due during the next 12 months on account of any first mortgage or other long-term financing of the facility. The bill decreases this requirement to six months. By law, the provider must also have enough in escrow to cover the total cost of operations of the facility for one month, excluding such payments for (1) debt service, rental payments, or lease payments and (2) capital improvements.

The bill allows providers to use funds in accounts for mortgage loans, bond indentures, or other long-term financing in their computation of required reserve amounts, provided such funds are

available to make payments when operating funds are insufficient for these purposes. The bill also allows providers to apply cash amounts held pursuant to requirements for such loans, indentures, or financing toward the provider's computation of the required operating reserve amount. Under the bill, DSS may accept the terms or covenants regarding establishment or maintenance of reserve or escrow funds or financial ratios associated with such loans, indentures, or other long-term financing as an alternative to reserve requirements.

Under current law, entrance fee or reserve fund escrows may not be pledged as collateral. The bill creates an exception to allow providers to pledge reserve fund escrows as collateral for a first mortgage or other long-term financing obligation of the facility.

### ***Financial Distress and Remediation Plan***

Under the bill, if a provider seeks modification, waiver, or extension of any of its material financial covenants or material payment terms under a mortgage loan, bond indenture, or other long term financing agreement, the provider must report such requests in writing to the DSS commissioner and provide a copy to the applicable residents councils within seven business days of making the request. If DSS determines that a facility is in financial distress, the provider must propose a remediation plan to improve the provider's financial health. Under the bill, the provider must submit the plan to DSS and disclose the plan to the residents council. The provider must file regular reports (quarterly or on an alternative schedule established by DSS) on its progress in meeting its submitted remediation plan with DSS and the residents council.

### **§ 16 — ADVISORY COUNCIL**

The bill requires the Advisory Committee on Continuing Care to meet by August 1, 2015 (though the bill is not effective until October 1, 2015) and quarterly thereafter. It adds to the committee a DSS designee who must report to the DSS commissioner after every meeting on actions taken and recommendations made at the meeting.

By law, the committee assists continuing-care staff in its review and registration of functions and reports to the commissioner on developments in the field, any special problems associated with continuing care, and providers' and resident's concerns, and when appropriate, recommends changes in statutes and regulations.

## **§ 15 — REGULATIONS**

Current law requires DSS to adopt regulations to carry out provisions related to continuing care facilities and contracts. The bill instead allows, rather than requires, DSS to adopt such regulations, including those concerning resident rights and protections.

## **BACKGROUND**

### ***Continuing-Care Contract***

By law, a continuing-care contract is an agreement in which the provider furnishes a person care and shelter in a facility or care at home with the right to future access to care and shelter in a facility and medical or nursing services or other health-related benefits for the life of a person or for a period in excess of one year. By law, the agreement governs care for a person not related to the provider and requires a present or future transfer of assets or an entrance fee in addition to or instead of periodic charges.

## **COMMITTEE ACTION**

Human Services Committee

Joint Favorable Substitute

Yea 16    Nay 0    (03/24/2015)