



General Assembly

January Session, 2015

Committee Bill No. 5358

LCO No. 5580



Referred to Committee on HUMAN SERVICES

Introduced by:
(HS)

***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 Section 17b-520 of the general statutes is repealed and the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 July 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, and any
28 affiliate of a provider as defined in subdivision (7) of this section,
29 undertaking to furnish care and shelter in a facility or care at home
30 with the right to future access to care and shelter in such facility and
31 medical or nursing services or other health-related benefits pursuant to
32 a continuing-care contract;

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

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

44 [(f)] (7) "Affiliate of a provider" means any person, corporation,
45 limited liability company, business trust, trust, partnership,

46 unincorporated association or other legal entity (A) directly or
47 indirectly controlling, controlled by or in common control with a
48 provider, or (B) operating a facility for a provider pursuant to a
49 contract or other agreement;

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

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

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

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

67 [(k)] (12) "Commissioner" means the Commissioner of Social
68 Services.

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

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

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

75 (3) Timely notification of developments affecting the facility,
76 including, but not limited to: (A) Ownership changes of the provider
77 operating the facility at which the resident resides, (B) a change in the
78 financial condition of the provider operating the facility at which the
79 resident resides, and (C) construction and renovation at the facility at
80 which the resident resides;

81 (4) Independence in decisions regarding medical care and assisted
82 living services; and

83 (5) Reasonable accommodations for persons with disabilities.

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

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

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

94 (3) If the provider does not have a board of directors or similar
95 governing body, or if a resident council is not established, then a
96 provider shall seek comments from residents in advance of designing
97 or adopting policies that affect the provider's ability to meet financial
98 conditions established by the Commissioner of Social Services
99 pursuant to section 17b-527 of the general statutes, as amended by this
100 act.

101 (b) On or before January 1, 2016, and not less than every two years
102 thereafter, each provider shall conduct a resident satisfaction survey at
103 each facility. The results of the survey shall be made available to the
104 residents council at each such facility, or to each resident, if there is no

105 residents council. A copy of the survey results shall also be posted in a
106 conspicuous location at each facility.

107 Sec. 4. (NEW) (*Effective July 1, 2015*) (a) A provider shall not prevent
108 or otherwise infringe upon a residents right to obtain treatment, care
109 and services, including, but not limited to, home health and hospice
110 care, from persons providing health care who have not entered into a
111 contract with or are not affiliated with the provider, subject to the
112 provider's policies and procedures for protecting the health and safety
113 of residents.

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

125 (c) Each provider operating a facility shall make reasonable
126 accommodations, in accordance with the Americans with Disabilities
127 Act, 42 USC 12101, et seq., the Fair Housing Amendments Act of 1988,
128 42 USC 1997, et seq., and section 46a-64c of the general statutes to
129 ensure that services and notices are accessible and communicated to
130 residents who have hearing loss, low vision or other disabilities.

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

133 No provider shall offer or enter into a continuing-care contract in
134 this state or with any resident of this state or regarding any facility in
135 this state and no change in ownership of such a facility shall be

136 completed unless the provider or proposed owner, as the case may be,
137 has (1) registered with the department by filing a (A) current
138 disclosure statement that meets the requirements of section 17b-522, as
139 amended by this act, (B) financial information [that meets the
140 requirements of] as required pursuant to section 17b-527, as amended
141 by this act, and (C) a sworn statement of the escrow agent to the effect
142 that the escrows required by sections 17b-524, as amended by this act,
143 and 17b-525, as amended by this act, have been established; [, has] (2)
144 received acknowledgment of such filing; and [has] (3) paid an annual
145 filing fee of twenty-four dollars per residential unit operated by such
146 provider. Acknowledgment of filing shall be furnished to the provider
147 by the commissioner within ten business days of the date of filing. The
148 commissioner may waive the requirements of this section if a change
149 of ownership is proposed pursuant to section 17b-532 or a federal
150 bankruptcy proceeding.

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

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

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

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

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

167 (4) The department does not guarantee the security of his
168 investment.

169 (b) Before the execution of a contract to provide continuing care, or
170 before the transfer of any money or other property to a provider by or
171 on behalf of a prospective resident, whichever shall occur first, the
172 provider shall deliver to the person with whom the contract is to be
173 entered into, or to that person's legal representative, a disclosure
174 statement. The text of the disclosure statement shall contain, to the
175 extent not clearly and completely set forth in the contract for
176 continuing care attached as an exhibit thereto, at least the following
177 information:

178 (1) The name and business address of the provider and a statement
179 of whether the provider is a partnership, corporation or other legal
180 entity;

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

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

190 (4) A description of any matter in which the provider, any of the
191 persons described in subdivision (2) of this subsection, or the manager
192 has been convicted of a felony or pleaded nolo contendere to a felony
193 charge, or held liable or enjoined in a civil action by final judgment, if
194 the felony or civil action involved fraud, embezzlement, fraudulent
195 conversion or misappropriation of property; or is subject to a currently
196 effective injunction or restrictive or remedial order of a court of record,
197 within the past five years has had any state or federal license or permit

198 suspended or revoked as a result of an action brought by a
199 governmental agency or department, rising out of or relating to
200 business activity or health care, including, but not limited to, actions
201 affecting the operation of a foster care facility, nursing home,
202 retirement home, residential care home, or any facility subject to
203 sections 17b-520 to 17b-535, inclusive, as amended by this act, sections
204 2 to 4, inclusive, of this act, or a similar statute in another state or
205 country;

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

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

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

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

224 (9) A description of the conditions under which the continuing-care
225 contract may be terminated, whether before or after occupancy, by the
226 provider or by the resident. In the case of termination by the provider,
227 a description of the manner and procedures by which a decision to
228 terminate is reached by the provider, including grounds for

229 termination, the participation of a resident's council or other group, if
230 any, in reaching such a decision, and any grievance, appeal or other
231 similar procedures available to a resident whose contract has been
232 terminated by the provider;

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

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

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

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

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

260 commissioner pursuant to section 17b-527; such summary shall set
261 forth by year any anticipated excess of future liabilities over future
262 revenues and shall describe the manner in which the provider plans to
263 meet such liabilities;]

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

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

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

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

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

288 (D) An estimate of the funds, if any, which are anticipated to be
289 necessary to fund start-up losses and provide reserve funds to assure

290 full performance of the obligations of the provider under continuing-
291 care contracts;

292 (17) Pro forma [annual income] cash flow statements for the facility
293 for the next [five] three fiscal years, including a summary of
294 projections used in the assumptions for such pro forma statements,
295 including, but not limited to, anticipated resident turnover rates,
296 average age of residents, health care utilization rates, the number of
297 health care admissions per year, days of care per year and the number
298 of permanent transfers;

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

301 ~~[(18)]~~ (19) A description of all entrance fees and periodic charges, if
302 any, required of residents and a record of past increases in such fees
303 and charges during the previous [seven] five years;

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

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

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

318 (22) If the construction of the facility is to be completed in stages, a
319 statement as to whether all services will be provided at the completion

320 of each stage and, if not, the services that will not be provided listed in
321 bold print; [.]

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

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

334 (d) The registration of a facility pursuant to section 17b-521, as
335 amended by this act, shall remain effective unless withdrawn by the
336 provider or unless the provider fails to file the documents specified in
337 this section within one hundred fifty days following the end of the first
338 fiscal year in which such registration is filed. The provider shall file a
339 revised disclosure statement at least annually with the commissioner.
340 The provider shall also file a narrative describing any material
341 differences between the pro forma income and cash flow statements
342 filed pursuant to this section and the actual results of operations
343 during the most recently concluded fiscal year. A provider may revise
344 its previously filed disclosure statement at any time if, in the opinion
345 of the provider, revision is necessary to prevent the disclosure
346 statement from containing a material misstatement of fact or from
347 omitting a material fact required to be included in the statement. Only
348 the most recently filed disclosure statement, as amended from time to
349 time, shall be deemed current for purposes of sections 17b-520 to 17b-
350 535, inclusive, as amended by this act, and sections 2 to 4, inclusive, of
351 this act.

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

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

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

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

377 [(e)] (h) Each statement required under subsections (a) and (b) of
378 this section and the continuing-care contract shall be in language easily
379 readable and understandable in accordance with the provisions of
380 subsections (a) and (b) of section 42-152.

381 [(f)] (i) A copy of the standard form or forms of the continuing-care
382 contract used by the provider shall be attached as an exhibit to each

383 disclosure statement.

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

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

390 Sec. 7. Section 17b-523 of the general statutes is repealed and the
391 following is substituted in lieu thereof (*Effective July 1, 2015*):

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

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

405 (2) That if, after the thirty-day period, a resident dies before
406 occupying a contracted-for living unit, or on account of illness, injury
407 or incapacity is precluded from occupying a contracted-for living unit
408 under the terms of the continuing-care contract, or a resident dies
409 before the commencement of care under a continuing-care contract to
410 provide care in such person's home, upon notice to the provider by
411 registered or certified mail, the contract is automatically cancelled and
412 the resident or the resident's legal representative shall receive a refund

413 of all money or property transferred to the provider, less (A) those
414 costs specifically incurred by the provider or facility at the request of
415 the resident and described in the contract or in an addendum thereto
416 signed by the resident; (B) a reasonable service charge not to exceed
417 the greater of one thousand dollars, or two per cent of the entrance fee,
418 and (C) if the contract includes occupying a living unit in a facility and
419 the unit was actually available for occupancy, the usual monthly
420 charge for that unit, prorated on a per diem basis, for the period
421 beginning seven days after the execution of the contract and ending on
422 the last day of the month in which the provider receives notice that the
423 resident will not occupy the unit;

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

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

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

442 (2) The terms and conditions under which a contract for continuing
443 care may be cancelled by the provider or by the resident; and the
444 conditions, if any, under which all or any portion of the entrance fee

445 will be refunded in the event of cancellation of the contract by the
446 provider or by the resident or in the event of the death of the resident
447 prior to or following occupancy of a living unit, provided that any
448 refund shall be delivered to the resident or the resident's estate not
449 later than two years from the date the living unit is vacated or when
450 contractual conditions for releasing the refund have been met,
451 whichever occurs first;

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

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

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

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

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

485 (2) If the entrance fee applies to a living unit which has not
486 previously been occupied by any resident, the entrance fee shall be
487 returned to the resident or the resident's legal representative under the
488 conditions described in section 17b-523, as amended by this act, if the
489 escrow agent receives written demand by registered or certified mail
490 for return of the entrance fee prior to release thereof to the provider, or
491 the entrance fee shall be released to the provider at the time all of the
492 following conditions have been met:

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

506 (B) A commitment has been received by the provider for any
507 permanent mortgage loan or other long-term financing described in
508 the statement of anticipated source and application of funds included

509 in the current disclosure statement on file pursuant to section 17b-522,
510 as amended by this act, and any conditions of the commitment prior to
511 disbursement of funds thereunder, other than completion of the
512 construction or closing of the purchase of the facility, have been
513 substantially satisfied; and

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

539 (b) The aggregate amount of entrance fees which may be released to
540 the provider pursuant to subparagraph (A) of subdivision (2) of
541 subsection (a) of this section prior to the date on which any reserve

542 fund escrow required to be established under section 17b-525, as
543 amended by this act, is established shall not exceed the aggregate
544 amount of entrance fees then received or receivable by the provider
545 pursuant to binding contracts for continuing care less the amount of
546 the entrance fees received or receivable which may be required to be
547 initially maintained in the reserve fund escrow.

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

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

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

556 (a) Except as provided in section 17b-534, on and after the date any
557 facility located in this state is first occupied by any resident, the
558 provider shall establish and maintain on a current basis, in escrow
559 with a bank, trust company, or other escrow agent having [its
560 principal] a place of business in this state, a portion of all entrance fees
561 received by the provider in an aggregate amount sufficient to cover: (1)
562 All principal and interest, rental or lease payments due during the next
563 [twelve] six months on account of any first mortgage loan or any other
564 long-term financing of the facility; and (2) the total cost of operations
565 of the facility for a one-month period, excluding debt service, rental or
566 lease payments as described in subdivision (1) of this subsection and
567 excluding capital expenditures. A provider may use funds in an
568 account established by or pursuant to a mortgage loan, bond indenture
569 or other long-term financing in its computation of the reserve amounts
570 required to satisfy this section, provided such funds are available to
571 make payments when operating funds are insufficient for these
572 purposes. To the extent that a provider is required pursuant to a
573 mortgage loan, bond indenture or other long-term financing to

574 maintain a certain number of days of cash on hand, cash amounts held
575 pursuant to such a requirement may be applied toward the provider's
576 computation of the operating reserve amount required to satisfy this
577 subsection. Notwithstanding any provision of this subsection, the
578 commissioner may accept the terms or covenants regarding the
579 establishment or maintenance of reserve or escrow funds or financial
580 ratios associated with a mortgage loan, bond indenture or other long-
581 term financing as an alternative to the reserve provisions set forth in
582 this subsection. The escrow agent may release up to one-twelfth of the
583 required principal balance of funds held in escrow pursuant to said
584 subdivision not more than once during any calendar month, if the
585 provider so requests in writing. The commissioner may authorize the
586 escrow agent to release additional funds held in escrow pursuant to
587 subdivisions (1) and (2) of this subsection, upon application by the
588 provider setting forth the reasons for the requested release and a plan
589 for replacing these funds within one year; the commissioner shall
590 respond within fifteen business days. If any escrow funds so released
591 are not replaced within one year the escrow agent shall so notify the
592 commissioner. A provider shall promptly notify the commissioner in
593 the event such provider uses funds held in escrow pursuant to
594 subdivisions (1) and (2) of this subsection. Upon written application by
595 a provider, the commissioner may authorize a facility to maintain a
596 reserve escrow or escrows in an amount less than the amounts set forth
597 in this section, if the commissioner finds that the contractual liabilities
598 of the provider and the best interests of the residents may be
599 adequately protected by a reserve escrow or escrows in a lesser
600 amount.

601 (b) No entrance fee escrows established or maintained under section
602 17b-524, as amended by this act, shall be subordinated to other loans or
603 commitments of any kind. No reserve fund escrows established or
604 maintained under this section shall be subordinated to other loans or
605 commitments, other than first mortgage loans or other long-term
606 financing obligations of the facility. No entrance fee [escrows] escrow
607 [or reserve fund escrows] shall be [(1)] pledged as collateral [, (2)] for

608 any loan or commitment, provided that a reserve fund escrow may be
609 pledged as collateral for a first mortgage loan or other long-term
610 financing obligation of the facility. No entrance fee escrows or reserve
611 fund escrows shall be (1) invested in any building or [healthcare]
612 health care facility of any kind, [(3)] (2) used for capital construction or
613 improvements or for the purchase of real estate, or [(4)] (3) removed
614 from the state if required to be maintained within this state. Interest on
615 the reserve fund required under this section shall be payable to the
616 provider.

617 (c) Any affiliate of a provider that controls any part of the reserve
618 escrow funds is liable for the debts of the provider up to the amount of
619 the provider's contribution to the fund plus any prorated interest the
620 fund may earn.

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

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

635 [(b) When the construction of a facility is to be completed in stages,
636 construction of any stage shall not begin until (1) the financial
637 feasibility of the designated part of the project to be constructed,
638 maintained and operated as a facility prior to the construction,
639 maintenance and operation of the remaining planned part or parts has

640 been demonstrated to the commissioner by the filing of proof of
641 committed construction financing or other documentation of financial
642 feasibility deemed sufficient by the commissioner, and (2) the
643 commissioner has issued a written notice stating that proof of
644 committed construction financing or other documentation of financial
645 feasibility deemed sufficient by the commissioner has been filed. The
646 commissioner shall issue a written notice as to whether the proof or
647 other documentation submitted is sufficient within twenty days of the
648 filing of such proof or other documentation.

649 (c) Upon receipt of a notice of the commissioner stating that proof of
650 committed construction financing or other documentation of financial
651 feasibility filed pursuant to subsection (b) of this section is deemed
652 insufficient, the provider shall have thirty days from the date of the
653 issuance of such notice to file a written request for a hearing in
654 accordance with chapter 54. The final decision of the commissioner
655 after a hearing shall be subject to appeal in accordance with section 4-
656 183. Notwithstanding the provisions of subsection (f) of section 4-183,
657 no stay of the final decision of the commissioner shall be granted
658 pending the outcome of any appeal of such decision.]

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

673 residents council or to each resident.

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

676 [(a) A provider operating a facility located in this state shall file with
677 the department annually, in a form and manner prescribed by the
678 commissioner, financial and actuarial information for each facility
679 located in this state and operated by the provider or by a manager
680 under contract to the provider. The commissioner shall prescribe the
681 information to be filed which shall include but is not limited to the
682 following: Financial statements including certified current balance
683 sheets and certified income statements and pro forma statements for
684 the next five years as provided in section 17b-522 and such information
685 as is necessary to assess the actuarial soundness thereof; the basis for
686 amortization assumptions for the provider's capital costs; the facility's
687 current rate schedule; a statement of source and application of funds
688 for the five-year period beginning the year of initial filing pursuant to
689 section 17b-521 or subsequent filing pursuant to section 17b-529;
690 current and anticipated residential turnover rates; the average age of
691 the residents for the next five years; healthcare utilization rates,
692 including admission rates and days per one hundred residents by level
693 of care; occupancy rates; the number of healthcare admissions per
694 year; the days of care per year; and the number of permanent transfers.
695 Financial and actuarial projections contained in such studies shall be
696 determined on an actuarially sound basis using reasonable
697 assumptions for mortality, morbidity and interest. Each provider
698 operating a facility in this state shall make the information filed with
699 the department pursuant to this subsection available to each such
700 resident for viewing during regular business hours and, upon request,
701 shall provide such resident with a copy of the most recent filing with
702 the department. Each provider shall notify each resident, at least
703 annually, of the right to view the filings and of the right to a copy of
704 the most recent filing. The commissioner may adopt regulations in
705 accordance with chapter 54 to prescribe financial and actuarial

706 information to be filed pursuant to this subsection.]

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

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

717 (c) A provider shall provide residents at all facilities it operates not
718 less than thirty days' advance written notice of increases in any
719 monthly service fees charged to the residents, along with an
720 explanation of such increases and an opportunity for dialogue and
721 comments from residents concerning such increases.

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

731 [(d)] (e) The commissioner may adopt regulations in accordance
732 with chapter 54 to prescribe additional conditions that constitute
733 financial distress. To the extent that a provider seeks modification,
734 waiver or extension of any of the provider's financial covenants or
735 payment terms under a mortgage loan, bond indenture or other long-
736 term financing agreement, the provider must report such requests in

737 writing to the commissioner with a copy to the applicable residents
738 council of the facility or facilities operated by the provider in this state,
739 not later than seven business days after making such requests. If the
740 commissioner determines that a facility is in financial distress, the
741 provider of that facility shall, pursuant to a process established by the
742 commissioner, propose a remediation plan to improve the provider's
743 financial health. Such remediation plan shall be submitted for approval
744 and supervision by the commissioner and shall be disclosed to the
745 residents council of the provider. The provider shall file regular
746 reports with the commissioner and the provider's residents council,
747 regarding its progress in meeting its approved remediation plan. Such
748 reports shall be filed on a quarterly basis or on an alternative schedule
749 established by the commissioner.

750 Sec. 12. Subsection (c) of section 17b-529 of the general statutes is
751 repealed and the following is substituted in lieu thereof (*Effective July*
752 *1, 2015*):

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

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

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

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

766 (a) The commissioner, or any agent authorized by the

767 commissioner, may conduct investigations within or outside of this
768 state as the commissioner deems necessary to determine whether any
769 person has violated any provision regarding the registration,
770 disclosure and escrow provisions relating to continuing-care contracts
771 or any regulation adopted pursuant to section 17b-533, as amended by
772 this act, or to aid in the enforcement of sections 17b-520 to 17b-535,
773 inclusive, as amended by this act, sections 2 to 4, inclusive, of this act
774 or in the prescribing of regulations under said sections. The
775 commissioner, or any agent authorized by the commissioner, shall
776 have the power to conduct any inquiry, investigation or hearing
777 pursuant to the provisions of this section relating to continuing-care
778 contracts and shall have the power to administer oaths and take
779 testimony under oath relative to the matter of inquiry or investigation.
780 At any hearing ordered by the commissioner, the commissioner or
781 such agent having authority by law to issue such process may
782 subpoena witnesses and require the production of records, papers and
783 documents pertinent to such inquiry. If any person disobeys such
784 process or, having appeared in obedience thereto, refuses to answer
785 any pertinent question put to him by the commissioner or his
786 authorized agent or to produce any records and papers pursuant
787 thereto, the commissioner or his agent may apply to the superior court
788 for the judicial district of Hartford or for the judicial district wherein
789 the person resides or wherein the provider or the facility is located, or
790 to any judge of said court if the same is not in session, setting forth
791 such disobedience to process or refusal to answer, and said court or
792 such judge shall cite such person to appear before said court or such
793 judge, and upon appropriate order, to show cause why answer to such
794 question or production of such records should not be made.

795 (b) If as the result of any investigation relating to continuing-care
796 contracts, the commissioner determines that any provider has violated
797 any provision of sections 17b-520 to 17b-535, inclusive, as amended by
798 this act, or sections 2 to 4, inclusive, of this act the commissioner may,
799 notwithstanding the provisions of chapter 54, request the Attorney
800 General to seek a temporary or permanent injunction and such other

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

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

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

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

825 There shall be an Advisory Committee on Continuing Care
826 appointed by the commissioner that shall meet not later than August 1,
827 2015, and at least quarterly thereafter. The advisory committee shall be
828 comprised of professionals such as accountants, actuaries, and
829 insurance representatives; representatives of the continuing-care
830 industry; a designee of the Commissioner of Social Services, who shall
831 report to the commissioner after every meeting on actions taken and
832 recommendations made at the meeting; and others knowledgeable in

833 the field of continuing care and familiar with the provisions of sections
 834 17b-520 to 17b-535, inclusive, as amended by this act, and sections 2 to
 835 4, inclusive, of this act. The advisory committee shall assist the
 836 continuing-care staff in its review and registration of functions, shall
 837 report to the commissioner on developments in the field, any special
 838 problems associated with continuing care, and concerns of providers
 839 and residents, and, when appropriate, shall recommend changes in
 840 relevant statutes and regulations.

841 Sec. 17. Section 17b-528 of the general statutes is repealed. (*Effective*
 842 *July 1, 2015*)

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2015</i>	17b-520
Sec. 2	<i>July 1, 2015</i>	New section
Sec. 3	<i>July 1, 2015</i>	New section
Sec. 4	<i>July 1, 2015</i>	New section
Sec. 5	<i>July 1, 2015</i>	17b-521
Sec. 6	<i>July 1, 2015</i>	17b-522
Sec. 7	<i>July 1, 2015</i>	17b-523
Sec. 8	<i>July 1, 2015</i>	17b-524
Sec. 9	<i>July 1, 2015</i>	17b-525
Sec. 10	<i>July 1, 2015</i>	17b-526
Sec. 11	<i>July 1, 2015</i>	17b-527
Sec. 12	<i>July 1, 2015</i>	17b-529(c)
Sec. 13	<i>July 1, 2015</i>	17b-530
Sec. 14	<i>July 1, 2015</i>	17b-531
Sec. 15	<i>July 1, 2015</i>	17b-533
Sec. 16	<i>July 1, 2015</i>	17b-535
Sec. 17	<i>July 1, 2015</i>	Repealer section

Statement of Purpose:

To establish additional protections for residents of continuing-care retirement communities and to streamline reporting requirements for providers.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]

Co-Sponsors: REP. D'AGOSTINO, 91st Dist.; REP. BOLINSKY, 106th Dist.
REP. ADINOLFI, 103rd Dist.; REP. ZONI, 81st Dist.

H.B. 5358