

CHAPTER 167

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

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

C.52:27D-360.1 Short title.

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

C.52:27D-360.2 Receipt of disclosure statement, explanation by prospective resident.

2. a. Each prospective resident is entitled to receive a copy of a disclosure statement from the facility, as well as an explanation written in clear and plain language of the rights and responsibilities of a resident, prior to the execution of a continuing care agreement. The prospective resident shall have up to 30 days to review the copy of the disclosure statement and the written explanation prior to executing the continuing care agreement.

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

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

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

C.52:27d-360.3 Rights of residents of community.

3. a. Unless a resident has violated the continuing care agreement or facility rules, or the facility has cancelled the agreement with sufficient notice and cause, or if the facility for sound business reasons decides to raze or to otherwise cease operating the structure, or the part of it, in which the resident’s unit is located, a resident may occupy the resident’s chosen unit for as long as the resident can function independently, with or without the assistance of an aide or aides. Any determination that the resident can no longer function independently, with or without the assistance of an aide or aides, shall be made by the director of medical services of the facility and be subject to the requirements of section 4 of P.L.2013, c.167 (C.52:27D-360.4), and the facility shall notify the resident in writing of any right that the resident may have to appeal that determination.

b. Each resident shall have privacy within their unit, except that personnel must be admitted for contracted services or to respond to an emergency or complaint.

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

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

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

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

g. Each resident has the right to express complaints without fear of interference, discharge, or reprisal, and the right to contact the Office of the Ombudsman for the Institutionalized Elderly, or any advocate or agency which provides health, social, legal, or other services to advocate on behalf of residents if the resident feels that their rights are being violated.

h. Each resident has the right to expect the facility to promptly investigate and try to resolve all concerns the resident expresses. A record shall be kept of all written complaints

made to the facility's senior management concerning residents' rights. This record shall be available to only the particular resident or the resident's legal representative, immediate family members, the residents' physicians, and agents of the State of New Jersey. Each resident may file a complaint with an appropriate agency, including the appropriate State office, without fear of reprisal from the facility.

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

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

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

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

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

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

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

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

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

r. Each resident shall receive every service, as contracted in the continuing care agreement that was executed upon the resident's admission, unless waived in writing by the resident, with the exception of changes required by State or federal law or permitted in the continuing care agreement.

s. A resident shall have the right to receive guests and visitors at the facility, and the right to allow guests to stay for a reasonable temporary period of time in a guest apartment or unit in the facility, subject to reasonable policies and procedures of the facility.

t. A resident may leave and return to the resident's independent living unit at will, provided the resident informs the facility if the resident will be temporarily absent overnight, or for a longer period of time. The facility shall notify residents in writing as to whether they will be charged a per diem fee during any such time that they are absent from the facility.

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

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

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

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

y. A resident may request from the facility, and shall receive without undue delay or cost, a copy of the “Bill of Rights for Continuing Care Retirement Community Residents in Independent Living,” as provided in section 5 of P.L.2013, c.167 (C.52:27D-360.5).

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

C.52:27D-360.4 Transfer, reassignment of resident.

4. a. A resident may be temporarily or permanently assigned to an assisted living unit or a licensed nursing unit if the facility determines that the resident’s physical or mental health requires that level of care. The determination shall be made in consultation with the resident’s attending physician if available, the medical director, a member of the resident’s immediate family but only at the resident’s request, and the resident or legal representative of the resident.

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

C.52:27D-360.5 “Bill of Rights for Continuing Care Retirement Community Residents in Independent Living.”

5. Each continuing care retirement facility is required to distribute to each resident, and post in a conspicuous public place in the facility, a statement of residents’ rights, entitled “Bill of Rights for Continuing Care Retirement Community Residents in Independent Living,” as provided in P.L.2013, c.167 (C.52:27D-360.1 et al.), to each resident. The statement of residents’ rights shall be prepared, distributed, and posted in a form approved by the department. The facility shall inform each resident, a member of the resident’s immediate family but only at the resident’s request, and the resident’s legal representative, if applicable, of the resident’s rights, provide explanations if needed, and ensure that each resident or legal representative of the resident has been encouraged to read the statement of residents’ rights, and sign a copy of the statement to demonstrate that it has been read and understood. The facility shall also be responsible for making this statement available to any resident within a reasonable time upon request and without cost. The facility shall be responsible for undertaking the actions in this section with respect to all new and existing residents as of the effective date of P.L.2013, c.167 (C.52:27D-360.1 et al.).

C.52:27D-360.6 Information provided to resident.

6. a. A resident shall receive, upon request, a fee schedule for any uncovered service before agreeing to the performance of that service.

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

c. A resident who is experiencing financial difficulties may thoroughly investigate with the facility any financial assistance which may be available to allow the resident to remain at the facility. The facility shall provide sustaining charitable assistance, unless the facility can demonstrate that:

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

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

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

C.52:27D-7 Cancellation of agreement.

7. a. A resident may, upon 60-days' written notice, cancel the continuing care agreement for any reason.

b. Upon cancellation of the continuing care agreement by either the resident or the facility, the resident shall have the right to receive a refund of the amount of any entrance fee as provided in the continuing care agreement. The amount of the entrance fee shall be set forth in a clear and conspicuous manner in the continuing care agreement.

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

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

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

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

C.52:27D-332 Definitions.

3. As used in this act and P.L.2013, c.167 (C.52:27D-360.1 et al.), unless the context clearly requires a different meaning:

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

b. "Commissioner" means the Commissioner of Community Affairs.

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

d. "Department" means the Department of Community Affairs.

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

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

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

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

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

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

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

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

C.52:27D-351 Violations, enforcement; penalties.

22. a. If the commissioner determines or has cause to believe that a person has engaged in any act or practice which constitutes a violation of P.L.1986, c.103 (C.52:27D-330 et seq.) or

P.L.2013, c.167 (C.52:27D-360.1 et al.), the commissioner may take any or all of the following actions, as appropriate:

(1) Issue a temporary cease and desist order upon the determination by the commissioner in writing, and based upon a finding of fact that the public interest will be irreparably harmed by delay in issuing an order, including therein a provision that, upon written request made within five business days following issuance of the order, a hearing will be held within 10 days of that request to determine whether or not the temporary cease and desist order shall become permanent. A copy of any temporary or permanent cease and desist order shall be sent to the person by certified mail;

(2) Bring an action in the Superior Court to enjoin the act or practice and to enforce compliance with P.L.1986, c.103 (C.52:27D-330 et seq.) and P.L.2013, c.167 (C.52:27D-360.1 et al.) if it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of P.L.1986, c.103 (C.52:27D-330 et seq.) or P.L.2013, c.167 (C.52:27D-360.1 et al.), or a rule or order of the department. Upon a proper showing, the court may grant a permanent or temporary injunction, restraining order, or writ of mandamus and may appoint a receiver or conservator for the defendant or the defendant's assets. The commissioner shall not be required to post a bond; or

(3) Levy and collect civil penalties in the amount of not less than \$250, and not more than \$50,000, for each violation of P.L.1986, c.103 (C.52:27D-330 et seq.) or P.L.2013, c.167 (C.52:27D-360.1 et al.), or any rule adopted pursuant thereto or order issued thereunder, and compromise and settle any claim for a penalty in such amount in the discretion of the commissioner as may appear appropriate and equitable under the circumstances of the violation. Each day during which a violation continues after the effective date of a notice to terminate issued by the commissioner shall constitute an additional, separate, and distinct violation. If an administrative order levying a civil penalty is not satisfied within 30 days of its issuance, the commissioner may sue for and recover the penalty with costs in a summary proceeding under the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.) in the Superior Court.

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

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

b. For the purposes of actions that the commissioner may take under subsection a. of this section, the following shall have the same effect as a violation of P.L.1986, c.103 (C.52:27D-330 et seq.) or sections 1 through 7 of P.L.2013, c.167 (C.52:27D-360.1 et seq.):

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

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

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

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

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

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

C.52:27G-2 Definitions.

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

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

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

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

d. "Caretaker" means a person employed by a facility to provide care or services to an elderly person, and includes, but is not limited to, the administrator of a facility;

e. "Exploitation" means the act or process of using a person or his resources for another person's profit or advantage without legal entitlement to do so;

f. "Facility" means any facility or institution, whether public or private, offering health or health related services for the institutionalized elderly, and which is subject to regulation, visitation, inspection, or supervision by any government agency. Facilities include, but are not limited to, nursing homes, skilled nursing homes, intermediate care facilities, extended care facilities, convalescent homes, rehabilitation centers, residential health care facilities, special hospitals, veterans' hospitals, chronic disease hospitals, psychiatric hospitals, mental hospitals, developmental centers or facilities, continuing care retirement communities, including independent living sections thereof, day care facilities for the elderly and medical day care centers;

g. "Government agency" means any department, division, office, bureau, board, commission, authority, or any other agency or instrumentality created by the State or to which the State is a party, or by any county or municipality, which is responsible for the regulation, visitation, inspection or supervision of facilities, or which provides services to patients, residents or clients of facilities;

h. "Guardian" means any person with the legal right to manage the financial affairs and protect the rights of any patient, resident or client of a facility, who has been declared an incapacitated person by a court of competent jurisdiction;

i. "Institutionalized elderly," "elderly" or "elderly person" means any person 60 years of age or older, who is a patient, resident or client of any facility;

j. "Office" means the Office of the Ombudsman for the Institutionalized Elderly established herein;

k. "Ombudsman" means the administrator and chief executive officer of the Office of the Ombudsman for the Institutionalized Elderly;

1. "Patient, resident or client" means any elderly person who is receiving treatment or care in any facility in all its aspects, including, but not limited to, admission, retention, confinement, commitment, period of residence, transfer, discharge and any instances directly related to such status.

11. This act shall take effect on the first day of the seventh month next following the date of enactment, but the Commissioner of Community Affairs may take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of this act.

Approved October 16, 2013.