

House Bill 894

By: Representative Peake of the 141st

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 45 of Title 33 of the Official Code of Georgia Annotated, relating to
2 continuing care providers and facilities, so as to provide for continuing care at home; to
3 define certain terms; to provide that a provider with a certificate of authority and the written
4 approval of the commissioner may offer, as a part of the continuing care agreement,
5 continuing care at home and continuing care in which the resident purchases a resident
6 owned living unit; to provide for notices of disclosure statements; to provide for related
7 matters; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Chapter 45 of Title 33 of the Official Code of Georgia Annotated, relating to continuing care
11 providers and facilities, is amended by revising Code Section 33-45-1, relating to definitions,
12 as follows:

13 "33-45-1.

14 As used in this chapter, the term:

15 (1) 'Continuing care' ~~or 'care'~~ means furnishing pursuant to ~~an~~ a continuing care
16 agreement ~~lodging~~;

17 (A) Lodging that is not in:

18 (i) In a skilled nursing facility, as such term is defined in paragraph (34) of Code
19 Section 31-6-2, ~~an~~;

20 (ii) An intermediate care facility, as such term is defined in paragraph (22) of Code
21 Section 31-6-2, ~~or a~~;

22 (iii) An assisted living community, as such term is defined in Code Section
23 31-7-12.2; or

24 (iv) A personal care home, as such term is defined in Code Section 31-7-12; ~~food~~;
25 ~~and nursing~~

26 (B) Food; and

27 ~~(C) Nursing care, whether such nursing care is provided in the a facility or in another~~
 28 ~~setting designated by the agreement for continuing care; to an individual not related by~~
 29 ~~consanguinity or affinity to the provider furnishing such care upon payment of an~~
 30 ~~entrance fee.~~

31 The term 'continuing care' shall not include continuing care at home.

32 (2) 'Continuing care agreement' means a contract or agreement to provide continuing
 33 care or limited continuing care. Agreements to provide continuing care or limited
 34 continuing care include agreements to provide care for any duration, including
 35 agreements that are terminable by either party.

36 (3) 'Continuing care at home' means furnishing services pursuant to a continuing care
 37 agreement at a home other than a home located at a facility and which includes the
 38 obligation to provide nursing care, assisted living care, or personal care home services.
 39 Such agreement may, but is not required to, include an obligation of lodging or food.

40 ~~(3)(4)~~ (4) 'Entrance fee' means an initial or deferred payment of a sum of money or property
 41 made as full or partial payment to assure the resident continuing care, ~~or limited~~
 42 ~~continuing care, or continuing care upon the purchase of a resident owned living unit;~~
 43 provided, however, that any such initial or deferred payment which is greater than or
 44 equal to 12 times the monthly care fee shall be presumed to be an entrance fee so long as
 45 such payment is intended to be a full or partial payment to assure the resident lodging in
 46 a residential unit. An accommodation fee, admission fee, or other fee of similar form and
 47 application greater than or equal to 12 times the monthly care fee shall be considered to
 48 be an entrance fee. Such term shall not include any portion of the purchase or sale of a
 49 resident owned living unit.

50 ~~(4)(5)~~ (5) 'Facility' means a place ~~in which it is undertaken to provide~~ which is owned or
 51 operated by a provider and provides continuing care or limited continuing care. Such
 52 term includes a facility which contains resident owned living units.

53 ~~(5)(6)~~ (6) 'Licensed' means that the provider has obtained a certificate of authority from the
 54 department.

55 ~~(6)(7)~~ (7) 'Limited continuing care' means furnishing pursuant to ~~an~~ a continuing care
 56 agreement lodging:

57 (A) Lodging that is not in:

58 (i) In a skilled nursing facility, as such term is defined in paragraph (34) of Code
 59 Section 31-6-2, an;

60 (ii) An intermediate care facility, as such term is defined in paragraph (22) of Code
 61 Section 31-6-2, or a;

62 (iii) An assisted living community, as such term is defined in Code Section
 63 31-7-12.2; or

64 (iv) A personal care home, as such term is defined in Code Section 31-7-12; food;
 65 and personal

66 (B) Food; and

67 (C) Personal services; whether such personal services are provided in a facility such
 68 as a personal care home or an assisted living community or in another setting
 69 designated by the continuing care agreement; to an individual not related by
 70 consanguinity or affinity to the provider furnishing such care upon payment of an
 71 entrance fee.

72 The term 'limited continuing care' shall not include continuing care at home.

73 ~~(7)~~(8) 'Monthly care fee' means the fee charged to a resident for continuing care or
 74 limited continuing care on a monthly or periodic basis. Monthly care fees may be
 75 increased by the provider to provide care to the resident as outlined in the continuing care
 76 agreement. Periodic fee payments or other prepayments shall not be monthly care fees.

77 ~~(8)~~(9) 'Nursing care' means services which are provided to residents of skilled nursing
 78 facilities or intermediate care facilities.

79 ~~(9)~~(10) 'Personal services' means, but is not limited to, such services as individual
 80 assistance with eating, bathing, grooming, dressing, ambulation, and housekeeping;
 81 supervision of self-administered medication; arrangement for or provision of social and
 82 leisure services; arrangement for appropriate medical, dental, nursing, or mental health
 83 services; and other similar services which the department may define. Personal services
 84 may be provided at a facility or at a home on or off of a facility, but such term shall not
 85 be construed to mean the provision of medical, nursing, dental, or mental health services
 86 by the staff of a facility. Personal services provided, if any, shall be designated in the
 87 continuing care agreement.

88 ~~(10)~~(11) 'Provider' means the owner or operator, whether a natural person, partnership,
 89 or other unincorporated association, however organized, trust, or corporation, of an
 90 institution, building, residence, or other place, whether operated for profit or not, which
 91 owner or operator undertakes to provide continuing care, ~~or~~ limited continuing care, or
 92 continuing care at home for a fixed or variable fee, or for any other remuneration of any
 93 type, ~~whether fixed or variable~~, for the period of care, payable in a lump sum or lump
 94 sum and monthly maintenance charges or in installments.

95 ~~(11)~~(12) 'Resident' means a purchaser of or a nominee of or a subscriber to a continuing
 96 care agreement. Such an agreement may permit a resident to live at a home on or off of
 97 a facility but shall not be construed to give the resident a part ownership of the facility
 98 in which the resident is to reside unless expressly provided for in the agreement.

99 ~~(12)~~(13) 'Residential unit' means a residence or apartment in which a resident lives that
 100 is not a skilled nursing facility as defined in paragraph (34) of Code Section 31-6-2, an

101 intermediate care facility as defined in paragraph (22) of Code Section 31-6-2, an assisted
 102 living community as defined in Code Section 31-7-12.2, or a personal care home as
 103 defined in Code Section 31-7-12.

104 (14) 'Resident owned living unit' means a residence or apartment, the purchase or sale
 105 of which is not included in an entrance fee, which is a component part of a facility and
 106 in which the resident has an individual real property ownership interest."

107 **SECTION 2.**

108 Said chapter is further amended by revising Code Section 33-45-3, relating to certificate of
 109 authority required for operation of continuing care facilities, as follows:

110 "33-45-3.

111 Nothing in this title or chapter shall be deemed to authorize any provider of a continuing
 112 care facility or a facility providing limited continuing care to transact any insurance
 113 business other than that of continuing care insurance or limited continuing care insurance
 114 or otherwise to engage in any other type of insurance unless it is authorized under a
 115 certificate of authority issued by the department under this title. Nothing in this chapter
 116 shall be construed so as to interfere with the jurisdiction of the Department of Community
 117 Health or any other regulatory body exercising authority over continuing care providers or
 118 limited continuing care providers regulated by this chapter or real property law related to
 119 the purchase and sale of resident owned living units."

120 **SECTION 3.**

121 Said chapter is further amended by revising division (a)(6)(B)(ii) of Code Section 33-45-7,
 122 relating to requirements for continuing care agreements, addenda, and amendments, as
 123 follows:

124 "(ii) If the continuing care agreement provides for the facility to retain no more than
 125 1 percent per month of occupancy by the resident, it may provide that such refund will
 126 be payable upon receipt by the provider of the next entrance fee for any comparable
 127 residential unit upon which there is no prior claim by any resident; provided,
 128 however, that the agreement may define the term 'comparable residential unit upon
 129 which there is no prior claim'; specifically delineate when such refund is due; and
 130 establish the order of priority of refunds to residents. Unless the provisions of
 131 subsection (e) of this Code section apply, for any prospective resident, ~~regardless of~~
 132 ~~whether or not~~ except when such resident receives a transferable membership or
 133 ownership right in ~~the facility~~ a resident owned living unit, who cancels the agreement
 134 prior to occupancy of the residential unit, the refund shall be the entire amount paid
 135 toward the entrance fee, less a processing fee not to exceed 4 percent of the entire

136 entrance fee, but in no event shall such processing fee exceed the amount paid by the
 137 prospective resident. Such refund shall be paid no later than 60 days after the giving
 138 of notice of intention to cancel. For a resident who has occupied his or her residential
 139 unit and who has received a transferable membership or ownership right in the
 140 facility, the foregoing refund provisions shall not apply but shall be deemed satisfied
 141 by the acquisition or receipt of a transferable membership or an ownership right in the
 142 facility. The provider shall not charge any fee for the transfer of membership or sale
 143 of an ownership right. Nothing in this paragraph shall be construed to require a
 144 continuing care agreement to provide a refund to more than one resident at a time
 145 upon the vacation of a specific comparable residential unit;"

146 SECTION 4.

147 Said chapter is further amended by adding a new Code section to read as follows:

148 "33-45-7.1.

149 A provider which has obtained a certificate of authority pursuant to Code Section 33-45-5
 150 and the written approval of the commissioner is authorized to offer, as a part of the
 151 continuing care agreement, continuing care at home and continuing care in which the
 152 resident purchases a resident owned living unit."

153 SECTION 5.

154 Said chapter is further amended by revising subsection (a) of Code Section 33-45-10, relating
 155 to information disclosure requirements, as follows:

156 "(a) Each facility shall maintain as public information, available upon request, a copy of
 157 its current disclosure statement and the disclosure and all previous disclosure statements
 158 that have been filed with the department. Each facility shall post in a prominent position
 159 in the facility, so as to be accessible to all residents and to the general public, a notice
 160 explaining where such disclosure statements may be viewed. Each facility shall mail to
 161 each resident living at a home not located at a facility a copy of the current disclosure
 162 statement, first-class postage prepaid and addressed to the resident's current home address.
 163 In conjunction with the disclosure statement, the facility shall notify residents of any
 164 proposed changes in policies, programs, and services."

165 SECTION 6.

166 All laws and parts of laws in conflict with this Act are repealed.