

The Senate Insurance and Labor Committee offered the following substitute to SB 304:

A BILL TO BE ENTITLED  
AN ACT

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

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

"33-45-1.

As used in this chapter, the term:

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

~~(A) lodging~~ Lodging that is not:

~~(i) in~~ In a skilled nursing facility, as such term is defined in paragraph (34) of Code Section 31-6-2;<sub>2</sub>

~~(ii) an~~ An intermediate care facility, as such term is defined in paragraph (22) of Code Section 31-6-2;<sub>2</sub>

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

~~(iv) a~~ A personal care home, as such term is defined in Code Section 31-7-12;

~~(B) food~~ Food; and

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

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

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

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

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

(6) 'Limited continuing care' means furnishing pursuant to ~~an~~ a continuing care  
 agreement;

~~(A) lodging~~ Lodging that is not:

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

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

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

~~(iv)~~ a A personal care home, as such term is defined in Code Section 31-7-12;

~~(B) food~~ Food; and

~~(C) personal~~ Personal services, whether such personal services are provided in a  
 facility such as a personal care home or an assisted living community or in another  
 setting designated by the continuing care agreement, to an individual not related by

consanguinity or affinity to the provider furnishing such care upon payment of an entrance fee.

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

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

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

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

(11) 'Resident' means a purchaser of or a nominee of or a subscriber to a continuing care agreement. Such an agreement shall not be construed to give the resident a part ownership of the facility in which the resident is to reside unless expressly provided for in the agreement.

(12) 'Residential unit' means a residence or apartment in which a resident lives that is not a skilled nursing facility as defined in paragraph (34) of Code Section 31-6-2, an intermediate care facility as defined in paragraph (22) of Code Section 31-6-2, an assisted living community as defined in Code Section 31-7-12.2, or a personal care home as defined in Code Section 31-7-12.

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

**SECTION 2.**

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

"33-45-3.

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

(b) Nothing in this chapter shall be construed so as to modify or limit in any way:

(1) Provisions of Article 3 of Chapter 6 of Title 31 and any rules and regulations promulgated by the Department of Community Health pursuant to such article relating to certificates of need for continuing care retirement communities or home health agencies, as such terms are defined in Code Section 31-6-2; or

(2) Provisions of Chapter 7 of Title 31 relating to licensure or permit requirements and any rules and regulations promulgated by the Department of Community Health pursuant to such chapter, including, without limitation, licensure or permit requirements for nursing home care, assisted living care, personal care home services, home health services, and private home care services."

**SECTION 3.**

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

"(ii) If the continuing care agreement provides for the facility to retain no more than 1 percent per month of occupancy by the resident, it may provide that such refund will be payable upon receipt by the provider of the next entrance fee for any comparable residential unit upon which there is no prior claim by any resident; provided, however, that the agreement may define the term 'comparable residential unit upon which there is no prior claim'; specifically delineate when such refund is due; and establish the order of priority of refunds to residents. Unless the provisions of subsection (e) of this Code section apply, for any prospective resident, ~~regardless of whether or not~~ except when such resident receives a transferable membership or

ownership right in ~~the facility~~ a resident owned living unit, who cancels the agreement prior to occupancy of the residential unit, the refund shall be the entire amount paid toward the entrance fee, less a processing fee not to exceed 4 percent of the entire entrance fee, but in no event shall such processing fee exceed the amount paid by the prospective resident. Such refund shall be paid no later than 60 days after the giving of notice of intention to cancel. For a resident who has occupied his or her residential unit and who has received a transferable membership or ownership right in the facility, the foregoing refund provisions shall not apply but shall be deemed satisfied by the acquisition or receipt of a transferable membership or an ownership right in the facility. The provider shall not charge any fee for the transfer of membership or sale of an ownership right. Nothing in this paragraph shall be construed to require a continuing care agreement to provide a refund to more than one resident at a time upon the vacation of a specific comparable residential unit;"

#### SECTION 4.

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

"33-45-7.1.

A provider which has obtained a certificate of authority pursuant to Code Section 33-45-5 and the written approval of the commissioner is authorized to offer, as a part of the continuing care agreement, continuing care in which the resident purchases a resident owned living unit, subject to the provisions of Chapters 6 and 7 of Title 31 and rules and regulations promulgated by the Department of Community Health pursuant to such chapters relating to certificate of need and licensure requirements."

#### SECTION 5.

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

"(a) Each facility shall maintain as public information, available upon request, a copy of its current disclosure statement and the disclosure and all previous disclosure statements that have been filed with the department. Each facility shall post in a prominent position in the facility, so as to be accessible to all residents and to the general public, a notice explaining where such disclosure statements may be viewed. In conjunction with the disclosure statement, the facility shall notify residents of any proposed changes in policies, programs, and services."

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**SECTION 6.**

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The provisions of this Act shall stand repealed in their entirety on December 31, 2015;

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provided, however, that facilities operating under the provisions of this Act on such date shall

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be permitted to operate as contemplated in this Act.

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**SECTION 7.**

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