

Senate Bill 304

By: Senators Stone of the 23rd and Jackson of the 24th

AS PASSED

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 define certain terms; to provide that a
3 provider with a certificate of authority and the written approval of the commissioner may
4 offer, as a part of the continuing care agreement, continuing care in which the resident
5 purchases a resident owned living unit; to provide for notices of disclosure statements; to
6 provide for related matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

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

12 "33-45-1.

13 As used in this chapter, the term:

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

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

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

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

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

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

24 ~~(B) food~~ Food; and

25 ~~(C) nursing~~ Nursing care, ~~whether such nursing care is provided in the~~ a facility or in
26 another setting designated by the agreement for continuing care; to an individual not

27 related by consanguinity or affinity to the provider furnishing such care upon payment
 28 of an entrance fee including skilled or intermediate nursing services and, at the
 29 discretion of the continuing care provider, personal care services including, without
 30 limitation, assisted living care services designated by the continuing care agreement,
 31 including such services being provided pursuant to a contract to ensure the availability
 32 of such services to an individual not related by consanguinity or affinity to the provider
 33 furnishing such care upon payment of an entrance fee.

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

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

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

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

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

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

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

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

60 ~~(iii)~~ An assisted living community, as such term is defined in Code Section
 61 31-7-12.2; or

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

63 ~~(B) food~~ Food; and

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

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

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

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

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

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

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

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

102 **SECTION 2.**

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

105 "33-45-3.

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

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

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

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

125 **SECTION 3.**

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

129 "(ii) If the continuing care agreement provides for the facility to retain no more than
 130 1 percent per month of occupancy by the resident, it may provide that such refund will
 131 be payable upon receipt by the provider of the next entrance fee for any comparable
 132 residential unit upon which there is no prior claim by any resident; provided,
 133 however, that the agreement may define the term 'comparable residential unit upon

134 which there is no prior claim'; specifically delineate when such refund is due; and
 135 establish the order of priority of refunds to residents. Unless the provisions of
 136 subsection (e) of this Code section apply, for any prospective resident, ~~regardless of~~
 137 ~~whether or not~~ except when such resident receives a transferable membership or
 138 ownership right in ~~the facility~~ a resident owned living unit, who cancels the agreement
 139 prior to occupancy of the residential unit, the refund shall be the entire amount paid
 140 toward the entrance fee, less a processing fee not to exceed 4 percent of the entire
 141 entrance fee, but in no event shall such processing fee exceed the amount paid by the
 142 prospective resident. Such refund shall be paid no later than 60 days after the giving
 143 of notice of intention to cancel. For a resident who has occupied his or her residential
 144 unit and who has received a transferable membership or ownership right in the
 145 facility, the foregoing refund provisions shall not apply but shall be deemed satisfied
 146 by the acquisition or receipt of a transferable membership or an ownership right in the
 147 facility. The provider shall not charge any fee for the transfer of membership or sale
 148 of an ownership right. Nothing in this paragraph shall be construed to require a
 149 continuing care agreement to provide a refund to more than one resident at a time
 150 upon the vacation of a specific comparable residential unit;"

151 **SECTION 4.**

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

153 "33-45-7.1.

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

160 **SECTION 5.**

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

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

168 disclosure statement, the facility shall notify residents of any proposed changes in policies,
169 programs, and services."

170 **SECTION 6.**

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