

## [N.J. Stat. § 52:27D-330](#)

Current through New Jersey 220th Second Annual Session, L. 2023, c. 171 and J.R. 15

**LexisNexis® New Jersey Annotated Statutes > Title 52. State Government, Departments and Officers (Subts. 1 — 5) > Subtitle 3. Executive and Administrative Departments (Chs. 14 — 27J) > Chapter 27D. Department of Community Affairs (Arts. 1 — 9) > Article 9. Department of Community Affairs Act (§§ 52:27D-32 — 52:27D-521)**

### **§ 52:27D-330. Short title [Continuing Care Retirement Community Regulation and Financial Disclosure Act]**

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This act shall be known and may be cited as the “Continuing Care Retirement Community Regulation and Financial Disclosure Act.”

#### **History**

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L. 1986, c. 103, § 1.

Annotations

#### **Research References & Practice Aids**

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##### **Cross References:**

Exemptions from certificate of need requirement, see [26:2H-7a](#).

Applicability of act, see [26:2H-12.20](#).

HMO to provide continuing nursing home care, certain, see [26:2J-4.21](#).

Definitions relative to Statewide non-residential development fees, see [40:55D-8.3](#).

Residents' organizations; quarterly meeting, see [52:27D-345](#).

Continuing Care Advisory Council, see [52:27D-357](#).

##### **Administrative Code:**

[N.J.A.C. 5:19-1.1](#) (2013), CHAPTER CONTINUING CARE RETIREMENT COMMUNITY RULES, Purpose.

[N.J.A.C. 5:19-1.3](#) (2013), CHAPTER CONTINUING CARE RETIREMENT COMMUNITY RULES, Definitions.

[N.J.A.C. 8:26-1.3](#) (2013), CHAPTER PUBLIC RECREATIONAL BATHING, Definitions.

[N.J.A.C. 8:33-6.1](#) (2013), CHAPTER CERTIFICATE OF NEED: APPLICATION AND REVIEW PROCESS, Statement of purpose.

§ 52:27D-330. Short title [Continuing Care Retirement Community Regulation and Financial Disclosure Act]

N.J.A.C. 8:36-1.3 (2013), CHAPTER STANDARDS FOR LICENSURE OF ASSISTED LIVING RESIDENCES, COMPREHENSIVE PERSONAL CARE HOMES, AND ASSISTED LIVING PROGRAMS, Definitions.

**PRACTICE GUIDES & TREATISES:**

[LexisNexis Practice Guide New Jersey Elder Law § 5.04](#) Explaining How Continuing Care Retirement Community Operates

**PRACTICE CHECKLISTS:**

[LexisNexis Practice Guide New Jersey Elder Law § 5.03](#) CHECKLIST: Evaluating Level of Service Provided by Continuing Care Retirement Community and Client's Needs

**PRACTICE FORMS:**

New Jersey Elder Law LexisNexis Forms: Form 1479-ELL 5.03 Evaluating Level of Service Provided by Continuing Care Retirement Community and Client's Needs

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## [N.J. Stat. § 52:27D-331](#)

Current through New Jersey 220th Second Annual Session, L. 2023, c. 171 and J.R. 15

**LexisNexis® New Jersey Annotated Statutes > Title 52. State Government, Departments and Officers (Subts. 1 — 5) > Subtitle 3. Executive and Administrative Departments (Chs. 14 — 27J) > Chapter 27D. Department of Community Affairs (Arts. 1 — 9) > Article 9. Department of Community Affairs Act (§§ 52:27D-32 — 52:27D-521)**

### § 52:27D-331. Findings, declarations

The Legislature finds and declares that: continuing care retirement communities are becoming an important and increasingly preferred alternative for the long-term residential, social and health care needs of New Jersey's senior citizens; because senior citizens often expend a significant portion of their savings in order to purchase care in the retirement community and thereby expect to receive care at the retirement community for the rest of their lives, tragic consequences can result to senior citizens when a continuing care provider becomes insolvent or unable to provide responsible care; and there is a need for full disclosure concerning the terms of agreements made between prospective residents and the continuing care providers and the operations of the providers; therefore, it is the policy of this State that providers of continuing care shall register with and be monitored by the State Department of Community Affairs.

### History

L. 1986, c. 103, 2; amended [2013, c. 253](#), § 50, eff. Jan. 17, 2014.

Annotations

### Notes

#### **Amendment Note:**

2013 amendment, by Chapter 253, deleted “and that a Continuing Care Advisory Council be established to advise and assist the Commissioner of Community Affairs in the monitoring of these providers and the regulation of continuing care retirement facilities” at the end.

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## [N.J. Stat. § 52:27D-332](#)

Current through New Jersey 220th Second Annual Session, L. 2023, c. 171 and J.R. 15

**LexisNexis® New Jersey Annotated Statutes > Title 52. State Government, Departments and Officers (Subts. 1 — 5) > Subtitle 3. Executive and Administrative Departments (Chs. 14 — 27J) > Chapter 27D. Department of Community Affairs (Arts. 1 — 9) > Article 9. Department of Community Affairs Act (§§ 52:27D-32 — 52:27D-521)**

### **§ 52:27D-332. Definitions**

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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.

### **History**

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L. 1986, c. 103, 3; amended [2013, c. 167](#), § 8, eff. May 1, 2014.

Annotations

## Notes

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### Effective Dates:

Section 11 of L. [2013, c. 167](#) provides: "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." Chapter 167, L. 2013, was approved on Oct. 16, 2013.

### Amendment Note:

2013 amendment, by Chapter 167, added " P.L.2013, c.167 ( C.52:27D-360.1 et al.), unless the context clearly requires a different meaning" in the introductory language; deleted "the Department of" following "Commissioner of" in b.; substituted "Department of Community Affairs" for "State Department of Community Affairs" in d.; deleted "or option" preceding "of the resident" in e.; and made related and stylistic changes.

## Research References & Practice Aids

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### PRACTICE GUIDES & TREATISES:

[LexisNexis Practice Guide New Jersey Elder Law § 5.10](#) Examining Entrance Fees Required by Continuing Care Retirement Community

[LexisNexis Practice Guide New Jersey Elder Law § 5.11](#) Examining Monthly Fees Required by Continuing Care Retirement Community

[LexisNexis Practice Guide New Jersey Elder Law § 5.12](#) Reviewing Surcharges Charged by Continuing Care Retirement Community

[LexisNexis Practice Guide New Jersey Elder Law § 5.13](#) Evaluating Provisions Concerning Buy-down Process in Contract with Continuing Care Retirement Community

[LexisNexis Practice Guide New Jersey Elder Law § 5.14](#) Evaluating Provisions Concerning Refunds in Contract with Continuing Care Retirement Community

### PRACTICE CHECKLISTS:

[LexisNexis Practice Guide New Jersey Elder Law § 5.09](#) CHECKLIST: Evaluating Financial Terms in Contract with Continuing Care Retirement Community

### PRACTICE FORMS:

New Jersey Elder Law LexisNexis Forms: Form 1479-ELL 5.09 Evaluating Financial Terms in Contract with Continuing Care Retirement Community

§ 52:27D-332. Definitions

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End of Document

## [N.J. Stat. § 52:27D-333](#)

Current through New Jersey 220th Second Annual Session, L. 2023, c. 171 and J.R. 15

**LexisNexis® New Jersey Annotated Statutes > Title 52. State Government, Departments and Officers (Subts. 1 — 5) > Subtitle 3. Executive and Administrative Departments (Chs. 14 — 27J) > Chapter 27D. Department of Community Affairs (Arts. 1 — 9) > Article 9. Department of Community Affairs Act (§§ 52:27D-32 — 52:27D-521)**

### **§ 52:27D-333. Certificate of authority**

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- a.** A person shall not establish, operate or administer a continuing care facility in this State without obtaining and maintaining a certificate of authority pursuant to this act. A certificate of authority granted pursuant to this act is not transferable.
- b.** A person shall file an application for a certificate of authority with the department on forms prescribed by the commissioner. The application shall include a disclosure statement prepared pursuant to section 7 of this act and other information as required by the commissioner.
- c.** Upon receipt of the application for a certificate of authority, the department shall, within 10 business days, issue a notice of filing to the applicant. Within 90 days of the notice of filing, the commissioner shall issue the certificate of authority or reject the application pursuant to subsection d. of this section.
- d.** If the commissioner determines that any of the requirements of this act has not been met, the commissioner shall notify the applicant in writing and specify those particulars which need to be corrected. The applicant has 30 days from the date of notification to correct the application as specified by the commissioner. If the requirements are not met within the time allowed, the commissioner may reject the application and notify the applicant in writing of the reason for the rejection. The rejection shall be effective 20 days after the foregoing 30 day period. During the 20 day period, the applicant may request reconsideration of the commissioner's action and is entitled to a hearing conducted pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 ([C. 52:14B-1](#) et seq.).
- e.** In the case of a provider who has offered continuing care agreements to existing or prospective residents in a facility established prior to the effective date of this act and which has one or more residents living there pursuant to agreements entered into prior to the effective date of this act, if the provider is unable to comply with section 10 of this act within the time required, the commissioner may, upon the written request of the provider, issue a temporary certificate of authority to the provider. The provider may then enter into continuing care agreements which are in compliance with all other applicable provisions of this act until the permanent certificate is issued. The temporary certificates shall be issued only to those existing providers who shall be able to comply with the provisions of section 10 of this act within a period of time determined by the commissioner but which does not exceed two years.
- f.** If an existing provider is granted a permanent certificate of authority, the provider shall give a resident who entered into an agreement before the certificate of authority was granted, a copy of the initial disclosure statement and any amendments thereto.
- g.** If a facility is accredited by a process approved by the commissioner as equivalent to or more stringent than the requirements of this section, the facility is deemed to have met the requirements of this section and the commissioner shall issue a certificate of authority to the facility.
- h.** A person who establishes, operates or administers a continuing care facility in this State without obtaining or maintaining a certificate of authority pursuant to this act is guilty of a crime of the third degree.

## History

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L. 1986, c. 103, 4.

Annotations

## Research References & Practice Aids

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### PRACTICE GUIDES & TREATISES:

[LexisNexis Practice Guide New Jersey Elder Law § 5.06](#) Advising Client in Inquiry About Residential Life Within Continuing Care Retirement Community

[LexisNexis Practice Guide New Jersey Elder Law § 5.07](#) Advising Client to Determine Degree of Control over Health Care Issues Within Continuing Care Retirement Community

[LexisNexis Practice Guide New Jersey Elder Law § 5.08](#) Advising Client to Investigate Financial Stability of Continuing Care Retirement Community

### PRACTICE CHECKLISTS:

[LexisNexis Practice Guide New Jersey Elder Law § 5.05](#) CHECKLIST: Evaluating Suitability and Stability of Continuing Care Retirement Community

### PRACTICE FORMS:

New Jersey Elder Law LexisNexis Forms: Form 1479-ELL 5.05 Evaluating Suitability and Stability of Continuing Care Retirement Community

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## [N.J. Stat. § 52:27D-334](#)

Current through New Jersey 220th Second Annual Session, L. 2023, c. 171 and J.R. 15

**LexisNexis® New Jersey Annotated Statutes > Title 52. State Government, Departments and Officers (Subts. 1 — 5) > Subtitle 3. Executive and Administrative Departments (Chs. 14 — 27J) > Chapter 27D. Department of Community Affairs (Arts. 1 — 9) > Article 9. Department of Community Affairs Act (§§ 52:27D-32 — 52:27D-521)**

### **§ 52:27D-334. Revocation of certificates**

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- a. The certificate of authority or temporary certificate of authority of a provider shall remain in effect until revoked, after notice and hearing conducted pursuant to the “Administrative Procedure Act,” P.L. 1968, c. 410 ([C. 52:14B-1](#) et seq.), upon the commissioner’s written findings of fact that the provider has:
- (1) Repeatedly failed to correct violations of this act or any regulation adopted hereunder;
  - (2) Failed to file an annual disclosure statement or resident agreement pursuant to this act;
  - (3) Failed to deliver to a prospective resident the disclosure statement required pursuant to this act;
  - (4) Delivered to a prospective resident a disclosure statement which makes an untrue statement or omits a material fact and the provider at the time of the delivery of the disclosure statement had actual knowledge of the misstatement or omission;
  - (5) Failed to comply with the terms of a cease and desist order; or
  - (6) Committed serious violations of any other State or federal law.
- b. The commissioner shall include with the findings of fact in support of revocation a concise and explicit statement of the underlying facts supporting the findings.
- c. If the commissioner has cause to believe that the provider is guilty of a violation for which revocation may be ordered, the commissioner may issue an order directing the provider or operator to cease and desist from engaging in any practice in violation of this act.
- d. If the cease and desist order is not or may not be effective in remedying the violation, the commissioner, after notice and hearing conducted pursuant to the “Administrative Procedure Act,” P.L. 1968, c. 410 ([C. 52:14B-1](#) et seq.), may revoke the certificate of authority or temporary certificate of authority and order that it be surrendered to the commissioner.

### **History**

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L. 1986, c. 103, 5.

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## [N.J. Stat. § 52:27D-335](#)

Current through New Jersey 220th Second Annual Session, L. 2023, c. 171 and J.R. 15

**LexisNexis® New Jersey Annotated Statutes > Title 52. State Government, Departments and Officers (Subts. 1 — 5) > Subtitle 3. Executive and Administrative Departments (Chs. 14 — 27J) > Chapter 27D. Department of Community Affairs (Arts. 1 — 9) > Article 9. Department of Community Affairs Act (§§ 52:27D-32 — 52:27D-521)**

### § 52:27D-335. Acquisition of ownership interest

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- a.** A person who desires to acquire an ownership interest in a continuing care facility shall so notify the department in writing at least 60 days in advance of the acquisition. The person shall obtain the approval of the commissioner for the acquisition prior to the completion of the sale or transfer of the facility's ownership interest.
- b.** For the purposes of this act, an acquisition of an ownership interest in a continuing care facility shall be deemed to take place if:
- (1)** The facility is a corporation and there is an acquisition by or a transfer of ownership to an individual, partnership or corporation through purchase, contract, donation, gift or stock option of 25% or more of the corporation's outstanding stock, either preferred or common, or there is acquisition of the physical assets of the facility by a newly formed or existing corporation;
  - (2)** The facility is a partnership and there is an acquisition by or a transfer of ownership to an individual, partnership, or corporation of 10% or more of the existing partnership's total capital interest or there is acquisition of the physical assets of the facility by a newly formed or existing partnership; and
  - (3)** The facility is individually owned and there is a purchase of the physical assets of the facility.

### History

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L. 1986, c. 103, 6.

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## [N.J. Stat. § 52:27D-336](#)

Current through New Jersey 220th Second Annual Session, L. 2023, c. 171 and J.R. 15

**LexisNexis® New Jersey Annotated Statutes > Title 52. State Government, Departments and Officers (Subts. 1 — 5) > Subtitle 3. Executive and Administrative Departments (Chs. 14 — 27J) > Chapter 27D. Department of Community Affairs (Arts. 1 — 9) > Article 9. Department of Community Affairs Act (§§ 52:27D-32 — 52:27D-521)**

### § 52:27D-336. Initial disclosure statement

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The provider shall provide a disclosure statement to a prospective resident of a continuing care facility or the person with whom the provider shall enter into a contract to provide continuing care, prior to the execution of the contract or at the time of or prior to the transfer of any money or other property to the provider by or on behalf of the prospective resident, whichever occurs first. The cover page of the disclosure statement shall state in a prominent location and type face, the date of the disclosure statement. The disclosure statement shall be written in plain English and in language understandable by a layperson.

The provider shall attach a copy of the standard form of contract for continuing care used by the provider as an exhibit to each disclosure statement.

The disclosure statement shall contain the following information unless the information is contained in the contract:

- a.** The name and business address of the provider and a statement of whether the provider is a partnership, corporation or other type of legal entity.
- b.** The names and business addresses of the officers, directors, trustees, managing or general partners and any person having a 10% or greater equity or beneficial interest in the provider and a description of that person's interest in or occupation with the provider.
- c.** With respect to the provider, any person named in response to subsection b. of this section and the proposed operator, if the facility is managed on a day-to-day basis by a person other than an individual directly employed by the provider:
  - (1)** A description of the person's business experience, if any, in the operation or management of similar facilities;
  - (2)** The name and address of any professional service firm, association, trust, partnership or corporation in which the person has a 10% or greater interest and which may provide goods, leases or services to the facility of a value of \$500.00 or more, within any year;
  - (3)** A description of the goods, leases or services provided pursuant to paragraph (2) of this subsection and the probable or anticipated cost thereof to the facility or provider;
  - (4)** A description of any matter in which the person has been convicted of a felony or pleaded nolo contendere to a felony charge, or has been held liable or enjoined in a civil action which involved fraud, embezzlement, fraudulent conversion or misappropriation of property; and
  - (5)** A description of any matter in which the person is subject to a currently effective injunctive or restrictive court order or, within the past five years, had a State or federal license or permit suspended or revoked as a result of an action brought by a governmental agency or department, which arose out of or related to business activity or health care, including actions affecting a license to operate a residential health care facility, nursing home, retirement home, home for the aged or facility registered under this act or a similar act in another state.

## § 52:27D-336. Initial disclosure statement

- d.** A statement whether the provider is or ever has been affiliated with a religious, charitable or other nonprofit organization, the nature of the affiliation, if any, the extent to which the affiliate organization is responsible for the financial and contractual obligations of the provider, and the provision of the federal Internal Revenue Code, if any, under which the provider or affiliate is exempt from the payment of income tax.
- e.** The location and description of the physical property of the facility, both existing and proposed, and with respect to proposed property, the estimated completion date, the date construction began or shall begin and the contingencies subject to which construction may be deferred.
- f.** The services provided or proposed to be provided under contracts for continuing care at the facility, including the extent to which medical care and other services are furnished under the basic contract and which other care or services are available at or by the facility at extra charge.
- g.** A description of all fees required of residents, including the application fee, entrance fee and periodic charges, if any, the manner by which the provider may adjust periodic charges or other recurring fees and the limitation on the adjustments, if any, and if the facility is already in operation or if the provider or operator operates one or more similar facilities within this State, tables showing the frequency and average dollar amount of each increase in periodic rates at each facility for the previous five years or as many years as the facility has been operated by the provider or operator, whichever is less.
- h.** The provisions that have been made or will be made, if any, to provide reserve funding or security which will enable the provider to fully perform its obligation under contracts to provide continuing care at the facility, including the establishment of escrow accounts, trusts or reserve funds, the manner in which the funds shall be invested and the names and experience of persons who will make the investment decisions.
- i.** Certified financial statements of the provider, which include balance sheets and income statements for the two most recently completed fiscal years or for as long as the provider has been in existence, whichever is less.
- j.** If operation of the facility has not yet commenced, a statement of the anticipated source and application of the funds used or to be used in the purchase or construction of the facility, including:
- (1)** An estimate of the cost of purchasing or construction and equipping the facility, which includes related costs such as financing expenses, legal expenses, land costs, marketing and development costs and other similar costs the provider expects to incur or become obligated for prior to the commencement of operations;
  - (2)** A description of any mortgage loan or other long-term financing intended to be used for the financing of the facility and the anticipated terms and costs of the financing;
  - (3)** An estimate of the total amount of entrance fees to be received from or on behalf of residents at or prior to commencement of operation of the facility;
  - (4)** An estimate of the funds, if any, which are anticipated to be necessary to fund start-up losses and provide reserve funds to assure full performance of the obligations of the provider under contracts for the provision of continuing care;
  - (5)** A projection of estimated income from fees and charges other than entrance fees, a description of individual rates anticipated to be charged, the assumptions used for calculating the estimated occupancy rate of the facility and the effect on the income of the facility of government subsidies, if any, for health care services provided pursuant to the contracts for continuing care;
  - (6)** A projection of estimated operating expenses of the facility, including a description of the assumptions used in calculating the expenses and separate allowances, if any, the replacement of equipment and furnishings and any anticipated major structural repairs or additions;
  - (7)** Identification of assets pledged as collateral for any purpose; and

## § 52:27D-336. Initial disclosure statement

(8) An estimate of annual payments of principal and interest required by any mortgage loan or other long-term financing.

k. Other material information concerning the facility or the provider as required by the department or as the provider wishes to include.

l. The provider shall designate and make knowledgeable personnel available to prospective residents to answer questions about any information contained in the disclosure statement or contract. The provider shall also advise prospective residents to seek the independent advice of an attorney and financial advisor of their choice concerning the disclosure statement or contract. The disclosure statement and the contract shall each state on the cover or top of the first page in bold print the following: "This matter involves a substantial financial investment and a legally binding contract. In evaluating the disclosure statement and the contract prior to any commitment, it is recommended that you consult with an attorney and financial advisor of your choice, if you so elect, who can review these documents with you."

## History

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L. 1986, c. 103, 7.

Annotations

## Research References & Practice Aids

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### Administrative Code:

[N.J.A.C. 5:19-7.6](#) (2013), CHAPTER CONTINUING CARE RETIREMENT COMMUNITY RULES, Bankruptcy or insolvency of provider.

### LAW REVIEWS & JOURNALS:

[28 Rutgers L.J. 261](#), SYMPOSIUM: ENTIRE CONTROVERSY DOCTRINE: NOTE: NEW JERSEY'S MEDICAL MALPRACTICE MODEL JURY INSTRUCTION: COMPREHENSIBLE TO THE JURY.

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## [N.J. Stat. § 52:27D-337](#)

Current through New Jersey 220th Second Annual Session, L. 2023, c. 171 and J.R. 15

**LexisNexis® New Jersey Annotated Statutes > Title 52. State Government, Departments and Officers (Subts. 1 — 5) > Subtitle 3. Executive and Administrative Departments (Chs. 14 — 27J) > Chapter 27D. Department of Community Affairs (Arts. 1 — 9) > Article 9. Department of Community Affairs Act (§§ 52:27D-32 — 52:27D-521)**

### **§ 52:27D-337. Annual disclosure statement**

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**a.** The provider shall file an annual disclosure statement with the commissioner, which contains the information required for the initial disclosure statement pursuant to section 7 of this act. The annual disclosure statement also shall include a narrative describing any material differences between the pro forma income statement filed pursuant to this act either as part of the initial application for a certificate of authority or the most recent annual disclosure statement and the actual results of operations during the fiscal year. The statement also shall contain a revised pro forma income statement for the next fiscal year. The commissioner may request additional income statements if necessary.

The provider shall file the annual disclosure statement within six months following the end of the provider's fiscal year.

**b.** Prior to the provider's acceptance of part or all of any application or entrance fee or the execution of the continuing care agreement by the resident, whichever occurs first, the provider shall deliver the most current annual disclosure statement to the current or prospective resident and to any other person with whom the continuing care agreement is or may be entered into.

**c.** A provider shall amend its currently filed annual disclosure statement at any time if, in the opinion of the provider or the department, an amendment is necessary to prevent the disclosure statement from containing any material misstatement of fact or omission to state a material fact as required pursuant to this act. The provider shall file an amendment or amended disclosure statement with the commissioner before the provider provides it to a resident or prospective resident.

### **History**

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L. 1986, c. 103, 8.

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## [N.J. Stat. § 52:27D-338](#)

Current through New Jersey 220th Second Annual Session, L. 2023, c. 171 and J.R. 15

**LexisNexis® New Jersey Annotated Statutes > Title 52. State Government, Departments and Officers (Subts. 1 — 5) > Subtitle 3. Executive and Administrative Departments (Chs. 14 — 27J) > Chapter 27D. Department of Community Affairs (Arts. 1 — 9) > Article 9. Department of Community Affairs Act (§§ 52:27D-32 — 52:27D-521)**

### **§ 52:27D-338. False, misleading statements**

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- a.** No provider or person acting on behalf of the provider shall make, publish, disseminate, circulate or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated or placed before the public in a newspaper or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement of any sort containing an assertion, representation or statement which is untrue, deceptive or misleading.
- b.** No provider or person acting on behalf of the provider shall file with the department or make, publish, disseminate, circulate or deliver to any person or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated or delivered to any person, or placed before the public, any disclosure statement, financial statement or continuing care agreement that contains an assertion, representation, or statement which is untrue, deceptive or misleading.
- c.** A person who willfully and knowingly violates the provisions of this section is guilty of a crime of the third degree.

### **History**

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L. 1986, c. 103, 9.

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## [N.J. Stat. § 52:27D-339](#)

Current through New Jersey 220th Second Annual Session, L. 2023, c. 171 and J.R. 15

**LexisNexis® New Jersey Annotated Statutes > Title 52. State Government, Departments and Officers (Subts. 1 — 5) > Subtitle 3. Executive and Administrative Departments (Chs. 14 — 27J) > Chapter 27D. Department of Community Affairs (Arts. 1 — 9) > Article 9. Department of Community Affairs Act (§§ 52:27D-32 — 52:27D-521)**

### **§ 52:27D-339. Liquid reserves**

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- a. Each provider shall establish and maintain liquid reserves in an amount equal to or exceeding the greater of:
  - (1) The total of all principal and interest payments due during the next 12 months on account of any mortgage loan or other long-term financing of the facility; or
  - (2) 15% of the projected annual operating expenses of the facility, exclusive of depreciation.
- b. A provider shall notify the commissioner in writing at least 10 days prior to reducing the amount of funds available to satisfy the applicable liquid reserve requirement. A provider may not expend more than 1/12 of the required balance each calendar month.
- c. In a facility where some residents are not under continuing care agreements, the reserve shall be computed only on the proportional share of financing or operating expenses that is applicable to residents under continuing care agreements at the end of the provider's most recent fiscal year.
- d. A provider may use funds in an endowment fund or escrow account, including an escrow account established by or pursuant to a mortgage loan, bond indenture or other long-term financing, to satisfy the reserve requirements of this section, if the funds are available to make payments when operating funds are insufficient for these purposes.

### **History**

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L. 1986, c. 103, 10.

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## [N.J. Stat. § 52:27D-340](#)

Current through New Jersey 220th Second Annual Session, L. 2023, c. 171 and J.R. 15

**LexisNexis® New Jersey Annotated Statutes > Title 52. State Government, Departments and Officers (Subts. 1 — 5) > Subtitle 3. Executive and Administrative Departments (Chs. 14 — 27J) > Chapter 27D. Department of Community Affairs (Arts. 1 — 9) > Article 9. Department of Community Affairs Act (§§ 52:27D-32 — 52:27D-521)**

### **§ 52:27D-340. Escrow account**

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- a.** The commissioner may require a provider to establish and maintain in escrow, on a current basis with a bank, trust company or other escrow agent approved by the department, a portion of all entrance fees received by the provider in an aggregate amount not to exceed the total of all principal and interest payments due during the next 12 months on account of any first mortgage loan or other long-term financing of the facility. The provider may invest the funds in the escrow account, with the earnings thereon payable to the provider. If the provider so requests in writing, the escrow agent shall release up to 1/12 of the original principal balance of the escrow account. The escrow agent shall not so release funds more than once during any calendar month, and then only after the escrow agent has given written notice to the commissioner at least 10 days prior to the release. The amount of this escrow fund shall be included in satisfying the reserves required pursuant to section 10 of this act.
- b.** This section is applicable only when the commissioner has cause to believe that additional protection is necessary to secure the provider's performance of the terms of all resident agreements.

### **History**

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L. 1986, c. 103, 11.

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## [N.J. Stat. § 52:27D-341](#)

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### **§ 52:27D-341. Filing of lien**

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Prior to the issuance of a certificate of authority pursuant to this act, or at any other time the commissioner determines it is in the best interest of residents of a facility, the commissioner may file a lien on the real and personal property of the provider or facility to secure the obligations of the provider pursuant to existing and future contracts for continuing care. A lien filed under this section is effective for a period of 10 days following its filing and may be extended by the commissioner, if the commissioner finds that the extension is advisable for the protection of residents of the facility.

The commissioner may foreclose on the lien upon the liquidation of the facility or the insolvency or bankruptcy of the provider. In this event, the commissioner shall use the proceeds thereof for full or partial satisfaction of obligations of the provider pursuant to contracts for continuing care in effect at that time.

The lien provided for in this section is subordinate to the lien of any first mortgage on the real property of the facility, and if the commissioner determines and so states in writing that it is advisable for the efficient operation of the facility, the lien may be subordinated to the claims of other persons.

### **History**

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L. 1986, c. 103, 12.

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## [N.J. Stat. § 52:27D-342](#)

Current through New Jersey 220th Second Annual Session, L. 2023, c. 171 and J.R. 15

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### **§ 52:27D-342. Release from escrow**

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The commissioner shall require a provider to establish an interest bearing escrow account with a bank, trust company or other escrow agent approved by the commissioner, as a condition of issuing a certificate of authority. The provider shall place in the escrow account any entrance fees or payments in excess of 5% of the then existing entrance fee for the living unit that are received by the provider prior to the date the resident is permitted to occupy the living unit in the facility. The fees or payments are subject to release from the escrow account in the following manner:

- a.** If the entrance fee gives the resident the right to occupy a living unit which has been previously occupied, the entrance fee and any interest earned thereon shall be released to the provider when the living unit becomes available for occupancy by the new resident.
- b.** If the entrance fee applies to a living unit which has not been previously occupied, the entrance fee and any interest earned thereon shall be released to the provider when the commissioner is satisfied that:
  - (1)** Aggregate entrance fees received or receivable by the provider pursuant to executed continuing care agreements equal at least 50% of the sum of the entrance fees due at full occupancy of the portion of the facility under construction, except that entrance fees receivable pursuant to an agreement shall be counted only if the facility has received a deposit of 35% or more of the entrance fee due from the individual signing the contract;
  - (2)** The aggregate entrance fees received or receivable pursuant to the preceding paragraph plus anticipated proceeds of any first mortgage loan or other long-term financing commitment and funds from other sources in the actual possession of the provider are equal to at least 50% of the aggregate cost of constructing or purchasing, equipping and furnishing the facility plus at least 50% of the funds necessary to fund start-up losses as estimated by the provider in the statement of anticipated source and application of funds submitted pursuant to subsection j. of section 7 of this act; and
  - (3)** The provider has received a preliminary commitment for any permanent mortgage loan or other long-term financing described pursuant to subsection j. of section 7 of this act and any conditions of the commitment prior to disbursement of funds thereunder, other than completion of the construction or closing of the purchase of the facility, are substantially satisfied.
- c.** If the funds in the escrow account established pursuant to this section and any interest earned thereon are not released within 36 months, or a greater time if so specified by the provider with the consent of the commissioner, the escrow agent shall return the funds to the individuals who made payments to the provider.
- d.** Nothing in this section shall require the provider to place any nonrefundable application fees charged to prospective residents in escrow.

## § 52:27D-342. Release from escrow

e. In lieu of any escrow required pursuant to this section, a provider is entitled to post a letter of credit from a financial institution, negotiable securities or a bond by a surety authorized to do business in this State, in a form approved by the commissioner and in an amount not to exceed the amount required by paragraph (1) of subsection b. of this section. The provider shall execute the letter of credit, negotiable securities or bond in favor of the commissioner on behalf of individuals who are entitled to a refund of entrance fees from the provider.

f. A provider may apply to the commissioner for a waiver of the applicable escrow requirements of this section when a provider constructs additional living units in an amount that does not exceed 10% of the facility's existing living units for continuing care residents.

The provider shall apply for the waiver in writing to the commissioner. The commissioner may grant the waiver, which may be effective for a period of one year or longer, at the discretion of the commissioner, if the construction of additional units meets the requirements of this subsection.

g. Upon receipt of a notice from the provider that an individual is entitled to a refund of an entrance fee, the escrow agent shall return the funds held in the escrow account to the individual.

## History

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L. 1986, c. 103, 13.

Annotations

## Research References & Practice Aids

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### PRACTICE GUIDES & TREATISES:

[LexisNexis Practice Guide New Jersey Elder Law § 5.16](#) Examining Non-financial Provisions of Contract with Continuing Care Retirement Community

### PRACTICE CHECKLISTS:

[LexisNexis Practice Guide New Jersey Elder Law § 5.15](#) CHECKLIST: Reviewing Non-financial Terms in Contract with Continuing Care Retirement Community

### PRACTICE FORMS:

New Jersey Elder Law LexisNexis Forms: Form 1479-ELL 5.15 Reviewing Non-financial Terms in Contract with Continuing Care Retirement Community

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## [N.J. Stat. § 52:27D-343](#)

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### **§ 52:27D-343. Collateral**

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A provider shall pledge only the unencumbered assets of a continuing care facility as collateral for the purpose of securing loans for other continuing care facilities, whether proposed or existing.

### **History**

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L. 1986, c. 103, 14.

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## [N.J. Stat. § 52:27D-344](#)

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### § 52:27D-344. Continuing care agreement

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- a. A continuing care agreement executed on or after the effective date of this act shall be written in plain English and in language understandable by a layperson and shall include, but not be limited to, the following:
- (1) A provision for the continuing care of one resident, or two or more residents occupying space designed for multiple occupancy under appropriate procedures established by the provider, and a statement showing the value of all property transferred, including donations, subscriptions, fees and any other amounts payable by, or on behalf of, the resident;
  - (2) A statement on a form provided by the commissioner specifying all services which are to be provided to the resident by the provider, including, in detail, all items which the resident will receive, such as food, shelter, nursing care, pharmaceuticals and burial, and whether the items will be provided for a designated period of time or for life;
  - (3) A description of the health and financial conditions upon which the provider may have the resident relinquish his space in the designated facility;
  - (4) A description of the health and financial conditions required for a person to continue as a resident;
  - (5) A description of the circumstances under which the resident shall be permitted to remain in the facility in the event of financial difficulties of the resident. The stated policy may not be less than the terms stated in subsection e. of this section;
  - (6) A statement of the fees that will be charged if the resident marries a person who is not a resident of the facility, the terms concerning the entry of a spouse into the facility and the consequences if the spouse does not meet the requirements for entry;
  - (7) A statement providing that the agreement may be canceled upon giving at least 60 days' notice by the provider or the resident, except that if an agreement is canceled by the provider because there has been a good faith determination in writing, signed by the medical director and the administrator of the facility, that a resident is a danger to himself or others, only notice that is reasonable under the circumstances is required;
  - (8) A statement providing in clear and understandable language, in print no smaller than the largest type used in the body of the agreement, the terms governing the refund of any portion of the entrance fee;
  - (9) A statement of the terms under which an agreement is canceled by the death of the resident, which statement may contain a provision stating that upon the death of the resident the moneys paid for the continuing care of the resident shall be considered earned and become the property of the provider; and

## § 52:27D-344. Continuing care agreement

**(10)** A statement providing for at least 30 days' advance notice to the resident before any change in fees or changes in the scope of care or services are effective, except for changes required by State or federal assistance programs.

**(10)** A resident has the right to rescind a continuing care agreement without penalty or forfeiture, except those costs specifically incurred by the facility at the request of the resident and set forth in writing in a separate addendum signed by both parties to the agreement, within 30 days after making an initial deposit or executing the agreement. A resident shall not be required to move into the facility designated in the agreement before the expiration of the 30 day period.

**c.** If a resident dies before the occupancy date, or through illness, injury or incapacity is precluded from becoming a resident under the terms of the continuing care agreement, the agreement shall be automatically rescinded and the resident or the resident's legal representative shall receive a full refund of all moneys paid to the facility, except those costs specifically incurred by the facility at the request of the resident and set forth in writing in a separate addendum signed by both parties to the agreement.

**d.** No agreement for care shall permit dismissal or discharge of the resident from the facility prior to the expiration of the agreement without just cause for the removal. For the purposes of this act, "just cause" means but is not limited to a good faith determination in writing, signed by the medical director and the administrator of the facility, that a resident is a danger to himself or others while remaining in the facility. The written determination shall state: (1) that the determination is made in good faith; (2) the reasons supporting the determination that the resident is a danger to himself or others; (3) the basis for the conclusion that there is no less restrictive alternative to dismissal, discharge or cancellation, as the case may be, for abating the dangerousness of the resident; and (4) the basis for the conclusion that the danger is such that a notice period of less than 60 days is appropriate.

If a facility dismisses a resident for just cause, the resident shall be entitled to a refund of his unearned entrance fee, if any, in the same manner as provided in subsection e. of this section. A resident may request a hearing to contest a facility's decision to dismiss or discharge the resident. The hearing shall be held pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 ([C. 52:14B-1](#) et seq.).

**e.** It shall not be deemed just cause if the resident is unable to pay monthly maintenance fees until the entire unearned entrance fee plus, where applicable, any third-party insurance benefits received, are earned by the facility. For the purpose of this subsection, the unearned portion shall be the difference between the entrance fee paid by, or on behalf of, the resident and the cost of caring for the resident based upon the per capita cost to the facility. In lieu of calculating the actual per capita cost of caring for a resident, a facility may provide, in the agreement for continuing care, that the per capita cost of caring for the resident shall be calculated as follows:

**(1)** No more than 2% of the entrance fee for each month the resident occupies, or is entitled to occupy, a bed in the residential unit of the facility;

**(2)** No more than 4% of the entrance fee for each month the resident occupies, or is entitled to occupy, a bed in the nursing unit of the facility; and **(3)** No more than 10% of the entrance fee as a one-time charge for processing and refurbishment.

If these entrance fees are exhausted within 90 days of the date of failure to pay, the facility may not require the resident to leave before 90 days from the date of failure to pay, during which time the resident shall continue to pay the facility a reduced fee based upon the resident's current income.

**f.** No act, agreement or statement of a resident or of an individual purchasing care for a resident under any agreement to furnish care to the resident shall constitute a valid waiver of any provision of this act intended for the benefit or protection of the resident or the individual purchasing care for the resident.

**g.** An agreement entered into prior to the effective date of this act or prior to the issuance of a certificate of authority to the provider is valid and binding upon both parties in accordance with the terms of the agreement.

## § 52:27D-344. Continuing care agreement

h. The provider shall designate and make knowledgeable personnel available to prospective residents to answer questions about any information contained in the agreement for continuing care. The provider shall also advise prospective residents to seek the independent advice of an attorney or financial advisor of their choice concerning the agreement. The agreement shall state on the cover or top of the first page in bold print the following: "This matter involves a substantial financial investment and a legally binding contract. In evaluating the disclosure statement and the contract prior to any commitment, it is recommended that you consult with an attorney and financial advisor of your choice, if you so elect, who can review these documents with you."

## History

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L. 1986, c. 103, 15.

Annotations

## CASE NOTES

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### Administrative Law: Agency Adjudication: Hearings: General Overview

Department of community affairs erred in issuing findings of fact, finding that a resident had violated the agreement for residence in a continuing care facility, because the findings of fact were issued as defined in N.J. Stat. Ann. § 52:27D-344d, when in reality, N.J. Stat. Ann. § 52:27D-344a(7) mandated that the resident was entitled to a hearing prior to the issuance of such findings. [Seabrook Village v. Murphy, 371 N.J. Super. 319, 853 A.2d 280, 2004 N.J. Super. LEXIS 324 \(App.Div. 2004\)](#).

## Research References & Practice Aids

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### PRACTICE GUIDES & TREATISES:

[LexisNexis Practice Guide New Jersey Elder Law § 5.18](#) Determining If Grounds for Removal from Continuing Care Retirement Community Meet Just Cause Standard

[LexisNexis Practice Guide New Jersey Elder Law § 5.19](#) Requesting Hearing before Department of Community Affairs

[LexisNexis Practice Guide New Jersey Elder Law § 5.20](#) Pursuing Administrative Appeals

[LexisNexis Practice Guide New Jersey Elder Law § 5.21](#) Negotiating Issues Regarding Level of Care

### PRACTICE CHECKLISTS:

[LexisNexis Practice Guide New Jersey Elder Law § 5.17](#) CHECKLIST: Dealing with Eviction from and Disputes over Services Provided by Continuing Care Retirement Communities



## [N.J. Stat. § 52:27D-345](#)

Current through New Jersey 220th Second Annual Session, L. 2023, c. 171 and J.R. 15

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### § 52:27D-345. Residents' organizations; quarterly meeting

- a. Residents living in a facility which holds a certificate of authority issued pursuant to this act [[C.52:27D-330](#) et seq.] have the right of self-organization. No retaliatory conduct shall be permitted against a resident for organization or membership or participation in a residents' organization; for the resident's lawful efforts to secure or enforce his rights under the continuing care agreement, the laws of the State of New Jersey or its governmental subdivisions, or of the United States; or for the resident's good faith complaint to a governmental authority of the provider's alleged violation of any health or safety law, regulation, code or ordinance or State law or regulation which has as its objective the regulation of the facility or the delivery of health care services.
- b. The board of directors or other governing body, or a designated representative who is not the chief executive officer or other staff member, of a continuing care facility shall hold quarterly meetings with the residents or their elected representatives of the facility, for the purpose of free discussion of subjects which may include income, expenditures and financial matters as they apply to the facility and proposed changes in policies, programs and services. Any questions on these subjects may be raised at each quarterly meeting, except for confidential personnel matters, and shall be answered or explained promptly when possible, or within a reasonable period of time. Residents shall be given at least seven days' notice of each quarterly meeting.
- c. The provider shall designate and make knowledgeable personnel available to address resident complaints about the operation and management of the facility.
- d. The board of directors or other governing body of a facility shall consult and discuss with the representatives of the residents any proposed action that might significantly affect the well-being of the residents or the financial stability of the facility, before taking the proposed action.
- e. The board of directors or other governing body of a facility shall include at least one resident as a full voting member of the board or body. Resident members shall be nominated by the elected representatives of the residents and selected by the board of directors or other governing body. If the board of directors or other governing body governs more than one facility, the occupancy of each seat on that body that is reserved for a resident member shall rotate among the facilities governed by that body on a term-by-term basis.

### History

L. 1986, c. 103, § 16; amended [2007, c. 192](#), § 1, eff. Jan. 20, 2008.

Annotations

### Notes

**Publisher's Note:**

The bracketed material was added by the Publisher to provide a reference.

**Effective Dates:**

Section 3 of L. [2007, c. 192](#) provides: "This act shall take effect on the 90th day after enactment." Chapter 192, L. 2007, was approved on Oct. 22, 2007.

**Amendment Note:**

2007 amendment, by Chapter 192, in the first sentence of b., substituted "The board of directors or other governing body, or a designated representative who is not the chief executive officer or other staff member" for "The board of directors, a designated representative, or other governing body", deleted "continuing care" preceding "facility, for the purpose of", and made a stylistic change, and inserted the second sentence of b.; and added d. and e.

**CASE NOTES**

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**Constitutional Law: Bill of Rights: Fundamental Freedoms: Freedom of Association****Public Health & Welfare Law: Social Services: Disabled & Elderly Persons: General Overview****Constitutional Law: Bill of Rights: Fundamental Freedoms: Freedom of Association**

Strict scrutiny applies regarding plaintiff church's freedom-of-association claim because it was an "expressive association," and, as defendant state presented no evidence that [N.J. Stat. Ann. § 52:27D-345\(e\)](#) was narrowly tailored to protect senior citizens, the court permanently enjoined the state from enforcing the statute against the church. [Wiley Mission v. New Jersey, Dep't of Cmty. Affairs, 2011 U.S. Dist. LEXIS 96473 \(D.N.J. Aug. 25, 2011\)](#).

**Public Health & Welfare Law: Social Services: Disabled & Elderly Persons: General Overview**

Strict scrutiny applies regarding plaintiff church's freedom-of-association claim because it was an "expressive association," and, as defendant state presented no evidence that [N.J. Stat. Ann. § 52:27D-345\(e\)](#) was narrowly tailored to protect senior citizens, the court permanently enjoined the state from enforcing the statute against the church. [Wiley Mission v. New Jersey, Dep't of Cmty. Affairs, 2011 U.S. Dist. LEXIS 96473 \(D.N.J. Aug. 25, 2011\)](#).

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### § 52:27D-346. Bankruptcy proceedings

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- a. The commissioner may apply to a court of competent jurisdiction or to the federal bankruptcy court, if that court had previously taken jurisdiction over the provider or facility, for an order authorizing the commissioner to appoint a trustee to rehabilitate or to liquidate the facility if, after notice and hearing pursuant to the “Administrative Procedure Act,” P.L. 1968, c. 410 ([C. 52:14B-1](#) et seq.), the commissioner determines that:
- (1) A portion of a provider’s reserve fund escrow as required pursuant to this act has been or is proposed to be released;
  - (2) A provider is or will be unable to meet the pro forma income or cash flow projections filed pursuant to section 7 of this act, except in a manner that may endanger the ability of the provider to fully meet its continuing care contract obligations;
  - (3) A provider has failed to maintain the reserves required under this act; or
  - (4) A provider is bankrupt or insolvent, or in imminent danger of becoming bankrupt or insolvent.
- b. An order to rehabilitate a facility shall direct the commissioner or trustee to take possession of the property of the provider and to conduct the business thereof, including the employment of managers or agents that the commissioner or trustee deems necessary and to take those steps the court directs toward removal of the causes and conditions which have made rehabilitation necessary.
- c. If the court finds, upon petition of the commissioner, trustee or provider, or on its own motion, that the objectives of an order to rehabilitate a facility have been accomplished and that the facility may be returned to the provider’s management without further jeopardy to the residents, creditors and owners of the facility, and to the public, the court may, upon a full report and accounting of the conduct of the facility’s affairs during the rehabilitation and the facility’s current financial condition, terminate the rehabilitation and order return of the facility and its assets and affairs to the provider’s management.
- d. If the commissioner determines that further efforts to rehabilitate the provider would be useless, the commissioner may apply to the court for an order of liquidation.
- e. The court may issue an order of liquidation upon application to the commissioner, whether or not a prior order to rehabilitate the facility had been issued. The order shall act as a revocation of the certificate of authority issued to the facility pursuant to this act. The order shall direct the commissioner or a trustee to marshal and liquidate all of the provider’s assets located within the State.
- f. In applying for an order to rehabilitate or liquidate a facility, the commissioner shall give due consideration in the application to the manner in which the welfare of persons who have previously contracted with the provider for continuing care may be best served.

In furtherance of this objective, the proceeds of any lien obtained by the commissioner pursuant to this act may be:

- (1) Used in full or partial payment of entrance fees;

## § 52:27D-346. Bankruptcy proceedings

(2) Used on behalf of residents of a facility that is being liquidated; or

(3) Paid, on behalf of those persons, to other facilities operated by providers who hold a certificate of authority issued pursuant to this act.

**g.** The court shall refuse or vacate an order for rehabilitation if the provider posts a bond by a surety authorized to do business in this State and executed in favor of the commissioner on behalf of persons who may be found entitled to a refund of entrance fees from the provider or other damages in the event the provider is unable to fulfill the terms of its contracts to provide continuing care at the facility. The amount of the bond shall be equal to the reserve funding which would otherwise need to be available to fulfill the provider's obligations, as determined by the court.

**h.** The commissioner or his designee shall attempt to keep residents of the community informed about his actions to rehabilitate or liquidate the facility and, when appropriate, the commissioner or his designee shall meet with residents of the facility.

## History

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L. 1986, c. 103, 17.

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## [N.J. Stat. § 52:27D-347](#)

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### § 52:27D-347. Liability for damages

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**a.** A provider or person acting on behalf of the provider is liable to the person who contracts for the continuing care for damages, including repayment of all fees paid to the provider, facility or person who violates this act plus interest thereon at the legal rate, court costs and reasonable attorney's fees, if the provider or person acting on behalf of the provider:

- (1)** Enters into a contract for continuing care at a facility which does not have a certificate of authority issued pursuant to this act;
- (2)** Enters into a contract for continuing care at a facility without having first delivered a disclosure statement to a person contracting for continuing care pursuant to this act; or
- (3)** Enters into a contract for continuing care at a facility with a person who has relied on a disclosure statement which omits a material fact required to be stated therein pursuant to this act.

The reasonable value of care and lodging provided to the resident by or on whose behalf the contract for continuing care was entered into prior to discovery of the violation, misstatement or omission or the time the violation, misstatement or omission should reasonably have been discovered shall be deducted from the amount of repayment due the person.

**b.** A provider is liable under this section whether or not the provider has actual knowledge of the violation, misstatement or omission. A person acting on behalf of the provider is liable under this section only if the person has actual knowledge of the violation, misstatement or omission.

**c.** A person may not file or maintain an action under this section if before filing the action, the person received an offer to refund all amounts paid to the provider, facility or person violating this act plus interest from the date of payment, less the reasonable value of care and lodging provided prior to receipt of the offer, and the person failed to accept the offer within 30 days of its receipt. At the time a provider makes a written offer of rescission, the provider shall file a copy with the commissioner and obtain the approval of the commissioner for the offer. The offer shall be written in clear and understandable language and shall explain the limitation on court action provided pursuant to this subsection. Subject to the provisions of this subsection, nothing in this act shall prohibit any person from seeking injunctive or other relief from the provider in a court of law or equity in this State.

**d.** A person shall not institute an action to enforce a liability created under this act more than six years after the violation is discovered or could have been discovered in the exercise of due diligence.

**e.** Except as expressly provided in this act, civil liability in favor of a private party shall not arise against a person by implication from or as a result of the violation of this act or an order issued pursuant to this act. This act shall not limit a liability which may exist by virtue of any other law if this act were not in effect.

### History

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§ 52:27D-347. Liability for damages

L. 1986, c. 103, 18.

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### **§ 52:27D-348. Investigatory powers**

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- a. The commissioner or his designee may, as often as he reasonably deems necessary, conduct an investigation to determine whether any person has violated or is about to violate any provision of this act or to aid in the enforcement of this act or in the prescribing of rules and forms hereunder.
- b. For the purpose of any investigation or proceeding under this act, the commissioner or his designee may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the commissioner deems relevant or material to the inquiry.

### **History**

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L. 1986, c. 103, 19.

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## [N.J. Stat. § 52:27D-349](#)

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### **§ 52:27D-349. Examination of records**

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The commissioner or his designee shall visit each facility offering continuing care in this State to examine its books and records at least once every four years.

### **History**

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L. 1986, c. 103, 20.

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## [N.J. Stat. § 52:27D-350](#)

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### **§ 52:27D-350. Consumers' guide; residents' rights booklet**

- a. The commissioner shall prepare and cause to be distributed to the public a consumers' guide to continuing care facilities and an annual directory of continuing care facilities in the State.
- b. The commissioner shall prepare and cause to be distributed to the public a residents' rights booklet that describes the rights of residents and obligations of providers under this act.

### **History**

L. 1986, c. 103, 21.

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## [N.J. Stat. § 52:27D-351](#)

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

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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.

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

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.

## History

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L. 1986, c. 103, § 22; amended [1991, c. 314](#); [2013, c. 167](#), § 9, eff. May 1, 2014.

Annotations

## Notes

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### Effective Dates:

Section 11 of L. [2013, c. 167](#) provides: “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.” Chapter 167, L. 2013, was approved on Oct. 16, 2013.

### Amendment Note:

2013 amendment, by Chapter 167, rewrote the section.

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## [N.J. Stat. § 52:27D-352](#)

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### **§ 52:27D-352. Criminal violations**

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- a. The commissioner may refer any available evidence concerning criminal violations of this act to the Attorney General or the appropriate county prosecutor.
- b. The Attorney General or a county prosecutor may institute appropriate criminal proceedings either in response to a referral from the commissioner or on their own initiative.
- c. Nothing in this act limits the power of the State to punish any person for any conduct which constitutes a crime under any other law.

### **History**

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L. 1986, c. 103, 23.

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## [N.J. Stat. § 52:27D-353](#)

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### **§ 52:27D-353. Fees**

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The commissioner shall determine reasonable fees for filing an application for a certificate of authority and other required documents pursuant to this act. The commissioner also may assess a provider for reasonable expenses incurred by the department in the investigation or rehabilitation of a provider or facility pursuant to this act.

### **History**

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L. 1986, c. 103, 24.

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### **§ 52:27D-354. One year to comply**

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A provider who is offering but not providing continuing care on the effective date of this act may be given a reasonable time, not to exceed one year from the date of promulgation of applicable regulations, within which to comply with the requirements of this act and obtain a certificate of authority.

### **History**

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L. 1986, c. 103, 25.

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### **§ 52:27D-355. Exclusion**

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A facility which has not entered into any agreements for continuing care pursuant to this act since 1965 is not subject to the provisions of this act; but this exclusion shall not apply if that facility enters into one or more agreements for continuing care on or after the effective date of this act.

### **History**

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L. 1986, c. 103, 26.

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## [N.J. Stat. § 52:27D-356](#)

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### **§ 52:27D-356. Fewer than 50 residents**

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A facility which has less than 50 residents who are under continuing care agreements on the date of enactment of this act is not subject to the provisions of this act, but this exclusion shall not apply if that facility increases the number of its residents under continuing care agreements to 50 or more, after the date of enactment of this act.

### **History**

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L. 1986, c. 103, 27.

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## [N.J. Stat. § 52:27D-357](#)

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### § 52:27D-357. Continuing Care Advisory Council

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**a.** There is created a Continuing Care Advisory Council which consists of 13 members as follows: the Commissioners of Human Services, Health, and Banking and Insurance, or their designees, who shall serve ex officio and shall be non-voting members; 10 public members appointed by the Governor, with the advice and consent of the Senate, who are residents of the State and two of whom are administrators of continuing care facilities in this State, one of whom is a representative of the business community and knowledgeable in the area of management, one of whom is a certified public accountant, one of whom is an attorney licensed to practice in this State, three of whom are residents of continuing care retirement communities in this State who are recommended by the Organization of Residents Associations of New Jersey, one of whom is a trustee or director of a continuing care retirement community in this State and one of whom is a representative of the New Jersey Association of Non-Profit Homes for the Aging.

**b.** The term of office for each public member is three years, or until the member's successor has been appointed; except that of the public members first appointed, two shall be appointed for a term of one year, two for a term of two years and three for a term of three years.

A vacancy in the membership of the council shall be filled in the same manner as the original appointment, but for the unexpired term. A member of the council is eligible for reappointment.

The members of the council shall serve without compensation, but the council shall reimburse the members for the reasonable expenses incurred in the performance of their duties.

**c.** The council shall hold an organizational meeting within 30 days after the appointment of its members. The members of the council shall elect from among them a chairperson, who shall be the chief executive officer of the council, and the members shall elect a secretary, who need not be a member of the council.

**d.** The council shall meet at least four times a year but may meet more frequently at the discretion of the chairperson or the commissioner.

**e.** The council may call to its assistance and avail itself of the services and assistance of any officials and employees of the Department of Community Affairs or other State agency and political subdivisions and their departments, boards, bureaus, commissions, and agencies as it requires and as is available to it for this purpose and may expend any funds that are appropriated or otherwise made available to it pursuant to this act [[C.52:27D-330](#) et seq.].

**f.** The council shall:

**(1)** Advise and provide information to the commissioner on matters pertaining to the operation and regulation of continuing care retirement facilities, upon request of the commissioner;

**(2)** Review and comment upon, as appropriate, any proposed rules and regulations and legislation pertaining to continuing care retirement facilities;

**(3)** Make recommendations to the commissioner about any needed changes in rules and regulations and State and federal laws pertaining to continuing care retirement facilities; and

## § 52:27D-357. Continuing Care Advisory Council

(4) Assist in the rehabilitation of a continuing care retirement facility, upon request of the commissioner.

g. The commissioner shall report annually to the Governor and the Legislature, the commissioner's and the council's findings and recommendations concerning continuing care retirement communities and the implementation of this act.

## History

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L. 1986, c. 103, § 28; amended [2007, c. 192](#), § 2, eff. Jan. 20, 2008; [2012, c. 17](#), § 423, eff. June 29, 2012.

Annotations

## Notes

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### Publisher's Note:

The bracketed material was added by the Publisher to provide a reference.

### Effective Dates:

Section 3 of L. [2007, c. 192](#) provides: "This act shall take effect on the 90th day after enactment." Chapter 192, L. 2007, was approved on Oct. 22, 2007.

### Amendment Note:

2007 amendment, by Chapter 192, in a., substituted "13 members" for "17 members", "Health and Senior Services" for "Health", and "Banking and Insurance" for "Insurance", inserted "who are recommended by the Organization of Residents Associations of New Jersey", and deleted from the end of a. "two members of the Senate appointed by the President thereof; and two members of the General Assembly appointed by the Speaker thereof"; and in b., deleted the former second sentence, which read: "The legislative members shall be appointed for their legislative terms of office."

2012 amendment, by Chapter 17, substituted "Commissioners of Human Services, Health, and Banking and Insurance" for "Commissioners of the Departments of Community Affairs, Health and Senior Services and Banking and Insurance" in a.; substituted "chairperson" for "chairman" in the second sentence of c. and in d.; and made a stylistic change.

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## [N.J. Stat. § 52:27D-358](#)

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### § 52:27D-358. Rules, regulations

---

The commissioner shall adopt rules and regulations necessary to carry out the provisions of this act, pursuant to the “Administrative Procedure Act,” P.L. 1968, c. 410 ([C. 52:14B-1](#) et seq.). The commissioner shall adopt the regulations within six months of the effective date of this act.

### History

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L. 1986, c. 103, 29.

Annotations

### Research References & Practice Aids

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#### **Administrative Code:**

[N.J.A.C. 5:19](#) (2013), CHAPTER CONTINUING CARE RETIREMENT COMMUNITY RULES, 5, Chapter 19 — Chapter Notes.

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## [N.J. Stat. § 52:27D-359](#)

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### § 52:27D-359. Health Department authority

---

Nothing in this act shall be construed to limit the licensing and regulatory authority of the Department of Health, pursuant to P.L. 1971, c. 136 ([C. 26:2H-1](#) et seq.), concerning health care services provided by a facility subject to this act.

### History

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L. 1986, c. 103, 30.

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## [N.J. Stat. § 52:27D-360](#)

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### **§ 52:27D-360. Community Affairs authority**

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Nothing in this act shall be construed to limit the authority of the Department of Community Affairs to enforce any otherwise applicable statute, code, or regulation in a facility subject to this act.

### **History**

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L. 1986, c. 103, 31.

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## [N.J. Stat. § 52:27D-360.1](#)

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### § 52:27D-360.1. Short title

Sections 1 through 7 [[C.52:27D-360.1](#) through [C.52:27D-360.7](#)] of this act shall be known and may be cited as the “Bill of Rights for Continuing Care Retirement Community Residents in Independent Living.”

### History

L. [2013, c. 167](#), § 1, eff. May 1, 2014.

Annotations

### Notes

#### **Publisher’s Note:**

The bracketed material was added by the Publisher to provide a reference.

#### **Effective Dates:**

Section 11 of L. [2013, c. 167](#) provides: “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.” Chapter 167, L. 2013, was approved on Oct. 16, 2013.

### Research References & Practice Aids

#### **Cross References:**

“Bill of Rights for Continuing Care Retirement Community Residents in Independent Living” [Effective May 1, 2014], see [52:27D-360.5](#).

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## [N.J. Stat. § 52:27D-360.2](#)

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

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- 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.

### **History**

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L. [2013, c. 167](#), § 2, eff. May 1, 2014.

Annotations

### **Notes**

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#### **Effective Dates:**

Section 11 of L. [2013, c. 167](#) provides: "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." Chapter 167, L. 2013, was approved on Oct. 16, 2013.

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## [N.J. Stat. § 52:27D-360.3](#)

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### § 52:27D-360.3. Rights of residents of community

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- 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.



## § 52:27D-360.3. Rights of residents of community

- 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.

## History

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Annotations

## Notes

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### Effective Dates:

Section 11 of L. [2013, c. 167](#) provides: "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." Chapter 167, L. 2013, was approved on Oct. 16, 2013.

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## [N.J. Stat. § 52:27D-360.4](#)

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

- 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.

### History

L. [2013, c. 167](#), § 4, eff. May 1, 2014.

Annotations

### Notes

#### **Effective Dates:**

Section 11 of L. [2013, c. 167](#) provides: "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." Chapter 167, L. 2013, was approved on Oct. 16, 2013.

### Research References & Practice Aids

#### **Cross References:**

Rights of residents of community [Effective May 1, 2014], see [52:27D-360.3](#).

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

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End of Document

## [N.J. Stat. § 52:27D-360.5](#)

Current through New Jersey 220th Second Annual Session, L. 2023, c. 171 and J.R. 15

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

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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 [May 1, 2014] of [P.L.2013, c.167 \(C.52:27D-360.1](#) et al.).

### **History**

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L. [2013, c. 167](#), § 5, eff. May 1, 2014.

Annotations

### **Notes**

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#### **Publisher’s Note:**

The bracketed material was added by the Publisher to provide a reference.

#### **Effective Dates:**

Section 11 of L. [2013, c. 167](#) provides: “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.” Chapter 167, L. 2013, was approved on Oct. 16, 2013.

### **Research References & Practice Aids**

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§ 52:27D-360.5. "Bill of Rights for Continuing Care Retirement Community Residents in Independent Living"

**Cross References:**

Rights of residents of community [Effective May 1, 2014], see [52:27D-360.3](#).

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## [N.J. Stat. § 52:27D-360.6](#)

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### § 52:27D-360.6. Information provided to resident

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- 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.

### History

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L. [2013, c. 167](#), § 6, eff. May 1, 2014.

Annotations

### Notes

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#### **Effective Dates:**

Section 11 of L. [2013, c. 167](#) provides: "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

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

administrative action in advance thereof as shall be necessary for the implementation of this act.” Chapter 167, L. 2013, was approved on Oct. 16, 2013.

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## [N.J. Stat. § 52:27D-360.7](#)

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### **§ 52:27D-360.7. Cancellation of agreement, returning of refundable entrance fee limited, disposition of personal property**

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**a.**

(1) A resident may, upon 60-days' written notice of the intent to vacate, cancel the continuing care agreement for any reason.

(2) Upon vacating the unit, a resident or resident's estate cancelling a continuing care agreement also shall provide written notice to the owner or manager of that facility that the unit is vacated. The notice shall declare that all personal property of the resident or estate thereof has been removed.

(3) After a unit is vacated, the facility may restore the unit to its original condition. The facility may remove any personal property of the prior resident that remains in the unit beginning on the twenty-first day following the date upon which notice of vacancy was received.

(4) In the case of a continuing care agreement that provides for a refundable entrance fee, the facility shall assign the vacated unit a sequential refund number among all the available units with refundable entrance fees once the unit is restored pursuant to paragraph (3) of this subsection, but not later than 60 days after the date that all the conditions for issuing a sequential refund number, as provided in the continuing care agreement, are fulfilled.

**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 based upon the order of the sequential refund number assigned to a unit pursuant to paragraph (4) of subsection a. of this section and the availability of funds from the proceeds of the resale of all vacated units with refundable entrance fees.

§ 52:27D-360.7. Cancellation of agreement, returning of refundable entrance fee limited, disposition of personal property

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.

f. Notwithstanding the provisions of subsection d. of this section to the contrary, a facility may apply to the Commissioner of Community Affairs for approval to implement an alternative methodology for making refund payments of refundable entrance fees, which approval shall not be granted unless the facility can demonstrate that the use of the alternative methodology is resident-focused and provides for a more equitable and timely payment of refundable entrance fees.

## History

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L. [2013, c. 167](#), § 7, eff. May 1, 2013; amended by [2018, c. 98](#), § 1, effective November 15, 2018.

Annotations

## Notes

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### Effective Dates:

Section 11 of L. [2013, c. 167](#) provides: "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." Chapter 167, L. 2013, was approved on Oct. 16, 2013.

Section 2 of L. [2018, c. 98](#) provides: "This act shall take effect 90 days after the date of enactment, and shall apply to continuing care agreements entered into on or after that date." Chapter 98, L. 2018, was approved on Aug. 17, 2018.

### Amendment Notes

2018 amendment by Chapter 98, redesignated former a. as a.(1); inserted "of the intent to vacate" in a.(1); added a.(2) through a.(4); substituted "based upon the order of the sequential refund number assigned to a unit pursuant to paragraph (4) of subsection a. of this section and the availability of funds from the proceeds of the resale of all vacated units with refundable entrance fees" for "within 60 days from the date the residence is resold and the entrance fee from the new resident has been received" in the last sentence of d.; and added f.

## Research References & Practice Aids

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### Cross References:

Short title [Effective May 1, 2014], see [52:27D-360.1](#).

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## [N.J. Stat. § 52:27D-360.8](#)

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### **§ 52:27D-360.8. Provision of information relative to the influenza vaccine for older adults**

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a. The Department of Health shall prepare and make available on the department's Internet website, in an easily printable format, information about the influenza vaccine for older adults, which shall include, but not be limited to:

- (1) the role the influenza vaccine plays in the prevention of influenza in older adults;
- (2) the availability and efficacy of the influenza vaccine;
- (3) a recommendation for each person to consult with a physician to determine whether receiving the influenza vaccine is recommended and appropriate for that person.

The department may additionally provide such other information as it deems necessary and appropriate, including, but not limited to: the health risks and complications associated with, and the morbidity and mortality rates among older adults suffering from, influenza; the individual and community benefits of inoculating older adults living in close proximity to each other, especially those living in continuing care retirement communities and influenza vaccination programs and health care providers providing influenza vaccinations to older adults.

b. As used in this section, "continuing care retirement community" means a continuing care facility that is operating under a certificate of authority issued by the Department of Community Affairs pursuant to P.L.1986, c.103 ([C.52:27D-330](#) et seq.), and which is registered with the Department of Community Affairs as a retirement community pursuant to P.L.1977, c.419 ([C.45:22A-21](#) et seq.).

c. Nothing in this section shall be deemed to require any person in a continuing care retirement community to receive an influenza vaccine.

### **History**

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L. [2015, c. 115](#), § 1, effective October 13, 2015.

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## [N.J. Stat. § 52:27D-360.9](#)

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### § 52:27D-360.9. Posting of information

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The Department of Community Affairs shall require each continuing care retirement community in this State to post the information made available by the Department of Health pursuant to section 1 of [P.L.2015, c.115 \(C.52:27D-360.8\)](#) in a conspicuous public place in the facility no later than August 1 of each year.

### **History**

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L. [2015, c. 115](#), § 2, effective October 13, 2015.

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## [N.J. Stat. § 52:27D-360.10](#)

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### § 52:27D-360.10. Rules, regulations

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The Commissioner of Health and the Commissioner of Community Affairs, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 ([C.52:14B-1](#) et seq.), may adopt rules and regulations to effectuate the purposes of this act [[C.52:27D-360.8](#) et seq.].

### History

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L. [2015, c. 115](#), § 3, effective October 13, 2015.

Annotations

### Notes

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#### **Publisher's Note:**

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