

Amendment to SB 124-FN

1 Amend section 1 of the bill by replacing subparagraph I(g) with the following:

2

3 (g) Recently, a continuing care resident community filed for chapter 11 bankruptcy in
4 New Hampshire. Other continuing care resident communities have filed for bankruptcy across the
5 country, and the proceedings illustrate the need for laws to be updated to provide more protection for
6 the residents of continuing care resident communities in the event of an insolvency or bankruptcy.
7 In the event of bankruptcy, residents could lose the right to occupy the facility and to receive a
8 refund of any remaining entrance fee when due, leaving them without funds and without a home.

9

10 Amend RSA 420-D:2, I as inserted by section 2 of the bill by replacing it with the following:

11

12 I. No person or provider may solicit funds other than non-binding deposit fees of not more
13 than \$1,000, accept payments of any kind, or otherwise engage in providing any form of continuing
14 care without acquiring and maintaining a certificate of authority issued by the commissioner
15 pursuant to this chapter. An application for a certificate shall include the proposed disclosure
16 statement and form contract required under RSA 420-D:4 and, in addition to any other state or
17 federal licensure or certification which may be required, a statement indicating that all of the
18 statutory requirements have been met. The commissioner shall take prompt action on requests for a
19 certificate and shall, within a reasonable time, issue a certificate of authority or a written rejection.
20 If the commissioner rejects an application, the commissioner may do so outright or state the
21 conditions which must be met before a certificate shall be issued. The applicant may request
22 reconsideration and shall be granted a hearing in accordance with rules adopted by the
23 commissioner pursuant to RSA 541-A. Certificates issued under this section shall continue in effect
24 until revoked by the commissioner or until sale or transfer of control to another provider.

25

26 Amend RSA 420-D:2, III(q) as inserted by section 2 of the bill by replacing it with the following:

27

28 (q) A statement that neither the provider nor any of its officers or principals have ever
29 been convicted of a felony or charged with a misdemeanor involving embezzlement, theft, larceny, or
30 mail fraud, or charged with any violation of any corporate securities laws in this state or a foreign
31 jurisdiction, and that the provider has never been subject to any permanent injunction or final
32 administrative order restraining a false or misleading promotional plan involving continuing care

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1 facility disposition or if so, copies of all pleadings and orders in regard thereto. If there is an action
2 or conviction the commissioner shall determine whether to disqualify the relevant party.

3
4 Amend RSA 420-D:2, III(v) as inserted by section 2 of the bill by replacing it with the following:

5
6 (v) Certification that the applicant's IT platform meets applicable health information
7 security regulations and standards, including those pertaining to cybersecurity.

8
9 Amend RSA 420-D:4, I as inserted by section 2 of the bill by replacing it with the following:

10
11 I. A disclosure statement shall be approved by the department prior to delivery to any
12 prospective resident. Each provider shall provide each prospective resident with a current disclosure
13 statement and a current continuing care contract, which have previously been approved by the
14 commissioner. A disclosure statement shall not be deemed current unless it contains all
15 amendments filed and is approved by the department. When a provider files an amended disclosure
16 statement, the provider shall redline the changes from the prior approved statement when
17 submitting it to the department. The provider shall amend the disclosure statement if there is any
18 change in management or ownership that requires the execution of a new affidavit supporting the
19 disclosure statement or other material change. The provider shall have 30 days to submit an
20 amended disclosure statement to the department for review if there is a material change. The
21 disclosure statement shall include, in conspicuous large type, the statements below. The statements
22 in the disclosure statement and contract shall be in plain and understandable English. The
23 disclosure statement shall disclose fully and accurately state the characteristics of the CCRC, and
24 the interests offered and shall make known to prospective residents all unusual and material
25 circumstances and features affecting the CCRC and provider.

26
27 Amend the introductory paragraph of RSA 420-D:4, II as inserted by section 2 of the bill by replacing
28 it with the following:

29
30 II. The disclosure statement shall be provided to the prospective resident at least 24 hours
31 before consenting to any contract and before the initial transfer of funds, and shall include, at a
32 minimum, the following information:

33
34 Amend RSA 420-D:4, II(c) as inserted by section 2 of the bill by replacing it with the following:

35
36 (c) The disclosure statement shall also include:

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1 (1) If the provider is not the owner, the name and address of the owner; whether or
2 not it is an affiliate; and the name and address of all affiliates.

3 (2) The provider's relationship with any religious, charitable, or nonprofit
4 organization and the extent of such organization's financial responsibilities to the provider or to
5 residents.

6 (3) Whether the provider claims to be nonprofit or tax exempt.

7 (4) The location and description of the facility and, if it is proposed or incomplete, the
8 estimated completion date, status of construction, and any contingencies on that completion date.

9 (5) The services to be provided by the facility under basic contract and those at extra
10 cost.

11 (6) All locations where services are to be provided, if different from the main facility.

12 (7) If the CCRC contract does not provide for assisted living, skilled nursing care, or
13 nursing home care, the contract shall state this prominently, on the first page of the contract and in
14 at least 14-point bold capital letters. This statement shall be preceded by the following caption:

15 “THIS CONTRACT DOES NOT PROVIDE YOU WITH ANY RIGHT TO RECEIVE THE
16 FOLLOWING CARE”

17 (8) All entrance fees and periodic payments that are required of residents and a
18 description of all policies and conditions for refund or return of these fees and payments.

19 (9) A description of the provider policy and procedures for receiving advance
20 deposits, also known as “wait list deposits”, by prospective residents desiring future occupancy at
21 the facility and how those deposits will be maintained prior to final signing of the continuing care
22 contract, in bank accounts, investment accounts, or escrow accounts if required by this statute and
23 including any interest payment provisions.

24 (10) A description of the provider policy and procedures for receiving and
25 maintaining entrance fees prior to and during the continuing care contract signing process, in bank
26 accounts, investment accounts, or escrow accounts if required by this statute and including any
27 interest payment provisions.

28 (11) When and how periodic payments may be charged by the provider.

29 (12) Provisions of the provider for reserve funding, escrows, and trusts and
30 investment of these funds.

31 (13) Financial statements audited by a certified public accountant including, if the
32 facility is in operation, a balance sheet and an income statement for the 2 complete and immediately
33 preceding years. This requirement may be waived by the commissioner in his or her sole discretion.

34 (14) A description of the company's affiliates and structure, and if a non-profit, a
35 discussion of the charitable purpose of the non-profit and the need in certain instances for money to
36 be used for advancement of the charitable purpose.

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1 (15) A description of the provider policy and procedures for receiving advance
2 deposits or “wait list deposits” by prospective residents desiring future occupancy at the facility and
3 how those deposits will be maintained prior to final signing of the continuing care contract, in bank
4 accounts, investment accounts, or escrow accounts if required by this chapter and including any
5 interest payment provisions.

6 (16) A description of the provider policy and procedures for receiving and
7 maintaining entrance fees prior to and during the continuing care contract signing process, in bank
8 accounts, investment accounts, or escrow accounts if required by this chapter and including any
9 interest payment provisions.

10
11 Amend RSA 420-D:5, I(f) as inserted by section 2 of the bill by replacing it with the following:

12
13 (f) Failure to comply with a cease-and-desist order under RSA 420-D:21.

14
15 Amend RSA 420-D:7, I as inserted by section 2 of the bill by replacing it with the following:

16
17 I. Annually, 120 days after the end of each fiscal year, a provider shall submit a report to the
18 commissioner relative to the financial condition of the provider together with any other information
19 required by the commissioner. The commissioner may require more frequent reports of any
20 provider, if the commissioner deems it necessary for proper review.

21
22 Amend RSA 420-D:7-a, II and III as inserted by section 2 of the bill by replacing it with the
23 following:

24
25 II. In addition, the provider shall calculate and submit a liquid reserve calculation for each
26 quarter and a detail of current occupancy by category of residency and representation that they are
27 in compliance with all material loan covenants.

28 III. The quarterly statements shall be signed and attested to by the provider’s chief financial officer
29 or if there is no chief financial officer, a company level officer.

30
31 Amend RSA 420-D:10, III(a)(1) as inserted by section 2 of the bill by replacing it with the following:

32
33 (1) If occupancy is greater than 80 percent for independent living, the days cash on
34 hand is more than 100 days, and there is no violation of RSA 420-D or material loan covenants, there
35 is no entrance fee escrow requirement.

36
37 Amend RSA 420-D:10, III(c)(1) as inserted by section 2 of the bill by replacing it with the following:

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1 (c)(1) If a wait list deposit exceeds 10 percent of the entrance fee per resident unit, any
2 amounts more than 10 percent of the entrance fee shall be escrowed. Amounts below or equal to 10
3 percent of the entrance fee need not be escrowed, as long as the provider has at least 80 percent
4 occupancy for independent living occupancy and 100 days cash on hand, and is otherwise in
5 compliance with RSA 420-D and its material loan covenants. All wait list deposits shall be
6 refundable. A maintenance fee may be charged of up to \$1,500, as may be adjusted from time to
7 time by the commissioner. The wait list agreement shall be provided to the department annually
8 and the resident shall be given an estimate of when the resident will be reached on the wait list at
9 the time the resident executes the wait list agreement. A resident shall also be told that their
10 payment will not be escrowed if the payment is being placed in a non-escrow account. Deposits
11 existing as of the effective date of this chapter are exempt. However, the provider shall contact all
12 prospective residents on any wait list within one year of the effective date of this chapter to
13 determine whether they are due any refund of existing deposits, and thereafter every 3 years.

14
15 Amend RSA 420-D:10-a, I as inserted by section 2 of the bill by replacing it with the following:

16
17 I.(a) A contract may only be terminated by the provider for the following reasons:

- 18 (1) It is necessary for the resident's welfare;
- 19 (2) The resident's health has improved sufficiently so that they no longer need the
20 services provided;
- 21 (3) The health or safety of the resident or other residents is endangered by the
22 resident's continued presence in the CCRC; or
- 23 (4) Nonpayment of periodic payments or other required fees or other violation of the
24 contract.

25 (b) If a provider seeks to terminate a contract, it must provide the resident with 60 days'
26 notice. If a contract is terminated outside the cancellation period either by the provider for just cause
27 or after 90 days written notice by the resident, then any refund that may be due shall be paid no
28 later than 45 days after a new resident signs a written contract for the unit and the 15-day
29 cancellation period passes without cancellation. The landlord-tenant laws shall apply to any eviction
30 for purposes of removal of a hold over resident in a non-licensed unit, and for no other purpose. For
31 hold over residents residing in units licensed under RSA 151, the transfer or discharge provisions
32 under RSA 151:21,V and RSA 151:26 shall apply.

33
34 Amend RSA 420-D:12, I(b) as inserted by section 2 of the bill by replacing it with the following:

35
36 (b) Cover only one resident, or 2 if jointly liable and shall include the total amount paid
37 by the resident, or on behalf of the resident, to the provider as an entrance fee. If securities or real

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1 or personal property are transferred to the provider instead of cash, the provider shall describe the
2 securities, property, or other goods transferred and the market value of securities or the professional
3 appraised value of property or goods as of the date they were tendered.

4
5 Amend RSA 420-D:12, I by inserting after subparagraph (p) the following new subparagraph:

6
7 (q) Explain whether the CCRC provides assisted living, skilled nursing care, or nursing
8 home care or accepts Medicaid or Medicare as a source of payment for these services.

9
10 Amend RSA 420-D:13, I as inserted by section 2 of the bill by replacing it with the following:

11
12 I. A provider shall notify the commissioner prior to the proposed sale or transfer to a third
13 party of a material portion of the provider's assets or beneficial interests, or of a proposed transfer of
14 control of the provider. For purposes of this section, "material portion of the provider's assets and or
15 interests" means any assets of the provider worth greater in the aggregate more than 10 percent of
16 any interests of the provider's total assets or 50 percent or more of the beneficial interests. The
17 notification shall specify the amount of assets or interests involved in the transfer, the type of
18 transfer, and to whom. The proposed transfer shall be approved by the commissioner before such
19 transfer can be made and become effective. The commissioner may refuse to approve such transfers
20 until full disclosure has been made, to his or her satisfaction, of the terms and conditions of the
21 transfer and the commissioner has determined that such transfer (i) will be to a qualified provider to
22 whom a certificate of authority will be issued under the statute; (ii) will not negatively impact the
23 financial stability of the CCRC; and (iii) will not diminish services or protections given to current
24 and future residents, whose interests are paramount. Notwithstanding the above, if a provider is in
25 violation of RSA 420-D or its material loan covenants, the provider shall notify the department of
26 any transfer of assets or interests out of the ordinary course of business in any amount and the
27 department shall, at its option, approve or deny the sale or transfer. If the transfer involves a
28 transfer of ownership of more than 5 percent of the outstanding ownership interests, a new
29 biographical affidavit shall be provided to the department.

30
31 Amend RSA 420-D:16-b, I(c) as inserted by section 2 of the bill by replacing it with the following:

32
33 (c) Any remaining amount due the resident shall be payable within 45 days from the
34 date of the end of the cancellation period or the date the entrance fee from the new resident is
35 received by the provider, whichever is later.

36
37 Amend RSA 420-D:16-b, II as inserted by section 2 of the bill by replacing it with the following:

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1 II. When an entrance fee deposit is refundable, it shall be paid to either the resident, the
2 resident's named beneficiary, or the legal representative of the resident's estate, whichever is
3 applicable, except for beneficiary assignments made irrevocable by the resident. A resident shall
4 have the right to change, in writing, the named beneficiary for the entrance fee refund at any time.

5
6 Amend RSA 420-D:18 as inserted by section 2 of the bill by replacing it with the following:

7
8 420-D:18 Dividends and Transfers. A provider shall obtain prior approval from the
9 commissioner before declaring and distributing any dividends, if a for-profit entity, or, except as
10 noted below, transferring any cash, dividends, or any other funds or assets of the provider to an
11 affiliate of any entity. Notwithstanding this paragraph, if the provider has more than 80 percent
12 occupancy of its independent living units, more than 100 days cash on hand, and the provider is
13 otherwise in compliance with RSA 420-D and its material loan covenants, the provider shall not
14 need commissioner approval for a transfer if the transfer is less than 10 percent of the provider's
15 total assets for any consecutive 12-month period. A transfer of assets shall include a management or
16 management-type fee that is not associated with providing goods and services by the affiliate. All
17 management contracts between the provider and an affiliate shall be disclosed to the commissioner,
18 and the commissioner shall have 30 days to object.

19
20 Amend RSA 420-D:20, I(b) as inserted by section 2 of the bill by replacing it with the following:

21
22 (b) What will happen to each resident. The provider shall either provide for the refund
23 of any remaining entrance fee to the resident through immediately available funds or shall provide
24 an alternative facility for the resident to occupy, with a transfer of remaining funds to the new
25 provider. The residents shall have the choice to move to the alternate facility, to have the remaining
26 portion of their entrance fee refunded through immediately available funds, or to enter into a
27 mutually agreeable alternative resolution with the provider. If the provider is incapable of satisfying
28 this subparagraph, they must explain why in any plan.