

House Bill 300 (AS PASSED HOUSE AND SENATE)

By: Representatives Smith of the 133rd, Smith of the 134th, Hawkins of the 27th, and Stephens of the 165th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 6 of Title 31 and Chapter 45 of Title 33 of the Official Code of Georgia
2 Annotated, relating to continuing care providers and facilities and state health planning and
3 development, so as to redesignate continuing care retirement communities as life plan
4 communities; to revise definitions; to provide for related matters; to repeal conflicting laws;
5 and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 6 of Title 31 of the Official Code of Georgia Annotated, relating to state health
9 planning and development, is amended in Code Section 31-6-2, relating to definitions, by
10 revising paragraphs (11) and (23.1) as follows:

11 ~~"(11) 'Continuing care retirement community' means an organization, whether operated~~
12 ~~for profit or not, whose owner or operator undertakes to provide shelter, food, and either~~
13 ~~nursing care or personal services, whether such nursing care or personal services are~~
14 ~~provided in the facility or in another setting, and other services, as designated by~~
15 ~~agreement, to an individual not related by consanguinity or affinity to such owner or~~
16 ~~operator providing such care pursuant to an agreement for a fixed or variable fee, or for~~
17 ~~any other remuneration of any type, whether fixed or variable, for the period of care,~~
18 ~~payable in a lump sum or lump sum and monthly maintenance charges or in installments.~~
19 ~~Agreements to provide continuing care include agreements to provide care for any~~
20 ~~duration, including agreements that are terminable by either party Reserved."~~

21 ~~"(23.1) 'Micro-hospital' means a hospital in a rural county which has at least two and not~~
22 ~~more than seven inpatient beds and which provides emergency services seven days per~~
23 ~~week and 24 hours per day. 'Life plan community' means an organization, whether~~
24 ~~operated for profit or not, whose owner or operator undertakes to provide shelter, food,~~
25 ~~and either nursing care or personal services, whether such nursing care or personal~~
26 ~~services are provided in the facility or in another setting, and other services, as designated~~

27 by agreement, to an individual not related by consanguinity or affinity to such owner or
 28 operator providing such care pursuant to an agreement for a fixed or variable fee, or for
 29 any other remuneration of any type, whether fixed or variable, for the period of care,
 30 payable in a lump sum, lump sum and monthly maintenance charges or in installments.
 31 Agreements to provide continuing care include agreements to provide care for any
 32 duration, including agreements that are terminable by either party.

33 (23.2) 'Micro-hospital' means a hospital in a rural county which has at least two and not
 34 more than seven inpatient beds and which provides emergency services seven days per
 35 week and 24 hours per day."

36 **SECTION 2.**

37 Said chapter is further amended in Code Section 31-6-21, relating to Department of
 38 Community Health generally, by revising paragraph (8) of subsection (b) as follows:

39 "(8) To establish, by rule, need methodologies for new institutional health services and
 40 health facilities. In developing such need methodologies, the department shall, at a
 41 minimum, consider the demographic characteristics of the population, the health status
 42 of the population, service use patterns, standards and trends, financial and geographic
 43 accessibility, and market economics. The department shall establish service-specific need
 44 methodologies and criteria for at least the following clinical health services: short stay
 45 hospital beds, adult therapeutic cardiac catheterization, adult open heart surgery, pediatric
 46 cardiac catheterization and open heart surgery, Level II and III perinatal services,
 47 freestanding birthing centers, psychiatric and substance abuse inpatient programs, skilled
 48 nursing and intermediate care facilities, home health agencies, and ~~continuing care~~
 49 ~~retirement~~ life plan community sheltered facilities;"

50 **SECTION 3.**

51 Said chapter is further amended in Code Section 31-6-47, relating to exemptions from state
 52 health planning and development, by revising paragraph (17) of subsection (a) as follows:

53 "(17) ~~Continuing care retirement~~ Life plan communities, provided that the skilled nursing
 54 component of the facility is for the exclusive use of residents of the ~~continuing care~~
 55 ~~retirement~~ life plan community and that a written exemption is obtained from the
 56 department; provided, however, that new sheltered nursing home beds may be used on
 57 a limited basis by persons who are not residents of the ~~continuing care retirement~~ life plan
 58 community for a period up to five years after the date of issuance of the initial nursing
 59 home license, but such beds shall not be eligible for Medicaid reimbursement. For the
 60 first year, the ~~continuing care retirement~~ life plan community sheltered nursing facility
 61 may utilize not more than 50 percent of its licensed beds for patients who are not

62 residents of the ~~continuing care retirement~~ life plan community. In the second year of
 63 operation, the ~~continuing care retirement~~ life plan community shall allow not more than
 64 40 percent of its licensed beds for new patients who are not residents of the ~~continuing~~
 65 ~~care retirement~~ life plan community. In the third year of operation, the ~~continuing care~~
 66 ~~retirement~~ life plan community shall allow not more than 30 percent of its licensed beds
 67 for new patients who are not residents of the ~~continuing care retirement~~ life plan
 68 community. In the fourth year of operation, the ~~continuing care retirement~~ life plan
 69 community shall allow not more than 20 percent of its licensed beds for new patients who
 70 are not residents of the ~~continuing care retirement~~ life plan community. In the fifth year
 71 of operation, the ~~continuing care retirement~~ life plan community shall allow not more
 72 than 10 percent of its licensed beds for new patients who are not residents of the
 73 ~~continuing care retirement~~ life plan community. At no time during the first five years
 74 shall the ~~continuing care retirement~~ life plan community sheltered nursing facility occupy
 75 more than 50 percent of its licensed beds with patients who are not residents under
 76 contract with the ~~continuing care retirement~~ life plan community. At the end of the
 77 five-year period, the ~~continuing care retirement~~ life plan community sheltered nursing
 78 facility shall be utilized exclusively by residents of the continuing care retirement life
 79 plan community, and at no time shall a resident of a ~~continuing care retirement~~ life plan
 80 community be denied access to the sheltered nursing facility. At no time shall any
 81 existing patient be forced to leave the ~~continuing care retirement~~ life plan community to
 82 comply with this paragraph. The department is authorized to promulgate rules and
 83 regulations regarding the use and definition of 'sheltered nursing facility' in a manner
 84 consistent with this Code section. Agreements to provide continuing care include
 85 agreements to provide care for any duration, including agreements that are terminable by
 86 either party;"

87 **SECTION 4.**

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

91 "33-45-1.

92 As used in this chapter, the term:

93 (1) 'Continuing care' means furnishing pursuant to a continuing care agreement:

94 (A) Lodging that is not:

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

- 97 (ii) An intermediate care facility, as such term is defined in ~~paragraph (22)~~ of Code
 98 Section 31-6-2;
- 99 (iii) An assisted living community, as such term is defined in Code Section
 100 31-7-12.2; or
- 101 (iv) A personal care home, as such term is defined in Code Section 31-7-12;
- 102 (B) Food; and
- 103 (C) Nursing care provided in a facility or in another setting designated by the
 104 agreement for continuing care to an individual not related by consanguinity or affinity
 105 to the provider furnishing such care upon payment of an entrance fee including skilled
 106 or intermediate nursing services and, at the discretion of the continuing care provider,
 107 personal care services including, without limitation, assisted living care services
 108 designated by the continuing care agreement, including such services being provided
 109 pursuant to a contract to ensure the availability of such services to an individual not
 110 related by consanguinity or affinity to the provider furnishing such care upon payment
 111 of an entrance fee.
- 112 Such term shall not include continuing care at home.
- 113 (2) 'Continuing care agreement' means a contract or agreement to provide continuing
 114 care, continuing care at home, or limited continuing care. Continuing care agreements
 115 include agreements to provide care for any duration, including agreements that are
 116 terminable by either party.
- 117 ~~(2.1)~~(3) 'Continuing care at home' means the furnishing of services pursuant to a
 118 continuing care agreement at a location other than at a facility and which includes the
 119 obligation to provide nursing care, assisted living care, or personal care home services.
 120 A continuing care at home agreement may, but is not required to, include an obligation
 121 to provide food.
- 122 ~~(3)~~(4) 'Entrance fee' means an initial or deferred payment of a sum of money or property
 123 made as full or partial payment to assure the resident continuing care, limited continuing
 124 care, or continuing care upon the purchase of a resident owned living unit; provided,
 125 however, that any such initial or deferred payment which is greater than or equal to 12
 126 times the monthly care fee shall be presumed to be an entrance fee so long as such
 127 payment is intended to be a full or partial payment to assure the resident lodging in a
 128 residential unit. An accommodation fee, admission fee, or other fee of similar form and
 129 application greater than or equal to 12 times the monthly care fee shall be considered to
 130 be an entrance fee. Such term shall not include any portion of the purchase or sale of a
 131 resident owned living unit.

132 ~~(4)~~(5) 'Facility' means a place which is owned or operated by a provider and provides
 133 continuing care or limited continuing care. Such term includes a facility which contains
 134 resident owned living units.

135 ~~(5)~~(6) 'Licensed' means that the provider has obtained a certificate of authority from the
 136 department.

137 (7) 'Life plan community' means a licensed provider furnishing continuing care or
 138 limited continuing care which has been issued a certificate of authority pursuant to this
 139 chapter.

140 ~~(6)~~(8) 'Limited continuing care' means furnishing pursuant to a continuing care
 141 agreement:

142 (A) Lodging that is not:

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

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

147 (iii) An assisted living community, as such term is defined in Code Section
 148 31-7-12.2; or

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

150 (B) Food; and

151 (C) Personal services, whether such personal services are provided in a facility such
 152 as a personal care home or an assisted living community or in another setting
 153 designated by the continuing care agreement, to an individual not related by
 154 consanguinity or affinity to the provider furnishing such care upon payment of an
 155 entrance fee.

156 Such term shall not include continuing care at home.

157 ~~(7)~~(9) 'Monthly care fee' means the fee charged to a resident for continuing care or
 158 limited continuing care on a monthly or periodic basis. Monthly care fees may be
 159 increased by the provider to provide care to the resident as outlined in the continuing care
 160 agreement. Periodic fee payments or other prepayments shall not be monthly care fees.

161 ~~(8)~~(10) 'Nursing care' means services which are provided to residents of skilled nursing
 162 facilities or intermediate care facilities.

163 ~~(9)~~(11) 'Personal services' means, but is not limited to, such services as individual
 164 assistance with eating, bathing, grooming, dressing, ambulation, and housekeeping;
 165 supervision of self-administered medication; arrangement for or provision of social and
 166 leisure services; arrangement for appropriate medical, dental, nursing, or mental health
 167 services; and other similar services which the department may define. Personal services
 168 may be provided at a facility or at a home on or off site of a facility. Personal services

169 shall not be construed to mean the provision of medical, nursing, dental, or mental health
 170 services. Personal services provided, if any, shall be designated in the continuing care
 171 agreement.

172 ~~(10)~~(12) 'Provider' means the owner or operator, whether a natural person, partnership,
 173 or other unincorporated association, however organized, trust, or corporation, of an
 174 institution, building, residence, or other place, whether operated for profit or not, which
 175 owner or operator undertakes to provide continuing care, limited continuing care, or
 176 continuing care at home for a fixed or variable fee, or for any other remuneration of any
 177 type for the period of care, payable in a lump sum or lump sum and monthly maintenance
 178 charges or in installments.

179 ~~(11)~~(13) 'Resident' means a purchaser of or a nominee of or a subscriber to a continuing
 180 care agreement. Such an agreement may permit a resident to live at a home on or off site
 181 of a facility but shall not be construed to give the resident a part ownership of the facility
 182 in which the resident is to reside unless expressly provided for in the agreement.

183 ~~(12)~~(14) 'Resident owned living unit' means a residence or apartment, the purchase or
 184 sale of which is not included in an entrance fee, which is a component part of a facility
 185 and in which the resident has an individual real property ownership interest.

186 ~~(13)~~(15) 'Residential unit' means a residence or apartment in which a resident lives that
 187 is not a skilled nursing facility as defined in ~~paragraph (34)~~ of Code Section 31-6-2, an
 188 intermediate care facility as defined in ~~paragraph (22)~~ of Code Section 31-6-2, an assisted
 189 living community as defined in Code Section 31-7-12.2, or a personal care home as
 190 defined in Code Section 31-7-12."

191 **SECTION 5.**

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

194 "33-45-3.

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

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

- 204 (1) Provisions of Article 3 of Chapter 6 of Title 31 and any rules and regulations
205 promulgated by the Department of Community Health pursuant to such article relating
206 to certificates of need for ~~continuing care retirement communities~~ life plan communities
207 or home health agencies, as such terms are defined in Code Section 31-6-2; or
- 208 (2) Provisions of Chapter 7 of Title 31 relating to licensure or permit requirements and
209 any rules and regulations promulgated by the Department of Community Health pursuant
210 to such chapter, including, without limitation, licensure or permit requirements for
211 nursing home care, assisted living care, personal care home services, home health
212 services, and private home care services.
- 213 (c) Nothing in this chapter shall be construed so as to allow private home care services to
214 be provided by any person or entity other than a licensed private home care provider.
- 215 (d) A provider of continuing care at home may contract with a licensed home health
216 agency to provide home health services to a resident. In order to provide home health
217 services directly, a provider of continuing care at home shall obtain a certificate of need for
218 a home health agency, as such term is defined in ~~paragraph (20)~~ of Code Section 31-6-2,
219 pursuant to the same criteria and rules as are applicable to freestanding home health
220 agencies that are not components of ~~continuing care retirement~~ life plan communities."

221

SECTION 6.

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