



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB4664

by Rep. Kathleen Willis

SYNOPSIS AS INTRODUCED:

See Index

Amends the Life Care Facilities Act. Adds provisions concerning required disclosures and life care contract requirements for providers under the Act. Provides that at the time of or before the execution of a life care contract, or at the time of or before to the transfer of any money or other property to a provider by or on behalf of a prospective resident, whichever shall first occur, a provider shall deliver a disclosure statement to the person with whom the life care contract is to be entered into that contains specified information. Provides that residents may receive, upon request, specified information from providers and may submit comments. Provides that providers shall, to the maximum extent practicable, offer specified explanations, inform residents of certain matters, and make use of specified standards and practices. Provides that a violation of these provisions by a provider of a facility is an unlawful practice under the Consumer Fraud and Deceptive Business Practices Act. Provides that the Department of Financial and Professional Regulation shall take specified enforcement actions if he or she receives notice from an escrow agent that specified provisions of the Act have not been complied with. Provides that the Secretary of Professional and Financial Regulation may conduct audits of providers. Provides that a provider shall provide all residents of a facility and the Department of Public Health with a printed report that contains certain information. Provides that the Department of Public Health shall provide the public with online access to the annual reports, inspection reports, and other specified information. Provides that an increase in a regular periodic charge not outlined in a life care contract must be approved by the Secretary of Financial and Professional Regulation. Makes other changes.

LRB100 20398 MJP 35719 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. This Act may be referred to as the Senior
5 Independent Living Bill of Rights Act.

6 Section 5. Purpose. This Act is intended to establish new
7 and strengthen existing rights for Illinois seniors residing in
8 independent living arrangements, often found as one service
9 component of continuing care retirement communities. Given
10 that the Department on Aging estimates a 57% increase in State
11 residents ages 60 and over from the years 2000 to 2030, the
12 General Assembly recognizes the need to proactively pass a
13 Senior Independent Living Bill of Rights to ensure adequate
14 protections for Illinois seniors. The General Assembly finds
15 the adoption of a Senior Independent Living Bill of Rights
16 necessary to increase standards to safeguard seniors from
17 potentially harmful, ambiguous, or unfair agreements
18 associated with independent living and continuing care
19 retirement communities. The proposed reforms will further
20 demonstrate the State of Illinois' commitment to protecting
21 seniors in their homes, communities, and applicable long-term
22 care establishments and facilities.

1 Section 10. The Life Care Facilities Act is amended by
2 changing Sections 5, 6, 9, and 10 and by adding Sections 4.1,
3 10.2, 10.3, and 10.4 as follows:

4 (210 ILCS 40/4.1 new)

5 Sec. 4.1. Required disclosures; life care contract
6 requirements. An existing or future provider must meet the
7 following requirements to obtain or retain a permit under this
8 Act:

9 (1) At the time of or before the execution of a life
10 care contract, or at the time of or before the transfer of
11 any money or other property to a provider by or on behalf
12 of a prospective resident, whichever shall first occur, the
13 provider shall deliver a disclosure statement to the person
14 with whom the life care contract is to be entered into, the
15 text of which shall contain, to the extent not clearly and
16 completely set forth in the life care contract attached as
17 an exhibit thereto, at least the following information:

18 (A) The name and business address of the provider
19 and a statement of whether the provider is a
20 partnership, corporation, or other type of legal
21 entity.

22 (B) The names of the officers, directors,
23 trustees, or managing or general partners of the
24 provider and a description of each named person's
25 occupation with the provider.

1 (C) A description of the business experience of the
2 provider in the operation or management of similar
3 facilities and of the manager of the facility if the
4 facility will be managed on a day-to-day basis by an
5 organization other than the provider. The description
6 shall include information on any matter in which the
7 manager or provider (i) has been convicted of a felony
8 or pleaded nolo contendere to a felony charge, or been
9 held liable or enjoined in a civil action by final
10 judgment, if the felony or civil action involved fraud,
11 embezzlement, fraudulent conversion, or
12 misappropriation of property; or (ii) is subject to a
13 currently effective injunctive or restrictive court
14 order or, within the last 5 years, had any State or
15 federal license or permit suspended or revoked as a
16 result of an action brought by a governmental agency or
17 department, if the order or action arose out of or
18 related to business activity of health care, including
19 actions affecting a license to operate a long-term care
20 facility, retirement home, home for the aged, or
21 assisted living establishment subject to this Act or a
22 similar law in Illinois or another state.

23 (D) A statement as to whether or not the provider
24 is, or is affiliated with, a religious, charitable or
25 other nonprofit organization; the extent of the
26 affiliation, if any; the extent to which the affiliate

1 organization will be responsible for the financial and
2 contract obligations of the provider; and the
3 provision of the federal Internal Revenue Code, if any,
4 under which the provider or affiliate is exempt from
5 the payment of income tax.

6 (E) The location and description of the physical
7 property or properties of the facility, existing or
8 proposed and, to the extent proposed, the estimated
9 completion date or dates, whether or not construction
10 has begun and the contingencies subject to which
11 construction may be deferred.

12 (F) Certified financial statements of the
13 provider, including a balance sheet as of the end of
14 the most recent fiscal year and income statements for
15 the 3 most recent fiscal years of the provider or such
16 shorter period of time as the provider shall have been
17 in existence. If the provider's fiscal year ended more
18 than 90 days prior to the date the application is
19 filed, interim financial statements as of a date not
20 more than 90 days before the filing shall be included,
21 but need not be certified.

22 (G) If the operation of the facility has not yet
23 commenced, a statement of the anticipated source and
24 application of the funds used or to be used in the
25 purchase or construction of the facility, including:
26 (i) an estimate of the cost of purchasing or

1 constructing and equipping the facility, including
2 related costs such as financing expense, legal
3 expense, land costs, occupancy development costs, and
4 all other similar costs that the provider expects to
5 incur or become obligated for before the commencement
6 of operations; (ii) a description of any mortgage loan
7 or other long-term financing intended to be used for
8 the financing of the facility, including the
9 anticipated terms and costs of the financing; (iii) an
10 estimate of the total entrance fees to be received from
11 residents at or before commencement of operation of the
12 facility; (iv) an estimate of the funds, if any, that
13 are anticipated to be necessary to fund start-up losses
14 and provide reserve funds to assure full performance of
15 the obligations of the provider under a life care
16 contract; (v) a projection of estimated income from
17 fees and charges other than entrance fees, showing
18 individual rates presently anticipated to be charged
19 and including a description of the assumptions used for
20 calculating the estimated occupancy rate of the
21 facility and the effect on the income of the facility
22 of government subsidies for health care services, if
23 any, to be provided pursuant to a life care contract;
24 and (vi) such other material information concerning
25 the facility or the provider as the provider wishes to
26 include.

1 (H) An actuarial report that is no more than 2
2 years old and the summary of a report of an actuary
3 that estimates the capacity of the provider to meet its
4 contractual obligations to the residents.

5 (I) Forecasted financial statements for the
6 provider of the next 5 years, including a balance
7 sheet, a statement of operations, a statement of cash
8 flows, and a statement detailing all significant
9 assumptions, compiled by an independent certified
10 public accountant. Reporting routine, categories, and
11 structure may be further defined by rules or forms
12 adopted by the Department of Financial and
13 Professional Regulation.

14 (J) The estimated number of residents of the
15 facility to be provided services by the provider
16 pursuant to a life care contract.

17 (K) Any other material information concerning the
18 facility or the provider that, if omitted, would lead a
19 reasonable person not to enter into the life care
20 contract.

21 The cover page of the disclosure statement shall state,
22 in a prominent location and in boldface type, the date of
23 the disclosure statement, the last date through which that
24 disclosure statement may be delivered if not earlier
25 revised, and that the delivery of the disclosure statement
26 to a contracting party before the execution of a life care

1 contract is required by this Section but that the
2 disclosure statement has not been reviewed or approved by
3 any government agency or representative to ensure accuracy
4 or completeness of the information set out. A copy of the
5 standard form of a life care contract used by the provider
6 shall be attached to each disclosure statement. The
7 Department of Financial and Professional Regulation may
8 prescribe a standardized format for the disclosure
9 statement required by this paragraph. The disclosure
10 statement shall be in plain English and in language
11 understandable by a layperson and combine simplicity and
12 accuracy to fully advise residents of the items required by
13 this paragraph. The Department of Financial and
14 Professional Regulation may require a provider to alter or
15 amend its disclosure statement in order to provide full and
16 fair disclosure to prospective residents. The Department
17 of Financial and Professional Regulation may also require
18 the revision of a disclosure statement that it finds to be
19 unnecessarily complex, confusing, or illegible.

20 (2) A life care contract for a facility used by a
21 provider shall provide all of the following:

22 (A) The party contracting with the provider may
23 rescind the life care contract at any time before
24 occupying a living unit in the facility, in which event
25 the party shall, within a reasonable period, receive a
26 refund of all money or property transferred to the

1 provider, less (i) those costs specifically incurred
2 by the provider or facility at the request of the party
3 and described in the life care contract or an addendum
4 thereto signed by the party; and (ii) a reasonable
5 service charge, if set out in the life care contract,
6 not to exceed 1% of the entrance fee. If the unit is
7 available for occupancy on the occupancy date agreed
8 upon in the life care contract, and the party failed to
9 occupy the unit, the party shall be deemed to have
10 rescinded the life care contract, unless the party and
11 the provider agree in writing to extend the occupancy
12 date.

13 (B) If the unit is not available for occupancy on
14 the date agreed upon in the life care contract, and the
15 party has not rescinded the life care contract, the
16 life care contract shall be automatically canceled,
17 unless the party and the provider agree in writing to
18 extend the occupancy date. If the life care contract is
19 automatically canceled the party shall, within a
20 reasonable period, receive a refund of all money or
21 property transferred to the provider plus a reasonable
22 inconvenience fee, if set out in the life care
23 contract, not to exceed 1% of the amount of the
24 entrance fee.

25 (C) If a resident dies before occupying a living
26 unit in the facility, the life care contract is

1 automatically canceled and the legal representative of
2 the resident shall receive a refund of all money or
3 property transferred to the provider, less (i) those
4 costs specifically incurred by the provider or
5 facility at the request of the party and described in
6 the life care contract or an addendum thereto signed by
7 the party; and (ii) a reasonable service charge, if set
8 out in the life care contract, not to exceed 1% of the
9 entrance fee.

10 (D) The entrance fee minus no more than 1% for each
11 month of occupancy shall be refunded to the resident
12 when the resident leaves the facility or to the legal
13 representative of a resident if the resident dies.

14 (E) The services provided or proposed to be
15 provided under a life care contract, including the
16 extent to which medical care is furnished, and
17 specifying those services that are included in the
18 basic life care contract and those made available at or
19 by the facility at extra charge.

20 (F) A description of all fees required of
21 residents, including the entrance fee and periodic
22 charges, if any. The description shall include: (i) a
23 statement of the fees that will be charged if the
24 resident marries while at the facility and a statement
25 of the terms concerning the entry of a spouse to the
26 facility and the consequences if the spouse does not

1 meet the requirements for entry, (ii) the
2 circumstances under which the resident will be
3 permitted to remain in the facility in the event of
4 possible financial difficulties for a resident, (iii)
5 the conditions under which a living unit occupied by a
6 resident may be made available by the facility to a
7 different or new resident other than on the death of
8 the original resident, (iv) the manner by which the
9 provider may adjust periodic charges or other
10 recurring fees and the limitations on such
11 adjustments, if any, and (v) how many non-residents the
12 facility allows to occupy bed space and what the
13 facility will do if there are no available nursing beds
14 at the facility should a current resident require such
15 care. If the facility is already in operation, or if
16 the provider or manager operates one or more similar
17 facilities within the State, there shall be included
18 tables showing the frequency and average dollar amount
19 of each increase in periodic rates at each facility for
20 the previous 5 years or such shorter period as the
21 facility may have been operated by the provider or
22 manager.

23 (G) The health and financial conditions required
24 for an individual to be accepted as a resident and to
25 continue as a resident once accepted, including the
26 effect of any change in the health or financial

1 condition of a person between the date of entering a
2 life care contract and the date of initial occupancy of
3 a living unit by that person.

4 (H) The provisions that have been made or will be
5 made, if any, to provide reserve funding or security to
6 enable the provider to fully perform its obligations
7 under a life care contract, including the
8 establishment of escrow accounts, trusts, or reserve
9 funds, together with the manner in which the funds will
10 be invested and the names and experience of persons who
11 will make the investment decisions.

12 A life care contract drawn in violation of this
13 paragraph may be rescinded by the resident, and the
14 resident shall be entitled to a full refund of the entrance
15 fee.

16 (3) As used in this paragraph, "market" includes, but
17 is not limited to, establishment of a waiting list,
18 acceptance of money, property, or other consideration, or
19 distribution of marketing brochures by the provider.

20 A provider intending to market or develop a facility
21 pursuant to a life care contract that would require
22 prepayment for some or all of a facility's services or
23 intending to market or develop additional units of a
24 facility shall forward a copy of the following information
25 to the Department of Financial and Professional Regulation
26 within 30 days following the implementation of marketing of

1 the facility:

2 (A) the disclosure statement required under
3 paragraph (1) to be delivered to a person with whom a
4 life care contract for the facility is to be entered;

5 (B) the life care contract for the facility to be
6 entered into by the provider under paragraph (2) with a
7 person who will occupy a living unit in the facility;
8 and

9 (C) any available advertising or promotional
10 material to be used in conjunction with the marketing
11 effort.

12 A provider shall forward a copy of any changes in the
13 information required to be provided within 30 days after
14 the provider's utilization of the changed materials with
15 prospective residents or residents of the facility. A
16 provider intending to market or develop additional units of
17 a facility who has filed such information with the
18 Department of Financial and Professional Regulation
19 pursuant to a previous marketing effort on the same units
20 shall not be required to refile unless there has been a
21 change in the information submitted. The Department shall
22 make the information available to the public in a manner
23 that allows residents and prospective residents to make
24 informed choices regarding the selection of a provider,
25 packages of services and coverage, and care alternatives.

26 A provider shall forward a copy of the building permit

1 for a facility to the Department of Financial and
2 Professional Regulation within 30 days after its issuance
3 by the city or town where the facility shall be located.

4 (4) A provider providing continuing care at a facility
5 on the effective date of this amendatory Act of the 100th
6 General Assembly under a life care contract that requires
7 prepayment for some or all of the covered services shall,
8 within 30 days after the effective date of this amendatory
9 Act of the 100th General Assembly, forward a copy of the
10 following to the Department of Financial and Professional
11 Regulation:

12 (A) the disclosure statement required under
13 paragraph (2) to be delivered to a person with whom a
14 life care contract shall be entered;

15 (B) the life care contract to be entered into by
16 the provider under paragraph (2) with a person who will
17 occupy a living unit in a facility;

18 (C) any available advertising or promotional
19 material to be used in conjunction with such marketing
20 effort; and

21 (D) a copy of the building permit for the facility.

22 A provider shall forward a copy of any changes in the
23 information required to be provided within 30 days after
24 the provider's utilization of the materials with
25 prospective residents or residents of the facility. A
26 provider intending to market or develop additional units of

1 a facility who has filed the information within the
2 Department of Financial and Professional Regulation
3 pursuant to a previous marketing effort on the same units
4 shall not be required to refile unless there has been a
5 change in the information submitted. The Department
6 Financial and Professional Regulation shall make the
7 information available to the public in a manner that shall
8 allow residents and prospective residents to make informed
9 choices regarding the selection of a provider, packages of
10 services and coverage, and care alternatives.

11 (5) Residents may:

12 (A) establish a residents association and elect
13 the officers of the residents association;

14 (B) receive, upon request, a current copy of a
15 facility's disclosure statement as described in
16 paragraph (1), and providers shall, upon request, make
17 a reasonable effort to explain the terms and
18 information contained within the disclosure document;
19 however, nothing in this subparagraph shall be
20 construed to modify the contractual rights of
21 residents or providers and providers may make
22 reasonable provisions for the form and manner in which
23 the requests shall be submitted;

24 (C) submit comments to providers on matters that
25 may affect the health and welfare of residents and
26 affect the future of the facility, including, but not

1 limited to, the facility's size and ownership and the
2 provider's financial health; providers may make
3 reasonable provisions for the form and manner in which
4 the comments shall be submitted and, to the maximum
5 extent feasible, shall seek comment from residents
6 when designing or adopting policies that significantly
7 affect the future of the facility;

8 (D) receive, upon request, information regarding
9 any major construction, modification, expansion, or
10 renovation of the facility, including information on
11 cost estimates, funding, financing, projected income,
12 schedule, and impacts on the existing facility;
13 providers may make reasonable provisions for the form
14 and manner in which the requests shall be submitted;
15 and

16 (E) receive, upon request, information regarding
17 the purpose and intended funding of all financial
18 reserves kept by a provider; providers may make
19 reasonable provisions for the form and manner in which
20 the requests may be submitted.

21 (6) A provider shall, to the maximum extent
22 practicable:

23 (A) offer a reasonable explanation of any
24 adjustment in monthly fees and other major fees paid by
25 residents;

26 (B) inform residents of matters that may affect the

1 health and welfare of residents and affecting the
2 future of the facility, including, but not limited to,
3 the facility's size and ownership and the provider's
4 financial health; on these matters, the providers
5 shall facilitate communications between residents and
6 management and between residents and boards or owners,
7 which may include residents' representation on the
8 provider's managing body, but need not depend solely on
9 board representation; and

10 (C) make use of applicable standards and practices
11 to maintain and project each facility's operational
12 and financial viability and, upon request, give that
13 information regarding the standards and practices used
14 by providers to the residents; the provider may make
15 reasonable provisions for the form and manner in which
16 the requests shall be submitted.

17 (7) Notwithstanding the remedy set forth in paragraph
18 (2), a violation of this Section by a provider for a
19 facility shall constitute an unlawful practice under the
20 Consumer Fraud and Deceptive Business Practices Act.

21 A facility must comply with the provisions of this Section
22 within one year after the effective date of this amendatory Act
23 of the 100th General Assembly.

24 (210 ILCS 40/5) (from Ch. 111 1/2, par. 4160-5)

25 Sec. 5. (a) At the time of or prior to the execution of a

1 life care contract and the transfer of any money or other
2 property to a provider or escrow agent, the provider shall
3 deliver to the resident a copy of a financial disclosure
4 statement reflecting the provider's financial condition. This
5 statement shall include, but not be limited to, disclosure of
6 short-term and long-term ~~short-term~~ assets and liabilities.

7 (b) The life care contract shall provide that any person
8 entering into the contract shall have a period of 14 days
9 beginning with the first full calendar day following the
10 execution of the contract, or the payment of an initial sum of
11 money as a deposit or application fee, or receipt of the
12 financial disclosure statement, whichever occurs last, within
13 which to rescind the life care contract without penalty or
14 further obligation. In the event of such rescission, all money
15 or property paid or transferred by such person shall be fully
16 refunded. No person shall be required to move into a facility
17 until after the expiration of the 14 day rescission period. No
18 permit shall be issued under this Act if the form of life care
19 contract attached as an exhibit in support of the application
20 for permit as provided in Section 4 does not contain the
21 provisions required by this paragraph (b).

22 (Source: P.A. 82-547.)

23 (210 ILCS 40/6) (from Ch. 111 1/2, par. 4160-6)

24 Sec. 6. Upon receipt of the completed application and
25 exhibits and payment of the fee by the applicant, and proof of

1 compliance by the applicant with the provisions of Section 7,
2 the Director shall issue a permit to the provider, subject to
3 the conditions imposed pursuant to Section 7, allowing the
4 provider to enter into life care contracts with respect to the
5 number of living units and facility described in the
6 application.

7 A permit issued pursuant to this Act shall remain in full
8 force, subject to the provisions of this Act, and shall be
9 publicly displayed ~~contain~~ in a prominent location ~~a statement~~
10 ~~that the issuance of such permit neither constitutes approval,~~
11 ~~recommendation or endorsement by the Department or Director nor~~
12 ~~evidences the accuracy or completeness of the information~~
13 ~~furnished to the Department.~~ A permit may be revoked by the
14 Department if the facility fails to provide to the Department
15 an accurate disclosure document in accordance with the
16 Alzheimer's Disease and Related Dementias Special Care
17 Disclosure Act.

18 All permits shall be nontransferable.

19 (Source: P.A. 96-990, eff. 7-2-10.)

20 (210 ILCS 40/9) (from Ch. 111 1/2, par. 4160-9)

21 Sec. 9. At any time the Director or the Secretary of
22 Financial and Professional Regulation receives notice from the
23 escrow agent that the provisions of Section 7 have not been
24 complied with, or at any other time when the Director or the
25 Secretary of Financial and Professional Regulation has reason

1 to believe that the provider is insolvent, is in imminent
2 danger of becoming insolvent or that its condition is such that
3 it may be financially unable to fully perform its obligations
4 pursuant to life care contracts, the Director or the Secretary
5 of Financial and Professional Regulation shall, through the
6 Attorney General, file an appropriate action on behalf of the
7 State of Illinois and any or all residents in any court of
8 competent jurisdiction, including the federal bankruptcy court
9 or any other federal court.

10 (Source: P.A. 82-547.)

11 (210 ILCS 40/10) (from Ch. 111 1/2, par. 4160-10)

12 Sec. 10. The Director or his or her authorized designee, or
13 the Secretary of Financial and Professional Regulation or his
14 or her designee, may conduct an audit or other examination of
15 the financial affairs of any provider as often as he deems it
16 necessary for the protection of the interests of the residents
17 and the people of this State, and for this purpose shall have
18 access to the books, records, financial data and other
19 documents maintained by the facility.

20 (Source: P.A. 82-547.)

21 (210 ILCS 40/10.2 new)

22 Sec. 10.2. Annual report. A printed report compiled by the
23 provider of a facility shall be provided to all residents of
24 the facility on an annual basis and submitted to the Department

1 on an annual basis. The report shall be updated with the
2 information for the preceding year as well as future
3 projections, where specified. The report shall be in 12-point
4 bold type and provide, at minimum, the following:

5 (1) a statement detailing the facility's financial
6 condition;

7 (2) audited balance sheets;

8 (3) a statement of income and expenses;

9 (4) a statement of cash flow changes;

10 (5) a list of reserve assets;

11 (6) a summary of recent State inspections;

12 (7) a copy of the current contract;

13 (8) the policy if financial difficulties arise;

14 (9) the rules and regulations of the facility;

15 (10) the life changes policy; and

16 (11) anticipated fee increases for the upcoming year.

17 (210 ILCS 40/10.3 new)

18 Sec. 10.3. Online consumer database. The Department shall
19 provide the public with online access to the annual reports
20 required under Section 10.2, facility inspection reports, and
21 any other documentation that the Department determines may be
22 useful for a member of the public who is determining whether he
23 or she would like to live at a facility.

24 (210 ILCS 40/10.4 new)

1 Sec. 10.4. Regular periodic charges. An increase in a
2 regular periodic charge not outlined in a life care contract
3 must be approved by the Secretary of Financial and Professional
4 Regulation before the provider or facility may charge a
5 resident with the increase. A request to increase a regular
6 periodic charge must be accompanied by a detailed outline and
7 description justifying the increase.

8 Section 15. The Consumer Fraud and Deceptive Business
9 Practices Act is amended by adding Section 2VVV as follows:

10 (815 ILCS 505/2VVV new)

11 Sec. 2VVV. Violations of the Life Care Facilities Act. A
12 provider for a facility under the Life Care Facilities Act who
13 violates Section 4.1 of the Life Care Facilities Act commits an
14 unlawful practice within the meaning of this Act.

1 INDEX

2 Statutes amended in order of appearance

3 210 ILCS 40/4.1 new

4 210 ILCS 40/5 from Ch. 111 1/2, par. 4160-5

5 210 ILCS 40/6 from Ch. 111 1/2, par. 4160-6

6 210 ILCS 40/9 from Ch. 111 1/2, par. 4160-9

7 210 ILCS 40/10 from Ch. 111 1/2, par. 4160-10

8 210 ILCS 40/10.2 new

9 210 ILCS 40/10.3 new

10 210 ILCS 40/10.4 new

11 815 ILCS 505/2VVV new