

Document No. 4625
DEPARTMENT OF CONSUMER AFFAIRS
 CHAPTER 28
 Statutory Authority: 1976 Code Section 37-11-80

28-600. Licensing Standards for Continuing Care Retirement Communities

Synopsis:

The department proposes to amend and modify Regulation 28-600. The purposes of these proposed amendments are to revise and edit regulatory language to conform to current statutory requirements and to delete obsolete and inconsistent provisions. South Carolina Code Section 37-11-80 authorizes the department to promulgate regulations necessary to effectuate the purposes of the chapter.

Notice of Drafting for the proposed regulations was published in the *State Register* on August 28, 2015. Comments were solicited for consideration in drafting the proposed regulation.

Instructions:

Replace Regulation 28-600. (Revisions) as printed below.

Text:

28-600. Licensing Standards for Continuing Care Retirement Communities.

A. License Applications.

(1) In addition to the requirements in Section 37-11-30(B), an application for a CCRC license must contain at least the following information:

- (a) a feasibility study prepared in accordance with generally accepted accounting principles;
- (b) a statement of all fees required of residents, including, but not limited to, a statement of the entrance fee charged, the monthly service charges, the proposed application of the proceeds of the entrance fee by the operator, and the plan by which the amount of the entrance fee is determined if the entrance fee is not the same in all cases;
- (c) a resident's guide, policy manual, or other material of similar application, whether current or proposed;
- (d) a copy of an agreement with the providers for the provision of medical care, health care, or other health-related services;
- (e) a list of all necessary permits, licenses and certificates received or applied for, and their status at the time the application is submitted to the department;
- (f) a copy of the procedure for reviewing and handling residents' complaints; and
- (g) such other reasonable data as the department may require with respect to the operator or the facility.

(2) The application for a license shall be accompanied by a license fee of Two Thousand Dollars.

B. All licenses; form and content; renewal licenses.

(1) Each license issued to a licensee must state the name and address of the facility and must state fully the name of the licensee, date of issuance, and date of expiration. The license must be posted prominently in the facility.

(2) All licenses expire on August thirty-first of each year.

(3) All licenses must be renewed by filing a renewal application with the department at least thirty days before the expiration of the license. A complete renewal application shall contain the information the department requires in order to determine the existence and effect of any material change from the information contained in the applicant's original application, annual reports, or previous renewal application. Each renewal application must be accompanied by a nonrefundable license fee of Two Thousand Dollars.

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C. Occurrences triggering updates.

Regardless of the information filed with the annual license renewal application, each operator shall notify the department and file pertinent documents within ten business days after the occurrence of any of the following events:

- (1) Any investigation, litigation, orders, judgments, or decrees which affect the facility, operator and/or owner, including, but not limited to, a bankruptcy, foreclosure, or receivership proceeding;
- (2) Any proceeding for denial, suspension or revocation of any license or permit needed to operate the facility;
- (3) Any proposed changes in the continuing care contract;
- (4) Any proposed changes to the disclosure statement;
- (5) Any proposed expansion or closure of the facility, including, but not limited to, the closing of a wing or building of the facility;
- (6) Any proposed transfer of ownership of the facility;
- (7) Any proposed change in the control of the operator;
- (8) Any change of the administrator of the facility;
- (9) Any change in the facility's contract(s) with the provider of medical or other health-related services.

D. Multiple Facilities.

(1) If the operator provides or intends to provide continuing care at more than one facility, the operator must obtain an appropriate separate license for each such facility. Funds collected by one facility should not be expended for the benefit of any other facility. Where there are multi-facility operations, entrance fees collected for service at a particular facility shall be managed appropriately to safeguard the financial interest of the resident who paid the fee for facilities and services at that particular community.

(2) An entity which operates several facilities on different locations under one corporate structure where all monies from and disbursements to such locations are channeled through the corporate headquarters and where only one central system of accounting is maintained for all the locations may in its license application submit only one financial statement on behalf of all locations it operates. Disbursements to individual locations will not be deemed cross-collateralization, provided, however, that continuance of such practice will not adversely affect financial soundness of any location operated by the corporation.

E. Advertising; general standards.

All advertising which is used by or on behalf of the operator to promote a continuing care retirement community shall be accurate, truthful and not misleading so as to fully inform the public and foster their understanding and trust. In preparing any advertising material, the operator is subject to state unfair and deceptive trade practices laws.

F. Continuing care contracts.

(1) Continuing care contracts must be printed in one hundred percent black ink with the exception of the operator's name and business logo. The contracts must be printed on stock that is at least 11 inches high and 7 1/4 inches wide. All print in continuing care contracts shall be in print no smaller than ten point type.

(2) Continuing care contracts shall be written in language customarily used and understood by people in the conduct of their personal affairs.

(3) The continuing care contract must contain:

(a) a right to cancel provision in the following language which must be bold face type:

RESIDENT'S RIGHT TO CANCEL

You may cancel this contract by sending notice of your wish to cancel to the continuing care community (community) before midnight of the thirtieth (30th) day after you sign a contract. This notice must be sent in writing to the following: (Insert business name and address). If you cancel within thirty days, all money or property paid or transferred by you must be refunded fully, less those reasonable costs incurred by the community. If the living unit was available for occupancy, the community may charge a daily rate based on the usual monthly charge for that unit beginning on the eighth (8th) day after signing and ending on the day notice of cancellation is given to the community. Within thirty days of receipt of the cancellation notice, the community must return any payments made and return any note or evidence of indebtedness.

(b) a statement in bold face type of what portion, if any, of the entrance fee is refundable or non-refundable.

(c) in capital letters, in bold face type no smaller than the largest type used in the contract the following statement:

A license issued by the South Carolina Department of Consumer Affairs is not an endorsement or guarantee of this facility by the State of South Carolina. The South Carolina Department of Consumer Affairs urges you to consult with an attorney and a suitable financial advisor before signing any documents.

(4) No act, agreement or statement of a resident or 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 the Act and this regulation intended for the benefit or protection of the resident or the individual purchasing care for the resident.

G. Disclosure Statement.

(1) The disclosure statement must contain at least the following information:

- (a) Items specified in Section 37-11-30(B)(1), (4), (5), (6), (7), (8), (10), (11), (12), and (13);
- (b) The name and position title of the individual to whom inquiries should be directed regarding facilities, services, or other information;
- (c) A statement that the facility will make available upon request the names and business addresses of the officers, directors, trustees, managing or general partners, any person having a five percent or greater equity or beneficial interest in the continuing care retirement community, and any person who will be managing the community on a day-to-day basis;
- (d) The services provided or proposed to be provided pursuant to contracts for continuing care at the facility, including the extent to which medical care is furnished; a clear statement of which services are included for monthly basic fees for continuing care and which services are made available at or by the facility at extra charge;
- (e) If the facility is already in operation, a statement as to which services may be available subject to a waiting list or priority rights of other residents, as well as the best estimate of the average waiting period for such services.
- (f) The current and estimated number of the residents of the facility to be provided services by the operator pursuant to the contract for continuing care;
- (g) A copy of the complaint system and procedures;
- (h) A statement as to whether or not the facility, or any component thereof, accepts Medicare and/or Medicaid. In case the facility does not accept Medicare and/or Medicaid, the following statement will be inserted in bold face type in the disclosure statement:

This facility does not accept Medicare and/or Medicaid. In case a resident exhausts his available financial resources prior to or following admission into our nursing home or assisted living accommodations, the resident might have no choice but to apply for admission to a facility that accepts these payments.

A facility which has a discretionary fund to assist residents who deplete their financial resources, the following language will also be inserted in bold face type in the disclosure statement:

The discretionary funds available to the management may be used to supplement the entire cost of care or a part of it. However, the application of these funds is entirely within the discretion of the management and the presence of these funds is no guarantee for a continuing stay in this facility following the depletion of your own financial resources.

(i) A conspicuous statement that in addition to the information contained in the disclosure statement, a prospective or current resident or prospective or current resident's legal representative with a general power of attorney has a right to ask for and receive the information regarding reserve funding of the facility, if any, experience of persons who will make investment decisions, certified financial statements of the operator including balance sheets and income statements, a current actuarial study, if available, a feasibility study for a facility that has not begun operations, and the names and business addresses of persons having a five percent or greater interest in the facility .

H. Expansions of existing facilities.

(1) An existing operator which intends to expand a continuing care retirement community by more than twelve units or twenty-five percent of individual living units, whichever is more, shall file with the department a letter of intent disclosing the plan of the expansion. The letter shall disclose the following:

- (a) The purpose and scope of the expansion;
- (b) Estimated capital cost;
- (c) Ability to finance;
- (d) Financial impact on current residents;
- (e) Impact on current community structure to provide resident services;
- (f) Present occupancy rate and marketability of the expansion;

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(g) If the facility has had a feasibility study made, then its operator shall submit, in addition to the letter of intent, a supplement to that feasibility study. If the facility did not have a feasibility study made in the past, then the operator shall submit, in addition to the letter of intent, a substitute study.

(2) In order to prevent avoidance of subsection (1) above, the exemption may not exceed a twenty-five percent increase in individual living units cumulative over a two year period.

I. Transfer of ownership of a facility.

(1) An operator intending to undertake a transfer of ownership of a facility shall notify the department at least thirty days in advance of the proposed settlement date.

(2) A notice of intention of transfer of ownership of a facility may be in the form of a letter, addressed to the department, and shall contain the following information:

- (a) Name and address of the licensed operator from whom ownership will be transferred;
- (b) Name and address of the person intending to acquire the ownership interest;
- (c) Name and address of the facility whose ownership is being transferred;
- (d) Proposed settlement date.

(3) No transfer of ownership of a facility shall be consummated until the person to whom ownership is being transferred obtains a license from the department.

(4) When a person to whom ownership is being transferred files an application for a license, in addition to the selected information as will be specified on a form available from the department, the person shall file a statement containing the following information:

- (a) The terms and conditions of the transfer of ownership;
- (b) The source of funds to be used to finance transfer of ownership and, if the funds are to be borrowed, the name of a lender and a summary of the terms and conditions of the loan transactions;
- (c) The plans, arrangements, understandings and intentions of the transferee for the future business and management of the facility, including plans as to the sale of assets or material change in business, corporate structure or management.

(5) A license will not be issued under this Section unless the transferee has agreed in writing to assume the contractual obligations imposed on the current operator by its existing continuing care agreements. Any person aggrieved by the determination of the department shall be entitled to a contested case hearing before the Administrative Law Court in accordance with the provisions of the Administrative Procedures Act.

J. Entrance fees; escrow provisions.

(1) An escrow agreement entered into between a trust institution and an operator shall state that its purpose is to protect the resident or the prospective resident; and, upon presentation of evidence of compliance with applicable portions of the Act and this regulation, or upon order of a court of competent jurisdiction, the escrow agent shall release and pay over the funds, or portions thereof, together with any interest accrued thereon or earned from investment of the funds, to the operator or resident as directed. At the time of entering into an escrow agreement, an operator shall inform an escrow agent of the Act and this regulation and the respective requirements of each.

(2) All funds deposited in an escrow account shall not be subject to any liens or charges by the escrow agent or judgments, garnishments, or creditor's claims against the operator or facility.

(3) When funds are received from a resident or prospective resident, the operator shall deliver to the resident a written receipt. The receipt shall show the payor's name and address, the date, the price of the continuing care contract, and the amount of money paid.

(4) In applying the provision of Section 37-11-90(C) relating to the reasonable time in which the operator must meet the requirements for release of funds held in the escrow account, escrow agents shall not consider such reasonable time to exceed thirty months from the date the entrance fee or any portion thereof was first deposited in the escrow account, unless the extension is requested from and granted by the department for good cause shown.

K. Dismissal or discharge of resident; refund.

(1) No continuing care contract which requires payment of an entrance fee or other fee in return for a promise of future care or which provides for services for the life of the person or for more than one year (including mutually terminable contracts) shall permit dismissal or discharge of the resident from the facility providing care before the expiration of the agreement without just cause for such removal. The term "just cause" includes, but is not limited to, a good faith determination in writing, signed by the medical director and/or 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:

- (a) That the determination is made in good faith;
- (b) The reasons supporting the determination that the resident is a danger to himself/herself or others;
- (c) 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.

(2) If a facility dismisses a resident for just cause, the resident shall be entitled to a refund of his unearned entrance fee, to the extent the continuing care contract between the parties so provides.

L. Inspections; Investigations.

(1) The department may conduct inspections or investigations as necessary to enforce the State Continuing Care Retirement Community Act, the accompanying regulations, or an order of the Administrator or the Administrative Law Court related to these provisions. Any operator being examined shall, upon request, give reasonable and timely access to all of its records. The representative of the department may at any time examine the records and affairs and inspect the physical property of any operator and the health care and health-related services provider with whom the operator has contracts, agreements, or other arrangements, whether in connection with a formal examination or not.

(2) Any duly authorized officer, employee, or agent of the department may, upon presentation of proper identification, have access to, and inspect and copy any records, with or without advance notice, to secure compliance with, or to prevent a violation of, any provision of the Act and this regulation.

(3) Reports of the results of such examinations shall be kept on file by the department. Any records, reports, or documents obtained by the department which by state or federal law or regulation are deemed confidential may not be distributed to the public by the department unless required under appropriate court order or until such confidential status has expired.

(4) The department shall notify the operator in writing of all deficiencies in its compliance with the provisions of the Act and this regulation and shall set a reasonable length of time for compliance by the facility. In addition, the department may require corrective action or request a corrective action plan.

M. Complaint system to be established.

(1) Each facility's complaint system shall, at a minimum, provide residents with the following:

- (a) The name of the staff person or persons authorized to receive written complaints from residents;
- (b) An opportunity to discuss the substance of the complaint with the designated staff person;
- (c) The time period in which the operator shall make a written response to the complaint;
- (d) A statement that the operator shall not engage in any retaliatory action against the complainant;
- (e) A statement that if the resident is not satisfied with the operator's response, the resident may file a complaint with the South Carolina Department of Consumer Affairs. The agency's current toll-free telephone number and website must be included.

(2) Copies of the complaint system shall be distributed to residents and conspicuously posted at a common area of the facility.

N. Department's response to written complaints.

(1) Upon receipt of a written complaint, the department shall make a preliminary review; and unless the department determines that the complaint is without any reasonable basis, the department shall take appropriate action.

(2) No licensed operator may discriminate or retaliate in any manner against a resident of a facility providing care because such resident has initiated a written complaint pursuant to this Section.

O. Financial review committee.

At such time as the Administrator determines that a facility cannot fully perform its obligations under continuing care contracts, the Administrator may appoint a financial review committee. Such committee may include persons knowledgeable in the field of continuing care, certified public accountants, members of the financial community, and others as may be deemed appropriate by the Administrator. The members of the committee shall advise the Administrator regarding the merits of the facility's corrective plan proposal.

P. Severability.

If any provision of this regulation or the application thereof to any person, facility or circumstances is held to be invalid, the invalidity shall not affect other provisions or application of this regulation, and to this end the provisions of this regulation are severable.

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Fiscal Impact Statement:

The Department of Consumer Affairs estimates the costs incurred by the State in complying with the proposed regulation will be approximately \$0.

Statement of Rationale:

The State Continuing Care Retirement Community Act specifically provides for the Department to promulgate regulations necessary to effectuate the purposes of the Code and these changes are being made to conform regulations to current statutory law.

Document No. 4708
DEPARTMENT OF CONSUMER AFFAIRS
CHAPTER 28
Statutory Authority: 1976 Code Sections 39-61-10 et seq.,
Particularly Section 39-61-160

28-80. Motor Club Certificate of Authority

Synopsis:

The department proposes to amend Regulation 28-80 to clarify registration requirements and processes regarding motor club services companies and representatives.

Notice of Drafting for the proposed regulation was published in the *State Register* on August 26, 2016. Comments were solicited for consideration in drafting the proposed regulation. Proposed regulation was published in the *State Register* on October 28, 2016.

Instructions:

Amend Regulation 28-80. (Motor Club Certificate of Authority) as printed below.

Text:

28-80. Motor Club Certificate of Authority.

A. DEFINITIONS

Definitions shall be those contained in the South Carolina Motor Club Services Act, S.C. Code Ann. S. 39-61-10 et seq. (1976 as amended).

B. CERTIFICATES OF AUTHORITY

(1) All organizations wishing to provide motor club services in this State must first obtain a Certificate of Authority from the Administrator. Initial applications for the Certificates shall be made on a form prescribed by the Administrator.

(2) Certificates of Authority expire on October 31. The renewal period will be between September 1 and October 31 of each year. Renewal applications shall be made on a form prescribed by the Administrator and must be accompanied by a copy of the club's most recent financial statement certified by two principal officers of the club, or in the case of partnerships or sole proprietorships, by a partner or the proprietor.