

## LICENSING AND REGULATION OF CONTINUING CARE RETIREMENT COMMUNITIES

### SECTION 37-11-10. Short title.

This chapter may be cited as the "State Continuing Care Retirement Community Act".

HISTORY: 1989 Act No. 97, Section 1.

### SECTION 37-11-20. Definitions.

As used in this chapter unless the context otherwise requires:

- (1) "Department" means the South Carolina Department of Consumer Affairs.
- (2) "Continuing care retirement community" means a community in which there is furnished, pursuant to a continuing care contract, to two or more persons not related to the administrator or owner of the facility within the third degree of consanguinity, board or lodging together with nursing, medical, or other health-related services, regardless of whether the services or lodging are provided at the same location or not. It does not include an institution operating solely as a nursing home or community residential care facility licensed by the South Carolina Department of Health and Environmental Control.
- (3) "Entrance fee" means a payment that assures a resident a place in a facility.
- (4) "Facility" means the place in which an operator undertakes to provide continuing care to a person.
- (5) "Health-related services" includes a degree of personal assistance in feeding, dressing, or other essential daily living activities.
- (6) "Continuing care contract" means a contract to provide board or lodging together with nursing, medical, or other health-related services:
  - (a) to a person sixty-five years of age or older at the time the contract is signed or purchased; or
  - (b) which provides for services for the life of the person or for more than one year, including mutually terminable contracts; and
  - (c) which requires payment of an entrance fee or other fee in return for a promise of future care.
- (7) "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 identified residents.
- (8) "Operator" means the promoter, developer, or owner of a continuing care retirement community or of an institution, building, residence, or other place, whether operated for profit or not, or a person who solicits or undertakes to provide continuing care under a continuing care facility contract.
- (9) "Resident" means a purchaser of, a nominee of, or a subscriber to a continuing care contract. It includes a person for whom an entrance fee has been paid.
- (10) "Trust institution" means a state or national bank, state or federal savings and loan association, or trust company authorized to act in a fiduciary capacity in this State.

HISTORY: 1989 Act No. 97, Section 1; 2000 Act No. 400, Section 1.

### SECTION 37-11-30. Licensing of continuing care retirement community.

(A) A continuing care retirement community must not be operated and an entrance fee must not be collected unless a license is obtained first from the department as provided in this chapter. The department shall establish reasonable licensing fees not to exceed the cost of administering this chapter. Licenses issued under this chapter expire one year after the date of issuance or annually upon dates as the department may prescribe by regulation. Licenses may be issued only for the premises and persons named in the application and are not transferable or assignable.

(B) Applications for licenses must be in a form and under conditions as may be prescribed by the department and must set forth:

(1) the name and business address of the operator and a statement of whether the operator is a partnership, corporation, or other type of legal entity;

(2) 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 facility on a day-to-day basis, and a description of these persons' interests in or occupations with the operator. The following information on all persons named in response to this item is required:

(a) a description of the business experience of the person, if any, in the operation or management of similar facilities;

(b) the name and address of any professional service, firm, association, trust, partnership, or corporation in which this person has, or which has in this person, a five percent or greater interest and which is providing or in the future shall provide goods, leases, or services to the facility or to residents of the facility of an aggregate value determined by regulation within any year, including a description of the goods, leases, or services and their probable or anticipated cost to the facility, operator, or residents, or a statement that this cost presently cannot be estimated;

(c) a description of any matter in which the person:

(i) has been convicted of a felony or pleaded nolo contendere to a felony charge, or held liable or enjoined in a civil action by final judgment, if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property; or

(ii) 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;

(3) a statement as to the operator's affiliation with a religious, charitable, or other nonprofit organization, the extent of the affiliation, if any, the extent to which the affiliate organization is responsible for the financial and contractual obligations of the operator, and the provision of the Federal Internal Revenue Code, if any, under which the operator or affiliate is exempt from the payment of income tax;

(4) the location and description of the physical property of the facility, existing or proposed, and to the extent proposed, the estimated completion date, whether construction has begun, and the contingencies subject to which construction may be deferred;

(5) 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, and a clear statement of which services are included for specified basic fees for continuing care and which services are made available at or by the facility at extra charge;

(6) a description of all fees required of residents, including the entrance fee and periodic charges, if any. The description must include:

(a) a statement of the fees charged if the resident marries while at the facility and a statement of the terms concerning the entry of a spouse to the facility and the consequences if the spouse does not meet the requirements for entry;

(b) the circumstances under which the resident is permitted to remain in the facility if he has financial difficulties;

(c) the terms and conditions under which a contract for continuing care at the facility may be canceled by the operator or by the resident, and the conditions, if any, under which all or a portion of the entrance fee is refunded if the contract is canceled by the operator or by the resident if the resident dies before or following occupancy of a living unit;

(d) the conditions under which a living unit occupied by a resident may be made available by the facility to a different or new resident;

(e) the manner by which the operator may adjust periodic charges or other recurring fees and the limitations on these adjustments, if any. If the facility is already in operation or if the operator or

manager operates one or more similar continuing care locations within this State, tables must be included showing the frequency and average dollar amount of each increase in periodic charges, or other recurring fees at each facility or location for the previous five years, or for all of the years in operation if less than five years;

(7) the health and financial conditions required for a person to be accepted as a resident and to continue as a resident once accepted, including the effect of a change in the health or financial condition of a person between the date of entering a contract for continuing care and the date or initial occupancy of a living unit by that person;

(8) the provisions that have been made or will be made, if any, to provide reserve funding or security to enable the operator to perform its obligations fully under contracts to provide continuing care at the facility, including the establishment of escrow accounts, trusts, or reserve funds, together with the manner in which these funds will be invested and the names and experience of individuals in the direct employment of the operator who will make the investment decisions;

(9) certified financial statements of the operator, including a balance sheet as of the end of the most recent fiscal year and income statements for the three most recent fiscal years of the operator or for all of the years in existence if less than three years. If the operator's fiscal year ended more than one hundred twenty days before the date the application for a license is filed, interim financial statements as of a date not more than ninety days before the date of filing the application must be included but need not be certified;

(10) if the continuing care contract provides for services for the life of the person or for more than one year including mutually terminable contracts, a summary of a report of an actuary, updated every two years, that estimates the capacity of the operator to meet its contractual obligation to the residents;

(11) if the facility has not begun operations, documentation by the operator that the proposed project is economically feasible, both immediately and long term, and can be accommodated in the patient charge structure without unreasonable increases;

(12) the estimated number of residents of the facility to be provided services by the operator pursuant to the contract for continuing care;

(13) a copy of the standard form of contract for continuing care used by the operator attached to each disclosure statement;

(14) other material information concerning the facility or the operator as the operator wishes to include.

HISTORY: 1989 Act No. 97, Section 1; 1995 Act No. 19, Section 4.

### **SECTION 37-11-35.** Continuing care contract requirements.

A continuing care contract must be in writing and must meet minimum standards for readability established by the department. Standards must include, but are not limited to, standards on general organization of text, text readability, type size, type style, type spacing, and general appearance of the contract.

A contract clearly must state what portion, if any, of the entrance fee is refundable and nonrefundable. A contract must include a statement that the resident has a right to cancel the contract within thirty days after signing. If the resident cancels within thirty days, all money or property paid or transferred by the resident must be refunded fully, less those 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 day after signing and ending on the day notice of cancellation is given to the community.

HISTORY: 1989 Act No. 97, Section 1.

**SECTION 37-11-40.** Determination of financial responsibility of applicant for license.

Within sixty days of the receipt of a completed application for a license, the department shall determine whether the continuing care retirement community is financially responsible and can meet its obligations to residents. In making this determination, the department may consider, but is not limited to:

- (1) the financial soundness of the arrangements for board, lodging, or medical, nursing, or health-related services and the schedule of charges used in connection with them;
- (2) the adequacy of working capital;
- (3) if the continuing care contract provides for services for the life of the person or for more than one year including mutually terminable contracts, a surety bond, financial reserves, letter of credit, or other financial arrangement to guarantee the performance of contractual obligations;
- (4) an agreement with providers for the provision of health care or health-related services.

HISTORY: 1989 Act No. 97, Section 1; 1995 Act No. 19, Section 5.

**SECTION 37-11-50.** Eligibility for license.

The department shall issue a license to a person filing an application pursuant to Section 37-11-30 if, upon payment of the application fee, the department is satisfied that:

- (1) The persons responsible for the conduct of the affairs of the applicant are competent and trustworthy and possess good reputations.
- (2) The continuing care retirement community is financially responsible and can meet its obligations to residents.
- (3) The operator has demonstrated the willingness and potential ability to assure that the health care or health-related services will be provided in a manner to assure both availability and accessibility of adequate personnel and facilities and in a manner assuring availability, accessibility, and continuity of service.
- (4) The operator has complied with all requirements of the Department of Health and Environmental Control concerning the furnishing of nursing, medical, or other health-related services.

HISTORY: 1989 Act No. 97, Section 1.

**SECTION 37-11-60.** Disclosure requirements; retirement community complaint system.

At the time of, or before, the execution of a contract to provide continuing care, or the transfer of money or other property to an operator by or on behalf of a prospective resident, whichever occurs first, the operator shall deliver a current disclosure statement to the person with whom the contract is to be entered into, the text of which must contain at least the information required by the department. The department may require a disclosure of all or part of the information submitted pursuant to Section 37-11-30(B) or a summary of the information.

Every continuing care retirement community shall establish and maintain a complaint system which is approved by the department to provide reasonable procedures for the resolution of written complaints initiated by residents. A complaint system established pursuant to other governmental requirements satisfies the requirements of this section if all residents are aware of and may use the system. A copy of all written complaints handled through this system and the average time taken to resolve a complaint must accompany an application to renew a license.

HISTORY: 1989 Act No. 97, Section 1.

**SECTION 37-11-70.** Itemized billing requirements.

A continuing care retirement community subject to the provisions of this chapter is required to furnish an item-by-item billing for all charges to the resident or the person paying the bill upon his request unless the items and charges are included in the continuing care contract. Items which remain unpaid are not required to be itemized again. A request for itemized billing remains in effect until further notification by the resident or person paying the bill.

HISTORY: 1989 Act No. 97, Section 1.

**SECTION 37-11-80.** Regulations; examination of affairs of retirement community and health care providers; communities and providers to submit books and records.

The department shall promulgate regulations in accordance with the Administrative Procedures Act as it considers necessary to carry out the purposes of this chapter.

The department may make an examination of the affairs of a continuing care retirement community and the health care and health-related services providers with whom the organization has contracts, agreements, or other arrangements as often as reasonably is necessary to ensure that the operator can meet his obligations to residents and otherwise meets the requirements of this chapter.

Continuing care retirement communities and health care providers examined pursuant to this section shall submit books and records needed to determine the continuing care retirement community's financial soundness. The department is responsible for the expenses of examinations under this section.

HISTORY: 1989 Act No. 97, Section 1.

**SECTION 37-11-90.** Certain entrance fees to be placed in escrow account; release of funds; exemptions from provisions of this section.

(A) A continuing care retirement community is exempt from the provisions of this section if:

(1) it has been operating for at least five years;

(2) for the previous six months it has maintained at least the minimum occupancy rate estimated in its financial feasibility study to achieve a break-even cash flow operating level or seventy-five percent occupancy, whichever is less.

(B) If an entrance fee is received by the operator before the date the resident is permitted to occupy a living unit in the facility, the total amount must be placed in an escrow account with a trust institution. These funds may be released only as follows:

(1) If the entrance fee applies to a living unit that previously has been occupied in the facility, the entrance fee must be released to the operator when the living unit becomes available for occupancy by the new resident.

(2) If the entrance fee applies to a living unit which previously has not been occupied by a resident, the nonrefundable portion, if any, of the entrance fee must be released to the operator when the living unit becomes available for occupancy. The refundable portion, if any, of the entrance fee must be released to the operator when the escrow agent is satisfied that:

(a) construction or purchase of the living unit has been completed, and an occupancy permit, if applicable, covering the living unit has been issued by the local government having authority to issue the permit.

(b) a commitment has been received by the operator for a permanent mortgage loan or other long-term financing, and conditions of the commitment before disbursement of funds have been satisfied substantially.

(c) aggregate entrance fees received or receivable by the operator pursuant to binding continuing care retirement community contracts, plus the anticipated proceeds of any first mortgage loan or other

long-term financing commitment, are equal to not less than ninety percent of the aggregate cost of constructing or purchasing, equipping, and furnishing the facility plus not less than ninety percent of the funds estimated in the financial feasibility study required by Section 37-11-30 to be necessary to fund cash shortages during start-up and assure full performance of the obligations of the operator pursuant to continuing care retirement community contracts.

(C) Upon receipt by the escrow agent of a request by the operator for the release of the escrow funds, the escrow agent shall approve release of the funds within five working days unless the escrow agent finds that the requirements of subsection (B) have not been met and notifies the operator of the basis for this finding. The request for release of the escrow funds must be accompanied by documentation the trust institution requires.

If the operator fails to meet the requirements for release of funds held in this escrow account within a time period the escrow agent considers reasonable, the funds must be returned by the escrow agent to the persons who have made payment to the operator. The escrow agent shall notify the operator of the length of this time period when the operator requests release of the funds.

An entrance fee held in escrow may be returned by the escrow agent to the person who made payment to the operator at any time upon receipt by the escrow agent of notice from the operator that this person is entitled to a refund of the entrance fee.

HISTORY: 1989 Act No. 97, Section 1.

**SECTION 37-11-95.** Approval required prior to declaring or distributing dividend or similar distribution.

(A) An operator shall obtain approval from the department before declaring or distributing a dividend or similar distribution which generates a retained deficit or increases an existing retained deficit.

(B) The department's approval required under subsection (A) must be given within thirty days from the date of the request unless the department determines in writing that the distribution is not reasonable in relation to the operator's or facility's outstanding liabilities or would otherwise affect the financial soundness of the operator or the facility.

HISTORY: 1995 Act No. 19, Section 1.

**SECTION 37-11-100.** Disciplinary actions; sanctions; assessment of costs.

(A) For the purposes of this section, "conviction" includes a plea of guilty or nolo contendere or a finding of guilt.

(B) The department may take disciplinary action against a licensee or an operator for violation of a provision of this chapter or a regulation promulgated pursuant to this chapter.

(C) Upon finding that a licensee, operator, or person who manages the community on a day-to-day basis has violated one or more provisions of this section, the department may:

- (1) deny an application for a license;
- (2) revoke, restrict, suspend, or refuse to renew a license;
- (3) impose an administrative penalty in an amount not less than one thousand dollars for each violation, but not more than ten thousand dollars;
- (4) issue a reprimand;
- (5) issue a cease and desist order; or
- (6) place the licensee, operator, or person who manages the community on a day-to-day basis on probation for a period and subject to conditions and restrictions that the department specifies.

(D) A disciplinary action, denial of an application for a new or renewal license, license revocation, or license suspension must occur subject to the Administrative Procedures Act, with notice to, and an opportunity for a hearing by, the affected applicant, licensee, or operator. A contested hearing pursuant to this section must be held before the Administrative Law Court.

(E) A licensee, operator, or person who manages the community on a day-to-day basis who is found to be engaged in unlawful conduct may be assessed the reasonable costs necessary to the investigation, disciplinary proceeding, court proceeding, or other action to enforce the provisions of this chapter.

HISTORY: 1989 Act No. 97, Section 1; 2005 Act No. 128, Section 20, eff July 1, 2005; 2008 Act No. 244, Section 1, eff May 27, 2008.

**SECTION 37-11-105.** Financial plan in case of insolvency or danger of insolvency; penalty for failure to implement approved plan.

(A) At any time when the department has reason to believe that the operator is insolvent, is in imminent danger of becoming insolvent, is in a financially unsound or unsafe condition, or that a continuing care retirement community's financial condition is such that it may otherwise be unable to fully perform its obligations pursuant to continuing care contracts, the department in addition to other remedies may require the operator to submit for approval within sixty days a financial plan detailing the method by which the operator proposes to overcome the deficiencies noted by the department. The department shall approve or disapprove the plan within thirty days of the receipt.

(B) If the plan is approved, the operator immediately shall implement the plan.

(C) If the plan is disapproved or if at any time after approval the department determines that the plan is not being fully implemented, the department may require the operator to obtain new or additional management capability to solve its difficulties. The department must give the reorganized management a reasonable period of time, as determined by the department, to develop a plan which, subject to the approval of the department, will reasonably assure that the operator will meet its responsibilities under the law. The deadlines for action described in this subsection may be extended upon mutual agreement of the operator and the department.

(D) Failure to implement the plan may result in suspension or revocation of a license.

HISTORY: 1995 Act No. 19, Section 2.

**SECTION 37-11-110.** Repealed by 2005 Act No. 128, Section 24, eff July 1, 2005.

**SECTION 37-11-120.** Injunctions; criminal penalties.

The department, in accordance with the laws of the State governing injunctions and other processes, may maintain an action in the name of the State against a person for establishing, conducting, managing, or operating a facility without obtaining a license as provided in this chapter. In charging a defendant in a complaint in the action, it is sufficient to charge that the defendant, upon a certain day and in a certain county, established, conducted, managed, or operated the facility or program without a license without asserting further or more particular facts concerning the charge.

A person violating the provisions of this chapter or regulations promulgated under this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than ten thousand dollars or imprisoned for not more than one year for each offense. Each day the facility or program operates without a license is considered a separate offense.

HISTORY: 1989 Act No. 97, Section 1.

**SECTION 37-11-125.** Enforcement actions.

The department or the Attorney General may file an action in the Administrative Law Court or circuit court to enforce the provisions of this chapter.

HISTORY: 2008 Act No. 244, Section 2, eff May 27, 2008.

**SECTION 37-11-130.** Waiver of certain requirements for certain retirement communities.

The department may waive any of the requirements of Section 37-11-30(B) for a continuing care retirement community in operation as of the effective date of this chapter.

HISTORY: 1989 Act No. 97, Section 1.

**SECTION 37-11-135.** Exemptions; letter of nonapplicability.

A continuing care retirement community which does not require payment of an entrance fee is exempt from the requirements of this chapter. In order to qualify for this exemption, a facility must obtain a letter of nonapplicability from the department.

HISTORY: 1995 Act No. 19, Section 3; 2000 Act No. 400, Section 2; 2008 Act No. 244, Section 3, eff May 27, 2008.

**SECTION 37-11-137.** Retention and use of funds.

All funds collected by the department pursuant to this chapter must be retained and used to implement the provisions of this chapter.

HISTORY: 2008 Act No. 244, Section 4, eff May 27, 2008.

**SECTION 37-11-140.** Effective date of chapter; exceptions.

(A) The provisions of Section 37-11-35 do not apply to a continuing care contract entered into before the effective date of this chapter.

(B) The provisions of subsection (A) do not limit the department's authority to deny, suspend, or revoke a license or assess a monetary penalty if it finds fraud or gross financial mismanagement.

HISTORY: 1989 Act No. 97, Section 1; 2008 Act No. 244, Section 5, eff May 27, 2008.