

Chapter 101

2007 EDITION

Continuing Care Retirement Communities

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PROPERTY RIGHTS AND TRANSACTIONS

101.010 Policy. The Legislative Assembly finds that continuing care retirement communities are an important and necessary alternative for the long term residential, social and health maintenance needs for many of Oregon's senior citizens. The Legislative Assembly recognizes the need for disclosure with respect to the terms of agreements between residents, prospective residents and the provider. The Legislative Assembly also recognizes the need to establish reserves and escrow requirements to provide adequate standards for the development and operation of continuing care retirement communities. Accordingly, the Legislative Assembly has determined that these providers should be registered and should establish reserves and escrows in accordance with this chapter. [1989 c.693 §2]

101.020 Definitions. As used in this chapter:

(1) "Application fee" means a fee charged to an individual or individuals, prior to execution of a residency agreement, apart from an entrance fee.

(2) "Audited financial statement" means a provider's financial statement that has been prepared in accordance with generally accepted accounting principles and that has been audited by an independent certified public accountant in accordance with generally accepted auditing standards and includes notes to the financial statement that state whether or not the community is in compliance with its reserve requirements.

(3) "Closed system long term care facility" means a long term care facility in a continuing care retirement community that is used exclusively by the continuing care retirement community's residents.

(4) "Continuing care" means directly furnishing or indirectly making available, upon payment of an entrance fee and under a residency agreement, housing and health related services, including nursing or assistance with activities of daily living, for a period greater than one year to an individual not related by blood or marriage to the continuing care retirement community provider that is furnishing care, whether provided in the community or in another setting designated by the residency agreement.

(5) "Continuing care retirement community" or "community" means any provider that agrees to furnish continuing care to a resident under a residency agreement.

(6) "Department" means the Department of Human Services.

(7) "Entrance fee" means an initial or deferred transfer to a provider of a sum of money or other property made or promised

to be made as full or partial consideration for acceptance of one or more residents in a community. A fee that is less than the sum of the regular periodic charges for one year of residency is not an entrance fee.

(8) "Living unit" means a room, apartment, cottage or other area set aside for the exclusive use of the resident.

(9) "Manager" means a person, corporation, partnership, association or other legal entity that enters into a contractual arrangement with the provider to manage the continuing care retirement community. However, "manager" does not include individuals employed by the provider or corporations affiliated with the provider or other legal entities within the provider's supervision or control.

(10) "New continuing care retirement community" or "new community" means a community established by a provider on or after January 1, 1990. "New community" does not mean the remodeling or expansion of an existing continuing care retirement community's facility on the same or an adjacent site.

(11) "Omit a material fact" means the failure to state a material fact required to be stated in any disclosure statement or registration.

(12) "Provider" means an owner or operator, whether a natural person, partnership, trust, limited liability company, corporation or unincorporated association, however organized, of a new or existing continuing care retirement community, whether operated for profit or not, that provides, plans to provide or agrees to provide continuing care for an entrance fee.

(13) "Residency agreement" means the contract or contracts between a provider and a resident for the provision of continuing care.

(14) "Resident" means a person who enters into a residency agreement with a provider or who is designated in a residency agreement to be a person being provided with continuing care in a community.

(15) "Solicit" means all actions of a provider in seeking to have individuals pay an application fee or enter into a residency agreement by any means including, without limitation, personal, telephone, mail or any media distributed or communicated by any means. [1989 c.693 §3; 1997 c.633 §4]

101.030 Registration of continuing care retirement community providers. (1) A provider shall register with the Department of Human Services before the provider:

(a) Enters into a residency agreement with a nonresident;

(b) Extends the terms of a resident's existing residency agreement; or

(c) Solicits either a resident or nonresident to pay an application fee or execute a residency agreement.

(2) The provider shall apply for registration with the department on forms prescribed by the department. The application shall include a disclosure statement as described in ORS 101.050.

(3) Within 10 business days after receipt of the application for registration from a new continuing care retirement community, the department shall issue a notice of filing to the provider applicant. Within 60 days of the notice of filing, the department shall enter an order registering the provider or rejecting the registration. If no order of rejection is entered within 60 days from the date of notice of filing, the provider shall be considered registered unless the provider has consented in writing to an extension of time. If no order of rejection is entered within the time period as so extended, the provider shall be considered registered.

(4) If the department determines that the requirements of ORS 101.050, 101.090 and 101.130 have been met, it shall enter an order registering the provider. If the department determines that any of the requirements of ORS 101.050 and 101.130 have not been met, the department shall notify the applicant that the application for registration must be corrected within 30 days in such particulars as are designated by the department. If the requirements are not met within the time allowed, the department may enter an order rejecting the registration. The order shall include the findings of fact upon which the order is based and which shall not become effective until 20 days after the end of the foregoing 30-day period. During the 20-day period, the applicant may petition for reconsideration and shall be entitled to a hearing. An order of rejection shall not take effect, in any event, until such time as the hearing, once requested, has been given to the applicant and a decision is rendered by the administrative law judge that sustains the department's decision to reject the registration. [1989 c.693 §7; 1991 c.67 §19; 2003 c.75 §82; 2005 c.22 §79]

101.040 Registration fees. The initial application for registration shall be accompanied by a fee of \$500. After the initial registration, the subsequent annual fee shall be \$250 per facility. [1989 c.693 §18]

101.050 Preparation of disclosure statement by provider; notice and review of statement by prospective residents; contents of statement. (1) After entry of an order registering the provider and before the provider enters into any residency

agreement with or on behalf of the prospective resident, the provider shall notify prospective residents of their right to review the initial disclosure statement and shall make copies of the statement available upon request. The initial disclosure statement shall be available during regular business hours in the business office of the continuing care retirement community. The text of the initial disclosure statement shall contain the following information:

(a) The names of the individual or individuals who constitute the provider or, if the provider is a partnership, limited liability company, corporation or other legal entity, whether for profit or not for profit, the names of the officers, directors, trustees or managing general partners of the provider and a description of each such individual's duties on behalf of the provider.

(b) The business address of the provider and a statement of whether the provider is an individual, partnership, limited liability company, corporation or other legal entity.

(c) With respect to a provider that is operated for profit, the names and business addresses of any individual having any more than a 10 percent ownership or beneficial interest in the provider and a description of such individual's interest in or occupation with the provider.

(d)(A) A statement as to whether the provider is or is not affiliated with any other organization of any kind, the extent of the affiliation, if any, and the extent to which any of the affiliate organizations are responsible for the financial and contractual obligations of the provider; and

(B) The provision of the Internal Revenue Code, if any, under which the provider or any of the provider's affiliates is exempt from the payment of federal income taxes.

(e) The location and general description of the continuing care retirement community and any other care facilities, both existing and proposed, owned or operated by the provider. The provider must disclose the following about any proposed continuing care retirement community or other care facilities:

(A) The estimated completion date or dates;

(B) A statement as to whether or not construction has begun; and

(C) Any contingencies subject to which construction may be deferred.

(f) A description of services provided or proposed to be furnished by the provider under its residency agreements including, without limitation, the extent to which medical care or assisted living is furnished, the ser-

vices made available by the continuing care retirement community at an extra charge over and above the entrance fee and periodic charges provided for in the residency agreement.

(g) A description of all fees required of each resident, including the entrance fee, periodic charges and the manner in which any additional fees or periodic charges will be determined. The description shall include:

(A) The circumstances under which the resident will be permitted to remain in the continuing care retirement community in the event the resident is unable to pay periodic or other charges;

(B) The terms and conditions under which the residency agreement may be canceled by the provider or the resident or in the event of the death of the resident prior to or following occupancy of the living unit;

(C) The percentage of the entrance fee refund required by ORS 101.080 and the manner in which this percentage is calculated;

(D) The conditions under which a living unit occupied by a resident may be made available by the provider to another resident other than on the death of the resident executing the residency agreement;

(E) The manner by which the provider may adjust periodic charges or other recurring fees; and

(F) A statement of the fees to be charged if the resident marries or divorces while at the designated continuing care retirement community, the terms concerning the entry or departure of a spouse to the community and the consequences if a new spouse does not meet the requirements for entry.

(h) The provider's most recent audited financial statement prepared in accordance with generally accepted accounting principles by a certified public accountant. This audited financial statement shall not have been prepared more than 16 months prior to the date of the initial application for registration.

(i) A copy of the residency agreement or agreements offered to the prospective resident by the provider.

(j) A statement on the cover page in a prominent location and typeface that registration of the continuing care retirement community does not constitute approval, recommendation or indorsement of the community by the Department of Human Services, and that such registration does not evidence the accuracy or completeness of the information set forth in the disclosure statement.

(k) Copies of the primary written brochures and written promotional materials furnished to prospective residents.

(2) Any person named in subsection (1)(a) or (c) of this section and any proposed or existing manager must disclose:

(a) Business experience in operation or management of the continuing care retirement community or other facilities;

(b) Whether the person or manager has been convicted of a crime;

(c) Whether the person or manager has been a party to any civil action in which a judgment for damages was obtained or in which an injunction was issued against the person or proposed manager for fraud, embezzlement, fraudulent conversion or misappropriation of property;

(d) Whether the person or manager has had any state or federal permits or licenses suspended or revoked in connection with the person or proposed manager's business activities; and

(e) The identity of any business or professional service entity in which the person or proposed manager has a 10 percent or greater ownership interest and which the provider intends to employ to provide goods, services or any other things of value.

(3) In the event subsection (2)(e) of this section applies, the person or manager must disclose the anticipated costs to the provider or a statement that such costs cannot presently be estimated.

(4) In addition to complying with all the provisions of this section, the provider must submit on behalf of a new continuing care retirement community a statement of the anticipated source and application of funds used or to be used in the purchase or construction of the community, including:

(a) An estimate of the cost of purchasing or constructing and equipping the community which the provider expects to incur or become obligated for prior to the commencement of the operation of the community;

(b) A description of any mortgage loan or other long term financing intended to be used for the financing of the community;

(c) An estimate of the total entrance fees to be received from the residents at or prior to the commencement of operation of the continuing care retirement community based on projected occupancy at the time the community commences operation; and

(d) An estimate of the funds, if any, anticipated to be necessary to pay for start-up losses. [1989 c.693 §8; 1997 c.633 §5]

101.055 Required meetings with residents; notice of changes in fees or services.

(1) The governing body or a designated representative of the provider shall hold meetings with the residents of the continuing care retirement community at least twice a year for the purpose of free discussion of subjects that may include, but are not limited to, facility income, expenditures, financial trends, resident concerns and proposed changes in policy, programs and services. The meetings shall be open to a designated personal representative of a resident. The provider shall report the dates of the meetings in the annual disclosure statement to the Department of Human Services.

(2) The provider shall give residents notice of proposed changes in fees or services and allow residents a reasonable opportunity to comment on the proposed changes before they become effective. [1997 c.633 §2]

101.060 Provider to maintain financial reserves; amount; escrow account; withdrawal from reserves. (1) A provider shall establish and maintain at all times:

(a) A debt service liquid reserve in an amount equal to or exceeding the total of all principal and interest payments due during the next 12 months on account of a mortgage loan or other long term financing of the continuing care retirement community taking into consideration any anticipated refinancing; and

(b) An operating liquid reserve in an amount equal to or exceeding the total of the community's projected operating expenses for three months.

(2) The Department of Human Services may require a provider not meeting its reserve requirements to place the reserves in an escrow account.

(3) The notes to the provider's annual audited financial statements shall state whether or not the reserve requirements have been met.

(4) The department may allow withdrawal or borrowing from the reserves in an amount not greater than 20 percent of the provider's total reserves. The withdrawal or borrowing can be approved by the department only if required for making an emergency repair or replacement of equipment, to cover catastrophic loss that is not able to be covered by insurance or for debt service in a potential default situation. No withdrawal or borrowing may be made from a reserve without the approval of the department. All funds borrowed shall be repaid to the reserve within 18 months in accordance with a payment plan approved by the department. [1989 c.693 §12; 1997 c.633 §6; 2003 c.14 §40]

101.065 Provider liquidation; resident claims preferred.

If the provider is liquidated, the claims of residents arising under residency agreements shall be preferred claims having priority over other unperfected claims against provider assets. [1997 c.633 §3]

101.070 Escrow account required for registration of new continuing care retirement community; entrance fees in escrow; use of escrow funds.

(1) As a condition of registration for a new community, the Department of Human Services shall require that the provider establish an escrow account with a bank, trust company or other escrow agent and that any entrance fees received by the provider prior to the date the resident is permitted to occupy the living unit in the community be placed in the escrow account.

(2) These funds shall be released by the department at such time the department is satisfied that:

(a) The provider has collected no less than 10 percent of each individual resident's entrance fee for no less than 50 percent of the total number of units;

(b) Anticipated proceeds of any first mortgage loan or other long term financing commitment plus funds from other sources in the actual possession of the provider are equal to not less than:

(A) Fifty percent of the aggregate cost of constructing or purchasing and equipping and furnishing the community; and

(B) Fifty percent of the funds, which the provider estimated in its disclosure pursuant to ORS 101.050, to fund start-up losses of the community; and

(c) A commitment has been received by the provider for any permanent mortgage loan or other long term financing commitment, which commitment the provider disclosed pursuant to ORS 101.050, and any conditions of this commitment prior to disbursement of funds thereunder, other than completion of the construction or closing of the purchase of the community, have been substantially satisfied.

(3) In the event a prospective resident withdraws from the residency agreement prior to occupancy, the entrance fee described in ORS 101.080 shall not be refunded to the prospective resident until such time as the prospective resident's unit has been resold.

(4) If the entrance fees in an escrow account are not released within 36 months after the escrow account is opened, entrance fees paid, less the escrow fee, shall be returned to the residents unless an extension is granted by the department.

(5) Nothing in this section requires the escrow of any nonrefundable application fee charged to prospective residents.

(6) An entrance fee held in escrow may be returned by the escrow agent, at any time, to the person or persons who paid the fee to the provider upon receipt by the escrow agent of notice from the provider that such person is entitled to a refund of the entrance fee. [1989 c.693 §13]

101.080 When resident eligible for refund of entrance fee; notice to resident.

(1) Any provider that requires any resident, as a condition of occupancy or use of the facility, to pay an entrance fee, prior to or during the first six months of occupancy in addition to monthly payments, shall provide that a percentage of that entrance fee be refunded to the resident if the residency agreement is terminated, other than by reason of death of the resident, within the first six months of occupancy.

(2) The percentage of the entrance fee to be refunded and the manner in which this percentage is calculated shall be written in boldfaced type in the residency agreement and disclosed in the initial disclosure statement required by ORS 101.050. [Formerly 91.690]

101.090 Exemption of certain facilities from certificate of need review; exception. A closed system long term care facility shall be subject to the same requirements as all other long term care facilities, as defined by ORS 442.015, except that it shall be exempt from the certificate of need process provided by ORS 442.315. However, any closed system long term care facility which initiates under this exemption any new institutional health services, as defined in ORS 442.015, and which subsequently accepts patients who are not residents of the continuing care retirement community, shall become subject to certificate of need review for such new institutional health services at the time that nonresident patients begin to be admitted. [1989 c.693 §10; 1991 c.67 §20]

101.100 Transfer of registration. No provider registration shall be transferred. A registered provider, who wishes to sell or transfer ownership of the continuing care retirement community to another party, shall first obtain approval from the Department of Human Services. [1989 c.693 §14]

101.110 Revocation of registration; findings. (1) The registration of a provider shall remain in effect until revoked, after notice and hearing, upon written findings of fact by the Department of Human Services that the provider has:

(a) Willfully violated any provision of this chapter or any rule or order adopted under this chapter;

(b) Failed to file an annual disclosure statement required by ORS 101.130;

(c) Failed to make available to prospective and current residents the disclosure statements required by ORS 101.050 and 101.130;

(d) Delivered to prospective residents a disclosure statement as provided by ORS 101.050 and 101.130 that makes an untrue statement of material fact or omits a material fact and the provider, at the time of the delivery of the disclosure statement, had actual knowledge of the misstatement or omission; or

(e) Failed to comply with the terms of a cease and desist order described in ORS 101.120.

(2) Findings of fact in support of revocation, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(3) If the department finds, after notice and hearing, that the provider has been guilty of a violation for which revocation could be ordered, it may first issue a cease and desist order. If the cease and desist order is or cannot be effective in remedying the violation, the department may, after notice and hearing, order that the registration be revoked. [1989 c.693 §15]

101.120 Power of department to prevent violations; cease and desist order; injunction. (1) If the Department of Human Services determines, after notice and hearing, that any person has violated or is about to violate any provision of this chapter or any rule or order issued under this chapter, the department may issue an order requiring the person to cease and desist from the unlawful practice or to take such affirmative action as in the judgment of the department carries out the purposes of this chapter.

(2) If the department makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing a cease and desist order, it may issue a temporary cease and desist order that shall include in its terms a provision that, upon request, a hearing shall be held within 10 days of such a request to determine whether or not the permanent cease and desist order shall be entered on the person. The temporary cease and desist order shall be served on the person by certified mail.

(3) If it appears that a person has engaged, or is about to engage, in an act or practice constituting a violation of any provision of this chapter or of a rule or order under this chapter, the department, with or without prior administrative proceedings, may bring an action in the circuit court to

enjoin the acts or practices or to enforce compliance with this chapter or any rule or order under this chapter. Upon proper showing, injunctive relief or temporary restraining orders shall be granted. The department shall not be required to post a bond in any court proceeding. [1989 c.693 §16]

101.130 Annual disclosure statement; contents. (1) The provider shall file annually with the Department of Human Services an annual disclosure statement for the end of the provider's fiscal year. The statement shall be filed within four months following the end of the provider's fiscal year unless the time is extended by the department.

(2) The annual disclosure statement shall consist of an audited financial statement prepared in accordance with generally accepted accounting principles for the preceding fiscal year and shall disclose any change in ownership or manager. [1989 c.693 §9]

101.140 Advisory council; membership; compensation; duties. (1) The Continuing Care Retirement Community Advisory Council is created and shall consist of nine members appointed by the Director of Human Services or a designee and shall represent the geographic location of providers in this state. A member must be a resident of this state. Three members must represent providers that are registered pursuant to ORS 101.030 and must have been actively engaged in the offering of residency agreements in this state for five years before appointment. The remaining members shall include:

(a) A representative of the business community with expertise in the area of management;

(b) A certified public accountant;

(c) An attorney; and

(d) Three Oregon residents of continuing care retirement communities or other consumer representatives.

(2) The term of office for a member shall be three years or until a successor has been appointed and qualified.

(3) The members of the advisory council shall serve without pay. They shall be reim-

bursed by the Department of Human Services for their actual and necessary traveling expenses incurred while on official business.

(4) The council shall:

(a) Elect a chairperson from among their number and elect or appoint a secretary, both of whom shall hold office for one year and thereafter until a successor is qualified and elected;

(b) Hold an annual meeting and hold other meetings at times and places the department or the chairperson of the council may direct;

(c) Keep a record of its proceedings. The record is prima facie evidence of all matters reported and shall be open to inspection at all times;

(d) Act in an advisory capacity to the department; and

(e) Make recommendations to the department on all proposed rules pertaining to this chapter. [1989 c.693 §5; 1993 c.18 §21; 1997 c.633 §7; 2001 c.900 §13]

101.150 Duties of Department of Human Services; rules. (1) The Department of Human Services shall implement the provisions of this chapter.

(2) The department shall adopt such rules as are reasonably necessary for the enforcement of this chapter. The department shall submit any proposed rules to the advisory council prior to proceeding with the notice procedures provided for in ORS 183.335. The department shall consider the comments of the advisory council which pertain to a proposed rule before the department adopts the rule. [1989 c.693 §§4,17]

101.160 Short title. This chapter may be cited as the Continuing Care Retirement Community Provider Registration Act. [1989 c.693 §1]

CHAPTERS 102 TO 104

[Reserved for expansion]