CONTINUING CARE COMMUNITY DISCLOSURE ACT

Act 448 of 2014

AN ACT to regulate the offer and sale of life interests and long-term leases in retirement communities that provide certain services and are independent living units, nursing homes, homes for the aged, adult foster care facilities, home care service agencies, hospices, or places that provide care for certain periods; to prohibit fraudulent practices in relation to the offer and sale of those life interests and long-term leases; to provide for the powers and duties of certain state governmental agencies; to provide for penalties and remedies; to prescribe penalties and civil sanctions; and to repeal acts and parts of acts.

History: 2014, Act 448, Eff. Apr. 2, 2015

The People of the State of Michigan enact:

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554.901 Short title.

Sec. 1.

This act shall be known and may be cited as the "continuing care community disclosure act".

History: 2014, Act 448, Eff. Apr. 2, 2015

554.903 Definitions; A to C.

Sec. 3.

As used in this act:

(a) "Administrator" means a person that performs administrative or operational functions within or in connection with the continuing care community.

(b) "Advertisement or marketing communication" means any disclosure statement, prospectus, pamphlet, circular, form letter, written or electronic advertisement, social media or other sales literature or advertising communication, including a written, printed, or pictorial communication, or a communication by means of a recorded telephone message or message spoken on the radio, television, or similar communications media, intended for distribution or transmission to prospective members in connection with an offer or sale of a continuing care agreement.

(c) "Amortized component of an entrance fee" means the portion of an entrance fee that is amortizable to reflect the cost of continuing care, multiplied by 1.5% for each month from the time of occupancy to the termination of membership by death or other cause.

(d) "Applicant" means a continuing care community applying for initial registration under section 19, applying for renewal registration under section 25, or applying to amend a registration under section 33.

(e) "Change in fees" means a change in either the amount or type of fees for continuing care, including entrance fees and monthly service fees, except for any change in fees mandated by a state or federal referral assistance program.

(f) "Complete", with reference to an application, means complete on its face and submitted with any registration fee and any other information, record, approval, or similar item required by law or rule.

(g) "Continuing care" means some or all of the following services:

(i) A living unit.

(ii) Meals.

(iii) Personal care services.

(iv) Skilled nursing.

(v) Rehabilitative services.

(vi) Medical care.

(vii) Social activities.

(viii) Supervision.

(ix) Program of all-inclusive care for the elderly.

(x) Continuing care at home.

(h) "Continuing care agreement" means a written agreement, including a long-term lease or an agreement conferring a life interest, between a member and a continuing care community for continuing care upon payment of an entrance fee.

(i) "Continuing care at home" means, upon payment of an entrance fee, providing or arranging for the provision of all of the following at the member's home:

(i) Continuing care.

(ii) Access to comprehensive services, including, but not limited to, care coordination, home assessments, and assistance with activities of daily living.

(iii) Services with a higher level of care when required by the health condition of the member, as determined by the continuing care community in consultation with the member or the member's representative.

(j) "Continuing care community" or "community" means a retirement community in which a person undertakes to provide or arrange for continuing care and which is 1 or more of the following:

(i) An adult foster care facility.

(ii) A home for the aged.

(iii) An independent living unit.

(iv) A nursing home.

(v) A home health care services agency.

(vi) Hospice.

(vii) A place that undertakes to provide care to a member for more than 1 year.

(k) "Continuing care administration fund" means the fund creation in section 31(3).

History: 2014, Act 448, Eff. Apr. 2, 2015

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554.905 Definitions; D to L.

Sec. 5.

As used in this act:

(a) "Department" means the department of licensing and regulatory affairs.

(b) "Disclosure statement" means a disclosure statement as required under section 19(1)(c) or that may be required by the department under section 25, as applicable.

(c) "Entrance fee" means money paid in a lump sum or installments or property transferred pursuant to a continuing care agreement before initiation of continuing care for 1 or more individuals and that confers the right to the continuing care.

(d) "Executive officer" means an individual holding executive power in an organization and generally responsible for the day-to-day operations of the organization, such as a chief executive officer, chief financial officer, or chief operating officer.

(e) "Initiation of continuing care" means the commencement of a member's right to possess a living unit in a continuing care community or the commencement of the actual provision of continuing care, whichever occurs first.

(f) "Life interest" means the right, upon payment of an entrance fee, to receive continuing care for life.

(g) "Living unit" means a physical space within a continuing care community set aside for the exclusive use or control of 1 or more specific members.

(h) "Long-term lease" means an agreement between a member and a continuing care community whereby the member has the right to occupy a space for more than 1 year but not for the life of the member.

History: 2014, Act 448, Eff. Apr. 2, 2015

554.907 Definitions; M to O.

Sec. 7.

As used in this act:

(a) "Member" means an individual who enters into a continuing care agreement with a continuing care community.

(b) "Monthly service fee" means a monthly charge to a member for continuing care and not as rent, or a daily prorated portion thereof.

(c) "Nonrefundable portion of the entrance fee" means the amortized component of an entrance fee and any other component of an entrance fee that is not refundable upon termination of the member under the terms and conditions of a continuing care agreement.

(d) "Offer of a continuing care agreement" includes an attempt to offer to sell, or a solicitation of an offer to enter into, a continuing care agreement.

(e) "Order" means a consent, authorization, approval, prohibition, or requirement applicable to a specific case issued by the department.

History: 2014, Act 448, Eff. Apr. 2, 2015

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554.909 Definitions; P to R.

Sec. 9.

As used in this act:

(a) "Person" means an individual, partnership, corporation, association, governmental entity, or other legal entity.

(b) "Publish" means to publicly issue or circulate by newspaper, mail, radio, television, or electronic means or otherwise to disseminate to the public.

(c) "Refundable portion of an entrance fee" means the component of an entrance fee that is refundable to the member or his or her estate under the terms and conditions of the continuing care agreement, but excludes the amortized component of an entrance fee.

(d) "Registrant" means a continuing care community registered under this act.

(e) "Reportable change", subject to subdivision (f), means any of the following:

(i) Any change in the tax status of the continuing care community.

(ii) Termination of the continuing care community's sponsorship, or a portion thereof, by a religious, nonprofit, or proprietary organization or group, or the establishment of any new sponsorship for the community.

(iii) Denial, suspension, or revocation of any license, certification, or registration held by the continuing care community and required by state or federal law.

(iv) The entry of any cease and desist order, other order similar in nature, or a temporary or permanent injunction by a court of competent jurisdiction that restricts the continuing care community from offering continuing care agreements to prospective members or restricts the community from operating in any material respect in compliance with the most recent registration.

(v) Any substantive amendments or changes in the disclosure statement, continuing care agreement, or the rules and regulations of the continuing care community.

(vi) Any significant alteration in the care, amenities, or services indicated in the disclosure statement or continuing care agreement.

(vii) Any change in monthly service fees.

(viii) A variation of 10% or more between the actual amount of any of the following items and the amount forecast in the continuing care community's pro forma financial plan most recently filed under this act:

(A) Total assets.

(B) Total liabilities.

(C) Equity.

(D) Fund balance or deficit.

(E) Long-term debt.

(F) Total revenue.

(G) Total expenses.

(H) Cash flow.

(ix) A violation of any debt covenant applicable to the continuing care community.

(f) "Reportable change" does not include a change in the value of an interest rate swap not related to the

termination of the interest rate swap.

History: 2014, Act 448, Eff. Apr. 2, 2015

554.911 Definitions; S.

Sec. 11.

As used in this act:
(a) "Sale of a continuing care agreement" means the execution of a continuing care agreement.
(b) "Sell a continuing care agreement" means to secure the sale of a continuing care agreement.

History: 2014, Act 448, Eff. Apr. 2, 2015

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554.913 Continuing care community; organization and operation; purpose; member to service in advisory capacity.

Sec. 13.

(1) A continuing care community shall be organized and operated as either a for-profit or nonprofit entity. The entity's purposes shall be limited to ownership, organization, and operation of the continuing care community.
(2) Each continuing care community shall elect or appoint at least 1 member, along with an alternate, to serve in an advisory capacity to its governing body. The member shall be notified in advance of and invited to attend all meetings of the governing body. The member shall not have a vote unless the governing body grants such voting rights. The continuing care community is responsible for expenses incurred by the member representative in fulfilling his or her duties under this section.

History: 2014, Act 448, Eff. Apr. 2, 2015

554.915 Continuing care agreement; registration or exemption required; applicability to written or oral arrangements; offer or sale; conditions; circumstances.

Sec. 15.

(1) Subject to subsections (3) and (4), a person shall not offer to enter into or enter into a continuing care agreement unless the person is registered or exempt from registration under this act.
(2) Subject to subsections (3) and (4), this act applies to all written or oral arrangements between a continuing care community and a member or prospective member in connection with the offer or the sale of a continuing care agreement.
(3) An offer or sale of a continuing care agreement is subject to this act if any of the following apply:
(a) Subject to subsection (4), the offer is made or accepted in this state.
(b) The continuing care community is or will be operated in this state.
(c) The offer originates from this state and is received at the place to which the offer is directed.
(d) The offer is directed by the offeror to this state and is received in this state.
(4) An offer of a continuing care agreement shall not be considered to be made in this state solely because of 1 or more of the following circumstances:
(a) Circulation in this state, by or on behalf of a publisher, of a bona fide newspaper, electronic media, or other publication of general, regular, and paid circulation that has had more than 2/3 of its circulation outside this state during the past 12 months.

(b) Reception in this state of a radio or television program originating outside this state.

History: 2014, Act 448, Eff. Apr. 2, 2015

554.917 Rules; exemption; variance; area not considered home for the aged or adult foster care facility; relationship not subject to laws between landlord and tenant.

Sec. 17.

(1) A continuing care community that is licensed in whole or part under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260, or the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737, is exempt from any rules promulgated under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260, or the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737, that would interfere with a resident's access to a common area, subject to the resident's need for care and supervision.

(2) A continuing care community may request a variance from the application of a rule promulgated under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260, or promulgated under the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737, and applicable to a home for the aged or adult foster care facility, respectively, that is part of the continuing care community. The department of human services shall grant the variance upon a finding of both of the following:

(a) That the rule unnecessarily segregates members of the continuing care community who reside in the home for the aged or adult foster care facility from other members of the continuing care community.

(b) That the variance will not result in a risk to human health or safety.

(3) An area where room and board together with personal care, protection and supervision, or supervised personal care are provided to a member is not a home for the aged as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106, or an adult foster care facility as defined in section 3 of the adult foster care facility licensing act, 1979 PA 218, MCL 400.703, if the services are only provided on a temporary basis under any of the following circumstances:

(a) While the member is recovering from an illness or accident.

(b) Until a living unit in an appropriate licensed area of the continuing care community becomes available.

(4) The relationship between a continuing care community and a member or prospective member is not subject to laws regulating the relationship between a landlord and a current or prospective tenant.

History: 2014, Act 448, Eff. Apr. 2, 2015

554.919 Initial registration; submission of information; missing or unreliable information; cost of investigation; deposit of payment; registration of 2 or more retirement communities as single continuing care community; consideration of opinions, appraisals, and reports of experts; electronic transmission of application and fee.

Sec. 19.

(1) A person seeking initial registration under this act shall submit the following information to the department:

(a) An initial registration application on a form prescribed by the department, signed and verified by an individual authorized to act on behalf of the continuing care community.

(b) The organizing documents of the applicant, and all amendments thereto, authorizing the applicant to conduct business in this state and a copy of the most recent annual report, if required under state law.

(c) A disclosure statement that complies with section 37.

(d) A copy of each form of continuing care agreement for the continuing care community, which shall comply with section 39, and all exhibits or addenda to each form of continuing care agreement.

(e) A copy of any rules, policies, and procedures of the applicant required for compliance with this act.

(f) A statement, on a form prescribed by the department, of whether any of the following apply to any executive officer, administrator, or director identified in the application for registration:

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(i) Has been convicted of a felony or been 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.

(ii) Is subject to an injunctive or restrictive order or federal or state administrative order relating to business activity or health care as a result of an action brought by a public agency or department, including, without limitation, actions affecting a license to operate a continuing care community, foster care facility, nursing home, retirement home, or home for the aged. The statement shall, if applicable, specify the court or agency, any penalty imposed or damages assessed, and the date of conviction or judgment or the date, nature, and issuer of the order.

(g) An executed irrevocable consent to service of process subject to section 61.

(h) Financial statements that comply with section 41.

(i) Unless waived by the department, a statement of the use of proceeds of entrance fees to be collected by the continuing care community.

(j) A pro forma financial plan that complies with section 43.

(k) A feasibility study, unless waived in the reasonable discretion of the department. The feasibility study shall be made available for review upon the request of a member or prospective member. The department may require the feasibility study to include 1 or more of the following:

(i) A statement of the purpose of the continuing care community and the need for the proposed services.

(ii) Documentation of the financial resources to be made available for the continuing care community.

(iii) A plan demonstrating the financial feasibility of the proposed continuing care community, including future funding sources.

(iv) An actuarial forecast that has been reviewed by a qualified actuary.

(v) A study demonstrating the proposed market for the continuing care community.

(vi) A detailed statement of the continuing care services to be offered.

(l) For a continuing care community seeking to offer continuing care at home, both of the following:

(i) A detailed business plan on how the needs and requirements of the members receiving continuing care at home will be met.

(ii) Agreements showing how and under what circumstances future specialized care, including assisted living, dementia care, and skilled nursing, will be provided when appropriate.

(m) Other material information as may reasonably be required by the department.

(n) Other material information as the applicant wishes to include.

(o) The initial registration application fee specified in section 31.

(2) If information required pursuant to subsection (1)(m) is not furnished by the applicant, or the department considers information submitted pursuant to subsection (1)(m) to be unreliable or substantially incomplete, the department may investigate any matters concerning the missing or unreliable information. The applicant shall pay the actual cost of the investigation as determined in the reasonable discretion of the department. The payment shall be deposited in the continuing care administration fund.

(3) An applicant may request and the department may order that 2 or more retirement communities be registered as a single continuing care community.

(4) The department may consider the opinions, appraisals, and reports of engineers, appraisers, or other experts presented by an applicant or an interested party on a question of fact concerning or affecting the continuing care agreements proposed to be offered and sold.

(5) An applicant may electronically transmit an application and fee for initial registration or renewal of registration to the department after the department posts notice on its website that it is prepared to receive those electronic filings.

History: 2014, Act 448, Eff. Apr. 2, 2015

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554.921 Incomplete application; notification; order approving or denying registration.

Sec. 21.

(1) Effective 60 days after the department receives a registration application, the application shall be considered to be complete unless the department proceeds as provided in subsection (2).

(2) If, before the expiration of the 60-day period under subsection (1), the department notifies the applicant that the application is not complete, specifying the information necessary to make the application complete or stating that the fee required to accompany the application has not been paid and specifying the amount due, the running of the 60-day period under subsection (1) is tolled until the applicant submits to the department the specified information or fee amount due.

(3) Not more than 180 days after the expiration of the 60-day period under subsections (1) and (2), the department shall enter an order registering the continuing care community or denying the registration and submit a copy of the order to the applicant. An order approving a registration shall specify the expiration date of the registration. If the department denies registration, the order shall specifically describe the deficiencies in the registration application or instances of noncompliance by the applicant with the requirements of this act.

(4) If an order approving or denying registration is not timely entered under subsection (3), the registration is immediately effective unless the applicant has consented in writing to a waiver or delay of automatic effectiveness.

History: 2014, Act 448, Eff. Apr. 2, 2015

554.923 Effect of order approving or filing registration.

Sec. 23.

(1) The fact that an application for registration has been filed or approved does not constitute any of the following:

(a) Approval of or a finding regarding the accuracy of any information in or accompanying the registration application.

(b) A recommendation, approval, or other finding by the department concerning the merits or qualifications of a person, life interest, long-term lease, transaction, or continuing care community.

(2) A person shall not make or cause to be made to a prospective member a representation inconsistent with this section.

History: 2014, Act 448, Eff. Apr. 2, 2015

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554.925 Renewal of registration; application form to be sent by department.

Sec. 25.

(1) Except as otherwise provided in this act, the department shall renew the registration of a registrant that does all of the following:

(a) On or before the expiration date printed on the registration, submits to the department an application for renewal of registration on a form provided by the department and accompanied by such information described in section 19 as may be required by the department.

(b) Pays the fee required under section 31.

(2) A reasonable time before a registrant's registration expires, the department shall send a renewal application form to the registrant's last postal mailing address or electronic address on file with the department. The failure of the department to comply with this subsection does not relieve the registrant of the responsibility to timely file an application for renewal of registration.

History: 2014, Act 448, Eff. Apr. 2, 2015

554.927 Application for registration renewal; processing; failure to submit application or fee; continuation of current registration; failure to file renewal application.

Sec. 27.

(1) Subject to subsections (2) and (3), an application for renewal of registration shall be processed in the same manner as an initial registration application under section 21.

(2) If, within 60 days after receiving notice from the department under section 21(2), an applicant fails to submit to the department the specified information or fee amount due, the department may deny the registration renewal application.

(3) If an applicant files an application for renewal of registration as provided in section 25(1), the current registration continues in effect until a new registration renewal order is issued or denied or the department revokes the registration.

(4) If a registrant fails to file an application for renewal of registration as provided in section 25(1), both of the following apply:

(a) The registration lapses effective the day after the expiration date specified in the order under section 21.

(b) The continuing care community shall not enter or offer to enter a continuing care agreement after the expiration date unless the community is reregistered pursuant to sections 19 and 21.

History: 2014, Act 448, Eff. Apr. 2, 2015

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554.929 Extension of registration; requirements; fees.

Sec. 29.

(1) The department may extend the term of an existing registration for a continuing care community for not more than 3 fiscal years if the department determines that all of the following requirements are met:

(a) The continuing care community was registered under this act during the immediately preceding 5 fiscal years.

(b) The continuing care community meets all of the following financial requirements:

(i) Has not committed a material default in the payment of principal or interest on its indebtedness during the immediately preceding 3 years.

(ii) Has had income or revenues in excess of its expenses in each of the immediately preceding 3 years.

(iii) Has a ratio of current assets to current liabilities of not less than 1:1.

(iv) Has reserves or funds designated for the payment of its indebtedness in an amount equal to or greater than 1 year's debt service.

(c) The continuing care community or any person with joint and several liability is not the subject of any action under sections 55 to 63.

(2) Notwithstanding the grant of an extension of its registration, a continuing care community shall annually submit to the department the registration renewal fees specified in section 31 and annual and semiannual financial statements under section 41. A registered continuing care community shall do all of the following:

(a) Submit the fees specified in section 31.

(b) Submit financial statements for that fiscal year that comply with section 41.

History: 2014, Act 448, Eff. Apr. 2, 2015

554.931 Fees; continuing care administration fund; creation; disposition; investment; money remaining at close of fiscal year; expenditures.

Sec. 31.

(1) The fee for filing an application for initial registration of the offer or sale of continuing care agreements or continuing care at home agreements is $250.00. If an application for registration is withdrawn before the effective date of registration or a stop order is issued before that date, the department shall retain the following:

(a) A fee of $25.00 if the initial review has not been commenced.

(b) The full application fee if the review has commenced.

(2) The fee for filing an application for registration renewal is $100.00.

(3) The continuing care administration fund is created within the state treasury. Fees collected by the department under this act shall be deposited into the fund. The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. Money in the fund at the close of the fiscal year shall

remain in the fund and shall not lapse to the general fund. The department shall be the administrator of the fund for auditing purposes.

(4) The department shall expend money from the continuing care administration fund, upon appropriation, only for the purposes of administration and enforcement of this act.

History: 2014, Act 448, Eff. Apr. 2, 2015

554.933 Reportable changes; amendment of registration.

Sec. 33.

(1) A registrant shall notify the department promptly in writing within 45 days of any reportable change with respect to the continuing care community measured semiannually.

(2) A registrant shall submit to the department an application to amend a registration to address reportable changes. The disclosure statement and each form of continuing care agreement for the continuing care community, including all exhibits or addenda, shall be in a format that identifies revisions to the last documents approved by the department. If required by the department, the application to amend a registration shall include a pro forma financial plan that complies with section 43. The department may require the production of other financial information reasonably necessary for the purposes of this act. The amended registration shall be signed and verified by the administrator.

(3) Effective 30 days after the department receives an application to amend a registration, the application shall be considered to be complete unless the department proceeds as provided in subsection (4).

(4) If, before the expiration of the 30-day period under subsection (3), the department notifies the applicant that the application is not complete, specifying the information necessary to make the application complete, the running of the 30-day period under subsection (3) is tolled until the applicant submits to the department the specified information or fee amount due.

(5) Not more than 30 days after the expiration of the 30-day period under subsections (3) and (4), the department shall enter an order approving or denying the amendment and submit a copy of the order to the applicant. If the department denies the amendment, the order shall specifically describe the deficiencies in the application or instances of noncompliance by the applicant with the requirements of this act.

(6) If an order approving or denying an amendment is not timely entered under subsection (5), the amendment is immediately effective unless the applicant has consented in writing to a waiver or delay of automatic effectiveness.

(7) An amendment to an application filed after the effective date of the registration and approved by the department under subsection (5) takes effect on the date determined by the department, having due regard for the public interest and the protection of prospective members.

History: 2014, Act 448, Eff. Apr. 2, 2015

554.935 Delivery of continuing care agreements, emergency plan, and disclosure statement; availability of feasibility study.

Sec. 35.

(1) A continuing care community shall deliver to a prospective member all continuing care agreements pertinent to the continuing care sought by the prospective member, the continuing care community emergency plan in case of power outage, and the disclosure statement most recently approved by the department. The delivery shall be by a method considered acceptable by the continuing care community and the prospective member and shall occur by the earlier of the following:

(a) The continuing care community's acceptance of a nonrefundable application fee from the prospective member, unless all of the following apply:

(i) The nonrefundable application fee does not exceed $500.00.

(ii) The availability of a disclosure statement is disclosed in writing to the prospective member.

(iii) A disclosure statement is made available to the prospective member upon request.

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(b) The prospective member's payment of at least 10% of the total entrance fee to reserve a living unit.

(2) Upon execution of the continuing care agreement and payment of the full entrance fee amount, the continuing care community shall provide the member with a physical copy of both of the following:

(a) The executed continuing care agreement.

(b) A physical copy of the disclosure statement, unless a physical copy has already been provided under subsection (1).

(3) A continuing care community shall make the feasibility study required under section 19 available for review by a member or prospective member upon request.

History: 2014, Act 448, Eff. Apr. 2, 2015

554.937 Disclosure statement.

Sec. 37.

(1) Subject to subsection (3), a disclosure statement shall include at a minimum the following information, unless waived by the department in the reasonable exercise of discretion:

(a) The name and address of the continuing care community and its affiliated parent or subsidiary business entity or partnership.

(b) The organization of the legal entity of the continuing care community as prescribed by the department.

(c) Whether the continuing care community or an affiliate, parent, or subsidiary is a religious, nonprofit, or proprietary organization. If the continuing care community uses a name designating or inferring a religious affiliation, a statement explaining the relationship with the religious organization or group or a statement that there is no relationship shall be included.

(d) Information concerning the identity and experience of persons affiliated with the continuing care community as the department shall prescribe.

(e) Whether the continuing care community participates in medicare or medicaid programs, or both.

(f) If the department has waived the submission of audited financial statements pursuant to section 41, a statement that an individual who purchases membership in a continuing care community during that period is entitled to damages or rescission under the same terms as provided in section 77 if, upon the availability of audited financial statements or any other valid basis, the department finds in the reasonable exercise of its discretion that material adverse financial conditions existed as of the date of the financial statements which were not disclosed.

(g) A statement that registration does not constitute approval of or a finding regarding the accuracy of any information in or accompanying the registration application.

(h) The entrance fee, any monthly services fees, and any other fees or charges that may be assessed to a member or prospective member by the continuing care community.

(i) All of the following statements as to the effect of the death of a member on the continuing care agreement:

(i) If, before receiving continuing care from the continuing care community, a member dies before occupying the continuing care community, or through illness, injury, or incapacity is precluded from being a member under the terms of the continuing care agreement, the continuing care agreement is automatically canceled and the member or a legal representative of the member shall receive a full refund of all money paid to the continuing care community. However, costs incurred by the continuing care community at the request of the member and set forth in writing in a separate addendum are not required to be refunded.

(ii) If a member dies within the 7-day rescission period under subdivision (j), the continuing care agreement automatically terminates, and the continuing care community shall within 30 days refund any entrance fee or portion of an entrance fee paid.

(iii) If a member dies after the 7-day rescission period under subdivision (j), the continuing care agreement terminates as follows:

(A) As of the date that all possessions of the deceased member are removed from the living unit if the deceased member was the sole occupant. The entrance fee shall be refunded within 30 days after the fulfillment of the conditions for a refund set forth in the continuing care agreement.

(B) Immediately if the deceased member occupied a living unit with another member. Any refundable portion of the deceased member's entrance fee shall be refunded within 60 days after the death of that member, but the continuing care agreement shall remain in effect for the living member.

(C) Immediately if the continuing care agreement is for continuing care at home. The refund shall be paid within 60 days after death of the member.

(j) A statement that a member may rescind without penalty a continuing care agreement within 7 days after

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executing the agreement and that the entrance fee or the portion of the entrance fee paid by the member shall be held by the continuing care community for the benefit of the member in a separate escrow account during that 7-day rescission period. A member shall not be required to initiate continuing care before the expiration of the 7-day rescission period.

(k) A statement that following the 7-day rescission period under subdivision (j), termination of a continuing care agreement by the member, other than by the member's death, will result in a refund of the entrance fee within 30 days after the fulfillment of the conditions for a refund set forth in the continuing care agreement. If the continuing care agreement is for continuing care at home, the refund shall be paid within 60 days after termination.

(l) A statement that monthly service fees and other fees assessed to a member are subject to increase by the continuing care community based on the reasonable cost of operations including the provision of care and services, and that the continuing care community shall give advance notice of not less than 60 days to the member before a new fee or change in a fee becomes effective.

(m) A statement that members may be charged assessments and a statement of the method used to allocate any assessment.

(n) A statement that the continuing care agreement is subject and subordinate to any mortgages on the property or any other creditors with a preferred status.

(o) Whether entrance fees are subject to an escrow under section 45(2) or an alternative financial arrangement under section 47, including a description of any applicable arrangement.

(p) The proposed application of the proceeds of the entrance fee by the continuing care community.

(q) The location and description of any premises that are used or proposed to be used for the provision of continuing care.

(r) A description of the continuing care services provided and the extent to which medical care is furnished.

(s) A description of the health and financial conditions required for a member to qualify for or to remain in the continuing care community, including temporary or permanent transfer of the member from his or her original living unit to a different type of living unit or different level of care or services, and whether a temporary or permanent transfer may result in termination of the continuing care agreement.

(t) A statement that the refundable portion of the entrance fee is equal to the total entrance fee paid less all of the following:

(i) The nonrefundable portion of the entrance fee.

(ii) A sales cost in conjunction with the continuing care agreement, not to exceed 8% of the entrance fee.

(iii) Any balance owed to the continuing care community for monthly service fees or other charges under the continuing care agreement.

(iv) A refurbishing fee that is the greater of 4% of the entrance fee or the actual costs of refurbishing the living unit if actual costs are known at the time of the refund and if an itemized list of actual costs is provided to the member.

(u) A detailed description of how the entrance fee refund is affected if a member moves from his or her original living unit to a different living unit.

(v) Whether the continuing care agreement terminates and whether a refund of the entrance fee is due if a member permanently or temporarily transfers to a different level of care within the continuing care community.

(w) The conditions upon which a member may reoccupy the member's living unit after termination of the continuing care agreement.

(x) The fees that will be charged if a member of the continuing care community marries, the terms and conditions as to membership in the continuing care community by the new spouse of a member or in the event of the divorce of a member, and the consequences if the new spouse does not meet the requirements for membership.

(y) The circumstances under which a person will be permitted to remain a member of the continuing care community in the event of possible financial difficulties of the member.

(z) Whether, if financial assistance is provided to the member through a charitable fund, a spend down of the entrance fee otherwise required for continued membership, or a reduction of monthly service fees or other fees assessed under the continuing care agreement or under some other arrangement, the financial assistance will be subject to either of the following:

(i) Be offset from the entrance fee refund due to the member or the member's estate upon termination of the continuing care agreement and upon removal of all possessions of the member or deceased member from the unit.

(ii) Vest in the continuing care community in the form of a claim for repayment of such financial assistance against the member or the member's estate.

(aa) An annual financial statement under section 41 as an attachment to and integral part of the disclosure statement.

(bb) Other material information as required by the department.

(cc) Other material information that the applicant wishes to include.

(dd) The following items in the beginning of the disclosure statement, in all capital letters, and in substantially the following language:

(i) "You may cancel the purchase and receive a full refund less damages to the living unit within 7 days after

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either making a deposit and receiving a copy of the disclosure statement or executing the continuing care agreement. You are not required to move into the continuing care community before the expiration of this 7-day period.".

(ii) "The purchase of a life interest or long-term lease is an investment that may involve a major financial commitment, and you should seek advice from an attorney or other financial advisor who is independent of the continuing care community.".

(iii) "This disclosure statement is required by law to contain all material facts regarding the offering it makes. No person is authorized to make any promises in connection with this offering other than those contained in this disclosure statement.".

(iv) "The department of licensing and regulatory affairs has not passed upon the accuracy of this disclosure statement or approved or disapproved of the offering described herein. Any representation to the contrary is unlawful and should be reported to the department.".

(v) "If you enter into a life interest or long-term lease during the period when financial statements submitted by the continuing care community to the department of licensing and regulatory affairs are unaudited, you are entitled to damages or rescission if the department finds in the reasonable exercise of its discretion that material adverse conditions existed at the date of the financial statements and were not disclosed.".

(vi) "More complete information is on file with the department of licensing and regulatory affairs and is available free of charge at the offices of the continuing care community.".

(2) Subject to subsection (3), a disclosure statement shall be set forth in not less than 12-point type. The department may prescribe the format of a disclosure statement and may require an applicant to set forth any of the following in its disclosure statement in a specified position and type size:

(a) Potential adverse information.

(b) That registration does not constitute approval, recommendation, or endorsement by the department.

(3) The department shall accept, in place of the disclosure statement that meets the requirements set forth in subsections (1) and (2), a disclosure statement form required by a federal government agency or a government agency of another state that the department has determined by rule or order to meet the requirements of this section.

History: 2014, Act 448, Eff. Apr. 2, 2015

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554.939 Continuing care agreement; requirements.

Sec. 39.

A continuing care agreement shall meet all of the following requirements:

(a) Specify in reasonable detail the rights, privileges, liabilities, and obligations of each party to the continuing care agreement with respect to the statements included in the disclosure statement under section 37(1)(h) to (cc).

(b) Specify whether a continuing care agreement may be terminated due to a material breach by either party and if so, what constitutes a material breach.

(c) Specify that the continuing care community may provide access to an adequate alternative facility that will provide care for the member, in place of or in mitigation of any damages.

(d) Specify that the continuing care community will not terminate a member without 30 days' written notice unless the continuing care community provides access to an adequate alternative facility.

(e) Each continuing care agreement shall be set forth in not less than 12-point type. The department may prescribe the format of a continuing care agreement or require a continuing care community to set forth in a continuing care agreement potential adverse information in designated positions and in a type size specified by the department.

(f) Specify that a continuing care agreement does not confer a property interest, an individual or partial ownership of a continuing care community, or voting rights in the operation of a continuing care community.

History: 2014, Act 448, Eff. Apr. 2, 2015

554.941 Financial statements; requirements.

Sec. 41.

(1) Financial statements under section 19, 25, or 29 shall meet all of the following requirements:

(a) Be submitted with a statement of any adverse material changes in the financial condition of the entity from the date of the financial statement.

(b) Subject to subdivision (c), be of form and content required by the department.

(c) Not be consolidated financial statements except under circumstances prescribed by the department. Requirements imposed by the department under subdivision (b) or this subdivision shall be consistent with generally accepted accounting principles or other nationally recognized accounting standards applicable to the entity.

(d) Be submitted within 120 days after the end of the entity's fiscal year.

(e) Be audited and prepared by a certified public accountant in accordance with generally accepted auditing standards, subject to all of the following:

(i) The department may waive all or part of this requirement if it is not necessary for the protection of the public. The department may impose conditions and restrictions on the waiver that it considers appropriate.

(ii) Unaudited financial statements may be submitted if the entity has not been in existence for 1 complete fiscal year.

(iii) If the audited financial statements are more than 120 days old, they shall be submitted with current unaudited financial statements.

(iv) Unaudited financial statements authorized under subparagraph (i), (ii), or (iii) shall be accompanied by the following written disclosure, or a substantially equivalent statement, immediately adjacent thereto, in all capital letters and at least 14-point type:

"These financial statements are prepared without audit. A certified public accountant has not examined the financial statements and accordingly has expressed no opinion on them.".

(2) Audited financial statements filed with the department shall include a consent of the certified public accounting firm, signed and dated at or near the effective date of the audit, approving the use of its name and its opinion in the continuing care community's disclosure statements and registration application. In the case of a substantial delay in effectiveness or an adverse material change in the filing, the department may require an updated consent.

(3) If the independent certified public accountant engaged as the principal accountant to audit the continuing care community's financial statements was not the principal accountant for the continuing care community's most recently filed audited financial statements, or a legal successor thereto, then all of the following apply:

(a) The continuing care community shall furnish the department with a statement of the date when the current independent accounting firm was engaged and whether, in the 18 months preceding the engagement, there were any disagreements with the former principal accounting firm in a matter of accounting principles or practices, financial statement disclosure, or accounting procedure which, if not resolved to the satisfaction of the former accounting firm, would have required a reference, in the accounting firm's opinion, to the subject matter of the disagreement.

(b) The continuing care community shall request the former accounting firm to furnish the continuing care community with a letter stating whether it agrees with the statement of the continuing care community under subdivision (a) and, if not, stating why it does not agree. The letter shall be furnished by the continuing care community to the department.

(4) If an entity owns multiple continuing care communities or if the organization has 1 or more affiliates, the department may require additional financial information for each continuing care community or affiliate but shall not require any audited financial statements other than the consolidated financial statements of the entity.

(5) Within 30 days after the end of the first half of its fiscal year, a continuing care community shall submit to the department an unaudited semiannual financial statement that includes at least all of the following:

(a) A balance sheet.

(b) An income statement.

(c) A statement of cash flows.

(d) A statement of how entrance fee proceeds are used.

(e) A management discussion explaining material fluctuations in the balance sheet and income statement, compared to the prior period or prior year-to-date.

History: 2014, Act 448, Eff. Apr. 2, 2015

554.943 Financial forecast.

Sec. 43.

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A pro forma financial plan shall include a financial forecast for a period of 3 years, presented on the same accounting basis as the financial statements, including all of the following:

(a) A balance sheet.

(b) A statement of changes and activities or statement of operations.

(c) A statement of cash flow.

(d) Expected cash proceeds from sales of continuing care agreements based on projected occupancy and attrition rates.

(e) Expected cash proceeds from monthly service fees, donations, interest, and entrance fees.

(f) Amount of reserves expected to be provided for capital replacement, improvements, maintenance, refunds, and other expenses.

(g) A statement of assumptions and principles used to make the forecast.

History: 2014, Act 448, Eff. Apr. 2, 2015

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554.945 Funds to be held in trust account; deposit with escrow agent; conditions; temporary suspension order; return of escrowed funds; escrow agreement and account; requirements; release of funds.

Sec. 45.

(1) If a member pays funds to a continuing care community before occupancy, the funds shall be held in a trust account unless this requirement is waived or modified by the department. Any interest or other income from the investment of the funds held in the trust account shall accrue to the benefit of the member. The department may, by rule or order, determine the conditions of the trust account. Funds placed with a continuing care community for continuing care at home are not subject to the requirements of this subsection.

(2) The department may require a deposit with an escrow agent acceptable to the department of an amount the department considers necessary for the continuing care community to fulfill its obligations if both of the following apply:

(a) The department finds 1 or more of the following:

(i) The financial condition of the continuing care community may materially jeopardize the care of members.

(ii) The continuing care community is insolvent or in jeopardy of becoming insolvent.

(iii) The continuing care community is not meeting its pro forma financial plan.

(b) The department determines the escrow to be necessary and appropriate to protect prospective members.

(3) If subsection (2)(a) and (b) applies, the department may summarily order the temporary suspension of a continuing care community's approval to offer continuing care agreements pending a hearing under section 69(2).

(4) The department may direct the escrow agent to return all the funds escrowed under subsection (2) to the members if any of the following apply:

(a) The department finds that any condition of an escrow agreement has not been satisfied or that any provision of this act or rules promulgated under this act has not been complied with.

(b) The registration or exemption of the continuing care community is revoked.

(5) An escrow agreement required under this section shall comply with all of the following:

(a) Be executed by the escrow agent and continuing care community.

(b) State that its purpose is to protect the members, that the escrow is for the benefit of each member in the amount paid by each member, and that all funds subject to the escrow shall be deposited, held, or guaranteed under the arrangement to remain the property of the respective members for whose account the proceeds were deposited and not subject to any liens or charges by the escrow agent or to judgments, garnishments, or creditor's claims against the continuing care community until the funds are released pursuant to this section.

(c) State that the department is authorized to inspect the records of the escrow agent relating to the escrow account.

(d) State that, upon order of the department or a court of competent jurisdiction, the escrow agent shall release and pay over the funds, or a portion thereof, to the continuing care community or member as ordered.

(e) Include on its face an acknowledgment executed by the department indicating approval of the form and content of the escrow agreement. The acknowledgment does not make the department a party to the escrow agreement.

(f) Specify 1 of the following methodologies to be used to determine the amount of funds that may be released pursuant to a request under subsection (7):

(i) An amount up to 75% of the funds as a result of occupancy of at least 75% of living units in the continuing care community. The continuing care community may request release of an additional 5% of the funds in

proportion to each 5-percentage-point increase in occupancy. Upon achieving 90% occupancy of living units, the continuing care community may request and the department may authorize release of all the funds. For purposes of this subparagraph and subparagraph (ii), occupancy shall be measured by the total number of living units of the entire continuing care community designated for occupancy under continuing care agreements.

(ii) An amount equal to 1-1/2% per month of the total entrance fees escrowed, with amortization beginning as of the date of occupancy of a living unit by the member. Upon achieving 90% occupancy of living units, the continuing care community may request and the department may approve release of all funds subject to the escrow arrangement.

(6) An escrow account under this section shall comply with all of the following:

(a) Checks shall be made payable to the depository approved by the department.

(b) The account shall be established with an escrow agent acceptable to the department and the funds shall be kept and maintained in an account separate and apart from any depository account of the continuing care community.

(c) All proceeds deposited in escrow remain the property of the respective members for whose account the proceeds were deposited and are not subject to a lien or charge by the escrow agent or to a judgment, garnishment, or creditor's claim against the continuing care community until the funds are released to the continuing care community as provided in this section.

(d) If required by the department, a quarterly statement indicating the status of the escrow account shall be furnished by the escrow agent to the department.

(7) A request for release of escrow funds under subsection (2) or for the discontinuance or modification of an escrow arrangement under subsection (2) shall be submitted by the administrator. The request shall include the following documentation, unless the documentation was previously provided in the most recent registration application or unless waived or modified, in whole or in part, by the department in the reasonable exercise of its discretion:

(a) The methodology under subsection (5)(f) for calculating the amount of funds to be released and supporting documentation.

(b) A statement by the continuing care community that the funds were placed in escrow as required by an order of the department imposing the escrow arrangement and pursuant to the terms and conditions of the escrow agreement.

(c) A statement by the continuing care community that it has satisfied all obligations for release of funds from escrow.

(d) If required by the department, a statement by the escrow agent, signed by an appropriate officer, setting forth the aggregate amount of escrowed funds placed with the escrow agent.

(e) The name of each member and the amount held in escrow for the account of the member.

(f) A pro forma financial plan that complies with section 43.

(g) Documentation evidencing availability of adequate resources to fund the continuing care community's capital expenditures, debt service, refund of entrance fees, operating costs, continuing care community maintenance, and other costs and expenses projected for not less than 3 years.

(h) Audited financial statements for the continuing care community's most recent 4 fiscal years and financial statements for any portion of the current fiscal year ending within 120 days after the date of filing.

(i) Commitments for construction and permanent loan financing together with a copy of an adequate construction bond.

(j) Irrevocable lines or letters of credit, other irrevocable instruments of credit, confirmations of deposits of proceeds of sales of securities, leases, or evidences of any other valid commitments or income.

(k) Assumptions and the basis of schedules for attrition rates, occupancy rates, refund of entrance fees, debt service, operating expenses, and operating income.

(l) A commitment to notify the department promptly in writing of a material change in the information submitted under this subsection.

(8) The amount released shall be based on the methodology specified in the escrow agreement pursuant to subsection (5)(f), unless a switch to the alternative methodology specified in subsection (5)(f) is requested by the continuing care community and approved by the department.

(9) After submission of a request for release of funds pursuant to subsection (7), the department may approve release to the continuing care community of funds held in escrow pursuant to subsection (2). An order issued by the department approving the release of funds held in escrow under subsection (2), in whole or in part, or for modification or discontinuance of an escrow arrangement imposed pursuant to subsection (2), shall include authorization for the escrow agent to release to the continuing care community those amounts of the escrowed funds applicable to a specified member as stated in the order.

History: 2014, Act 448, Eff. Apr. 2, 2015

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554.947 Alternative financial arrangement.

Sec. 47.

(1) In lieu of an escrow arrangement imposed pursuant to section 45(2), the department may approve an alternative financial arrangement that separates or secures a designated amount of funds of the continuing care community for the benefit of members of the continuing care community or provides for the payment of funds on behalf of members through a surety bond, irrevocable letter of credit, trust account, guarantee, or other acceptable financing method or arrangement approved by the department. Documentation establishing an alternative financial arrangement shall be approved by the department and shall name the department as a party or third party beneficiary of the alternative financial arrangement to act on behalf of the members of the continuing care community.

(2) An alternative financial arrangement approved pursuant to this section shall comply with all of the following requirements:

(a) Be established pursuant to 1 or more written agreements approved by the department between the continuing care community and a reputable financial institution, escrow agent, surety, lender, guarantor, or other entity, which may include an affiliate of the continuing care community, authorized to transact business in this state.

(b) State that the purpose of the arrangement is to protect members of the continuing care community from the inability of the continuing care community to refund entrance fees when due.

(c) Be in an amount that is at least equal to the total entrance fees that would be collected for the continuing care community and that allows the continuing care community to fulfill its obligations to members consistent with the purpose for imposition of the arrangement.

(d) Require that all proceeds deposited, held, or guaranteed under the arrangement remain the property of the respective members for whose account the proceeds were deposited and are not subject to any liens or charges by the escrow agent or to judgments, garnishments, or creditor's claims against the continuing care community until the proceeds are released pursuant to this section.

(e) Provide that, upon order of the department or a court of competent jurisdiction, the appropriate amount of funds described in this section shall be released and paid to the continuing care community or member as ordered.

(f) Require that quarterly balance statements be provided to the department directly from the escrow agent, financial institution, or other entity with custody of the funds and authorize the department to inspect the records pertinent to the arrangement.

(g) Comply with such other terms or conditions imposed by the department by rule or order.

(3) The department shall take into consideration the amount of the entrance fees and other fees to be charged in addition to the number of continuing care agreements to be offered, granted, or sold in determining the initial amount of the alternative financial arrangement and shall amend the amount of the alternative financial arrangement, as the public interest requires, using the same factors.

(4) If a continuing care community fails to complete its obligations under a continuing care agreement, the financial institution that is a party to the alternative financial arrangement with the continuing care community shall, upon order of the department, pay funds to the department or its designee for the benefit of all members.

(5) If an instrument comprising an alternative financial arrangement expires or is canceled and the continuing care community is still under an obligation to provide certain items under the continuing care agreement, the continuing care community, at its option, may either establish a new alternative financial arrangement under subsection (1) or have the department impose under section 45(2) an escrow of entrance and other fees. Until an alternative financial arrangement acceptable to the department is established or escrow is imposed, the continuing care community shall not enter into any additional continuing care agreements. An alternative financial arrangement approved under this section may be released in whole or in part by order of the department, subject to the requirements for release of escrow funds pursuant to section 45.

History: 2014, Act 448, Eff. Apr. 2, 2015

554.949 Records; reports.

Sec. 49.

(1) A registered continuing care community shall prepare and maintain for not less than 6 years all of the

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following records:

(a) Accounts and records of each day's sales of memberships in the continuing care community, receipts of cash, and other debits and credits.

(b) Copies of contracts, including continuing care agreements and terminated continuing care agreements, management contracts for any material component of operations, contracts for construction of buildings or other structures used to provide continuing care, and contracts with affiliated persons related to any material component of operations.

(c) Records of compensation paid to persons, directly or indirectly, in connection with the offer or sale of continuing care agreements. These records shall include all the following information:

(i) The persons to whom payments are made.

(ii) The date and amount of each payment.

(iii) The reason for each payment.

(iv) The transaction from which each payment arose.

(d) Member records of all of the following:

(i) Each member's name, address, and age.

(ii) The total amount paid to date by each member and the dates on which the payments were made.

(iii) The aggregate amount to be paid by each member.

(iv) The terms of payment.

(e) Complaint records of all of the following:

(i) Each written complaint by a member alleging violations of this act or rules promulgated under this act.

(ii) The date of the complaint.

(iii) Any action taken by the continuing care community in response to the complaint.

(2) Not more than 30 days after the end of each fiscal year quarter, or such later date as may be authorized by the department, a registered continuing care community shall submit the following to the department, unless waived by the department:

(a) A quarterly sales report setting forth the continuing care community's sales executed by new members and the proceeds derived from the collection of entrance fees from such members.

(b) A quarterly occupancy report stating the percentage of occupancy of living units in a continuing care community, the number of occupants who have continuing care agreements, and the number of members who have died or moved out of the continuing care community since the last occupancy report was submitted.

(3) If required by the department in the reasonable exercise of its discretion, a registered continuing care community shall submit to the department a report that compares any increases in monthly service fees to the annual consumer price index - all urban consumers, over 5 preceding calendar years. This report shall be submitted no later than February 1 following the end of each 5-year period. The first 5-year period begins January 1 after the effective date of this act.

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History: 2014, Act 448, Eff. Apr. 2, 2015

554.951 Advertising or marketing communication.

Sec. 51.

(1) A person shall not distribute or transmit an advertisement or marketing communication described in this subsection unless a true copy of the advertisement or marketing communication has been submitted to and approved by the department or unless an advertising waiver has been approved by the department. This subsection applies only to an advertising or marketing communication that contains any of the following information:

(a) An entrance fee.

(b) A monthly service fee.

(c) A disclosure statement.

(d) A continuing care agreement.

(2) The department shall approve or reject in writing any advertisement or marketing communication submitted under subsection (1) within 10 days after the date it is received.

(3) To obtain an advertising waiver, a continuing care community shall submit to the department a written request that includes the reasons why the waiver should be approved. The department shall grant or deny a waiver request in writing within 30 days after receipt. If the waiver is granted, the waiver shall specify its expiration date, if any.

(4) This act does not impose liability, civil or criminal, upon a person regularly engaged in the business of

publishing a bona fide newspaper or operating a radio or television station, and acting solely in the person's official capacity, who publishes an advertisement or marketing communication in good faith and without knowledge that the advertisement or marketing communication constitutes a violation of this act.

(5) A continuing care community shall maintain advertising or marketing communications for not less than 3 years in physical copy or electronic format and make these records available to the department upon written request.

History: 2014, Act 448, Eff. Apr. 2, 2015

554.955 Offer or sale of continuing care agreement; prohibited acts.

Sec. 55.

(1) A person shall not, in connection with the offer or sale of a continuing care agreement, directly or indirectly do any of the following:

(a) Employ a device, scheme, or artifice to defraud.

(b) Engage in an act, practice, or course of business which operates or would operate as a fraud or deceit.

(c) Make an untrue statement of a material fact or fail to state a material fact necessary in order to make the statements made not misleading, in the light of the circumstances under which they are made, including an untrue statement of a material fact or failure to state a material fact in any application, notice, or report filed with the department under this act.

(d) Fail to notify the department of a reportable change as required by section 33.

(e) Publish any advertisement or marketing communication that contains false, fraudulent, misleading, or deceptive information. This subdivision does not apply to a person that publishes an advertisement or marketing communication on behalf of a continuing care community and is not affiliated with the continuing care community.

(2) Each of the following practices constitutes a false, fraudulent, misleading, or deceptive advertising or marketing communication for purposes of subsection (1)(e):

(a) A statement or inference that the purchase of a membership in a continuing care community is a safe investment.

(b) A statement or inference that a continuing care community is affiliated with a religious, nonprofit, or proprietary organization if it is not so affiliated.

(c) A material misrepresentation of services, care, or amenities, provided or to be provided by a continuing care community.

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History: 2014, Act 448, Eff. Apr. 2, 2015

554.957 Appointment of independent conservator or guardian.

Sec. 57.

If a member becomes mentally or physically incapacitated and is unable to handle his or her own personal or financial affairs, the continuing care community may petition a court of competent jurisdiction to appoint an independent conservator or guardian. If the court approves the petition as well as the costs associated with the petition, the continuing care community may charge these costs to the member.

History: 2014, Act 448, Eff. Apr. 2, 2015

554.959 Arbitration.

Sec. 59.

(1) A dispute, claim, or grievance arising between a member or a member's estate and a continuing care community shall upon written consent of the parties be submitted to arbitration. The arbitrator's decision is final and binding. The arbitration is subject to the rules of the American arbitration association in effect at the time of the dispute, claim, or grievance.

(2) A condition, stipulation, or provision purporting to bind a member to waive compliance with any provision of this act or a rule promulgated or order issued under this act is void.

History: 2014, Act 448, Eff. Apr. 2, 2015

554.961 Service of process; irrevocable consent appointing department.

Sec. 61.

(1) An applicant for registration under this act, other than a domestic corporation, shall file with the department, on a form prescribed by the department, an irrevocable consent appointing the department to be its attorney to receive service of lawful process in a noncriminal action or proceeding against it or its successor, executor, or administrator that arises under this act or a rule promulgated or order issued under this act after the consent has been filed. After the filing of the consent, process received by the department has the same force and validity as if served personally on the person filing consent.

(2) Service under subsection (1) may be made by leaving a copy of the process in the office of the department but it is not effective unless all of the following requirements are met:

(a) The plaintiff, who may be the department in an action or proceeding instituted by it, immediately sends notice of the service and a copy of the process by certified mail to the defendant or respondent at its last address on file with the department.

(b) The plaintiff's affidavit of compliance with subdivision (a) is filed in the action, on or before the return day of the process, if any, or within such further time as the court may allow.

(3) When a person, including a nonresident of this state, engages in conduct prohibited or made actionable by this act or a rule promulgated or order issued under this act, whether or not a consent to service of process has been filed and personal jurisdiction can otherwise be obtained in this state, that conduct shall be considered equivalent to the appointment of the department to be the attorney to receive service of a lawful process in a civil action or proceeding against the person or a successor, executor, or administrator arising out of that conduct and which is brought under this act or a rule promulgated or order issued under this act, with the same force and validity as if served on the person personally.

(4) Service under subsection (3) may be made by leaving a copy of the process in the office of the department, but it is not effective unless all of the following requirements are met:

(a) The plaintiff, which may be the department in an action or proceeding instituted by it, immediately sends notice of the service and a copy of the process by certified mail to the defendant or respondent at its last known address or takes other steps that are reasonably calculated to give actual notice.

(b) The plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

History: 2014, Act 448, Eff. Apr. 2, 2015

554.963 Investigations.

Sec. 63.

(1) The department may conduct investigations within or outside this state to determine if any of the following apply:

(a) An offering of a continuing care agreement under this act poses or may pose an unreasonable risk as described in subsection (3).

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(b) A person has violated or is about to violate this act or a rule promulgated or order issued under this act.

(2) The department may require or permit a person to file a written statement under oath or otherwise as to all the facts and circumstances concerning the matter to be investigated under subsection (1). If the person fails to reply with all required information to a written request from the department within 15 days after receipt of the letter, the department may issue a cease and desist order.

(3) The department may determine that an offering creates an unreasonable risk to members under this act if any of the following apply:

(a) Monthly service fees or assessments are not used for the purpose designated.

(b) With respect to an offering by a continuing care community seeking registration or exemption, the offering fails to provide for adequate reserves or other adequate revenue sources for operations, repairs, and renovations. The department may utilize an industry representative or accounting representative to determine the adequacy of revenue sources.

(c) With respect to a continuing care community making an offering, the continuing care community has been in operation less than 1 year or is in the development stage at the time of registration and has failed to achieve reservations for 75% of the living units at the date of first occupancy, unless the department finds that the financial condition of the continuing care community or the escrow arrangements established in connection with the offering are such as to outweigh any special risk.

(4) For the purpose of an investigation or proceeding under this act, the department may administer oaths and affirmations and receive evidence. To subpoena witnesses or require the production of books, papers, or other documents or records, the department must obtain an order of the circuit court by a showing that there is good cause to believe that a violation has taken place or is about to take place. However, in a contested case, the department itself may issue subpoenas and is subject to section 73 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.273.

History: 2014, Act 448, Eff. Apr. 2, 2015

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554.965 Review and audit of documents and records.

Sec. 65.

(1) The department shall review all documents submitted to the department under this act for compliance with this act. The department may require the submission of supplemental documents if the department considers the additional information necessary for the purposes of this act.

(2) The records of a continuing care community are subject to reasonable audit by a representative of the department, inside or outside of this state, that the department considers necessary or appropriate in the public interest and for the protection of members or prospective members. The department may copy records the department reasonably considers necessary to conduct the audit.

(3) A routine audit shall be conducted during normal business hours and with reasonable advance notice. An audit in response to a complaint or other special audit may be conducted at any time and without advance notice.

History: 2014, Act 448, Eff. Apr. 2, 2015

554.967 Repayment of entrance fee; temporary suspension.

Sec. 67.

(1) A court or the department may by order authorize a registrant to suspend repayment of an entrance fee for not more than 180 days, upon a showing by the registrant that payment would jeopardize the care of members in the continuing care community. The order may be extended upon a showing of substantial progress in resolving the financial difficulties of the continuing care community.

(2) To obtain an order from the department allowing the temporary suspension of repayment of an entrance fee pursuant to subsection (1), a continuing care community shall submit to the department a letter requesting a temporary suspension order. The letter shall contain all of the following information:

(a) The name of the facility involved and its affiliates, if any.
(b) The particular facts relied upon as a basis for the suspension request.
(c) The time during which the facility desires the suspension to be effective.
(d) Financial statements dated not more than 45 days before the date of the request.
(e) Other information required by the department.
(3) The department may hold a public hearing to determine whether the suspension should be granted.

History: 2014, Act 448, Eff. Apr. 2, 2015

554.969 Order denying, suspending, or revoking registration.

Sec. 69.

(1) The department may issue an order denying, suspending, or revoking a registration if it finds that the order is in the public interest and finds 1 or more of the following:
(a) The application for registration or the registration statement in effect is not complete in a material respect or contains a statement that was, in the light of the circumstances under which it was made, false or misleading with respect to a material fact.
(b) The registrant or applicant, or its agent or employee, has violated this act or a rule promulgated or order issued under this act.
(c) The offer and sale of a continuing care agreement is not fair, just, and equitable or has worked or tended to work a fraud or imposition or would so operate, or the terms of the offering would create an unreasonable risk to members as defined by rules.
(d) The registrant's or applicant's method of business includes or would include activities that are illegal where performed.
(e) A person identified in the application is described in section 19(1)(f)(i) or (ii) as a result of an act or omission involving the illegal offering of a continuing care agreement, franchise, or security and the department determines that the involvement of the person in the sale of leases or management of the continuing care community creates an unreasonable risk to members.
(f) The registrant or applicant is the subject of a permanent or temporary injunction entered under a federal or state act, and the injunction is applicable to the offer and sale of a continuing care agreement.
(g) The registrant or applicant has failed to pay the proper fee required by, or fine imposed under, this act.
(h) The registrant has failed to submit an application for renewal of a registration as required under section 25.
(2) Before issuing an order under subsection (1) or section 45(3), the department shall notify the registrant or applicant by registered or certified mail. The notice shall include the proposed order, the reasons for the proposed order, and a statement that, if a hearing is requested in writing within 15 days after issuance of the notice of intent, a hearing will be conducted on the matter within 45 days after the receipt of the request, unless the registrant or applicant consents to a later date. If a hearing is not timely requested by the continuing care community and is not ordered by the department, the department shall issue an order under subsection (1). The order shall remain in effect until it is modified or vacated by the department. If a hearing is timely requested or ordered, the department, after notice and an evidentiary hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, may enter an order under subsection (1), or find that a violation or other condition under which entry of an order is authorized has not occurred.
(3) The department may vacate or modify an order under this section if it finds that the conditions on which it was based have changed or that it is otherwise in the public interest to do so.

History: 2014, Act 448, Eff. Apr. 2, 2015

554.971 Cease and desist order.

Sec. 71.

(1) Subject to subsection (2), if the department determines that a person has engaged, is engaging, or is about to

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engage in an act, practice, or course of business constituting a violation of this act or a rule promulgated or order issued under this act, or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting such a violation, the department may issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary to comply with this act.

(2) Before issuing an order under subsection (1), the department shall notify the person. The notice shall include the proposed order, the reasons for the proposed order, and a statement that, if a hearing is requested in writing within 15 days after issuance of the notice of intent, a hearing will be conducted on the matter within 45 days after receipt of the request, unless the person consents to a later date. If a hearing is not timely requested, the department shall issue an order under subsection (1). If a hearing is timely requested, the department, after notice and an evidentiary hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, may enter a cease and desist order or find that a violation has not occurred.

(3) A person that knowingly authorizes, directs, or aids in violation of a final cease and desist order, or who knowingly fails to comply with the terms of a final cease and desist order, may be fined not more than $10,000.00.

History: 2014, Act 448, Eff. Apr. 2, 2015

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554.973 Injunction, restraining order, or writ of mandamus.

Sec. 73.

If it appears to the department that a person has engaged or is about to engage in an act or practice constituting a violation of this act or a rule promulgated or order issued under this act, the attorney general may bring an action in the name of the people in the circuit court to enjoin the acts or practices or to enforce compliance with this act or the rule or order. Upon a proper showing, a preliminary or permanent injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The court shall not require the department to post a bond.

History: 2014, Act 448, Eff. Apr. 2, 2015

554.975 Civil fine; costs; sanctions; continuing care agreement as voidable; refund.

Sec. 75.

(1) If the director of the department finds that a person violated this act or a rule promulgated or order issued under this act, after an opportunity for an evidentiary hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the director may order the person to pay a civil fine of not less than $1,000.00 or more than $50,000.00. The director may also order the respondent to pay the costs of the investigation.

(2) After providing an opportunity for a contested case hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the department may impose any of the following sanctions on a person that violates this act or a rule promulgated or order issued under this act:

(a) If the person is registered under this act, an administrative fine of not more than $10,000.00 for each violation.

(b) A requirement that restitution be made. The registration of the person required to make the restitution may be suspended until the restitution is made.

(3) If a continuing care agreement does not comply with the requirements of this act, the continuing care agreement is voidable. If the agreement is voided, the continuing care community shall refund to the member the amount that the member paid when the continuing care agreement was entered into.

History: 2014, Act 448, Eff. Apr. 2, 2015

554.977 Liability; offer of rescission.

Sec. 77.

(1) A person that offers or sells a continuing care agreement in violation of section 15 or 55 or an order issued under section 69 is liable to the person executing the continuing care agreement for all of the following:

(a) Damages.

(b) Repayment of all fees paid to the continuing care community or entity purporting to operate as a continuing care community under this act less, in the case of a continuing care community, the reasonable cost of continuing care provided by the continuing care community until discovery or until the violation should reasonably have been discovered.

(c) 6% interest on the amounts under subdivisions (a) and (b).

(d) Reasonable attorney fees.

(e) Court costs.

(2) A person may not file or maintain an action under this section if, before filing the action, the person received an offer of rescission approved by the department to refund the entrance fee together with interest at 6% per year from the date of purchase less the reasonable cost of continuing care provided until discovery, and the member failed to accept the offer within 30 days after its receipt. When a continuing care community makes written offer of rescission, the continuing care community shall file a copy with the department. The rescission offer shall recite the provisions of this section.

History: 2014, Act 448, Eff. Apr. 2, 2015

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554.979 Liability by implication; liability under other statute or common law.

Sec. 79.

Except as explicitly provided in this act, civil liability in favor of a private party does not arise against a person by implication from or as a result of the violation of this act or a rule promulgated or order issued under this act. This act does not limit liability that may exist under any other statute or under common law.

History: 2014, Act 448, Eff. Apr. 2, 2015

554.981 Person materially aiding in act or transaction constituting violation; joint and several liability.

Sec. 81.

A person that directly controls a person that violates this act, a partner in a firm that violates this act, a principal executive officer or paid director or trustee of a corporation that violates this act, a person occupying a similar status as an executive officer or director performing similar functions, or an employee of a person that violates this act who materially aids in the act or transaction constituting the violation is also liable jointly and severally with and to the same extent as the person that violates this act, unless the person did not have knowledge of or reasonable grounds to believe in the existence of the facts constituting the violation.

History: 2014, Act 448, Eff. Apr. 2, 2015

554.983 Statute of limitations.

Sec. 83.

An action shall not be maintained to enforce a liability created under this act unless brought before the expiration of 3 years after the date of the act or transaction constituting the violation.

History: 2014, Act 448, Eff. Apr. 2, 2015

554.985 Violation as felony; penalty; seizure and forfeiture of proceeds or instrumentality of crime.

Sec. 85.

(1) A person that knowingly violates this act is guilty of a felony punishable by imprisonment for not more than 7 years or a fine of not more than $10,000.00, or both.

(2) The proceeds, the substituted proceeds, or an instrumentality of a crime described in subsection (1) are subject to seizure and forfeiture in the manner provided in chapter 47 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4701 to 600.4709.

History: 2014, Act 448, Eff. Apr. 2, 2015

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554.987 Promulgation of rules.

Sec. 87.

Pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the department may promulgate rules to implement this act.

History: 2014, Act 448, Eff. Apr. 2, 2015

554.989 Disclosure of filings; exemption; confidentiality of social security numbers.

Sec. 89.

(1) Applications, reports, and other papers and documents filed by applicants or registrants or experts or appraisers with the department under this act are subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. However, pro forma financial statements, marketing plans, feasibility studies, and social security numbers are exempt from disclosure. In addition, a continuing care community may request, and the department may grant, subject to section 13 of the freedom of information act, 1976 PA 442, MCL 15.243, confidentiality as to any other document received under this act.

(2) Subject to subsection (1) the department or its examiners, investigators, assistants, clerks, or deputies shall not disclose information filed with or obtained by them under this act except among themselves or when necessary or appropriate in a proceeding or investigation under this act or to other federal or state regulatory agencies. However, to aid in the enforcement of this act or in the prescribing of rules and forms under this act, the department may publish information concerning a violation of this act or a rule promulgated or order issued under this act.

(3) The department shall take reasonable steps to protect the confidentiality of social security numbers provided to the department under this act.

History: 2014, Act 448, Eff. Apr. 2, 2015

554.991 Life interest or long-term lease agreement under former act.

Sec. 91.

A life interest or long-term lease agreement entered into under the former 1976 PA 440 is not invalidated by the repeal of that act and the adoption of this act.

History: 2014, Act 448, Eff. Apr. 2, 2015

554.993 Facility or person registered or exempt under former act.

Sec. 93.

A facility or person that was registered or exempt from registration under the former living care disclosure act, 1976 PA 440, immediately before the effective date of this act shall be considered to be registered or exempt from registration, respectively, under this act until the registration or exemption would have expired under the former living care disclosure act, 1976 PA 440, or 30 days after the effective date of this act, whichever is later.

History: 2014, Act 448, Eff. Apr. 2, 2015

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