

CONTINUING CARE COMMUNITY DISCLOSURE ACT (EXCERPT)
Act 448 of 2014

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 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 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.