

Effective 5/10/2016

**Part 3
Provider Disclosure**

31A-44-301 Precontractual recording requirements.

- (1) A provider shall file with the department a current disclosure statement that meets the requirements of this part.
- (2) A provider shall comply with Subsection (1) before the provider:
 - (a) contracts to provide continuing care to a resident in this state;
 - (b) extends the term of an existing continuing care contract with a resident in this state that requires a person to pay an entrance fee, regardless of whether the extended continuing care contract requires an entrance fee; or
 - (c) solicits or offers, or directs another person to solicit or offer, a continuing care contract to a resident of the state.
- (3) A provider solicits or offers a contract under Subsection (2)(c), if, after 12 months before the day on which a party to a continuing care contract signs or accepts a continuing care contract, the provider or a person acting on behalf of the provider gives information concerning the facility or the availability of a continuing care contract for the facility:
 - (a) in a direct communication to an individual in the state; or
 - (b) in a paid advertisement published in or broadcast from the state, except for a paid advertisement in a publication with more than two-thirds of the publication's circulation outside of the state.

Enacted by Chapter 270, 2016 General Session

31A-44-302 Delivery of disclosure statement.

- (1) A provider shall deliver a disclosure statement to an individual before the earlier of the date:
 - (a) the provider executes a continuing care contract with the individual; or
 - (b) the individual transfers an entrance fee or a nonrefundable deposit to the provider.
- (2) The most recently filed disclosure statement:
 - (a) is current for the purpose of this chapter; and
 - (b) is the only disclosure statement that satisfies the requirements described in Subsection (1).

Enacted by Chapter 270, 2016 General Session

31A-44-303 Cover page of disclosure statement.

The cover page of a disclosure statement shall state:

- (1) the disclosure statement's date in a prominent location and in type that is boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material so as to be conspicuous;
- (2) that the provider is required to deliver a disclosure statement to an individual before the provider executes a continuing care contract with the individual or accepts payment of an entrance fee or a nonrefundable deposit from the individual; and
- (3) that the disclosure statement has not been approved by a government agency to ensure the disclosure statement's accuracy.

Enacted by Chapter 270, 2016 General Session

31A-44-304 Disclosure statement -- Contents -- Provider characteristics.

A provider disclosure statement shall contain:

- (1) the name and business address of each provider officer, director, trustee, and managing or general partner of the provider;
- (2) the name and business address of each person who has at least a 10% interest in the provider and a description of the person's interest in or occupation with the provider;
- (3) a statement of whether the continuing care provider is a for-profit or not-for-profit entity, and a statement of the provider's tax-exempt status, if any;
- (4)
 - (a) the location and a description of the proposed or existing physical property of the facility; and
 - (b) if the physical property is proposed:
 - (i) the property's estimated completion date;
 - (ii) whether construction has begun; and
 - (iii) conditions known to the provider under which the property's construction could be deferred;
- (5) if the provider intends to contract with a person other than an employee of the provider to manage the operations of the facility:
 - (a) a description of the person's experience in the operation or management of a continuing care or similar facility;
 - (b) a description of any entity that controls or is controlled by the person that proposes to provide goods, leases, or services to residents of the facility, of an aggregate value of \$500 or greater in a year;
 - (c) a description of any goods, leases, or services described in Subsection (5)(b), and a statement of the probable or anticipated cost to the facility, provider, or residents for the goods, leases, or services, or a statement that the provider is unable to estimate the cost; and
 - (d) a description of any matter in which the person:
 - (i) has been convicted of a felony;
 - (ii) is subject to a restrictive court order; or
 - (iii) has had a state or federal license revoked as a result of a matter related to a continuing care facility or a related health care field; and
- (6)
 - (a) any religious, charitable, or nonprofit organization affiliated with the provider;
 - (b) the extent of the affiliation and the extent to which the organization is responsible for contractual or financial obligations of the provider; and
 - (c) the organization's tax-exempt status, if any.

Enacted by Chapter 270, 2016 General Session

31A-44-305 Disclosure statement -- Contents -- Contract.

A provider disclosure statement shall include a description of the following provisions contained in the provider's continuing care contract:

- (1) a description of the services provided under the provider's proposed continuing care contract, including a description of:
 - (a) the extent to which the provider will offer or provide medical care to a resident; and
 - (b) the services the provider includes under the contract, and the services the provider offers at an extra charge;
- (2) the fees the provider requires a resident to pay, including any entrance fees or periodic charges;

- (3) a description of the conditions, in the provider's continuing care contract, under which:
 - (a) a provider or a resident may cancel the continuing care contract;
 - (b) a provider will refund all or part of an entrance fee; or
 - (c) a provider may adjust a fee the provider charges a resident and any limitations on those adjustments;
- (4) any health or financial criteria that a resident is required to meet under the continuing care contract for acceptance to the facility or for the resident to continue living in the facility, including the effect of any change in the health or financial condition of an individual between the date of the continuing care contract and the date on which the individual initially occupies a living unit;
- (5) the provider's policy for the spouse of a resident, regarding:
 - (a) the conditions under which the spouse is allowed to live in the resident's unit; and
 - (b) the financial or other consequences to the resident if the spouse does not meet the requirements for admission;
- (6) the provider's policy regarding changes in the number of people residing in a living unit because of marriage or other relationships;
- (7) the conditions under which a living unit occupied by a resident may be made available by the provider to a different resident other than on the death of the previous resident; and
- (8) the number of continuing care contracts terminated, other than by the resident's death, at the provider's facility in the state during the three most recent calendar years.

Enacted by Chapter 270, 2016 General Session

31A-44-306 Disclosure statement -- Contents -- Health care information.

The provider disclosure statement shall include:

- (1) a description of the facility as an independent living, assisted living, or nursing care facility, or a combination of facility types;
- (2) a general description of medical services provided at the facility in addition to assisted living services and nursing care services;
- (3) a statement as to whether the facility accepts Medicare and Medicaid reimbursements; and
- (4) notice of the online federal nursing care facility database and the online federal nursing care facility database's Internet address.

Enacted by Chapter 270, 2016 General Session

31A-44-307 Disclosure statement -- Contents -- Financial information.

The provider disclosure statement shall:

- (1) describe any provisions the provider made or will make to provide reserve funding or security to enable the provider to fully perform the provider's obligations under a continuing care contract, including:
 - (a) the establishment of an escrow account, trust, or reserve fund, and the manner in which the provider will invest the account, trust, or reserve funds; and
 - (b) the name and experience of an individual in the provider's direct employment who will make the investment decisions;
- (2) contain a provider financial statement, prepared in accordance with generally accepted accounting principles, and audited by an independent certified public account, that includes:
 - (a) a balance sheet as of the end of the most recent fiscal year;
 - (b) an income statement for each of the three most recent fiscal years; and

- (c) a cash flow statement for each of the three most recent fiscal years.

Enacted by Chapter 270, 2016 General Session

31A-44-308 Anticipated source and application of funds.

If a provider's facility is not in operation, the provider disclosure statement shall include a statement of the provider's anticipated source and application of funds to be used in the purchase or construction of the facility, including:

- (1) an estimate of the cost of purchasing or constructing and of equipping the facility, including financing expenses, legal expenses, land costs, occupancy development costs, and any other costs that the provider expects to incur or to become obligated to pay before the facility begins operating;
- (2) a description of any mortgage loan or other long-term financing arrangement for the facility, including the anticipated terms and costs of the financing;
- (3) an estimate of the total entrance fees to be received from, or on behalf of, residents before the facility begins operation; and
- (4) an estimate of any funds the provider anticipates are necessary to cover the facility's initial losses.

Enacted by Chapter 270, 2016 General Session

31A-44-309 Standard contract form.

- (1) A provider shall attach a copy of the provider's standard contract form to a disclosure statement.
- (2) The standard contract form shall specify the refund provisions of Sections 31A-44-312 and 31A-44-313.

Enacted by Chapter 270, 2016 General Session

31A-44-310 Annual disclosure statement revision.

- (1) A provider shall file a revised disclosure statement with the department before 120 days after the day on which the provider's fiscal year ends.
- (2) The revised disclosure statement shall revise, as of the end of the provider's fiscal year, the information required by this part.
- (3) The revised disclosure statement shall describe any material differences between:
 - (a) the estimated income statements filed under Section 31A-44-307 as a part of the disclosure statement the provider filed after the start of the provider's most recently completed fiscal year; and
 - (b) the actual result of operations during that fiscal year with the revised estimated income statements filed as a part of the revised disclosure statement.
- (4) A provider may revise the provider's disclosure statement and may file a revised disclosure statement at any time if, in the provider's opinion, a revision is necessary to prevent a disclosure statement from containing a material misstatement of fact or omitting a material fact required by this part.
- (5) The department:
 - (a) shall review the disclosure statement for completeness; and
 - (b) is not required to review the disclosure statement for accuracy.

Enacted by Chapter 270, 2016 General Session

31A-44-311 Advertisement in conflict with disclosures.

A provider may not engage in any type of advertisement for a continuing care contract or facility if the advertisement contains a statement or representation in conflict with the disclosures required under this part.

Enacted by Chapter 270, 2016 General Session

31A-44-312 Rescission of contract -- Required language.

- (1) An individual who executes a continuing care contract with a provider may rescind the contract at any time before the later of:
 - (a) midnight on the day seven days after the day on which the individual executes the continuing care contract; or
 - (b) a time specified in the continuing care contract that is:
 - (i) after the day on which the continuing care contract is executed; or
 - (ii) after the day on which the individual receives a disclosure statement that meets the requirements of this part.
- (2) A provider may not require an individual who executes a continuing care contract with the provider to move into a facility before the end of the rescission period described in Subsection (1).
- (3) If an individual rescinds a continuing care contract under this section, the provider shall refund any money or property that the individual transferred to the provider, other than periodic charges specified in the contract and applicable only to the period the individual occupied a living unit, before 30 days after the day on which the individual rescinds the contract.
- (4) A continuing care contract shall include the following statement, or a substantially equivalent statement, in type that is boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material so as to be conspicuous: "You may cancel this contract at any time before midnight on the day seven days after the day on which you sign the contract, or before a later day if specified in the contract that is after the later of the day on which you sign the contract or you receive the facility's disclosure statement. If you elect to cancel the contract, you are required to cancel the contract in writing, and you are entitled to receive a refund of all assets transferred other than periodic charges applicable to the time you occupied your living unit."
- (5) In addition to Subsection (4), a continuing care contract shall include the following statement in type that is boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material so as to be conspicuous: "This document, if executed, constitutes a legal and binding contract between you and _____ (Legal name of the continuing care provider). You may wish to consult a legal or financial advisor before signing, although it is not required that you do so to make this contract binding."

Enacted by Chapter 270, 2016 General Session

31A-44-313 Cancellation of contract -- Death or incapacity before occupancy.

- (1) A continuing care contract to provide continuing care in a living unit in a facility is cancelled if the resident:
 - (a) dies before occupying a living unit in the facility; or

- (b) is precluded under the terms of the contract from occupying a living unit in the facility because of illness, injury, or incapacity.
- (2) If a continuing care contract is cancelled under this section, the resident or the resident's legal representative is entitled to a refund of all money or property transferred to the provider, minus:
 - (a) any nonstandard costs specifically incurred by the provider or facility at the request of the resident that are described in the contract or in an addendum to the contract signed by the resident; and
 - (b) a reasonable service charge, if set out in the contract, that may not exceed the greater of:
 - (i) \$1,000; or
 - (ii) 2% of the entrance fee.

Enacted by Chapter 270, 2016 General Session

31A-44-314 Disclosure statement fees.

A provider that files a disclosure statement under this chapter shall pay to the department a fee established by the department in accordance with Section 63J-1-504.

Enacted by Chapter 270, 2016 General Session