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Document No. 3204
DEPARTMENT OF CONSUMER AFFAIRS
CHAPTER 28
Statutory Authority: 1976 Code Sections 37-11-10 et seq.

28-600. Licensing Standards for Continuing Care Retirement Communities

Synopsis:

The Department of Consumer Affairs is amending 23A S.C. Code Ann. R. 28-600 to provide greater detail of existing procedures, delete obsolete provisions, otherwise conform the Regulation to Title 37 Chapter 11 of the South Carolina Code, and clarify that contested case hearings shall be filed with the Administrative Law Court.

Instructions: Amend R. 28-600 by replacing it in its entirety with the following:

Text:

28-600. Licensing Standards for Continuing Care Retirement Communities.

A. Definitions and interpretations.

In addition to definitions contained in Section 37-11-20, the following definitions and interpretations apply:

(1) "Act" as used in this regulation refers to State Continuing Care Retirement Community Act, Section 37-11-10 et. seq.

(2) "Administrator" means Administrator of the South Carolina Department of Consumer Affairs.

(3) "Application processing fee" means those costs incurred by the operator in determining the financial, mental, and physical eligibility of an applicant for entrance into a facility.

(4) "Binding financial commitments" for the purposes of the application of Section 37-11-140 means commitments from a financial institution or other similar entity for construction and long-term financing, or any other arrangement to achieve the same purpose.

(5) "Binding reservation agreement" means an agreement for an acceptance of a binding reservation deposit. The agreement shall state, at a minimum:

- (a) the amount of money received, and the total amount due;
- (b) the rate of interest payable to the prospective resident, if any;
- (c) the application of the deposit to the entrance fee, if any, when this reservation agreement is executed;
- (d) a description of the living unit reserved;

(e) the location, name, and address of the facility or proposed facility, and the location, name, and address of the operator, if different;

(f) cancellation, penalties, and refund and escrow provisions.

(6) "Binding reservation deposit" means a deposit with an operator of a sum of money in excess of One Thousand Dollars pursuant to a binding reservation agreement that assures a person a place in the facility.

(7) "Continuing care contract" means a contract or a series of contracts or agreements to provide services under Section 37-11-20(2) and (6). A continuing care contract may have other writings incorporated by reference.

(8) "Continuing care retirement community" also includes an equity project as long as the services under Section 37-11-20(2) and (6) are provided or available to residents.

(9) "Debt service" means all interest, lease payments, and principal payments on debt due in the next fiscal year.

(10) "Entrance fee" means an initial or deferred transfer to an operator of a sum of money or property, made or promised to be made as a full or partial consideration for acceptance by an operator as a resident. It includes a fee which is refundable upon death, departure or option of the resident. However, neither an accommodation fee, admission fee, or other fee of similar form and application, nor a security deposit shall be considered an entrance fee. An application processing fee covering reasonable costs of processing the application shall not be considered an entrance fee.

(11) "Equity" means the residual value of a business or property beyond any mortgage or deed of trust thereon and liability therein.

(12) "Equity project" means a continuing care retirement community wherein the residents are given an equity interest in the facility property or in a membership in a resident association, including those arrangements involving fee simple or stock ownership.

(13) "Health-related services" means any of the following:

(a) at a minimum, a priority for admission to a nursing home, community residential care facility or a similar facility or accommodation with a degree of services not required to be licensed by the Department of Health and Environmental Control. The conditions of such admission may range from a full coverage of care in an on-site nursing home, community residential care facility or other facility or accommodation at no additional charge to a priority admission to a nursing home, community residential care facility or other facility or accommodation either on or off the facility with services offered on a fee-for-service basis;

(b) assistance in the activities of a daily living. For the purposes of Section 37-11-10 et. seq., daily living activities, at a minimum, mean assisted or supervised walking, bathing, shaving, brushing teeth, combing hair, dressing; eating; getting in and out of bed; laundry; cleaning the room; self-administration of medication; recreational and leisure activities; or other similar activities, regardless of whether such services are offered as a part of monthly basic fee or on a fee-for-service basis, and regardless of whether or not such services are offered at a facility licensed by the Department of Health and Environmental Control; or

(c) system of managed health care.

(14) "Medical services" means, but is not limited to, any of the following:

(a) availability of consulting or supervisory services of a nurse; or

(b) availability of a certain number of in-patient days in a licensed community residential care facility or a nursing home, regardless of whether included in a monthly basic fee or paid for separately, and regardless of whether the service is offered on site or off site; or

(c) availability of services of health care personnel from the on site health care facility or a nursing home or contracted for by the facility; or

(d) availability of therapeutical services, regardless of whether included in a monthly basic fee or paid for separately.

(15) "Monthly basic fee" means any periodic charge required of a resident pursuant to a continuing care contract.

(16) "Staff" means the staff of the South Carolina Department of Consumer Affairs.

B. Letter of Non-applicability.

(1) Any entity which believes it is exempt from or not subject to the provisions of Section 37-11-10 et. seq., in whole or in part, or which is contemplating a facility to provide housing and services to residents which it believes may not be subject to the Act, must apply to the department for a Letter of Non-applicability. The application shall be in writing, shall list the reasons why the existing or proposed facility may be exempt or not subject to the Act, and shall be accompanied by current or proposed continuing care contracts, representative samples of promotional materials, and, if applicable, residential guides and residential policy manuals. In addition, the application shall be accompanied by a One Hundred Dollar non-refundable fee, subject to change.

(2) Any communications from the department regarding the status of any facility which were made prior to July 1, 1991, have no legal effect and cannot be used as a substitute for a Letter of Non-applicability under this Section.

(3) In the event the department shall determine that the facility is not subject to the Act, it shall issue a Letter of Non-applicability setting forth the facts upon which its determination is based.

(4) A Letter of Non-applicability issued under subsection (3) of this Section shall be valid only upon the facts submitted. Whenever there is any subsequent change in these facts that might affect the status of such facility, the facility must apply for a new Letter of Non-applicability.

(5) In the event the department shall determine that such facility is subject to the provisions of the Act, it shall deny the request for the Letter of Non-applicability setting forth the facts upon which its determination is based and shall notify the applicant of its findings. The One Hundred Dollar nonrefundable fee will thereafter be applied towards the license application fee. Any person who is aggrieved by the determination by the department shall be entitled to a contested case hearing before the Administrative Law Court in accordance with the provisions of R. 28-600Z.

(6) In the event the facility does not wish to contest the decision of applicability, the facility shall submit an application for an appropriate license within thirty days from the date the Letter of Applicability was mailed by the department.

C. Preliminary license.

(1) A continuing care retirement community which has not yet been in operation may not collect binding reservation deposits for continuing care or advertise as a continuing care retirement community without a preliminary license issued by the department. The application for a license will be on a form prescribed by the department. The application shall be accompanied by a feasibility study. If the operator cannot yet obtain a feasibility study, it shall instead submit a comparable substitute prepared by its consulting firm. In such a case the operator shall first inform the department of the unavailability of and the nature of the substitute study and apply with the department for an approval of such substitute.

(2) Operators of proposed facilities that are not planned to exceed twenty-five units and that will not collect entrance fees, do not have to submit a feasibility study with the application.

(3) The feasibility study or its approved substitute shall include at least the following information:

(a) A statement of the purpose and need for the facility;

(b) A description of the proposed facility, including the location, size, number of units to be constructed, anticipated completion date, and the proposed construction program;

(c) An identification and evaluation of the primary market areas and assumptions as to the secondary market areas, as well as the proposed unit sales per month;

(d) Projected revenues, including anticipated entrance fees; monthly service fees; nursing care rates, if applicable; and all other sources of revenue, including the total amount of financing required;

(e) Projected expenses, including staffing requirements and salaries; cost of property, plant and equipment, including depreciation expense; interest expense; marketing expense; and other operating expenses;

(f) Current assets and liabilities of the applicant;

(g) Expectations of the financial condition of the facility, including the projected cash flow and a projected balance sheet and an estimate of the funds anticipated to be necessary to cover start-up losses;

(h) The inflation factor, if any, assumed in the study for the proposed facility and how and where it is applied;

(i) Financial forecasts or projections prepared in accordance with standards promulgated by the American Institute of Certified Public Accountants or financial forecasts or projections prepared in accordance with standards for feasibility studies for continuing care retirement communities promulgated by the Actuarial Standards Board, and an independent evaluation and opinion by the consultant who prepared the study of the underlying assumptions used a basis for the forecasts or projections in the study. The study shall take into account facility costs, marketing projections, resident fees and charges, the competition, resident contract provisions, and other factors which affect the feasibility of the study;

(j) An opinion letter prepared by the person who prepared the study as to the financial feasibility of the facility;

(k) The name, address and phone number of the person who prepared the feasibility study and the experience of such person in preparing similar studies or otherwise consulting in the field of continuing care;

(l) A statement of financial responsibility as required in R. 28-600Q.

(4) The department shall approve the feasibility study or its approved substitute when it determines that:

(a) A reasonable financial plan has been developed for constructing the facility;

(b) A market analysis supports the existence of the market and the need for the facility;

(c) The feasibility study was prepared by an authority acceptable to the department.

(5) In addition to the feasibility study or its approved substitute, the application for a preliminary license shall contain the following information:

(a) Items specified in Section 37-11-30(B)(1), (2), (3) and (4);

(b) Copies of the articles of incorporation, constitution and bylaws with all amendments thereto, if the operator is a corporation; copies of all instruments by which the trust is created or declared, if the operator is a trust; copies of the articles of partnership or association and all other organization papers if the operator is organized under another form. In the event the operator is not the legal title holder to the property upon which the facility is or is to be constructed, the above documents shall be submitted for both the provider and the legal title holder;

(c) An organizational chart describing the relationship between the applicant and its affiliates, indicating the state of domicile of the entity and the primary business of each;

(d) A statement concerning any litigation, orders, judgments or decrees which might affect the facility;

(e) A statement concerning any adjudication of bankruptcy during the last five years against the operator, its predecessor, parent or subsidiary company and any principal owning more than five percent of the interests in the facility at the time of the filing of the application for preliminary license. This requirement shall not extend to limited partners or those whose interests are solely those of investors;

(f) A representative sample of advertisements and promotional materials for the facility;

(g) A copy of a continuing care agreement and any binding reservation agreement proposed to be used by the operator in the furnishing of continuing care or in taking reservations for continuing care; such agreements must meet the minimum requirements of Section 37-11-35 and this regulation;

(h) A copy of an agreement with providers for the provision of nursing care, health care, or other health-related services. If no agreement is executed at the time of the application for a preliminary

license, these agreements may be submitted with the application for a final license;

(i) A copy of an entrance fee escrow agreement proposed to be used by the operator;

(j) If the operator collects or intends to collect binding deposits at the time of signing of a continuing care agreement or a continuing care reservation agreement, a copy of such deposit and/or reservation agreement and a copy of an escrow agreement for such deposits;

(k) A description of the proposed complaint system to resolve complaints by prospective residents who have deposited funds with the operator;

(l) A copy of a current or proposed disclosure statement conforming to the requirements of Section 37-11-60 and of this regulation and including a detailed description with terms concerning whether the facility will offer terms for payment of entrance fees and/or deposits;

(m) A list of all necessary permits, licenses and certifications received or applied for and their status at the time the application is submitted to the department;

(n) Such other reasonable data as the department may require with respect to the provider or the facility.

(6) The department shall issue a preliminary license if it determines that:

(a) The feasibility study or its substitute has been approved;

(b) The continuing care contracts to be used between the operator and the subscriber meet the requirements prescribed by Section 37-11-10 et. seq. and by this regulation;

(c) The operator's disclosure statement conforms to the requirements prescribed by Section 37-11-60 and by this regulation;

(d) The facility's advertising and promotional materials are not deceptive, misleading or likely to mislead;

(e) The facility has in effect its complaint system as described more fully in R. 28-600W;

(f) The applicant has demonstrated the willingness and potential ability to assure that the health care or health-related services will be provided in a manner to assure both availability and accessibility of adequate personnel and facilities and in a manner assuring availability, accessibility, and continuity of service;

(g) The entrance fee escrow agreement and any binding reservation agreement state that, if required by Section 37-11-90, all deposits will be held in escrow until the issuance of a final license and thereafter released in accordance with Section 37-11-90 and this regulation.

(7) An operator who elects not to collect binding reservation deposits from prospective residents may apply for a final license pursuant to R. 28-600D(4).

(8) The application for a preliminary license shall be accompanied by a license fee of One Thousand Five Hundred Dollars, subject to change.

(9) The department shall decide whether to grant a preliminary license within sixty days of the submission of the application provided that for good cause shown and subject to R. 28-600J, a reasonable extension of time may be granted concerning an application. If a preliminary license is denied, the department shall immediately notify the applicant in writing, citing the specific failure to satisfy the provisions of Section 37-11-10 et. seq. and of this regulation. Any person who is aggrieved by the decision of the department shall be entitled to a contested case hearing before the Administrative Law Court in accordance with the provisions of R. 28-600Z.

D. Final license.

(1) An operator may not enter into continuing care contracts nor provide continuing care, except for good cause shown, until the issuance of a final license by the department. The application for a final license shall be on a form prescribed by the department. The application shall be accompanied by a license fee of Five Hundred Dollars, subject to change.

(2) The application for a final license shall contain at least the following information:

(a) Any material change with respect to the information required to be filed in the application for a preliminary license;

(b) An affidavit by the person who prepared the original feasibility study that there has been no material adverse change in status with regard to the feasibility study, such statement generally dated not more than twelve months from the date of filing the application for a final license. Should a material adverse change exist at the time of the submission, then sufficient information acceptable to the department and the feasibility consultant shall be submitted together with the proposed remedy;

(c) If instead of a feasibility study a substitute was submitted with an application for a preliminary license, then the feasibility study and the opinion letter shall be submitted with an application for a final license. However, operators of proposed facilities that are not planned to exceed twenty-five units and that will not collect entrance fees, do not have to submit a feasibility study with the application;

(d) Proof that the applicant has received written commitments for construction financing and for permanent long-term financing when the construction has been completed;

(e) Certified financial statements of the operator, including a balance sheet as of the end of the most recent fiscal year of the operator and statements of income and expenses for the three most recent fiscal years of the operator or for all of the years in existence if less than three years. The statements shall be in accordance with generally accepted accounting principles and shall also contain the following:

(i) an accountant's opinion; and

(ii) notes to the financial statements considered customary or necessary to full disclosure or adequate understanding of the financial statements, financial conditions and operations;

(f) If the operator's fiscal year ended more than one hundred twenty days before the date the license application is filed, interim financial statements as of a date not more than ninety days before the date of filing of the application must be included but need not be certified;

(g) A statement of financial responsibility as required in R. 28-600Q;

(h) A statement of all fees required of residents, including, but not limited to, a statement of

the entrance fee charged, the monthly service charges, the proposed application of the proceeds of the entrance fee by the operator, and the plan by which the amount of the entrance fee is determined if the entrance fee is not the same in all cases;

(i) A projected annual budget for the facility for one year unless required otherwise by the department in case the facility might experience financial problems;

(j) If the facility's continuing care contract provides for services for the life of the person or for more than one year, a summary of a report of an actuary, updated every two years, that estimates the capacity of the operator to meet its contractual obligations to the residents. Such study shall be accompanied by an opinion letter of a qualified actuary as to the operator's ability to meet its contractual obligations;

(k) Any resident's guide, policy manual or other material of similar application, whether current or proposed;

(l) A copy of an agreement with the providers for the provision of nursing care, health care, or other health-related services;

(m) A list of all necessary permits, licenses and certificates received or applied for, and their status at the time the application is submitted to the department;

(n) A copy of the procedure for handling and reviewing residents' complaints;

(o) A representative sample of advertisements and promotional materials for the facility;

(p) Any other information required to be submitted under Section 37-11-30(B) as may be outlined in the application form for a final license;

(q) Such other reasonable data as the department may require with respect to the operator or the facility.

(3) The department shall issue a final license, with appropriate conditions, if it determines that each of the following have been satisfied:

(a) The applicant has a preliminary license issued by the department;

(b) The documents required have been filed with the department;

(c) The advertising materials filed are not deceptive, misleading, or likely to mislead;

(d) The continuing care retirement community is financially responsible and can meet its obligations to residents:

(i) In determination of financial responsibility of an applicant for a final license, the department shall consider the requirements set forth in Section 37-11-40(1) through (4) and the facility's statement of financial responsibility as required in R. 28-600Q;

(ii) Financial adequacy required to guarantee performance of contractual obligations will be determined from a review of audited financial statements to insure that the assets are adequate to meet contractual obligations to residents and from actuarial reports, if required under Section 37-11-30(B)(10);

(e) The operator has complied with all requirements of the Department of Health and Environmental Control in obtaining a Certificate of Need and has applied for licenses to operate nursing, medical, or other health-related services;

(f) The operator has all necessary permits and licenses or applications for the same. If applications are provided, the effectiveness of any final license is conditioned upon the receipt of all necessary permits and licenses;

(g) The proposed complaint system satisfies the requirements of Section 37-11-60 and of this regulation;

(h) The operator is in compliance with the entrance fee escrow requirements of Section 37-11-90.

(4) An operator who elects not to collect binding reservation deposits from prospective residents but who instead, prior to securing binding financial commitments, intends to offer for signature by prospective residents continuing care contracts with certain percentage of the entrance fee to be paid upon signature, is not required to apply for a preliminary license under R. 28-600C. Such operator may instead apply only for a final license pursuant to this Section. To the extent applicable, such application shall contain information required by R. 28-600C and D and shall be accompanied by a licensing fee of Two Thousand Dollars, subject to change. Under no circumstances may continuing care contracts be entered into or advertising as a continuing care retirement community occur prior to obtaining a final license from the department.

(5) The department shall decide whether to grant a final license within sixty days of the submission of the application provided that for good cause shown and subject to R. 28-600J, a reasonable extension of time may be granted concerning an application. If a final license is denied, the department shall immediately notify the applicant in writing, citing the specific failure to satisfy the provisions of Section 37-11-10 et. seq. and of this regulation. Any person who is aggrieved by the decision of the department shall be entitled to a contested case hearing before the Administrative Law Court in accordance with the provisions of R. 28-600Z.

E. Renewal licenses.

(1) Holders of final licenses shall apply at least sixty days prior to the expiration of their current licenses for a renewal license. Any subsequent annual applications for a renewal license shall likewise be submitted at least sixty days prior to the expiration of a current license.

(2) The application for a renewal license shall be on a form prescribed by the department and accompanied by a license fee of Two Thousand Dollars, subject to change.

(3) Unless the same information was previously submitted to the department, the application for a renewal license shall contain:

(a) Certified financial statements of the operator, including a balance sheet as of the end of the most recent fiscal year of the operator and statements of income and expenses for the three most recent fiscal years of the operator or for all of the years in existence if less than three years. The statements shall be in accordance with generally accepted accounting principles and shall also contain the following:

(i) An accountant's opinion; and

(ii) Notes to the financial statements considered customary or necessary to full disclosure or adequate understanding of the financial statements, financial condition, and operation;

(b) If the fiscal year ended more than one hundred twenty days before the date of filing, a financial statement which need not be certified concerning the period between the date the fiscal year ended and a date not more than ninety days before the date the application is filed;

(c) A statement of financial responsibility as required in R. 28-600Q;

(d) A projected annual budget for the facility;

(e) If the facility's continuing care contract provides for services for the life of the person or for more than one year, a summary of a report of an actuary, updated every two years, that estimates the capacity of the operator to meet its contractual obligations to the residents. Such study shall be accompanied by an opinion letter of a qualified actuary as to the operator's ability to meet its contractual obligations;

(f) A copy of all written complaints handled through the complaint system and a statement of the average time to resolve the complaint;

(g) A description of any material change with respect to any information provided with the previous application;

(h) A representative sample of advertisements and promotional materials for the facility;

(i) Such other reasonable data as the department may require with respect to the operator or the facility.

(4) The department shall decide whether to grant a renewal license within sixty days of the submission of the application provided that for good cause shown and subject to Section J, a reasonable extension of time may be granted concerning the application. If a renewal license is denied, the department shall immediately notify the applicant in writing, citing the specific failure to satisfy the provisions of Section 37-11-10 et. seq. and of this regulation. Any person who is aggrieved by the decision of the department shall be entitled to a contested case hearing before the Administrative Law Court in accordance with the provisions of R. 28-600Z.

F. Continuous updates.

Regardless of the information filed with the annual license renewal application, each operator shall immediately notify the department of and file pertinent documents regarding:

(1) Any investigation, litigation, orders, judgments, or decrees which affect the facility, operator and/or owner, including, but not limited to, a bankruptcy, foreclosure, or receivership proceeding;

(2) Any proceeding for denial, suspension or revocation of any license or permit needed to operate the facility;

(3) Any proposed changes in the continuing care contract;

(4) Any updates to the disclosure statement in which information required by R. 28-600M is

changed;

(5) Any proposed expansion or closure of the facility, including, but not limited to, the closing of a wing or building of the facility where the residents are being relocated;

(6) Any proposed transfer of ownership of the facility;

(7) Any proposed change in the control of the operator;

(8) Any change of the administrator of the facility;

(9) Any change with respect to the information required by the sections as in D and E above;

(10) Any change in the facility's contract(s) with the provider of medical or other health-related services.

G. All license applications; form.

Applications for all licenses shall be submitted in the following form:

(1) One complete set of the information and documents required to be filed shall be submitted in a separate binder, fastened in such a manner as to permit the reading of each page without requiring removal. The disclosure statement and financial statement shall be submitted in separate binders.

(2) All information and documents shall be arranged in the order set forth by the department in the application forms. The department will make such applications form available upon request to any potential applicant.

(3) Each binder shall note the name and address of the operator and the name, address and phone number of the person responsible for the preparation of the application on the front cover.

(4) The first page shall be a table of contents.

(5) The right of the first page of each section shall bear a tab numbered in conformity with the table of contents. Each tab shall be visible without the necessity of lifting any other tab.

(6) If a section or document is omitted, a single sheet of paper, properly tabbed, shall be inserted containing a description of what is omitted and an explanation as to the reason for the omission.

(7) With the exception of maps, drawings, surveys and the like, all documents shall be no smaller than 8 ½ inches by 11 inches nor larger than 8 ½ inches by 14 inches.

(8) Plats, maps, or surveys which are too bulky to include in a binder may be submitted in a separate folder and a list of such shall be included in the binder.

H. All licenses; validity and form.

(1) All licenses issued under the Act and this regulation expire one year after the date of issuance or such additional time as the department may allow during the review of the subsequent application. Licenses may be issued only for the premises and persons named in the application and are not transferrable or assignable.

(2) All licenses issued by the department shall be on a form issued by the department and shall be posted in a conspicuous place at the business location. If the facility has not begun operations, the license shall be posted where contracts are entered into or monies are received by the business.

(3) All licenses issued by the department pursuant to this regulation shall contain, in a prominent location, a statement that the issuance of a license does not constitute approval, recommendation, or endorsement of the facility by the department nor does such a license evidence the accuracy or completeness of the information set forth in the applications for such license.

I. Several facilities.

(1) If the operator provides or intends to provide continuing care at more than one facility, the operator must obtain an appropriate separate license for each such facility. Funds collected by one facility should not be expended for the benefit of any other facility. Where there are multi-facility operations, entrance fees collected for service at a particular facility shall be managed appropriately to safeguard the financial interest of the resident who paid the fee for facilities and services at a particular community, provided no cross-collateralization is permissible and evidence of any shall be grounds for license revocation, penalty or other action deemed appropriate by the department.

(2) An entity which as of July 1, 1991, has operated in this State several facilities on different locations under one corporate structure where all monies from and disbursements to such locations have been channeled through the corporate headquarters and where only one central system of accounting has been maintained for all the locations is exempt from the provision of subsection (1) above. Such entity may in its license application submit only one financial statement on behalf of all locations it operates, pay a license fee of Two Thousand Dollars on behalf of the corporate entity and a processing fee of Five Hundred Dollars on behalf of each location it operates, subject to change. Disbursements to individual locations will not be deemed cross-collateralization, provided, however, that continuance of such practice will not adversely affect financial soundness of any location operated by the corporation. To that effect, the department reserves the right to invoke, upon investigation and hearing, the cross-collateralization penalties of subsection (1) above.

J. Incomplete applications and notice of corrections.

(1) When the department determines, upon inquiry and examination, that any application for license is not complete or in any other way does not meet the requirements of Section 37-11-10 et. seq. and of this regulation, the department shall issue to the applicant in writing a notice of corrections that will clearly notify the applicant that the application for license must be corrected in such particulars within thirty days of receipt of the notice.

(2) The issuance of a notice of corrections shall toll the sixty day review period of the application by the department until the deficiencies listed in the notice of corrections are cured by the applicant.

(3) In the event the requirements of the notice of corrections are not met within the thirty day period or in such additional time as the department may grant for good cause shown, the department may reject the application for a license and include findings of facts.

(4) Upon rejection, an applicant may request a hearing, or alternatively, may reapply after making appropriate corrections.

K. Advertising; general standards.

All advertising which is used by or on behalf of the operator to promote a continuing care retirement community shall be accurate, truthful and not misleading so as to fully inform the public and foster their understanding and trust. In preparing any advertising material, the operator is subject to state unfair and deceptive trade practices laws.

L. Continuing care contracts.

(1) Continuing care contracts must be printed in one hundred percent black ink with the exception of the operator's name and business logo. The contracts must be printed on stock that is at least 11 inches high and 7¼ inches wide. All print in continuing care contracts shall be in print no smaller than ten point type.

(2) Continuing care contracts shall be written in language customarily used and understood by people in the conduct of their personal affairs.

(3) A continuing care contract shall contain a full description of services offered by the continuing care community. Such description shall include, to the extent known, a description of the conditions under which such services may be rendered, including the services that may in the future be rendered pursuant to a different contract with the operator.

(4) The continuing care contract must contain a right to cancel provision in the following language which must be bold face type:

RESIDENT'S RIGHT TO CANCEL

You may cancel this contract by sending notice of your wish to cancel to the continuing care community (community) before midnight of the thirtieth (30th) day after you sign a contract. This notice must be sent in writing to the following: (Insert business name and address). If you cancel within thirty days, all money or property paid or transferred by you must be refunded fully, less those reasonable costs incurred by the community. If the living unit was available for occupancy, the community may charge a daily rate based on the usual monthly charge for that unit beginning on the eighth (8th) day after signing and ending on the day notice of cancellation is given to the community. Within thirty days of receipt of the cancellation notice, the community must return any payments made and return any note or evidence of indebtedness.

(5) The continuing care contract must contain a statement in bold face type of what portion, if any, of the entrance fee is refundable or non-refundable.

(6) The continuing care contract must contain in capital letters in bold face type no smaller than the largest type used in the contract the following statement:

A license issued by the South Carolina Department of Consumer Affairs is not an endorsement or guarantee of this facility by the State of South Carolina. The South Carolina Department of Consumer Affairs urges you to consult with an attorney and a suitable financial advisor before signing any documents.

(7) No act, agreement or statement of a resident or an individual purchasing care for a resident under any agreement to furnish care to the resident shall constitute a valid waiver of any provision of the Act and this regulation intended for the benefit or protection of the resident or the individual purchasing care for the resident.

M. Disclosure statement.

(1) At the time of, or before, the execution of a contract to provide continuing care, or the transfer of money or other property to an operator by or on behalf of a prospective resident, whichever occurs first, the operator must deliver a current disclosure statement to the person with whom the contract is to be entered into containing at least the following information:

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

(b) The name and position title of the individual to whom inquiries should be directed regarding facilities, services, or other information;

(c) A statement that the facility will make available upon request the names and business addresses of the officers, directors, trustees, managing or general partners, any person having a five percent or greater equity or beneficial interest in the continuing care retirement community, and any person who will be managing the community on a day-to-day basis, together with a description of a business experience, if any, of these persons in the operation or management of similar facilities and, if applicable, a description of any matter in which these persons:

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

(ii) are subject to a currently effective injunctive or restrictive court order or within the past five years, had a state or federal license suspended or revoked as a result of an action brought by a governmental agency or department;

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

(e) The location and description of the physical property of the facility, existing or proposed, and to the extent proposed, the estimated completion date, the date construction began or shall begin, and the contingencies subject to which construction may be deferred;

(f) The services provided or proposed to be provided pursuant to contracts for continuing care at the facility, including the extent to which medical care is furnished; a clear statement of which services are included for monthly basic fees for continuing care and which services are made available at or by the facility at extra charge;

(g) If the facility is already in operation, a statement as to which services may be available subject to a waiting list or priority rights of other residents, as well as the best estimate of the average waiting period for such services. This statement shall cover both the services described in the continuing care contract and in any other materials used to advertise and promote the facility regardless of whether such services are provided under the continuing care contract or under another agreement to be executed in the future;

(h) A description of all fees required of residents, including the entrance fee, monthly basic fee

and other periodic charges, if any. The description must include:

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

(ii) the circumstances under which the resident is permitted to stay in the facility if the resident has financial difficulties;

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

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

(v) the manner by which the operator may adjust monthly basic fees or other periodic charges, and the limitations on these adjustments, if any. If the facility is already in operation, tables must be included showing the frequency and average dollar amount of each increase in monthly basic fees or other periodic charges at the facility or location for the previous two years, or for all the years in operation if less than two years;

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

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

(k) A description of the procedures for receiving and resolving written complaints by the residents;

(l) The following statement: The operator is required to furnish an item-by-item billing for all charges to the resident or the person paying the bill upon his or her request unless the items and charges are included in the continuing care contract. Items which remain unpaid are not required to be itemized again. A request for itemized billing remains in effect until further notification by resident or person paying the bill;

(m) A statement as to whether or not the facility, or any component thereof, accepts Medicare and/or Medicaid. In case the facility does not accept Medicare and/or Medicaid, the following statement will be inserted in bold face type in the disclosure statement:

This facility does not accept Medicare and/or Medicaid. In case a resident exhausts his available financial resources prior to or following admission into our nursing home or assisted living accommodations, the resident might have no choice but to apply for admission to a facility that accepts these payments.

In case the facility has a discretionary fund to assist residents who deplete their financial resources, the following language will also be inserted in bold face type in the disclosure statement:

The discretionary funds available to the management may be used to supplement the entire cost of care or a part of it. However, the application of these funds is entirely within the discretion of the management and the presence of these funds is no guarantee for a continuing stay in this facility following the depletion of your own financial resources.

(2) The disclosure statement shall conspicuously state that in addition to the information contained in the disclosure statement, a prospective or current resident or prospective or current resident's legal representative with a general power of attorney has a right to ask for and receive the information regarding reserve funding of the facility, if any, experience of persons who will make investment decisions, certified financial statements of the operator including balance sheets and income statements, a current actuarial study, if available, a feasibility study for a facility that has not begun operations, and information regarding persons having a five percent or greater interest in the facility within the scope of Section 37-11-30(B)(2).

(3) To the extent applicable, the information required to be provided under this section will be provided in the same form as the identical information required to be submitted with the operator's application for a license under Section 37-11-30(B).

(4) Material changes in the information contained in the disclosure statement shall be updated in the form of addenda on a periodic basis. Each addendum shall be clearly and conspicuously marked as such and shall be immediately filed with the department upon license renewal. Each operator shall from time to time revise the disclosure statement so as to incorporate all existing addenda.

N. Expansions of existing facilities.

(1) An existing operator which intends to expand a continuing care retirement community by more than twelve units or twenty-five percent of individual living units, whichever is more, shall file with the department a letter of intent disclosing the plan of the expansion. The letter shall disclose the following:

- (a) The purpose and the scope of the expansion;
- (b) Estimated capital cost;
- (c) Ability to finance;
- (d) Financial impact on current residents;
- (e) Impact on current community structure to provide resident services;
- (f) Present occupancy rate and marketability of the expansion;

(g) If the facility has had a feasibility study made, then its operator shall submit, in addition to the letter of intent, a supplement to that feasibility study. If the facility did not have a feasibility study made in the past, then the operator shall submit, in addition to the letter of intent, a substitute study.

(2) In order to prevent avoidance of subsection (1) above, the exemption may not exceed a twenty-five percent increase in individual living units cumulative over a two year period.

O. Transfer of ownership of a facility.

(1) An operator intending to undertake a transfer of ownership of a facility shall notify the department at least thirty days in advance of the proposed settlement date.

(2) A notice of intention of transfer of ownership of a facility may be in the form of a letter, addressed to the department, and shall contain the following information:

- (a) Name and address of the licensed operator from whom ownership will be transferred;
- (b) Name and address of the person intending to acquire the ownership interest;
- (c) Name and address of the facility whose ownership is being transferred;
- (d) Proposed settlement date.

(3) No transfer of ownership of a facility shall be consummated until the person to whom ownership is being transferred obtains a license from the department.

(4) When a person to whom ownership is being transferred files an application for a license, in addition to the selected information as will be specified on a form available from the department, the person shall file a statement containing the following information:

- (a) The terms and conditions of the transfer of ownership;
- (b) The source of funds to be used to finance transfer of ownership and, if the funds are to be borrowed, the name of a lender and a summary of the terms and conditions of the loan transactions;
- (c) The plans, arrangements, understandings and intentions of the transferee for the future business and management of the facility, including plans as to the sale of assets or material change in business, corporate structure or management.

(5) A license will not be issued under this Section unless the transferee has agreed in writing to assume the contractual obligations imposed on the current operator by its existing continuing care agreements. Any person aggrieved by the determination of the department shall be entitled to a contested case hearing before the Administrative Law Court in accordance with the provisions of R. 28-600Z.

P. Entrance fees and binding reservation deposits; escrow provisions.

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

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

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

- (i) construction or purchase of the living unit has been completed, and an occupancy

permit, if applicable, covering the living unit has been issued by the local government having authority to issue the permit;

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

(iii) aggregate entrance fees received or receivable by the operator pursuant to binding continuing care retirement community contracts, plus the anticipated proceeds of any first mortgage loan or other long-term financing commitment, are equal to not less than ninety percent of the aggregate cost of constructing or purchasing, equipping, and furnishing the facility plus not less than ninety percent of the funds estimated in the financial feasibility study required by Section 37-11-30 to be necessary to fund cash shortages during start-up and assure full performance of the obligations of the operator pursuant to continuing care retirement community contracts.

(2) If the operator enters into binding reservation agreements pursuant to which deposits are collected from prospective residents, such deposits shall be deposited in an escrow account with a trust institution as defined in Section 37-11-20(10). Such deposits will be released to the operator under the conditions stated in Section 37-11-90(B) and R. 28-600P of this regulation.

(3) An escrow agreement entered into between a trust institution and an operator shall state that its purpose is to protect the resident or the prospective resident; and, upon presentation of evidence of compliance with applicable portions of the Act and this regulation, or upon order of a court of competent jurisdiction, the escrow agent shall release and pay over the funds, or portions thereof, together with any interest accrued thereon or earned from investment of the funds, to the operator or resident as directed. At the time of entering into an escrow agreement, an operator shall inform an escrow agent of the Act and this regulation and the respective requirements of each.

(4) All funds deposited in an escrow account shall not be subject to any liens or charges by the escrow agent or judgments, garnishments, or creditor's claims against the operator or facility.

(5) When funds are received from a resident or prospective resident, the operator shall deliver to the resident a written receipt. The receipt shall show the payor's name and address, the date, the price of the continuing care contract, and the amount of money paid.

(6) In applying the provision of Section 37-11-90(C) relating to the reasonable time in which the operator must meet the requirements for release of funds held in the escrow account, escrow agents shall not consider such reasonable time to exceed thirty months from the date the entrance fee or any portion thereof was first deposited in the escrow account, unless the extension is requested from and granted by the department for good cause shown.

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

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

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

Q. Financial responsibility requirements.

The applicant shall provide a detailed written statement regarding the specific provisions taken, or to be taken, to enable the applicant to perform its obligations fully under contracts to provide continuing care. Such provisions may include surety bonds; financial reserves; letters of credit; adequacy of working capital and actual and projected occupancy rates; and other financial arrangements or assurances, as permitted in Section 37-11-40.

R. Dismissal or discharge of resident; refund.

(1) No continuing care contract which requires payment of an entrance fee or other fee in return for a promise of future care or which provides for services for the life of the person or for more than one year (including mutually terminable contracts) shall permit dismissal or discharge of the resident from the facility providing care before the expiration of the agreement without just cause for such removal. The term "just cause" includes, but is not limited to, a good faith determination in writing, signed by the medical director and/or the administrator of the facility, that a resident is danger to himself or others while remaining in the facility. The written determination shall state:

(a) That the determination is made in good faith;

(b) The reasons supporting the determination that the resident is a danger to himself/herself or others;

(c) The basis for the conclusion that there is no less restrictive alternative to dismissal, discharge or cancellation, as the case may be, for abating the dangerousness of the resident.

(2) If a facility dismisses a resident for just cause, the resident shall be entitled to a refund of his unearned entrance fee, to the extent the continuing care contract between the parties so provides.

S. Examination of affairs of continuing care retirement communities and health care providers.

(1) The department may at any time examine the business of any applicant for a license and any operator engaged in the execution of continuing care contracts or in the performance of obligations under such agreements. Routine examinations may be made by having the necessary documents submitted to the department; and, for that purpose, financial documents and records conforming to commonly accepted accounting principles and practices will be deemed adequate. The final written report of each such examination shall be filed with the Administrator. Any operator being examined shall, upon request, give reasonable and timely access to all of its records. The representative of the department may at any time examine the records and affairs and inspect the physical property of any operator and the health care and health-related services provider with whom the operator has contracts, agreements, or other arrangements, whether in connection with a formal examination or not.

(2) Any duly authorized officer, employee, or agent of the department may, upon presentation of proper identification, have access to, and inspect and copy any records, with or without advance notice, to secure compliance with, or to prevent a violation of, any provision of the Act and this regulation.

(3) Reports of the results of such examinations shall be kept on file by the Administrator. Any records, reports, or documents obtained by the department which by state or federal law or regulation are deemed confidential may not be distributed to the public by the department unless required under appropriate court order or until such confidential status has expired.

(4) The department shall notify the operator in writing of all deficiencies in its compliance with the provisions of the Act and this regulation and shall set a reasonable length of time for compliance by

the facility. In addition, the department shall require corrective action or request a corrective action plan. If the operator fails to comply in a time established by the department, a fine not to exceed Fifty Dollars per day shall be paid. The department may also initiate action against the operator in accordance with the provisions of Section 37-11-110 and R. 28-600Z.

T. Grounds for discretionary denial, suspension, or revocation of a license.

The department, in its discretion, may deny, suspend, revoke, or refuse to renew or continue the license of any applicant or operator if it finds that any one or more of the following grounds applicable to the operator exist:

- (1) Failure by the operator to continue to meet the requirements for the license originally granted, on account of deficiency of assets;
- (2) Lack of one or more of the qualifications for the license as specified by this chapter;
- (3) Material misstatement, misrepresentation, or fraud in attempting to obtain or obtaining the license;
- (4) Demonstrated lack of fitness or trustworthiness;
- (5) Fraudulent or dishonest practices of management in the conduct of business under the license;
- (6) Misappropriation, conversion, or withholding of money;
- (7) Substantial failure to comply with, or violation of, any provision of the Act and this regulation or any properly issued order of the Administrator;
- (8) Refusal by the operator to be examined or to produce its accounts, records, and files for examination, or refusal by any of its officers to give information with respect to its affairs or to perform any other legal obligation as to such examination, when required by the department;
- (9) Failure by the operator to comply with the requirements of Section 37-11-90 and R. 28-600S;
- (10) Failure by the operator to maintain escrow accounts or funds that may be required by the Act and this regulation;
- (11) Failure by the operator to honor its continuing care contracts with residents.

U. Duration of suspension; obligations during suspension period; reinstatement.

- (1) Suspension of a license shall be for such period, not to exceed one year, as is fixed by the department in the order of suspension, unless the department shortens or rescinds such suspension or the order of suspension is modified, rescinded, or reversed.
- (2) During the period of suspension, the operator shall file its renewal application if and when due. The department in its order of suspension may order that the operator issue no new contracts. If and when the renewal license is granted, the operator shall then pay its annual license fee required for that year.
- (3) Upon expiration of the suspension period, if within such period the license has not otherwise

terminated, the operator's license shall automatically be reinstated unless the department finds that the causes for the suspension have not been removed or that the operator is otherwise not in compliance with the requirements of the Act and this regulation. If not automatically reinstated, the license shall be deemed to have expired as of the end of the suspension period or upon failure of the operator to continue the license during the suspension period, whichever event first occurs.

V. Administrative fines.

(1) If the department finds that one or more grounds exist for revocation or suspension of a license, the department, in lieu of such revocation or suspension, may impose a fine upon the operator in an amount not to exceed Ten Thousand Dollars per violation.

(2) If it is found that the operator has knowingly and willfully violated a lawful order of the department or a provision of the Act and this regulation, the department may impose a fine not to exceed Ten Thousand Dollars for each such violation.

(3) Failure of holders of final licenses to apply at least sixty days prior to the expiration of their current licenses for a renewal license shall result in a fine being imposed by the department.

W. Complaint system to be established.

(1) Each facility's complaint system shall, at a minimum, provide residents with the following:

(a) The name of the staff person or persons authorized to receive written complaints from residents;

(b) An opportunity to discuss the substance of the complaint with the designated staff person;

(c) The time period in which the operator shall make a written response to the complaint;

(d) A statement that the operator shall not engage in any retaliatory action against the complainant.

(2) Copies of the complaint system shall be distributed to residents and conspicuously posted at a common area of the facility.

X. Department's response to written complaints.

(1) Upon receipt of a written complaint, the department shall make a preliminary review; and unless the department determines that the complaint is without any reasonable basis, the department shall take appropriate action.

(2) No licensed operator may discriminate or retaliate in any manner against a resident of a facility providing care because such resident has initiated a written complaint pursuant to this Section.

Y. Financial review committee.

At such time as the Administrator determines that a facility cannot fully perform its obligations under continuing care contracts, the Administrator may appoint a financial review committee. Such committee may include persons knowledgeable in the field of continuing care, certified public accountants, members of the financial community, and others as may be deemed appropriate by the Administrator. The

members of the committee shall advise the Administrator regarding the merits of the facility's corrective plan proposal.

Z. Administrative Procedures Act; applicability.

The South Carolina Administrative Procedures Act and the department's regulations promulgated thereunder shall apply in all the proceedings involving the determination of any issue pursuant to Section 37-11-10 et. seq. and thereunder. Any person who is aggrieved by a decision of the department shall be entitled to a contested case hearing before the Administrative Law Court provided the hearing is requested in writing no later than thirty days from the issuance of such decision pursuant S.C. Code Ann. Section 1-23-310 and Rule 11 of the Rules of Procedure for the Administrative Law Court.

AA. Severability.

If any provision of this regulation or the application thereof to any person, facility or circumstances is held to be invalid, the invalidity shall not affect other provisions or application of this regulation, and to this end the provisions of this regulation are severable.

Fiscal Impact Statement:

There will be no increased costs to the State or its political subdivisions.

Statement of Rationale:

The purpose of the revisions to 23A S.C. Code Ann. R. 28-600 is to provide greater detail of existing procedures, delete obsolete provisions, otherwise harmonize the Regulation with Title 37 Chapter 11 of the South Carolina Code, and clarify that contested case hearings shall be filed with the Administrative Law Court. There was no scientific or technical basis relied upon in the development of this regulation. Other formatting changes and minor edits have been made for consistency purposes.