

Chapter 101

1989 EDITION

Continuing Care Retirement Communities

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PROPERTY RIGHTS AND TRANSACTIONS

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

101.020 Definitions. As used in this chapter:

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

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

(3) "Continuing care" means furnishing upon payment of an entrance fee and, pursuant to a residency agreement, housing and other hospitality services which include nursing, assistance with daily living or other health-related services, for a period greater than one year to an individual not related by blood or marriage to the continuing care retirement community provider which is furnishing care, whether provided in the community or in another setting designated by the residency agreement.

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

(5) "Division" means the Senior and Disabled Services Division.

(6) "Entrance fee" means an initial or deferred transfer to a provider of a sum of money or other property made or promised to be made as full or partial consideration for acceptance of one or more residents in a community. A fee which is less than the sum of the regular periodic charges for one year of residency will not be considered to be an entrance fee for the purposes of this chapter.

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

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

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

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

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

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

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

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

101.030 Registration of continuing care retirement community providers. (1) On October 3, 1989, all providers shall register with the Senior and Disabled Services Division before the provider:

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

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

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

(2) The provider shall apply for registration with the division on forms prescribed by

the division. The application shall include a disclosure statement as described in ORS 101.050.

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

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

Note: Sections 20 and 19, chapter 693, Oregon Laws 1989, provide:

Sec. 20. Persons who are providers on the effective date of this chapter [October 3, 1989] shall comply with section 7 of this chapter [101.030 (4)] on or before March 1, 1990. [1989 c 693 §20]

Sec. 19. With respect to residency agreements executed by a provider to existing or prospective residents in a continuing care retirement community established prior to January 1, 1990, which community has one or more residents living there pursuant to agreements entered into prior to the effective date of this chapter [October 3, 1989], after the provider files its application for registration, the Senior and Disabled Services Division shall issue a temporary order registering the provider which may then enter into residency agreements in compliance with all applicable provisions of this chapter. This temporary registration order remains in effect until such time as the division issues its order pursuant to subsection (4) of section 7 of this chapter [101.030]. These existing providers shall be considered to have complied with the registration requirements of this chapter, pending issuance of the temporary order,

provided an application for registration has been filed within the timelines set by the division. [1989 c.693 §19]

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

101.050 Preparation of disclosure statement by provider; notice and review of statement by prospective residents; contents of statement. (1) After entry of an order registering the provider and before the provider enters into any residency agreement with or on behalf of the prospective resident, the provider shall notify prospective residents of their right to review the initial disclosure statement and shall make copies of the statement available upon request. The initial disclosure statement shall be available during regular business hours in the business office of the continuing care retirement community. The text of the initial disclosure statement shall contain the following information:

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

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

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

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

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

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

retirement community or other care facilities:

(A) The estimated completion date or dates;

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

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

(f) A description of services provided or proposed to be furnished by the provider under its residency agreements including, without limitation, the extent to which medical care or assisted living is furnished, the services made available by the continuing care retirement community at an extra charge over and above the entrance fee and periodic charges provided for in the residency agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

101.060 Provider to maintain financial reserves; amount. (1) Each provider shall establish and maintain at all times liquid reserves in an amount equal to or exceeding:

(a) The total of all principal and interest payments due during the next 12 months on account of any mortgage loan or other long term financing of the continuing care retirement community taking into consideration any anticipated refinancing; and

(b) The total of the community's projected operating expenses for three months.

(2) Providers, whose residents occupy the continuing care retirement community on or before January 1, 1990, shall establish the reserves required in subsection (1) of this section in increments, to be completed on or before January 1, 2000. [1989 c.693 §12]

101.070 Escrow account required for registration of new continuing care retirement community; entrance fees in escrow; use of escrow funds. (1) As a condition of registration for a new community, the Senior and Disabled Services Division shall require that the provider establish an escrow account with a bank, trust company or other escrow agent and that any entrance fees received by the provider prior to the date the resident is permitted to occupy the living unit in the community be placed in the escrow account.

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

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

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

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

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

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

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

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

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

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

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

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

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

101.090 Exemption of certain facilities from certificate of need review; exception. A closed system long term care facility shall be subject to the same requirements as all other long term care facilities, as defined by ORS 442.015, except that it shall be exempt from the certificate of need process provided by ORS 442.320 (1987 Replacement Part). However, any closed system long term care facility which initiates under this exemption any new health service, as defined

in ORS 442.015 (20) (1987 Replacement Part), and which subsequently accepts patients who are not residents of the continuing care retirement community, shall become subject to certificate of need review for such new health services at the time that nonresident patients begin to be admitted. [1989 c.693 §10]

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

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

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

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

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

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

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

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

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

101.120 Power of division to prevent violations; cease and desist order; injunction. (1) If the Senior and Disabled Services Division determines, after notice and hearing, that any person has violated or is about to violate any provision of this chapter

or any rule or order issued under this chapter, the division may issue an order requiring the person to cease and desist from the unlawful practice or to take such affirmative action as in the judgment of the division carries out the purposes of this chapter.

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

(3) If it appears that a person has engaged, or is about to engage, in an act or practice constituting a violation of any provision of this chapter or of a rule or order under this chapter, the division, with or without prior administrative proceedings, may bring an action in the circuit court to enjoin the acts or practices or to enforce compliance with this chapter or any rule or order under this chapter. Upon proper showing, injunctive relief or temporary restraining orders shall be granted. The division shall not be required to post a bond in any court proceeding. [1989 c.693 §16]

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

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

101.140 Advisory council; membership; compensation; duties. (1) The Continuing Care Retirement Community Advisory Council is created, to consist of eight members appointed by the Assistant Director for Senior Services, each of whom shall be a resident of this state and representative of the geographic location of all providers in this state. Three members shall be representatives of providers that are registered pursuant to ORS 101.030, and each of these representatives shall have been actively engaged in the offering of residency agreements in this state for five years before appointment. The remaining members shall include:

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

(b) A certified public accountant;

(c) An attorney; and

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

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

(3) The members of the advisory council shall serve without pay. They shall be reimbursed by the division for their actual and necessary traveling expenses incurred while on official business.

(4) The council shall:

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

(b) Hold an annual meeting and hold other meetings at such times and places as the division or the chairman of the council may direct;

(c) Keep a record of its proceedings, which books and records shall be prima facie evidence of all matters reported therein and shall be open to inspection at all times;

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

(e) Make recommendations to the division on all proposed rules pertaining to this chapter. [1989 c.693 §5]

101.150 Duties of Senior and Disabled Services Division; rulemaking. (1) The Senior and Disabled Services Division shall implement the provisions of this chapter.

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

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

CHAPTERS 102 TO 104

[Reserved for expansion]