

**CHAPTER 19**

**CONTINUING CARE RETIREMENT COMMUNITY RULES**

**Authority**

N.J.S.A. 52:27D-358.

**Source and Effective Date**

R.2009 d.1, effective November 20, 2008.  
See: 40 N.J.R. 6(a), 41 N.J.R. 127(a).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 19, Continuing Care Retirement Community Rules, expires on November 20, 2015. See: 43 N.J.R. 1203(a).

**Chapter Historical Note**

Chapter 19, Rules of Practice of Bureau of Housing Inspection, was adopted as R.1971 d.94, effective June 18, 1971. See: 3 N.J.R. 75(b), 3 N.J.R. 129(b).

Chapter 19, Rules of Practice of Bureau of Housing Inspection, was repealed by R.1989 d.205, on May 8, 1980, effective June 1, 1980. See: 12 N.J.R. 305(a).

Chapter 19, Continuing Care Retirement Community Rules, was adopted as new rules by R.1988 d.60, effective February 1, 1988. See: 19 N.J.R. 597(a), 20 N.J.R. 256(b).

Subchapter 8, Nonbinding Reservation Agreements, was adopted as R.1988 d.190, effective May 2, 1988. See: 20 N.J.R. 347(a), 20 N.J.R. 976(a).

Pursuant to Executive Order No. 66(1978), Chapter 19, Continuing Care Retirement Community Rules, was readopted as R.1993 d.79, effective January 15, 1993. See: 24 N.J.R. 1146(a), 25 N.J.R. 686(b).

Pursuant to Executive Order No. 66(1978), Chapter 19, Continuing Care Retirement Community Rules, was readopted as R.1998 d.59, effective December 22, 1997. See: 29 N.J.R. 3761(a), 30 N.J.R. 335(a).

Chapter 19, Continuing Care Retirement Community Rules, was re-adopted as R.2003 d.282, effective June 17, 2003. See: 34 N.J.R. 3413(a), 35 N.J.R. 3297(b).

Chapter 19, Continuing Care Retirement Community Rules, was re-adopted as R.2009 d.1, effective November 20, 2008. See: Source and Effective Date.

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## SUBCHAPTER 1. GENERAL PROVISIONS

**5:19-1.1 Purpose**

The Continuing Care Retirement Community Regulation and Financial Disclosure Act (P.L.1986, c. 103, N.J.S.A. 52:27D-330 et seq.) became effective March 2, 1987. The rules contained in this chapter are intended to enable the Department of Community Affairs to implement the Act and to enable affected providers to more easily and more fully comply with the requirements of the Act.

**5:19-1.2 Affirmative determination**

(a) The Department shall issue a certificate of authority upon its affirmative determination that all of the following requirements have been met:

1. The provider can fulfill its obligations under the continuing care agreement if the resident complies with the terms of the offer;

2. There is reasonable assurance that all proposed improvements can be completed as represented;

3. The provider, its officers and/or principals have not been convicted of a crime in this State, the United States, or any other state or foreign country within the past 10 years, the seriousness of which, in the opinion of the Department, warrants the denial of certification;

4. The provider, its officers and/or principals have not been subject to any permanent injunction or final administrative order restraining a false or misleading plan involving a facility disposition, the seriousness of which, in the opinion of the Department, warrants the denial of certification; and

5. The disclosure statement requirements have been satisfied.

**5:19-1.3 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Act” means the Continuing Care Retirement Community Regulation and Financial Disclosure Act (P.L.1986, Chapter 103, N.J.S.A. 52:27D-330 et seq.), together with any amendatory or supplementary acts.

“Advertising” means and includes the publication or causing to be published of any information offering for disposition or for the purpose of causing or inducing any other person to enter into a continuing care agreement in a continuing care retirement community, including the continuing care agreement to be used and any photographs or drawings or artist’s representation of physical conditions or facilities on the property existing or to exist by means of any:

1. Newspaper or periodical;
2. Radio or television broadcast;
3. Written, printed or photographic matter;
4. Billboards or signs;
5. Display of model facilities or units;
6. Material used in connection with the disposition or offer of the facility by radio, television, telephone or any other electronic means; or
7. Material used by provider or their agents to induce prospective residents to visit the facility, particularly gift certificates which require the holders of such certificates to attend or submit to a sales presentation by providers or their agents.

The term “advertising” does not include stockholder communications, such as annual reports, interim financial reports, proxy materials, certification statements, securities prospectuses, applications for listing securities on stock exchanges, and the like, and any and all communications addressed and relating to the account of any person who has previously executed a continuing care agreement.

“Application fee” means the fee an individual is charged, in addition to an entrance fee or any other fee, to cover the provider’s reasonable cost for processing the individual’s application to become a resident at the facility.

“Blanket encumbrance” means a trust deed, mortgage, judgment or other lien or encumbrance, including an option or contract to sell or a trust agreement, affecting a continuing care retirement community of more than one unit therein, but does not include any lien or other encumbrance arising as the result of the imposition of any tax assessment by any public authority.

“Commissioner” means the Commissioner, Department of Community Affairs.

“Continuing care” means the provision of lodging and nursing, medical or other health related services at the same or another location to an individual pursuant to an agreement effective for the life of the individual or for a period greater than one year, including mutually terminable contracts, and in consideration of the payment of an entrance fee with or without other periodic charges. An individual who is provided continuing care is one who is not related by consanguinity or affinity to the person who provides the care.

“Department” means the Department of Community Affairs.

“Entrance fee” means a 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 a specified person as a resident in a facility, and includes a fee which is refundable upon the death, departure or option of the resident.

1. A fee which is less than the sum of the regular periodic charges for one year of residency is not considered an entrance fee for the purpose of the Act. A transfer of a sum of money or other property, by or on behalf of a resident, to a trust account which is managed by the facility or an independent trustee for the benefit of the resident is not considered an entrance fee for the purposes of the Act if the transfer is not a condition of admission or of continued stay and the principal amount and any interest thereon are the exclusive and sole property of the resident or the individual acting on behalf of the resident.

“Facility” means the place or places in which a person undertakes to provide continuing care to an individual.

“Living unit” means a room, apartment, cottage or other area within a facility set aside for the exclusive use or control of one person or of persons constituting a household unit.

“Offer” means an inducement, solicitation, advertisement, or attempt to encourage a person to enter into a continuing care agreement.

“Operator or administrator” means a person who operates or manages a facility for the provider.

“Person” shall be defined as in N.J.S.A 1:1-2.

“Provider” means a person who undertakes to provide continuing care in a facility.

“Resident” means a person entitled to receive continuing care in a facility.

“State” means the State of New Jersey.

## SUBCHAPTER 2. CERTIFICATION

### 5:19-2.1 Certification required

A person shall not establish, operate or administer a continuing care facility in this State without obtaining and maintaining a certificate of authority pursuant to the Act. A certificate of authority granted pursuant to the Act is not transferable.

### 5:19-2.2 Nonapplicability

Unless the method of disposition is adopted for purposes of evasion, the provisions of these rules shall not apply to offers or disposition:

1. Pursuant to court order;
2. By the United States, by this State or any of its agencies or political subdivisions;
3. Of real property located outside of the State.

### 5:19-2.3 Request for Letter of Nonapplicability

(a) Any person who believes that a continuing care retirement community or similar facility is not subject to the provisions of the Act, or who is contemplating or proposing

establishment of a continuing care retirement community or similar facility, which he or she believes may not be subject to the Act, may apply to the Department for a Letter of Nonapplicability.

1. Such application shall be in writing and shall list the reasons why such existing or proposed or contemplated continuing care retirement community or similar facility may not be subject to the Act.

2. An application for a Letter of Nonapplicability pursuant to this subsection shall be accompanied by a fee of \$70.00.

(b) In the event the Department shall determine that such continuing care retirement community or similar facility is not subject to the Act, it shall issue a Letter of Nonapplicability setting forth the facts upon which its determination is based.

(c) In the event the Department shall determine that such continuing care retirement community facility or proposed continuing care retirement community or similar facility is subject to the provisions of the Act, it shall deny the request for the Letter of Nonapplicability setting forth the facts upon which its determination is based and shall notify the applicant of its findings.

Amended by R.2009 d.77, effective March 2, 2009.

See: 40 N.J.R. 5895(a), 41 N.J.R. 1009(b).

In (a), redesignated the former second and third sentences as (a)1 and (a)2; in the introductory paragraph of (a), inserted “that”, “or proposing establishment of” and “or she”; in (a)1, inserted “or contemplated”; and in (a)2, substituted “subsection” for “Subsection” and “\$63.00” for “\$50.00”.

Amended by R.2014 d.149, effective October 6, 2014.

See: 46 N.J.R. 898(a), 46 N.J.R. 2024(a).

In the introductory paragraph of (a), inserted a comma following the second occurrence of “facility”; and in (a)2, substituted “\$70.00” for “\$63.00”.

### 5:19-2.4 Application for certification; submission and fees

(a) An application for a certificate of authority shall consist of a statement containing the items set forth in N.J.A.C. 5:19-3 and shall be submitted in the manner and form as provided therein, together with the filing fee in the amount of \$560.00, plus \$56.00 per living unit, made payable to the Treasurer, State of New Jersey.

1. In the event that living units are added during certification, an additional fee of \$56.00 per living unit shall be paid. There shall be no refunds for deletions.

(b) Any facility with one or more residents under continuing care agreements on March 2, 1987 shall pay a fee of \$200.00 plus \$20.00 per unit in lieu of the fee in (a) above.

Amended by R.2009 d.77, effective March 2, 2009.

See: 40 N.J.R. 5895(a), 41 N.J.R. 1009(b).

In (a), redesignated the former last two sentences as (a)1; in the introductory paragraph of (a), substituted “\$504.00,” for “\$400.00” and “\$50.00” for “\$40.00”, and inserted a comma following “unit”; and in (a)1, inserted “that”, and substituted “\$50.00” for “\$40.00” and “shall” for “will”.

Amended by R.2014 d.149, effective October 6, 2014.

See: 46 N.J.R. 898(a), 46 N.J.R. 2024(a).

In (a), updated the fee amounts throughout.

#### 5:19-2.5 Notice of filing

Upon receipt of an application for certification in proper form, accompanied by payment of the required filing fee, the Department shall, within 10 business days, issue a notice of filing to the applicant. The notice of filing shall not be construed as an approval of the application for certification or any portion thereof.

#### 5:19-2.6 Order of certification

Within 90 days from the date of the notice of filing, or the notice of correction as provided below, the Department shall issue a certificate of authority if the Department affirmatively determines that the requirements of N.J.A.C. 5:19-1.2 and all applicable statutory requirements have been met.

#### 5:19-2.7 Notice of correction

When the Department determines, upon inquiry and examination, that any of the requirements of N.J.A.C. 5:19-1.2 or any other requirements under the Act have not been met, the Department shall notify the applicant that the application for certification must be corrected in such particulars within 30 days. The applicant may request and receive an extension of 30 days to submit necessary corrections. Additional 30 day extensions may be granted for good cause shown.

#### 5:19-2.8 Order of rejection

(a) In the event the requirements of the notice of correction are not met within the time allowed, the Department may enter an order rejecting the application for certification which shall include the findings of fact upon which the order is based.

(b) The order of rejection shall not take effect for a period of 20 days from the expiration of the 30 day period as set forth in N.J.A.C. 5:19-2.7.

#### 5:19-2.9 Petition for reconsideration

(a) Upon the issuance of an order of rejection, the applicant shall have the right to file a petition for reconsideration with the Department.

(b) In the event a petition for reconsideration is filed by the applicant, as provided, the order of rejection shall not take effect until such time as the hearing has been held and a final decision rendered by the Commissioner.

#### 5:19-2.10 Automatic certification

The continuing care retirement community shall be deemed to be certified pursuant to N.J.A.C. 5:19-1.2 if, within 90 days of the notice of filing or notice of correction, the Department

has not issued a certificate of authority or order of rejection and the applicant has not consented to an extension of the time for review in writing.

#### 5:19-2.11 Order of revocation

(a) The certificate of authority or temporary certificate of authority of a provider shall remain in effect until revoked, upon the Department's written finding of fact that the provider has:

1. Repeatedly failed to correct violations of the Act or these rules;
2. Failed to file an annual disclosure statement or resident agreement pursuant to the Act;
3. Failed to deliver to a prospective resident or their representative an annual disclosure statement or resident agreement pursuant to the Act;
4. Delivered to a prospective resident a disclosure statement which makes an untrue statement 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;
5. Failed to comply with the terms of a cease and desist order; or
6. Committed serious violations of any other State or Federal law.
7. The provider has disseminated false or misleading advertising material which does not comply with the standards set forth in N.J.A.C. 5:19-5.

(b) The Department shall include in the findings of fact in support of revocation a concise and explicit statement of the underlying facts supporting the findings.

(c) If the Department has cause to believe that the provider is guilty of a violation for which revocation may be ordered, the Department may issue an order directing the provider or operator to cease and desist from engaging in any practice in violation of the Act.

(d) If the cease and desist order is not or may not be effective in remedying the violation, the Department may revoke the certificate of authority or temporary certificate of authority and order that it be surrendered to the Department.

(e) The Department may, as often as it deems necessary, conduct an investigation to determine whether any person has violated or is about to violate any provision of these rules or to aid in the enforcement of these rules or as necessary for prescribing rules and forms hereunder.

(f) For the purpose of any investigation or proceeding under these rules, the Department may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or other

documents or records which the Department deems relevant or material to the inquiry.

Act or these rules, upon the Department's determination that a provider has:

**5:19-2.12 Cease and desist orders; injunctions**

(a) The Department may issue an order requiring a person to cease and desist from an unlawful practice or an order requiring him to take such other affirmative action as in the judgment of the Department will carry out the purposes of the

1. Violated any provision of the Act;
2. Directly or through an agent or employee knowingly engaged in false, deceptive or misleading advertising, promotional or sales methods to offer or dispose of a unit;

3. Made any material change in the plan of disposition of the continuing care retirement community subsequent to the certificate of authority without obtaining prior approval from the Department.

4. Disposed of any unit or interest in a continuing care retirement community which has not been certified with the Department; or

5. Violated any lawful order or rule of the Department.

(b) Upon the determination of the Department in writing, based on a finding of fact that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order including therein a provision that, upon request, a hearing will be held within 10 days of such request to determine whether or not the temporary cease and desist order shall become permanent. A copy of any temporary cease and desist order shall be sent to the provider by certified mail.

(c) The Department may, if it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of the Act or a rule or order of the Department, bring an action in Superior Court to enjoin the acts or practices and to enforce compliance with the Act or rules herein, and may seek appointment of a receiver or conservator for the facility or its assets.

(d) In addition to, or in lieu of, the actions authorized by (a) through (c) above, the Department may levy and collect civil penalties in the amount of not less than \$250.00, and not more than \$50,000.00, for each violation of the Act or of this chapter, or of any order issued thereunder, and may compromise and settle any claim for a penalty in such amount as in the discretion of the Department may appear appropriate and equitable under the circumstances of the violation.

1. Each day during which a violation continues after the effective date of a notice to terminate issued by the Department shall constitute an additional, separate and distinct violation.

2. Except as set forth in (d)3 below, the initial penalty levied for any violation shall not exceed \$250.00 per violation, or \$250.00 per unit in the case of any violation of N.J.A.C. 5:19-2.1, and a subsequent penalty for the same act or omission shall not exceed 10 times the amount of the last previous penalty or the statutory maximum, whichever is less.

3. The limitations set forth in (d)2 above shall not apply to any violation involving either dishonesty in dealings with residents or prospective residents or willful disregard of the rights of residents.

4. If an administrative order levying a civil penalty is not satisfied within 30 days of its issuance, the Department may sue for and recover the penalty with costs in a

summary proceeding under N.J.S.A. 2A:58-1 et seq. in the Superior Court.

Amended by R.1992 d.114, effective March 16, 1992.

See: 24 N.J.R. 3(b), 24 N.J.R. 934(b).

Text added at (d) on collection of civil penalties.

#### 5:19-2.13 Annual report

(a) The provider shall file on a form designated by the Department an annual report reflecting any material changes in information contained in the original application for certification. This shall not diminish the obligation of the provider to notify the Department of material changes as they occur.

(b) The Annual Report shall be filed together with the Annual Disclosure Statement.

#### 5:19-2.14 Consolidated filing

A provider may register additional property pursuant to a common promotional plan as those previously certified by the Department by submitting another application providing such additional information as may be necessary to register the additional units.

#### 5:19-2.15 Cyclical inspections

The Department shall visit each facility offering continuing care in this State to examine its books and records at least once every four years.

### SUBCHAPTER 3. APPLICATION FOR CERTIFICATION

#### 5:19-3.1 Contents of application for certification

(a) The application for certification shall contain the following documents and information:

1. An irrevocable appointment of the Department to receive service of any lawful process in any noncriminal proceeding arising under the Act against the provider or his agents;

2. The States or other jurisdictions, including the Federal Government, in which an application for certification or similar documents for the subject facility have been or will be filed and any order, judgment or decree entered in connection therewith by the regulatory authorities in each of the jurisdictions or by any court or administrative body thereof;

3. The names and business addresses of the officers, directors, trustees, managing or general partners and any person having a 10 percent or greater equity or beneficial interest in the provider and a description of that person's interest in or occupation with the provider;

4. Copies of the articles of incorporation, with all amendments thereto, if the provider is a corporation; copies of all instruments by which the trust is created or declared, if the provider is a trust; copies of the articles of partnership or association and all other organization papers if the provider is organized under another form. In the event the provider 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;

5. A legal description by metes and bounds or other acceptable means of the lands to be certified, and the relationship of such lands to existing streets, roads and other improvements, together with a map showing the proposed or actual facility and showing the dimensions of the living units as available, except for living units that are completed and available for inspection. The aforesaid map shall be drawn to scale, signed and sealed by a licensed professional engineer or land surveyor;

6. Copies of the deed or other instrument establishing title of the provider and a title search, title report or title certificate or binder or policy issued by a licensed title insurance company;

7. A statement concerning any litigation, orders, judgments or decrees which might affect the offering;

8. A statement that the continuing care agreements will be offered to the public and entered into without regard to marital status, sex, race, creed or national origin or, if not, any legally permissible restrictions on purchase that will apply;

9. A statement of the present conditions of physical access to the facility, and the existence of any material adverse conditions that affect the facility, that are known, should be known or are readily ascertainable;

10. Copies of all contracts and agreements which the resident may be required to execute;

11. In the event there is or will be a blanket encumbrance affecting the facility or a portion thereof, a copy of the document creating it and a statement of the consequences upon a resident of a failure of the person bound to fulfill the obligations under the instrument and the manner in which the interest of the resident is to be protected in the event of such eventuality;

12. One copy of the proposed disclosure statement;

13. A current financial statement of the provider and any related predecessor, parent or subsidiary company, including but not limited to a current profit and loss statement and balance sheet audited by an independent public accountant;

14. A statement concerning any adjudication of bankruptcy during the last five years against the provider, its predecessor, parent or subsidiary company and any principal owning more than 10 percent of the interests in the facility at the time of the filing of the application for certification. This requirement shall not extend to limited partners or those whose interests are solely those of investors;

15. Copies of all easements and restrictions, whether of record or not;

16. A statement as to the status of compliance with all the requirements of all laws, ordinances and regulations of governmental agencies having jurisdiction over the construction, permitting and licensing of the facility, including but not limited to any permits required by the Department of Environmental Protection together with copies of all necessary Federal, State, county and municipal approvals;

17. A statement that neither the provider nor any of its officers or principals have ever been convicted of a crime in this State or a foreign jurisdiction, and that the provider has never been subject to any permanent injunction or final administrative order restraining a false or misleading promotional plan involving continuing care facility disposition or if so, copies of all pleadings and orders in regard thereto;

18. A projected annual budget for the facility for the next five years, or such lesser time as the Department allows, together with a financial feasibility study prepared according to Generally Accepted Accounting Principles, as established by the American Institute of Certified Public Accountants, which study shall include an opinion letter as to the financial feasibility of the facility;

i. In the event that the provider of a new facility can establish to the Commissioner's satisfaction that it cannot obtain an acceptable opinion letter at the time of the initial certification, the Commissioner may allow the provider to defer compliance with said requirement until such time as the provider has obtained binding contracts on 50 percent of the units in the facility; provided that, notwithstanding the provisions of N.J.A.C. 5:19-7.4, all entrance fees shall remain in escrow until the Commissioner has received an acceptable feasibility study and opinion letter as aforesaid.

19. Copies of market studies, if any, prepared on the behalf of the provider, concerning the feasibility of the project;

20. An affidavit, signed by the provider, that the contents of the application are true and accurate and made in good faith; and

21. Such other additional information as the Department may require in individual cases after review of an application for certification to assure full and fair disclosure.

Amended by R.1991 d.175, effective April 1, 1991.

See: 23 N.J.R. 3(b), 23 N.J.R. 1028(a).

In (a)18, added financial feasibility study, opinion letter and i.

### 5:19-3.2 Form of the application for certification

(a) An application for certification shall be submitted in the following form:

1. Two sets of the information and documents required to be filed shall be submitted in separate binders, fastened at the top in such a manner as to permit the reading of each page without requiring removal. The two required copies of the disclosure statement shall be submitted in separate binders;

2. All information and documents shall be arranged in the order set forth in N.J.A.C. 5:19-3.1;

3. Each binder shall note the name and address of the provider and the name and address 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 side 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 8-1/2 inches by 11 inches nor larger than 8-1/2 inches by 14 inches.

(b) 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.

### 5:19-3.3 Amendment of the application for certification

The provider shall promptly report to the Department any material changes in the information or documents contained in the application for certification, with a request for an amendment to the application for certification.

### 5:19-3.4 Review of requests for amendment

(a) The Department shall process and review requests for amendments of an application for certification in accordance with the standards and procedures established in this chapter for review of an application for certification.

(b) Requests for amendments shall be accompanied by a fee of \$50.00. This fee shall not be required for amendments concerned exclusively with price changes.

### 5:19-3.5 Public inspection of application for certification

The Department shall retain copies of all certified applications, together with all amendments thereto that have been approved, and shall make them reasonably available for public inspection during ordinary business hours at the Department's office.

### 5:19-3.6 Copies of the application for certification

(a) The Department shall comply with all reasonable requests for copies of an application for certification, together with all amendments thereto.

(b) The Department shall charge a fee for such copies as follows:

First page to tenth page	\$0.75 per page
Eleventh page to 20th page	\$0.50 per page
All pages over 20	\$0.25 per page

This fee shall be in addition to a charge for the cost of postage.

Amended by R.1998 d.59, effective January 20, 1998.

See: 29 N.J.R. 3761(a), 30 N.J.R. 335(a).

In (b), increased fees.

## SUBCHAPTER 4. DISCLOSURE STATEMENT

### 5:19-4.1 Disclosure statement required

(a) The disclosure statement shall disclose fully and accurately the characteristics of the facility and the interests offered and shall make known to prospective residents all unusual and material circumstances and features affecting the facility.

(b) The disclosure statement shall be in plain English and in language understandable by a lay person and combine simplicity and accuracy in order to fully advise residents of their rights, privileges, obligations and restrictions.

(c) The Department may require the provider to alter or amend the proposed disclosure statement in order to assure full and fair disclosure to prospective residents and may require the revision of a disclosure statement which it finds to be unnecessarily complex, confusing or illegible.

(d) The provider shall provide a disclosure statement to a prospective resident of a continuing care facility or the person with whom the provider shall enter into a contract to provide continuing care, prior to the execution of the contract or at the time of or prior to the transfer of any money or other property to the provider by or on behalf of the prospective resident, whichever occurs first, at no charge to the prospective resident.

(e) A disclosure statement shall not be deemed current unless it contains all amendments filed with the Department.

#### 5:19-4.2 Contents of disclosure statement

(a) The disclosure statement shall contain the following information unless the information is contained in the contract:

1. The name and business address of the provider and a statement of whether the provider is a partnership, corporation or other type of legal entity;
2. The names and business addresses of the officers, directors, trustees, managing or general partners and any person having a 10 percent or greater equity or beneficial interest in the provider and a description of that person's interest in or occupation with the provider;
3. With respect to the provider, any person named in response to (a)2 above and the proposed operator, if the facility is managed on a day-to-day basis by a person other than an individual directly employed by the provider:
  - i. A description of the person's business experience, if any, in the operation or management of similar facilities;
  - ii. The name and address of any professional service firm, association, trust, partnership or corporation in which the person has a 10 percent or greater interest and which may provide goods, leases or services to the facility of a value of \$500.00 or more, within any year;
  - iii. A description of the goods, leases or services provided pursuant to (a)3iii above and the probable or anticipated cost thereof to the facility or provider;
  - iv. A description of any matter in which the person has been convicted of a crime or pleaded nolo contendere to a criminal charge, or has been held liable or enjoined in a civil action which involved fraud, embezzlement, fraudulent conversion or misappropriation of property; and
  - v. A description of any matter in which the person is subject to a currently effective injunctive or restrictive court order or, within the past five years, had a state or Federal license or permit suspended or revoked as a result of an action brought by a governmental agency or department, which arose out of or related to business activity or health care, including actions affecting a license to operate a residential health care facility, rooming or boarding house, nursing home, retirement home, home for the aged or facility certified under the Act or a similar act in another state.
4. A statement whether the provider is or ever has been affiliated with a religious, charitable or other non-profit organization, the nature of the affiliation, if any, the extent to which the affiliate organization is responsible for the financial and contractual obligations of the provider, and the provision of the Federal Internal Revenue Code, if any, under which the provider or affiliate is exempt from the payment of income tax;

5. The location and description of the physical property of the facility, both existing and proposed, and, with respect to proposed property, the estimated completion date, the date construction began or shall begin and the contingencies subject to which construction may be deferred.

6. A statement of what laws and regulations apply to the operation and maintenance of the facility and which public agencies have jurisdiction over the facility;

7. The services provided or proposed to be provided under contracts for continuing care at the facility, including the extent to which medical care and other services are furnished under the basic contract and which other care or services are available at or by the facility at extra charge;

8. A description of all fees required of residents subject to contracts for continuing care, including the application fee, entrance fee and periodic charges, if any, the manner by which the provider may adjust periodic charges or other recurring fees and the limitation on the adjustments, if any, and, if the facility is already in operation or if the provider or operator operates one or more similar facilities within this State, tables showing the frequency and average dollar amount of each increase in periodic rates at each facility for the previous five years or as many years as the facility has been operated by the provider or operator, whichever is less;

9. The provisions that have been made or will be made, if any, to provide reserve funding or security which will enable the provider to fully perform its obligations under contracts to provide continuing care at the facility, including the establishment of escrow accounts, trusts or reserve funds, the manner in which the funds shall be invested and the names and experience of persons who will make the investment decisions;

10. Certified financial statements of the provider which include balance sheets and income statements for the two most recent completed fiscal years or for as long as the provider has been in existence, whichever is less;

11. If the operation of the facility has not yet commenced, a statement of the anticipated source and application of the funds used or to be used in the purchase or construction of the facility, including:

- i. An estimate of the cost of purchasing or construction and equipping the facility which includes related costs such as financing expenses, legal expenses, land costs, marketing and development costs and other similar costs the provider expects to incur or become obligation for prior to the commencement of operations;

- ii. A description of any mortgage loan or other long-term financing intended to be used for the financing of the facility and the anticipated terms and costs of the financing;

iii. An estimate of the total amount of entrance fees to be received from or on behalf of residents at or prior to commencement of operation of the facility;

iv. An estimate of the funds, if any, which are anticipated to be necessary to fund start-up losses and provide reserve funds to assure full performance of the obligations of the provider under contracts for the provision of continuing care;

v. A projection of estimated income from fees and charges other than entrance fees, a description of individual rates anticipated to be charged, the assumptions used in calculating the estimated occupancy rate of the facility and the effect on the income of the facility of government subsidies, if any, for health care services provided pursuant to the contracts for continuing care;

vi. A projection of estimated operating expenses of the facility, including a description of the assumptions used in calculating the expenses and separate allowances, if any, the replacement of equipment and furnishings and any anticipated major structural repairs or additions.

vii. Identification of assets pledged as collateral for any purpose; and

viii. An estimate of annual payments of principal and interest required by any mortgage loan or other long-term financing.

12. Other material information concerning the facility or the provider as required by the Department or as the provider wishes to include.

#### 5:19-4.3 Form of disclosure statement

(a) The disclosure statement shall be in the following form:

1. A front cover shall contain the name and address of the provider, the name and location of the continuing care retirement community, the effective date of the disclosure statement which shall be the date of certification by the Department and shall contain the following statement in 10-point bold face type:

#### NOTICE TO PURCHASERS

**THIS DISCLOSURE STATEMENT IS FOR INFORMATIONAL PURPOSES ONLY. PURCHASERS SHOULD ASCERTAIN FOR THEMSELVES THAT THE UNIT OFFERED MEETS THEIR PERSONAL REQUIREMENTS. THE NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS HAS NEITHER APPROVED NOR DISAPPROVED THE MERITS OF THIS DISCLOSURE STATEMENT. BE SURE TO READ CAREFULLY ALL DOCUMENTS BEFORE YOU SIGN THEM.**

2. The disclosure statement and the contract shall each state on the cover or top of the first page in bold print the following:

**THIS MATTER INVOLVES A SUBSTANTIAL FINANCIAL INVESTMENT AND A LEGALLY BINDING CONTRACT. IN EVALUATING THE DISCLOSURE STATEMENT AND THE CONTRACT PRIOR TO ANY COMMITMENT, IT IS RECOMMENDED THAT YOU CONSULT WITH AN ATTORNEY AND FINANCIAL ADVISOR OF YOUR CHOICE, IF YOU SO ELECT, WHO CAN REVIEW THESE DOCUMENTS WITH YOU.**

3. A reasonably detailed table of contents showing the subject matter of the various sections, subsections or documents contained in the disclosure statement and the page number on which each appears shall be added at the front of the disclosure statement;

4. The provider shall attach a copy of the standard form of contract for continuing care used by the provider as an exhibit to each disclosure statement;

5. The disclosure statement shall be printed on good quality unglazed white paper no smaller than 8-1/2 inches by 11 inches nor larger than 8-1/2 inches by 14 inches. The cover may be of a different color provided the printed material contained thereon shall be legible;

6. No portion of the disclosure statement shall be underscored, italicized, or printed in larger, heavier or different color type than the remainder of the statement unless required or permitted by the Department.

Administrative Correction to (a)3.

See: 22 N.J.R.

#### 5:19-4.4 Filing of disclosure statement

Two copies of the proposed disclosure statement shall be filed with the application for certification and, if the Department requires revisions to the proposed disclosure statement, two copies of the revised disclosure statements shall be filed.

#### 5:19-4.5 Amendment of the disclosure statement

(a) A provider shall amend its disclosure statement at any time if, in the opinion of the provider or the Department, an amendment is necessary to prevent the disclosure statement from containing any material misstatement of fact or omission to state a material fact as required pursuant to the Act. The provider shall file an amendment or amended disclosure statement with the Department before the provider provides it to a resident or prospective resident.

(b) Amendments and corrections to the disclosure statement shall be by replacement of the amended or corrected material by paste-over or other permanent means.

#### 5:19-4.6 Review of request for amendments

The Department shall process and review requests for amendments of a disclosure statement in accordance with the standards and procedures established in this chapter for review of a disclosure statement.

**5:19-4.7 Use of the disclosure statement**

(a) The disclosure statement shall not be used for any promotional purposes before certification of the facility and thereafter may only be used in its entirety.

(b) No person shall represent or imply that the Department approves or recommends the continuing care retirement community.

**5:19-4.8 Assistance by provider**

The provider shall designate and make knowledgeable personnel available to prospective residents to answer questions about any information contained in the disclosure statement or contract.

**5:19-4.9 Annual disclosure statement**

(a) The provider shall file an annual disclosure statement with the Department which contains the information required for the initial disclosure statement pursuant to N.J.A.C. 5:19-4. The annual disclosure statement also shall include a narrative describing any material differences between the pro forma income statement filed pursuant to these rules either as part of the initial application for a certificate of authority or the most recent annual disclosure statement and the actual results of operations during the fiscal year. The statement also shall contain a revised pro forma income statement for the next fiscal year. The Department may request additional income statements if necessary.

(b) The provider shall file the annual disclosure statement within six months following the end of the provider's fiscal year.

(c) Prior to the provider's acceptance of part or all of any application or entrance fee or the execution of the continuing care agreement by the resident, whichever occurs first, the provider shall deliver the most current annual disclosure statement to the current or prospective resident and to any other person with whom the continuing care agreement is or may be entered into.

(d) The annual disclosure statement, when filed with the Department, shall be accompanied by a fee of \$130.00 plus \$13.00 per certified unit.

**SUBCHAPTER 5. ADVERTISING****5:19-5.1 General standards**

(a) All advertising which is used by or on behalf of the provider 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.

(b) No provider or person acting on behalf of the provider shall make, publish, disseminate, circulate or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated or placed before the public in a newspaper or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement of any sort containing an assertion, representation or statement which is untrue, deceptive or misleading.

(c) No provider or person acting on behalf of the provider shall file with the Department or make, publish, disseminate, circulate or deliver to any person or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated or delivered to any person, or placed before the public, any disclosure statement, financial statement or continuing care agreement that contains an assertion, representation, or statement which is untrue, deceptive or misleading.

**5:19-5.2 Specific standards**

(a) Without limiting the general standards of advertising in this chapter, all advertising, except billboards, shall substantially conform to the following specific standards:

1. Advertising that refers to a specific entrance fee shall state the full entrance fee and shall state any periodic charges, assessments or cost to the purchaser;
2. In order to eliminate fictitious pricing or illusory discounts, no certificates shall be distributed indicating that a discount from the advertised price shall be given. This shall not preclude the giving of a discount on the basis of any reasonable criteria;
3. Advertising shall not refer to any facility that does not then exist unless that fact is prominently stated in the advertising and the proposed date of completion is contained therein;
4. Any reference to proposed improvements for which the purchaser will be assessed shall clearly set forth the fact of the assessment and the amount of the assessment;
5. Advertising shall not state that items or services are free when the cost thereof is included in the monthly maintenance fee.
6. Advertising shall not contain photographs, sketches or artist's conceptions of proposed facilities unless the fact that the photographs, sketches or artist's conceptions are of proposed facilities is stated immediately adjacent to them;
7. Advertising shall not refer in wording, photograph, sketch or artist's conception to any recreational, medical, social, shopping or other facility that is not located within the continuing care retirement community unless so stated and the approximate distance therefrom in miles is set forth;

8. Advertising shall not refer to a price increase unless the amount and date of the increase are indicated;

9. Advertising in the form of vacation certificates or other promotions intended to induce prospective residents to visit the continuing care retirement community that requires the holders thereof to attend or submit to a sales promotion shall clearly and conspicuously state the necessity of attendance at or submission to the sales promotion and the approximate length of time required to be spent by the prospective resident at such sales promotion;

10. Any model unit that is used as a part of a promotional plan shall be in substantial conformity with the units that are subsequently constructed unless otherwise noted in the contract.

(b) Application fees shall not exceed \$500.00 unless the provider can demonstrate that the actual cost of processing exceeds \$500.00.

Amended by R.1988 d.190, effective May 2, 1988.

See: 20 N.J.R. 347(a), 20 N.J.R. 976(a).

Added application fees.

#### 5:19-6.4 Provisions required

(a) A continuing care agreement executed on or after March 2, 1987 shall be written in plain English, and in language understandable by a lay person, and shall include, but not be limited to, the following:

1. A provision for the continuing care of one resident, or two or more residents occupying space designed for multiple occupancy under appropriate procedures established by the provider, and a statement showing the value of all property transferred, including donations, subscriptions, fees and any other amounts payable by, or on behalf of, the resident;

2. A statement on a form provided by the Department specifying all services which are to be provided to the resident by the provider including, in detail, all items which the resident will receive such as food, shelter, nursing care, pharmaceuticals and burial and whether the items will be provided for a designated period of time or for life;

3. A description of the health and financial conditions upon which the provider may have the resident relinquish his space in the designated facility;

4. A description of the health and financial conditions required for a person to continue as a resident;

5. A description of the circumstances under which the resident shall be permitted to remain in the facility in the event of financial difficulties of the resident. The stated policy may not be less than the terms stated in N.J.A.C. 5:19-6.5(f) and (g);

6. A statement of the fees that will be charged if the resident marries a person who is not a resident of the facility, the terms concerning the entry of a spouse into the facility and the consequences if the spouse does not meet the requirements for entry;

7. A statement providing that the agreement may be cancelled upon giving at least 60 days' notice by the provider or the resident, except that if an agreement is cancelled by the provider because there has been a good faith determination in writing, signed by the medical director and the administrator of the facility, that a resident is a danger to himself or others, only notice that is reasonable under the circumstances is required;

8. A statement providing in clear and understandable language, in print no smaller than the largest type used in the body of the agreement, the terms governing the refund of any portion of the entrance fee;

## SUBCHAPTER 6. CONTRACTS

### 5:19-6.1 General standards

All contracts or agreements for continuing care in a continuing care retirement community shall be fair and reasonable and shall not impose undue restrictions or hardships upon the resident.

### 5:19-6.2 Notice of rescission

Every contract or agreement shall contain the following notice in 10-point bold face type or larger, directly above the space provided for the signature of the resident.

**NOTICE TO THE RESIDENT: YOU HAVE THE RIGHT TO CANCEL THIS CONTRACT OR AGREEMENT BY SENDING OR DELIVERING WRITTEN NOTICE OF CANCELLATION TO THE PROVIDER BY MIDNIGHT OF THE 30TH CALENDAR DAY FOLLOWING THE DAY ON WHICH IT WAS EXECUTED BY BOTH PARTIES, OR AN INITIAL DEPOSIT WAS MADE. SUCH CANCELLATION IS WITHOUT PENALTY, AND ALL DEPOSITS MADE BY YOU SHALL BE PROMPTLY REFUNDED, EXCEPT FOR EXPENSES INCURRED BY THE PROVIDER AT THE RESIDENT'S SPECIFIC REQUEST.**

### 5:19-6.3 Deposits and application fees

(a) All deposits, downpayments, or other funds paid to a provider by a purchaser shall be held in an interest bearing separate trust account in a banking or similar institution located within this State or deposited with an attorney licensed to practice law in this State, or until occupancy or cancellation of the contract, as governed by N.J.A.C. 5:19-7.4. Occupancy of the living unit by the resident prior to the expiration of the 30 day rescission period shall not be construed as a waiver of any part of said rescission period.

9. A statement of the terms under which an agreement is cancelled by the death of the resident, which statement may contain a provision stating that upon the death of the resident the moneys paid for the continuing care of the resident shall be considered earned and become the property of the provider; and

10. A statement providing for at least 30 days advance notice to the resident before any change in fees or changes in the scope of care or services are effective, except for changes required by State or Federal assistance programs.

#### 5:19-6.5 Rescission and removal

(a) A resident has the right to rescind a continuing care agreement without penalty or forfeiture, except those costs specifically incurred by the facility at the request of the resident and set forth in writing in a separate addendum signed by both parties to the agreement, within 30 days after making an initial deposit or executing the agreement. A resident shall not be required to move into the facility designated in the agreement before the expiration of the 30 day period.

(b) If a resident dies before the date the unit is available for occupancy pursuant to a continuing care agreement, or through illness, injury or incapacity is precluded from becoming a resident under the terms of the continuing care agreement, the agreement shall be automatically rescinded and the resident or the resident's legal representative shall receive a full refund of all moneys paid to the facility, except those costs specifically incurred by the facility at the request of the resident and set forth in writing in a separate addendum signed by both parties to the agreement.

(c) No agreement for care shall permit dismissal or discharge of the resident from the facility prior to the expiration of the agreement without just cause for the removal. For the purposes of the Act, "just cause" means but is not limited to a good faith determination in writing, signed by the medical director and the administrator of the facility, that a resident is a danger to himself or others while remaining in the facility. The written determination shall state:

1. That the determination is made in good faith;
2. The reasons supporting the determination that the resident is a danger to himself or others;
3. 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; and
4. The basis for the conclusion that the danger is such that a notice period of less than 60 days is appropriate.

(d) If a facility dismisses a resident for just cause, the resident shall be entitled to a refund of his unearned entrance fee, if any, in the same manner as provided in (f) below.

(e) A resident may request a hearing to contest a facility's decision to dismiss or discharge the resident. The hearing shall be held pursuant to the Administrative Procedure Act (P.L. 1968, c.410, N.J.S.A. 52:14B-1 et seq.) and the Uniform Administrative Practice Rules, N.J.A.C. 1:1-1 et seq.

(f) It shall not be deemed just cause if the resident is unable to pay monthly maintenance fees until the entire unearned entrance fee plus, where applicable, any third-party insurance benefits received, are earned by the facility. For the purpose of this subsection, the unearned portion shall be the difference between the entrance fee paid by, or on behalf of, the resident and the cost of caring for the resident based upon the per capita cost to the facility. In lieu of calculating the actual per capita cost of caring for a resident, a facility may provide, in the agreement for continuing care, that the per capita cost of caring for the resident shall be calculated as follows:

1. No more than two percent of the entrance fee for each month the resident occupies, or is entitled to occupy, a bed in the residential unit or residential health care unit of the facility;
2. No more than four percent of the entrance fee for each month the resident occupies, or is entitled to occupy, a bed in the nursing unit of the facility; and
3. No more than 10 percent of the entrance fee as a one-time charge for processing and refurbishment.

(g) If the entrance fees as set forth in (f) above are exhausted within 90 days of the date of failure to pay, the facility may not require the resident to leave before 90 days from the date of failure to pay, during which time the resident shall continue to pay the facility a reduced fee based upon the resident's current income.

(h) No act, agreement or statement of a resident or of 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 intended for the benefit or protection of the resident or the individual purchasing care for the resident.

(i) An agreement entered into prior to March 2, 1987 or prior to the issuance of a certificate of authority to the provider is valid and binding upon both parties in accordance with the terms of the agreement.

#### Case Notes

Section of continuing care facility's residence agreement authorizing facility to discharge and remove a resident merely by giving sixty-day advance notice violated the "just cause" provision in statute, providing that no agreement for care shall permit dismissal or discharge of the resident from the facility prior to the agreement without just cause for the removal, and thus, this section of the facility's residence agreement was legally void and unenforceable as against public policy. *Seabrook Village v. Murphy*, 853 A.2d 280, 371 N.J.Super. 319.

Department of Community Affairs' (DCA) determination that continuing care retirement facility had established "just cause" for discharge of resident constituted an utter abdication of the DCA's responsibilities under the Continuing Care Retirement Community Regulation and Financial Disclosure Act, in that the "decision" by the DCA was reached without conducting and evidentiary hearing and was facially devoid of legal analysis. *Seabrook Village v. Murphy*, 371 N.J.Super. 319, 853 A.2d 280.

**SUBCHAPTER 7. FINANCIAL RESPONSIBILITY****5:19-7.1 Liquid reserves**

(a) Each provider shall establish and maintain liquid reserves in an amount equal to or exceeding the greater of:

1. 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 facility; or
2. 15 percent of the projected annual operating expenses of the facility, exclusive of depreciation.

(b) A provider shall notify the Department in writing at least 10 days prior to reducing the amount of funds available to satisfy the applicable liquid reserve requirement. A provider may not expend more than one-twelfth of the required balance each calendar month.

(c) In a facility where some residents are not under continuing care agreements, the reserve shall be computed only on the proportional share of financing or operating expenses that is applicable to residents under continuing care agreements at the end of the provider's most recent fiscal year.

(d) A provider may use funds in an endowment fund or escrow account, including an escrow account established by or pursuant to a mortgage loan, bond indenture or other long-term financing, to satisfy the reserve requirements of this section if the funds are available to make payments when operating funds are insufficient for these purposes.

(e) In the case of a provider who has offered continuing care agreements to existing or prospective residents in a facility established prior to March 2, 1987 and which has one or more residents living there pursuant to agreements entered into prior to March 2, 1987, if the provider is unable to comply with this section of these rules within the time required, the Department may, upon the written request of the provider, issue a temporary certificate of authority to the provider. The provider may then enter into continuing care agreements which are in compliance with all other applicable provisions of the Act until the permanent certificate is issued.

(f) The temporary certificates shall be issued only to those existing providers who shall be able to comply with the provisions of this section within a period of time determined by the Department but which does not exceed two years. If a provider is not in compliance on or before the expiration date of the temporary certificate, the provider may request an extension from the Department. The Department may grant an extension of up to three years to a provider who shall be able to comply with this section in that time period.

#### 5:19-7.2 Financial responsibility

(a) The Department may require a provider to establish and maintain in escrow, on a current basis with a bank, trust company or other escrow agent approved by the Department, a portion of all entrance fees received by the provider in an aggregate amount not to exceed the total of all principal and interest payments due during the next 12 months on account of any first mortgage loan or other long-term financing of the facility. The provider may invest the

funds in the escrow account, with the earnings thereon payable to the provider. If the provider so requests in writing, the escrow agent shall release up to one-twelfth of the original principal balance of the escrow account. The escrow agent shall not so release funds more than once during any calendar month, and then only after the escrow agent has given written notice to the Department at least 10 days prior to release. The amount of this escrow fund shall be included in satisfying the reserves required pursuant to N.J.A.C. 5:19-7.1.

(b) This section shall be applicable only when the Department has cause to believe that additional protection is necessary to secure the provider's performance of the terms of all resident agreements.

#### 5:19-7.3 Department's lien

(a) Prior to the issuance of a certificate of authority pursuant to these rules, or at any other time the Department determines it is in the best interest of residents of a facility, the Department may file a lien on the real and personal property of the provider or facility to secure the obligations of the provider pursuant to existing and future contracts for continuing care. A lien filed under this section is effective for a period of 10 days following its filing and may be extended by the Department if the Department finds that the extension is advisable for the protection of residents of the facility.

(b) The Department may foreclose on the lien upon the liquidation of the facility or the insolvency or bankruptcy of the provider. In this event, the Department shall use the proceeds thereof for full or partial satisfaction of obligations of the provider pursuant to contracts for continuing care in effect at that time.

(c) The lien provided for in this section is subordinate to the lien of any first mortgage on the real property of the facility, and if the Department determines and so states in writing that it is advisable for the efficient operation of the facility, the lien may be subordinated to the claims of other persons.

#### 5:19-7.4 Escrow requirements

(a) The provider shall establish an interest-bearing escrow account with a bank, trust company or other escrow agent authorized to do business in the State of New Jersey, as a condition of the issuing of a certificate of authority. The provider shall place in the escrow account any entrance fees or payments in excess of five percent of the then-existing entrance fee for the living unit that are received by the provider prior to the date the resident is permitted to occupy the living unit in the facility.

(b) The fees or payments are subject to release from the escrow account in the following manner:

1. If the entrance fee gives the resident the right to occupy a living unit which has been previously occupied, the entrance fee and any interest earned thereon shall be released to the provider when the living unit becomes available for occupancy by the new resident.

2. If the entrance fee applies to a living unit which has not been previously occupied, the entrance fee and any interest earned thereon shall be released to the provider when the Department is satisfied that:

i. Aggregate entrance fees received or receivable by the provider pursuant to executed continuing care agreements equal at least 50 percent of the sum of the entrance fees due at full occupancy of the portion of the facility being certified, except that entrance fees receivable pursuant to an agreement shall be counted only if the facility has received a deposit of 35 percent or more of the entrance fee due from the individual signing the contract;

ii. The aggregate entrance fees received or receivable pursuant to the preceding paragraphs plus anticipated proceeds of any first mortgage loan or other long-term financing commitment and funds from other sources in the actual possession of the provider are equal to at least 50 percent of the aggregate cost of constructing or purchasing, equipping and furnishing the facility plus at least 50 percent of the funds necessary to fund start-up losses as estimated by the provider in the statement of anticipated source and application of funds submitted pursuant to N.J.A.C. 5:19-4.2(a)11; and

iii. The provider has received a preliminary commitment for any permanent mortgage loan or other long-term financing described pursuant to N.J.A.C. 5:19-4.2(a)11 and any conditions of the commitment prior to disbursement of funds thereunder, other than completion of the construction or closing of the purchase of the facility, are substantially satisfied.

3. If the funds in the escrow account established pursuant to this section and any interest earned thereon are not released within 36 months, or a greater time if so specified by the provider with the consent of the Department, the escrow agent shall return the funds to the individuals who made payments to the provider.

4. Nothing in this section shall require the provider to place any non-refundable application fees charged to prospective residents in escrow.

5. In lieu of any escrow required pursuant to this section, a provider is entitled to post a letter of credit from a financial institution, negotiable securities or a bond by a surety authorized to do business in this State, in a form approved by the Department and in an amount not to exceed the amount required by (b)2 above. The provider shall execute the letter of credit, negotiable securities or bond in favor of the Department on behalf of individuals who are entitled to a refund of entrance fees from the provider.

6. A provider may apply to the Department for a waiver of the applicable escrow requirements of this section when a provider constructs additional living units in an amount that does not exceed 10 percent of the facility's existing living units for continuing care residents. The provider shall apply for the waiver in writing to the Department. The Department may grant the waiver which may be effective for a period of one year or longer, at the discretion of the Department, if the construction of additional units meets the requirements of this subsection.

7. Upon receipt of a notice from the provider that an individual is entitled to a refund of an entrance fee, the escrow agent shall return the funds held in the escrow account to the individual.

Amended by R.1998 d.59, effective January 20, 1998.

See: 29 N.J.R. 3761(a), 30 N.J.R. 335(a).

Inserted (b) designation, and made a corresponding internal citation change.

#### 5:19-7.5 Provider's collateral

A provider shall pledge only the unencumbered assets of a continuing care facility as collateral for the purpose of securing loans for other continuing care facilities, whether proposed or existing.

#### 5:19-7.6 Bankruptcy or insolvency of provider

(a) The Department may apply to a court of competent jurisdiction or to the Federal bankruptcy court, if that court had previously taken jurisdiction over the provider or facility, for an order authorizing the Department to appoint a trustee to rehabilitate or to liquidate the facility if the Department determines that:

1. A portion of a provider's reserve fund escrow as required pursuant to the Act has been or is proposed to be released;

2. A provider is or will be unable to meet the pro forma income or cash flow projections filed pursuant to N.J.S.A. 52:27D-336, except in a manner that may endanger the ability of the provider to fully meet its continuing care contract obligations.

3. A provider has failed to maintain the reserves required under the Act; or

4. A provider is bankrupt or insolvent, or in imminent danger of becoming bankrupt or insolvent.

(b) An order to rehabilitate a facility shall direct the Department or trustee to take possession of the property of the provider and to conduct the business thereof, including the employment of managers or agents that the Department or trustee deems necessary and to take those steps the court directs toward removal of the causes and conditions which have made rehabilitation necessary.

(c) If the Department determines that further efforts to rehabilitate the provider would be useless, the Department may apply to the court for an order of liquidation.

(d) In applying for an order to rehabilitate or liquidate a facility, the Department shall give due consideration in the application to the manner in which the welfare of persons who have previously contracted with the provider for continuing care may be best served. In furtherance of this objective, the proceeds of any lien obtained by the Department pursuant to the Act may be:

1. Used in full or partial payment of entrance fees;
2. Used on behalf of residents of a facility that is being liquidated; or
3. Paid, on behalf of those persons, to other facilities operated by providers who hold a certificate of authority issued pursuant to the Act.

(e) The Department shall attempt to keep residents of the community informed about its actions to rehabilitate or liquidate the facility and, when appropriate, the Department shall meet with residents of the facility.

#### 5:19-7.7 Initial occupancy

(a) A provider shall not permit the first resident to occupy a unit until the provider has:

1. Supplied the Department with a financial feasibility study, including an opinion letter, demonstrating, to the Department's satisfaction, that the project may reasonably be expected to be financially viable; and
2. Received and accepted binding contracts for occupancy of at least 50 percent of the units either in the facility or in the portion of the facility being certified.

(b) If, at any time prior to occupancy by the first resident, the assumptions of the financial feasibility study described in (a) above become so materially inconsistent with actual facts or events that have occurred since the submission of the financial feasibility study to the Department that the financial feasibility study opinion is no longer valid, the provider shall so notify the Department and shall provide the Department with a new five-year financial projection, and related new assumptions, to demonstrate and support the financial feasibility of the project.

New Rule, R.1998 d.59, effective January 20, 1998.  
See: 29 N.J.R. 3761(a), 30 N.J.R. 335(a).

## SUBCHAPTER 8. NONBINDING RESERVATION AGREEMENTS

### 5:19-8.1 Scope

Upon application to and certification by the Department as provided in N.J.A.C. 5:19-8.2 below, a provider may

accept a nominal sum, not to exceed 10 percent of the entrance fee, which sum shall be held in trust, as a nonbinding reservation for the purpose of determining the market demand for a proposed continuing care retirement community and shall not be deemed to be an offer or disposition of an interest therein, provided the provider shall do so under the terms and conditions contained in this subchapter.

### 5:19-8.2 Application

(a) Prior to accepting any nonbinding reservation agreements, the provider shall submit an application to the Department for certification that contains the following information:

1. The name and address of the provider;
2. The location and description of the facility to be developed;
3. The number and types of living units to be contained in the continuing care retirement community as well as a description of the services and facilities;
4. The selling price at which each living unit will be offered, together with a general description of the living unit or interest offered at that price and the estimated periodic charges;
5. The name and address of the person or firm holding the deposits and the name and location of the banking or similar institution wherein the deposits will be deposited;
6. A statement that no binding contract for a living unit will be offered or accepted until the continuing care retirement community is certified by the Department in accordance with this chapter;
7. A copy of the most recent financial statement of the provider, certified to be true and accurate by an independent public accountant;
8. A copy of all advertising material;
9. A copy of the proposed reservation agreement form;
10. Any other material deemed necessary by the Department in furtherance of the provisions of this chapter.

(b) The application shall be accompanied by a filing fee in the amount of \$250.00.

### 5:19-8.3 Advertising standards

(a) All nonbinding reservations advertising material shall conform to the provisions of N.J.A.C. 5:19-5 and, in addition, shall contain the following:

1. A statement that the purpose of the advertising is to solicit nonbinding reservations;

2. A statement that the nonbinding reservation is not a contract and may be cancelled by the prospective purchaser at any time, without cause;

3. A statement that any money paid to the developer shall be refunded to the prospective purchaser upon request and cancellation of the nonbinding reservation.

#### 5:19-8.4 Reservation form

(a) Every provider accepting any nonbinding reservation agreement shall be given a reservation form to all prospective purchasers, which shall contain the following items:

1. The name and location of the project;
2. The name and address of the provider;
3. The name and address of the prospective purchaser;
4. A description of the particular living unit reserved;
5. The purchase price and terms;
6. A notice in 10-point bold face type that the nonbinding reservation agreement does not obligate the purchaser in any way; that there is or is not, as the case may be, a guarantee by the provider that the purchase price and terms will not be changed for such period of time as may be specified in the agreement; that there is or is not, as the case may be, a guarantee that the living unit described in the agreement will be built or otherwise made available for purchase by the prospective purchaser; and that he or she may receive a refund of the deposit, upon request, at any time prior to the execution of a contract or agreement of sale;
7. All nonbinding reservation agreements shall be signed by the party reserving the unit and the provider or the provider's agent;
8. A statement of the period of time for which the nonbinding reservation agreement is effective.

#### 5:19-8.5 Effective period

Unless cancelled by the prospective purchaser, the nonbinding reservation agreement shall be effective for a period of not less than 30 days after notice to the prospective purchaser that the application for certification and the disclosure statement have been certified by the Department as provided in this chapter or until the provider withdraws the proposal to establish a continuing care retirement community.

#### 5:19-8.6 Notice

The provider shall give written notice to the prospective purchaser that the application for certification and the disclosure statement have been certified by the Department, enclosing a copy of the disclosure statement, and shall notify the prospective purchaser that he or she must enter into a contract or agreement of sale within a specific period of time, but not less than 30 days, or the nonbinding reservation will expire and all deposit money will be refunded.

#### 5:19-8.7 Period of validity of certification

The certification of an application to accept nonbinding reservations shall be valid for a period of one year from the date of certification unless an application for certification pursuant to N.J.A.C. 5:19-3 is submitted during that time, in which event the certification of the application to accept nonbinding reservations shall automatically be extended for the entire certification period and may be further extended from time to time by the Department.

### SUBCHAPTER 9. ADMINISTRATION

#### 5:19-9.1 Enforcing agency designated

The Division of Housing and Development in the Department of Community Affairs shall administer and enforce these rules. Within the Division, responsibilities for administration and enforcement of these rules shall be vested in the Bureau of Homeowner Protection. All powers and responsibilities vested in the Commissioner shall be executed by the Chief, Bureau of Homeowner Protection, with the exception of the power to promulgate rules and the power to issue final decisions in administrative hearings.

#### 5:19-9.2 Complaints and investigations

Any person may, at any time, file a complaint with the Department concerning any matter subject to the Act or these rules. Said complaint may be written or oral. Nothing contained herein shall prevent the Department from instituting an investigation on its own initiative.

#### 5:19-9.3 Rights to a hearing

Any applicant aggrieved by an order or determination of the Department issued under these rules shall be entitled to a hearing as provided by law, provided a written request for such hearing is filed within 20 days of the receipt of the order or determination. Hearing requests shall be addressed to the Hearing Coordinator, Division of Housing and Development, PO Box 802, New Jersey 08625-0802.

Amended by R.1992 d.114, effective March 16, 1992.

See: 24 N.J.R. 3(b), 24 N.J.R. 934(b).

Address changed.

Amended by R.1998 d.59, effective January 20, 1998.

See: 29 N.J.R. 3761(a), 30 N.J.R. 335(a).

Expanded zip code.

#### 5:19-9.4 Conduct of hearing

All hearings shall be conducted in accordance with the Administrative Procedure Act, (N.J.S.A. 52:14B-1 et seq.) and the amendments thereto and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq.

**5:19-9.5 Consent orders**

The Department may, in its discretion, enter into any consent order, stipulation or settlement in any matter.

**5:19-9.6 Applicability**

(a) These rules shall be applicable as follows:

1. A provider who is offering but not providing continuing care on March 2, 1987 may be given a reasonable time, not to exceed one year from the date of promulgation of these rules, within which to comply with the requirements of the Act and obtain a certificate of authority.

2. A facility which has not entered into any agreements for continuing care pursuant to the Act since 1965, is not subject to the provisions of the Act; but this exclusion shall not apply if that facility enters into one or more agreements for continuing care on or after March 2, 1987.

3. A facility which has fewer than 50 residents who are under continuing care agreements on the date of enactment of the Act is not subject to the provisions of the Act; but this exclusion shall not apply if that facility increases the number of its residents under continuing

care agreements to 50 or more, after the date of enactment of the Act.

4. A provider who is offering continuing care on the effective date of the Act shall be given a reasonable time, not to exceed one year from the date of promulgation of this chapter, within which to comply with the requirements of the Act and obtain a Certificate of Authority.

**5:19-9.7 Construction**

These rules shall be construed liberally to effectuate the purposes of the Act and of these rules.

**5:19-9.8 Waiver**

The Department may grant exemptions to these rules or any part thereof when, in its opinion, the enforcement thereof is unduly burdensome or impractical.

**5:19-9.9 Severability**

If any provision of these rules or the application thereof to any person or circumstances is held to be invalid, the invalidity shall not affect other provisions or applications of these rules which can be given effect and to this end the provisions of these rules are severable.