

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 a continuing care retirement community or similar facility is not subject to the provisions of the Act, or who is contemplating a continuing care retirement community or similar facility which he believes may not be subject to the Act, may apply to the Department for a Letter of Nonapplicability. Such application shall be in writing and shall list the reasons why such existing or proposed continuing care retirement community or similar facility may not be subject to the Act. An application for a Letter of Nonapplicability pursuant to this Subsection shall be accompanied by a fee of \$50.00.

(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.

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 \$400.00 plus \$40.00 per living unit made payable to the Treasurer, State of New Jersey. In the event living units are added during certification, an additional fee of \$40.00 per living unit shall be paid. There will 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.

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.

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

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;