

CHAPTER 19**CONTINUING CARE RETIREMENT
COMMUNITY RULES****Authority**

N.J.S.A. 52:27D-330 et seq., specifically N.J.S.A. 52:27D-358.

Source and Effective Date

R.1993 d.79, effective January 15, 1993.
See: 24 N.J.R. 1146(a), 25 N.J.R. 686(b).

Executive Order No. 66(1978) Expiration Date

Pursuant to the requirements and criteria of Executive Order No. 66(1978), this chapter expires on January 15, 1998.

Chapter Historical Note

This Chapter 19 was previously Rules of Practice of Bureau of Housing Inspection and was adopted pursuant to authority of N.J.S.A. 52:27D-21 and 55:13A-1 et seq. The chapter was filed and became effective on June 18, 1971, as R.1971 d.94. 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 Chapter 19, Rules of Practice of Bureau of Housing Inspection was repealed on May 8, 1980 as R.1980 d.205 to become effective on June 1, 1980. See: 12 N.J.R. 305(a). Chapter 19, Continuing Care Retirement Community Rules became effective February 1, 1988 as R.1988 d.60. See: 19 N.J.R. 597(a), 20 N.J.R. 256(b). Pursuant to the authority of N.J.S.A. 52:27D-332 and 338, Subchapter 8, Nonbinding Reservation Agreements, became effective May 2, 1988 as R.1988 d.190. See: 20 N.J.R. 347(a), 20 N.J.R. 976(a). Pursuant to Executive Order No. 66(1978), Chapter 19 was readopted, effective January 15, 1993. See: Source and Effective Date.

See section annotations for additional rulemaking.

CHAPTER TABLE OF CONTENTS**SUBCHAPTER 1. GENERAL PROVISIONS**

- 5:19-1.1 Purpose
- 5:19-1.2 Affirmative determination
- 5:19-1.3 Definitions

SUBCHAPTER 2. CERTIFICATION

- 5:19-2.1 Certification required
- 5:19-2.2 Nonapplicability
- 5:19-2.3 Request for Letter of Nonapplicability
- 5:19-2.4 Application for certification; submission and fees
- 5:19-2.5 Notice of filing
- 5:19-2.6 Order of certification
- 5:19-2.7 Notice of correction
- 5:19-2.8 Order of rejection
- 5:19-2.9 Petition for reconsideration
- 5:19-2.10 Automatic certification
- 5:19-2.11 Order of revocation
- 5:19-2.12 Cease and desist orders; injunctions
- 5:19-2.13 Annual report
- 5:19-2.14 Consolidated filing
- 5:19-2.15 Cyclical inspections

SUBCHAPTER 3. APPLICATION FOR CERTIFICATION

- 5:19-3.1 Contents of application for certification
- 5:19-3.2 Form of the application for certification
- 5:19-3.3 Amendment of the application for certification
- 5:19-3.4 Review of requests for amendment

- 5:19-3.5 Public inspection of application for certification
- 5:19-3.6 Copies of the application for certification

SUBCHAPTER 4. DISCLOSURE STATEMENT

- 5:19-4.1 Disclosure statement required
- 5:19-4.2 Contents of disclosure statement
- 5:19-4.3 Form of disclosure statement
- 5:19-4.4 Filing of disclosure statement
- 5:19-4.5 Amendment of the disclosure statement
- 5:19-4.6 Review of request for amendments
- 5:19-4.7 Use of the disclosure statement
- 5:19-4.8 Assistance by provider
- 5:19-4.9 Annual disclosure statement

SUBCHAPTER 5. ADVERTISING

- 5:19-5.1 General standards
- 5:19-5.2 Specific standards

SUBCHAPTER 6. CONTRACTS

- 5:19-6.1 General standards
- 5:19-6.2 Notice of rescission
- 5:19-6.3 Deposits and application fees
- 5:19-6.4 Provisions required
- 5:19-6.5 Rescission and removal

SUBCHAPTER 7. FINANCIAL RESPONSIBILITY

- 5:19-7.1 Liquid reserves
- 5:19-7.2 Financial responsibility
- 5:19-7.3 Department's lien
- 5:19-7.4 Escrow requirements
- 5:19-7.5 Provider's collateral
- 5:19-7.6 Bankruptcy or insolvency of provider

**SUBCHAPTER 8. NONBINDING RESERVATION
AGREEMENTS**

- 5:19-8.1 Scope
- 5:19-8.2 Application
- 5:19-8.3 Advertising standards
- 5:19-8.4 Reservation form
- 5:19-8.5 Effective period
- 5:19-8.6 Notice
- 5:19-8.7 Period of validity of certification

SUBCHAPTER 9. ADMINISTRATION

- 5:19-9.1 Enforcing agency designated
- 5:19-9.2 Complaints and investigations
- 5:19-9.3 Rights to a hearing
- 5:19-9.4 Conduct of hearing
- 5:19-9.5 Consent orders
- 5:19-9.6 Applicability
- 5:19-9.7 Construction
- 5:19-9.8 Waiver
- 5:19-9.9 Severability

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.

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:	\$0.50 per page
Eleventh page to 20th page:	\$0.25 per page
All pages over 20:	\$0.10 per page

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

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)3ii 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;

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 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. 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 under construction, 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 (a)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.

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.

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, CN 802, Trenton, New Jersey 08625.

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.

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.

