

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.

## 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: