



STATE CORPORATION COMMISSION
BUREAU OF INSURANCE

Obsolete and Withdrawn July 22, 1985
By Administrative
Letter 2015-09

ADMINISTRATIVE LETTER
1985-15

TO: All Continuing Care Providers

RE: New Regulatory Requirements

On July 1 of this year all entities that provide continuing care in accordance with the following definition became subject to new regulatory requirements under the jurisdiction of the State Corporation Commission (a copy of the new statutes is attached).

"Continuing care" means providing or committing to provide board, lodging and nursing services to an individual, other than an individual related by blood or marriage, (i) pursuant to an agreement effective for the life of the individual or for a period in excess of one year, including mutually terminable contracts, and (ii) in consideration of the payment of an entrance fee or periodic charges. A contract shall be deemed to be one offering nursing services, irrespective of whether such services are provided under such contract, if nursing services are offered to the resident entering such contract either at the facility in question or pursuant to arrangements specifically offered to residents of the facility.

Those entities that fall within the above definition should review the new statutes very carefully. To be in compliance with the new statutes, you will need to file several documents with the State Corporation Commission's Bureau of Insurance. These documents are (1) a completed continuing care provider registration statement, (2) a disclosure statement that conforms to the requirements of § 38.1-957 and the disclosure statement guidelines established by the Commission, and (3) a copy of your standard resident's contract which conforms to the requirements of § 38.1-960 (copies of items (1) and (2) are attached).

Three copies of each document shall be submitted with every filing. Filings should be mailed to:

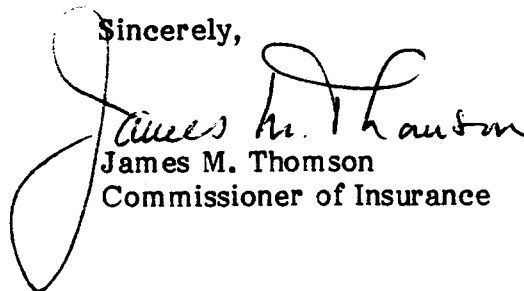
Mr. Alfred W. Gross
Supervisor of Company Licensing
State Corporation Commission
Bureau of Insurance
P. O. Box 1157
Richmond, VA 23209

Continuing care providers that existed prior to July 1, 1985 must be in full compliance with the new statutes prior to January 1, 1986. As the Commission is entitled to a ninety day period within which it shall approve or disapprove the initial filing, it is essential that all existing continuing care providers file the necessary documents with the Bureau of Insurance before October 3, 1985. New continuing care providers must be in full compliance with the new statutes before providing or offering to provide continuing care.

Any questions relating to the continuing care provider registration statement or the disclosure statement should be directed to Mr. Gross at (804) 786-3081. Any questions relating to resident's contracts should be directed to Mrs. Ruth V. Dabney at (804) 786-1270.

To facilitate orderly implementation of the new requirements, we are requesting any entity that receives this letter and which does not fall within the definition of continuing care to write to Mr. Gross. You have been identified as an entity that probably comes within the scope of the new statutes. Your letter should explain in detail why you are not subject to the new statutes.

Sincerely,


James M. Thomson
Commissioner of Insurance

JMT:bt

DISCLOSURE STATEMENT GUIDELINES

The disclosure statement of each facility shall contain all of the information required below unless such information is contained in the continuing care contract and a copy of that contract is attached to and made a part of the disclosure statement. The information shall be presented in the order set forth below and shall be preceded by the prescribed headings in boldface type.

Regarding the disclosure statement submitted to the State Corporation Commission:

1. It shall be printed in at least ten point type;
2. It shall, in a conspicuous fashion, state on its cover that the filing of the disclosure statement with the State Corporation Commission does not constitute approval, recommendation or endorsement of the facility by the State Corporation Commission;
3. A response under each heading is required;
4. When any disclosure requirement is not applicable to your facility this must be so stated in the disclosure statement.
5. When required information is contained in the continuing care contract as opposed to the body of the disclosure statement, the disclosure statement must indicate by explicit reference where the information may be found in the contract;
6. The section "Anticipated Source and Application of Purchase or Construction Funds" applies only to new facilities;
7. Additional information concerning the provider or the facility may be included under appropriately labeled headings; and
8. A copy of the standard form or forms for continuing care contracts used by the provider shall be attached as an exhibit to each disclosure statement.

Required Information**Continuing Care Provider**

Give the name and business address of the provider and a statement of whether the provider is a partnership, foundation, association, corporation or other type of business or legal entity. Such statement shall also set forth the jurisdiction in which the provider is organized if applicable.

If the provider is composed of multiple legal entities, give the required information for all such entities and provide a specific description of their relationship to each other.

Officers, Directors, Trustees, Managing and General Partners, and Certain Persons Who Hold Equity or Beneficial Interests

Give the names and business addresses of the officers, directors, trustees, managing or general partners, and any person having a ten percent or greater equity or beneficial interest in the provider, and a description of such person's interest in or occupation with the provider. In the case a nonstock corporation also provide the required information for members of the nonstock corporation.

"Beneficial interest" means any current interest in a provider that is directly related to the financial performance of that provider. Beneficial interest includes:

1. All forms of direct or indirect ownership of a provider, including ownership through another legal entity;
2. Ownership or control of any voting class of securities issued by the provider; and
3. Any contract, including a lease or management contract, with a provider where the amount of consideration under the contract is tied to the financial performance of the provider.

This section shall be divided into appropriately labeled subsections for each group of persons listed.

Business Experience of; Acquisition of Goods and Services from; and Criminal, Civil and Regulatory Proceedings Against the Provider; its Officers, Directors, Trustees, Managing and General Partners; Certain Persons Who Hold Equity or Beneficial Interests; and the Management

For (i) the provider, (ii) any person named in the previous section or (iii) the proposed management, if the facility will be managed on a day-to-day basis by a person other than an individual directly employed by the provider:

- a. Give a description of any specific business experience in the operation or management of similar facilities.
- b. Give the name and address of any professional service, firm, association, foundation, trust, partnership or corporation or any other business or legal entity in which such person has, or which has in such person, a ten percent or greater direct or indirect interest and which it is presently intended will or may provide goods, leases or services to the provider of a value of \$500 or more, within any year, including:

- (1) A description of the goods, leases or services and the probable or anticipated cost thereof to the provider;
- (2) The process by which the contract was awarded;
- (3) Any additional offers that were received; and
- (4) Any additional information requested by the Commission detailing how and why a contract was awarded.

c. Give a description of any matter in which such person:

- (1) Has been convicted of a felony or pleaded nolo contendere to a felony charge, or been held liable or enjoined in a civil action by final judgment if the felony or civil action involved fraud, embezzlement, fraudulent conversion or misappropriation of property; or
- (2) Is subject to an injunctive or restrictive order of a court of record, or within the past five years had any state or federal license or permit suspended or revoked as a result of an action brought by a governmental agency or department, arising out of or relating to business activity or health care, including without limitation actions affecting a license to operate a foster care facility, nursing home, retirement home, home for the aged or facility registered under this chapter or similar laws in another state; or
- (3) Is currently the subject of any state or federal prosecution, or administrative investigation involving allegations of fraud, embezzlement, fraudulent conversion, or misappropriation of property.

This section shall be divided into appropriately labeled subsections for parts a, b, and c. A response for each part is required.

Ownership of Real Property

Give full and detailed information regarding direct and indirect ownership of the property on which the facility is or will be operated and of the buildings in which it is or will be operated.

Location and Description of Real Property

Give the location and description of the real property of the facility, existing or proposed, and to the extent proposed, the estimated completion date or dates of improvements, whether or not construction has begun and the contingencies under which construction may be deferred.

Affiliations with Religious, Charitable or Other Nonprofit Organizations; Tax Status of Provider

Give a statement as to:

a. Whether the provider is or ever has been affiliated with a religious, charitable or other nonprofit organization, the nature of any such affiliation, and the extent to which the affiliate organization is or will be responsible for the financial and contractual obligation of the provider.

b. Any provision of the Federal Internal Revenue Code under which the provider is exempt from the payment of income tax. This section shall be divided into appropriately labeled subsections for parts a and b. A response for each part is required.

Services Provided Under Continuing Care Contracts

Describe the services provided or proposed to be provided under continuing care contracts, including the extent to which medical care is furnished. The disclosure statement shall clearly state which services are included in basic continuing care contracts and which services are made available by the provider at extra charge.

Fees Required of Residents

Give a description of all fees required of residents, including any entrance fee and periodic charges. The description shall include the manner by which the provider may adjust periodic charges or other recurring fees and any limitations on such adjustments. If the facility is already in operation, or if the provider operates one or more similar facilities within this Commonwealth, there shall be included tables showing the frequency and average dollar amount of each increase in periodic rates at each facility for the previous five years or such shorter period that the facility has been operated by the provider.

Reserve Funding

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

This description shall include a specific explanation of how the value of any such reserve funding was established and, if available, it shall include the opinion of a qualified actuary.

Certified Financial Statements

Give certified financial statements of the provider, including (i) a balance sheet as of the end of the two most recent fiscal years and (ii) income statements of the provider for the two most recent fiscal years or such shorter period that the provider has been in existence. Such statements shall conform to generally accepted accounting principles and shall be certified by an independent, certified public accountant. The opinion of the independent, certified public accountant shall be included in this section.

Pro Forma Income Statement

Give a pro forma income statement for the current fiscal year. This statement shall conform to generally accepted accounting principles and shall include a specific description of the major assumptions used in developing the pro forma statement.

Admission of New Residents

Give a description of the provider's criteria for admission of new residents.

Access to Facility by Nonresidents

Give a description of the provider's policies regarding access to the facility and its services for nonresidents.

Anticipated Source and Application of Purchase or Construction Funds

If operation of the facility has not yet commenced, give 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:

a. An estimate of the cost of purchasing or constructing and equipping the facility including such related costs as financing expense, legal expense, land costs, occupancy development costs, and all other similar costs that the provider expects to incur or become obligated for prior to the commencement of operations.

b. A description of any mortgage loan or other long-term financing intended to be used for any purpose in the financing of the facility, including the anticipated terms and costs of such financing.

c. An estimate of the percentage of entrance fees that will be used or pledged for the construction or purchase of the facility, as security for long-term financing, or for any other use in connection with the commencement of operation of the facility.

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

e. 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 continuing care contracts.

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

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

h. Identification of any assets pledged as collateral for any purpose.

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

State Corporation Commission
Bureau of Insurance

CONTINUING CARE PROVIDER REGISTRATION STATEMENT

Legal Name of Provider: _____

Recorded Trade Name(s): _____

Mailing Address of Provider: _____

Location of Provider: _____

Telephone Number: _____

Contact Person: _____

Were you acting as a continuing care provider prior to July 1, 1985? _____

On what date (month/day) does your fiscal year end? _____

Have all applicable certificate of need requirements imposed by the Health Department for existing and planned facilities been met? _____ If no, attach an exhibit that describes the nature of the certificate of need deficiency and how it affects your ability to serve current and future residents.

Have all other applicable licensure or certification requirements been met? _____ If no, attach an exhibit that describes the nature of the deficiency and how it affects your ability to serve current and future residents.

Are you in compliance with all other state, federal, and municipal laws and _____

Location of Provider: _____

Telephone Number: _____

Contact Person: _____

Were you acting as a continuing care provider prior to July 1, 1985? _____

On what date (month/day) does your fiscal year end? _____

Have all applicable certificate of need requirements imposed by the Health Department for existing and planned facilities been met? _____ If no, attach an exhibit that describes the nature of the certificate of need deficiency and how it affects your ability to serve current and future residents.

Have all other applicable licensure or certification requirements been met? _____ If no, attach an exhibit that describes the nature of the deficiency and how it affects your ability to serve current and future residents.

Are you in compliance with all other state, federal, and municipal laws and regulations? _____ If no, attach an exhibit that describes the nature of your noncompliance and how it affects your ability to serve current and future residents.

Are you bankrupt, insolvent, under reorganization pursuant to federal bankruptcy laws, or in imminent danger of becoming bankrupt or insolvent? _____ If yes, attach an exhibit that describes the nature of the bankruptcy, insolvency, reorganization, or imminent bankruptcy or insolvency and how it affects your ability to serve current and future residents.

I _____ as a duly authorized officer, principal,
(Name)
general partner, or trustee of _____ hereby
(Continuing Care Provider)

certify that the information contained herein, in any attached exhibits, and in the attached disclosure statement is a true representation of said provider's operation, financial condition, and method of doing business.

(Signature) (Title)

Subscribed and sworn to before me this _____ day of _____, 1985.

(Notary Public)