

LIVING CARE DISCLOSURE ACT (EXCERPT)
Act 440 of 1976

***** 554.810 THIS SECTION IS REPEALED BY ACT 448 OF 2014 EFFECTIVE APRIL 2, 2015 *****

554.810 Lease or membership agreement; minimum provisions; termination of member; refund; providing access to adequate alternative facility.

Sec. 10. (1) The lease or membership agreement at a minimum shall include the following provisions:

(a) If a member dies before occupying the facility, or through illness, injury, or incapacity would be precluded from being a resident under the terms of the lease, membership is automatically canceled and the member or a legal representative of the member shall receive a full refund of all money paid to the facility except those costs specifically incurred by the facility at the request of the member and set forth in writing in a separate addendum to the agreement and signed by both parties.

(b) If a resident places funds with a facility for future care before occupancy, the funds shall be placed in an escrow or trust account unless this requirement is waived or modified by the bureau. Any interest or other income from the investment of the funds shall accrue to the benefit of the resident. The bureau may by rule or order determine the conditions of any escrow or trust account. A petition for waiver or for discontinuance or other modification of the escrow requirement shall be submitted by the chief operating officer of a facility or facilities together with, unless previously provided in the registration application, a pro forma financial plan and documentation evidencing availability of adequate resources to fund the facility's capital expenditures, debt service, refund of unearned portion of entrance fees, operating costs, facility maintenance, and other costs and expenses projected for not less than 5 years. Documentation shall include the following, if applicable:

(i) Audited financial statements for the facility's most recent 4 fiscal years and financial statements for any portion of the current fiscal year ending within 90 days after the date of filing. The bureau may by order waive or modify this requirement.

(ii) Commitments for construction and permanent loan financing together with a copy of an adequate construction bond.

(iii) Irrevocable lines or letters of credit, other irrevocable instruments of credit, confirmations of deposits or proceeds of sales of securities, leases, or evidences of any other valid commitments or income.

(iv) Assumptions and the basis of schedules for attrition rates; occupancy rates; refund of unearned portion of entrance fees; debt service; operating expenses; and operating income.

(v) A commitment to notify the bureau promptly in writing of a change in the information submitted under this subdivision.

(c) During the first 6 months of residency, a resident, upon 30 days' written notice, may cancel his or her membership and shall receive a refund of the entrance fee, as provided for in subdivision (e)(i) or (ii), if the resident vacates the facility not more than 30 days after giving notice. If the required notice is given within the first 30 days, the resident shall receive a refund of all but the actual cost of care and the actual cost of refurbishing the unit for resale. If the required notice is given after the first 30 days, the facility may deduct the per capita costs or the actual cost of care, a sales expense not to exceed 10% of the entrance fee up to the first \$15,000.00, as indicated in the disclosure statement, and the actual cost of refurbishing the unit for resale.

(d) After the first 6 months of residency, a resident may cancel the residency, upon 90 days' written notice, or upon less than 90 days' written notice if by written agreement of the parties. The resident shall be refunded an amount equal to the difference between all amounts paid in by the resident and the cost of caring for the resident based upon the facility's per capita cost and the sales cost in conjunction with the original lease and the cost of refurbishing.

(e) Refunds shall be made as follows:

(i) If the required notice is given during the first 5 months of residency, the refund shall be made within 30 days after the notice is given.

(ii) If the required notice is given during the sixth month of residency, the refund shall be made within 30 days after the member leaves the facility or upon resale, whichever occurs first.

(iii) If the required notice is given after the initial 6 months of residency, the refund shall be made within 45 days after notice or upon resale of the unit, whichever occurs first.

(2) If the facility terminates a member without good cause, the member is entitled to an immediate refund, upon vacating the unit, of an amount set forth in the agreement which was approved by the bureau. The facility may provide access to an adequate alternative facility which will provide care for the member, in place of or in mitigation of any damages.

(3) A facility shall not terminate a member without 30 days' notice unless the facility provides access to an

adequate alternative facility. A member terminated by the facility for cause shall receive a refund in the same manner as if the member had provided notice pursuant to subsection (1).

History: 1976, Act 440, Eff. July 1, 1977;—Am. 1980, Act 343, Imd. Eff. Dec. 23, 1980.

Compiler's note: For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.