

CONTINUING CARE COMMUNITY DISCLOSURE ACT (EXCERPT)
Act 448 of 2014

***** 554.947.new THIS NEW SECTION IS EFFECTIVE APRIL 2, 2015 *****

554.947.new Alternative financial arrangement.

Sec. 47. (1) In lieu of an escrow arrangement imposed pursuant to section 45(2), the department may approve an alternative financial arrangement that separates or secures a designated amount of funds of the continuing care community for the benefit of members of the continuing care community or provides for the payment of funds on behalf of members through a surety bond, irrevocable letter of credit, trust account, guarantee, or other acceptable financing method or arrangement approved by the department. Documentation establishing an alternative financial arrangement shall be approved by the department and shall name the department as a party or third party beneficiary of the alternative financial arrangement to act on behalf of the members of the continuing care community.

(2) An alternative financial arrangement approved pursuant to this section shall comply with all of the following requirements:

(a) Be established pursuant to 1 or more written agreements approved by the department between the continuing care community and a reputable financial institution, escrow agent, surety, lender, guarantor, or other entity, which may include an affiliate of the continuing care community, authorized to transact business in this state.

(b) State that the purpose of the arrangement is to protect members of the continuing care community from the inability of the continuing care community to refund entrance fees when due.

(c) Be in an amount that is at least equal to the total entrance fees that would be collected for the continuing care community and that allows the continuing care community to fulfill its obligations to members consistent with the purpose for imposition of the arrangement.

(d) Require that all proceeds deposited, held, or guaranteed under the arrangement remain the property of the respective members for whose account the proceeds were deposited and are not subject to any liens or charges by the escrow agent or to judgments, garnishments, or creditor's claims against the continuing care community until the proceeds are released pursuant to this section.

(e) Provide that, upon order of the department or a court of competent jurisdiction, the appropriate amount of funds described in this section shall be released and paid to the continuing care community or member as ordered.

(f) Require that quarterly balance statements be provided to the department directly from the escrow agent, financial institution, or other entity with custody of the funds and authorize the department to inspect the records pertinent to the arrangement.

(g) Comply with such other terms or conditions imposed by the department by rule or order.

(3) The department shall take into consideration the amount of the entrance fees and other fees to be charged in addition to the number of continuing care agreements to be offered, granted, or sold in determining the initial amount of the alternative financial arrangement and shall amend the amount of the alternative financial arrangement, as the public interest requires, using the same factors.

(4) If a continuing care community fails to complete its obligations under a continuing care agreement, the financial institution that is a party to the alternative financial arrangement with the continuing care community shall, upon order of the department, pay funds to the department or its designee for the benefit of all members.

(5) If an instrument comprising an alternative financial arrangement expires or is canceled and the continuing care community is still under an obligation to provide certain items under the continuing care agreement, the continuing care community, at its option, may either establish a new alternative financial arrangement under subsection (1) or have the department impose under section 45(2) an escrow of entrance and other fees. Until an alternative financial arrangement acceptable to the department is established or escrow is imposed, the continuing care community shall not enter into any additional continuing care agreements. An alternative financial arrangement approved under this section may be released in whole or in part by order of the department, subject to the requirements for release of escrow funds pursuant to section 45.

History: 2014, Act 448, Eff. Apr. 2, 2015.