

IC 23-2-4

Chapter 4. Supervision of Continuing Care Contracts

IC 23-2-4-1

Definitions

Sec. 1. As used in this chapter, the term:

"Application fee" means the fee charged an individual, in addition to the entrance fee or any other fee, to cover the provider's reasonable costs in processing the individual's application to become a resident.

"Commissioner" means the securities commissioner as provided in IC 23-19-6-1(a).

"Continuing care agreement" means the following:

(1) For continuing care retirement communities registered before January 2, 2007, an agreement by a provider to furnish to at least one (1) individual, for the payment of an entrance fee and periodic charges, accommodations in a living unit of a home, and at least two (2) of the following services for the life of the individual or for more than one (1) month unless the agreement is cancelled:

- (A) Meals and related services.
- (B) Nursing care services.
- (C) Medical services.
- (D) Other health related services.

(2) For continuing care retirement communities registered after January 1, 2007, and before July 1, 2009, an agreement by a provider to furnish to an individual, for the payment of an entrance fee of at least twenty-five thousand dollars (\$25,000) and periodic charges:

- (A) accommodations in a living unit of a continuing care retirement community;
- (B) meals and related services;
- (C) nursing care services;
- (D) medical services;
- (E) other health related services; or
- (F) any combination of these services;

for the life of the individual or for more than one (1) month, unless the agreement is canceled.

(3) For continuing care retirement communities registered after June 30, 2009, an agreement by a provider to furnish to an individual, for the payment of an entrance fee of at least twenty-five thousand dollars (\$25,000) and periodic charges:

- (A) accommodations in a living unit of a continuing care retirement community;
- (B) meals and related services;
- (C) nursing care services;
- (D) medical services;
- (E) other health related services; or
- (F) any combination of these services;

for the life of the individual, unless the agreement is terminated as specified under this chapter.

"Continuing care retirement community" includes both of the following:

- (1) An independent living facility.
- (2) A health facility licensed under IC 16-28.

"Contracting party" means a person or persons who enter into a continuing care agreement with a provider.

"Entrance fee" means the sum of money or other property paid or transferred, or promised to be paid or transferred, to a provider in consideration for one (1) or more individuals becoming a resident of a continuing care retirement community under a continuing care agreement.

"Living unit" means a room, apartment, cottage, or other area within a continuing care retirement community set aside for the use of one (1) or more identified residents.

"Long term financing" means financing for a period in excess of one (1) year.

"Omission of a material fact" means the failure to state a material fact required to be stated in any disclosure statement or registration in order to make the disclosure statement or registration, in light of the circumstances under which they were made, not misleading.

"Person" means an individual, a corporation, a partnership, an association, a limited liability company, or other legal entity.

"Provider" means a person that agrees to provide care under a continuing care agreement.

"Refurbishment fee" means the fee charged an individual, in addition to the entrance fee or any other fee, to cover the provider's reasonable costs in refurbishing a previously occupied living unit specifically designated for occupancy by that individual.

"Resident" means an individual who is entitled to receive benefits under a continuing care agreement.

"Solicit" means any action of a provider in seeking to have an individual residing in Indiana pay an application fee and enter into a continuing care agreement, including:

- (1) personal, telephone, or mail communication or any other communication directed to and received by any individual in Indiana; and
- (2) advertising in any media distributed or communicated by any means to individuals residing in Indiana.

"Termination" refers to the cancellation of a continuing care agreement under this chapter.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.234-1985, SEC.1; P.L.177-1991, SEC.8; P.L.8-1993, SEC.312; P.L.27-2007, SEC.16; P.L.153-2009, SEC.3; P.L.278-2013, SEC.17.

IC 23-2-4-2

Application of chapter

Sec. 2. This chapter applies to any person who:

- (1) enters into a continuing care agreement in Indiana to provide care at a continuing care retirement community located either inside Indiana or outside Indiana;

- (2) enters into a continuing care agreement outside Indiana to provide care at a continuing care retirement community located in Indiana;
- (3) extends the term of an existing continuing care agreement in Indiana to provide care at a continuing care retirement community located either inside Indiana or outside Indiana;
- (4) extends the term of an existing continuing care agreement outside Indiana to provide care at a continuing care retirement community located in Indiana; or
- (5) solicits the execution of a continuing care agreement by persons in Indiana.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.153-2009, SEC.4.

IC 23-2-4-3

Registration; application; order

Sec. 3. (a) A provider shall register each continuing care retirement community with the commissioner if:

(1) before opening the continuing care retirement community, the provider:

- (A) enters into;
- (B) extends; or
- (C) solicits;

a continuing care agreement; or

(2) while operating the continuing care retirement community, the provider has either:

- (A) for a continuing care retirement community registered before January 2, 2007, continuously maintained since on or before January 1, 2007, at least one (1) continuing care agreement with an individual living in the continuing care community; or
- (B) for a continuing care retirement community registered after January 1, 2007, entered into a continuing care agreement with at least twenty-five percent (25%) of the individuals living in the continuing care retirement community.

(b) If a provider fails to register a continuing care retirement community, the provider may not:

- (1) enter into, or extend the term of, a continuing care agreement to provide continuing care to any person at that continuing care retirement community;
- (2) provide services at that continuing care retirement community under a continuing care agreement; or
- (3) solicit the execution, by persons residing within Indiana, of a continuing care agreement to provide continuing care at that continuing care retirement community.

(c) The provider's application for registration must be filed with the commissioner by the provider on forms prescribed by the commissioner, and must be accompanied by an application fee of two hundred fifty dollars (\$250). The application must contain the

following information:

- (1) an initial disclosure statement, as described in section 4 of this chapter; and
- (2) any other information required by the commissioner under rules adopted under this chapter.

(d) The commissioner may accept, in lieu of the information required by subsection (c), any other registration, disclosure statement, or other document filed by the provider in Indiana, in any other state, or with the federal government if the commissioner determines that such document substantially complies with the requirements of this chapter.

(e) Upon receipt of the application for registration, the commissioner shall mark the application filed. Within sixty (60) days of the filing of the application, the commissioner shall enter an order registering the provider or rejecting the registration. If no order of rejection is entered within that sixty (60) day period, the provider shall be considered registered unless the provider has consented in writing to an extension of time; if no order of rejection is entered within the time period as extended by consent, the provider shall be considered registered.

(f) If the commissioner determines that the application for registration complies with all of the requirements of this chapter, the commissioner shall enter an order registering the provider. If the commissioner determines that such requirements have not been met, the commissioner shall notify the provider of the deficiencies and shall inform the provider that it has sixty (60) days to correct them. If the deficiencies are not corrected within sixty (60) days, the commissioner shall enter an order rejecting the registration. The order rejecting the registration shall include the findings of fact upon which the order is based. The provider may petition for reconsideration, and is entitled to a hearing upon that petition.

As added by Acts 1982, P.L. 145, SEC.1. Amended by P.L. 153-2009, SEC.5; P.L. 278-2013, SEC.18.

IC 23-2-4-4

Initial disclosure statement; contents

Sec. 4. The initial disclosure statement shall contain the following information:

- (1) The name and business address of the provider.
- (2) If the provider is a partnership, corporation, limited liability company, or association, the names and duties of its officers, directors, trustees, partners, members, or managers.
- (3) The name and business address of any person having a five percent (5%) or greater ownership interest in the provider or manager of the continuing care retirement community.
- (4) A description of the business experience of the provider and its officers, directors, trustees, partners, or managers.
- (5) A statement as to whether the provider or any of its officers, directors, trustees, partners, or managers, within ten (10) years prior to the date of the initial disclosure statement:

- (A) was convicted of a crime;
 - (B) was a party to any civil action for fraud, embezzlement, fraudulent conversion, or misappropriation of property that resulted in a judgment against the provider or individual;
 - (C) had a prior discharge in bankruptcy or was found insolvent in any court action; or
 - (D) had any state or federal licenses or permits suspended or revoked in connection with any health care or continuing care activities, or related business activities.
- (6) The identity of any other continuing care retirement community currently or previously operated by the provider or manager of the continuing care retirement community.
- (7) The location and description of other properties, both existing and proposed, of the provider in which the provider owns a twenty-five percent (25%) ownership interest, and on which continuing care retirement communities are or are intended to be located.
- (8) A statement as to whether the provider is, or is affiliated with, a religious, charitable, or other nonprofit association, and the extent to which the affiliate organization is responsible for the financial and contractual obligations of the provider.
- (9) A description of all services to be provided by the provider under its continuing care agreements with contracting parties, and a description of all fees for those services, including conditions under which the fees may be adjusted.
- (10) A description of the terms and conditions under which the continuing care agreement can be cancelled, or fees refunded.
- (11) Financial statements of the provider prepared in accordance with generally accepted accounting principles applied on a consistent basis and certified by an independent certified or public accountant, including a balance sheet as of the end of the provider's last fiscal year and income statements for the last three (3) fiscal years, or such shorter period of time as the provider has been in operation.
- (12) If the operation of the continuing care retirement community has not begun, a statement of the anticipated source and application of funds to be used in the purchase or construction of the continuing care retirement community, and an estimate of the funds, if any, which are anticipated to be necessary to pay for start-up losses.
- (13) A copy of the forms of agreement for continuing care used by the provider.
- (14) Any other information that the commissioner may require by rule or order.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.8-1993, SEC.313; P.L.153-2009, SEC.6.

IC 23-2-4-5

Annual disclosure statement; contents; fee

Sec. 5. (a) Each year after the initial year in which a continuing

care retirement community is registered under section 3 of this chapter, the provider shall file with the commissioner within four (4) months after the end of the provider's fiscal year, unless otherwise extended by the written consent of the commissioner, an annual disclosure statement which shall consist of the financial information set forth in section 4(11) of this chapter.

(b) The annual disclosure statement required to be filed with the commissioner under this section shall be accompanied by an annual filing fee of one hundred dollars (\$100).

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.234-1985, SEC.2; P.L.153-2009, SEC.7.

IC 23-2-4-6

Disclosure statements; amendment

Sec. 6. (a) A provider shall amend its initial or annual disclosure statement filed with the commissioner under section 3 and section 5 of this chapter at any time if necessary to prevent the initial or annual disclosure statement from containing any material misstatement of fact or omission of a material fact.

(b) Upon the sale of a continuing care retirement community to a new provider, the new provider shall amend the currently filed disclosure statement to reflect the fact of sale and any other fact that would be required to be disclosed under section 4 of this chapter if the new provider were filing an initial disclosure statement.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.153-2009, SEC.8.

IC 23-2-4-7

Delivery of disclosure statements to persons executing agreements

Sec. 7. (a) Prior to the execution of a continuing care agreement, a provider shall deliver to the contracting party and the prospective resident a copy of the initial disclosure statement and the latest annual disclosure statement.

(b) After the execution of a continuing care agreement, a provider shall provide, upon request, a copy of the initial disclosure statement and the latest annual disclosure statement.

As added by Acts 1982, P.L.145, SEC.1.

IC 23-2-4-7.5

Termination of contract

Sec. 7.5. (a) This section does not apply to a continuing care retirement community registered before July 1, 2009.

(b) A continuing care agreement may be terminated for any of the following reasons:

(1) The provider has determined that the resident is inappropriate for living in the care setting.

(2) The resident is unable to fully pay the periodic charges because the resident inappropriately divested the assets and income the resident identified at the time of admission to meet the ordinary and customary living expenses for the resident.

(3) Providing assistance to the resident would jeopardize the financial solvency of the provider and the other residents being served by the provider.

(4) The resident has requested a termination of the agreement as allowed under the agreement.

As added by P.L.153-2009, SEC.9.

IC 23-2-4-8

Sanctions against registration of providers or execution of new continuing care agreements; findings of fact; cease and desist order; notice and hearing

Sec. 8. (a) The commissioner may deny, revoke, or refuse to renew registration of a provider or prohibit the execution of new continuing care agreements if the commissioner finds that:

(1) the provider willfully violated any provision of this chapter or any rule or order adopted under this chapter;

(2) the provider failed to file an annual disclosure statement required by section 5 of this chapter;

(3) the provider failed to deliver to a prospective resident or contracting party a copy of the disclosure statements as required by section 7 of this chapter;

(4) the provider delivered to a prospective resident or contracting party a disclosure statement that contained a misstatement of material fact or omission of a material fact even though the provider, at the time of the delivery of the disclosure statement, had no actual knowledge of the misstatement or omission;

(5) the provider failed to comply with the terms of a cease and desist order of the commissioner; or

(6) according to rules adopted by the commissioner under IC 4-22-2, the provider is insolvent and the financial condition of the provider may jeopardize the care of the residents.

(b) Findings of fact in support of an order under this section, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(c) If the commissioner finds, after notice and hearing, that the provider has committed a violation for which revocation could be ordered, the commissioner may first issue a cease and desist order. If the cease and desist order is not effective in remedying the violation, the commissioner may, after notice and hearing, order that the registration be revoked.

(d) The commissioner may summarily prohibit the execution of new continuing care agreements pending final determination of any proceeding under this section. Upon the entry of the order, the commissioner shall promptly notify the provider that it has been entered and of the reasons for the order and that upon receipt of a written request the matter will be set down for hearing to commence within fifteen (15) business days after receipt of the request unless the provider consents to a later date. If no hearing is requested and none is ordered by the commissioner, the order remains in effect until

it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to the provider, may modify, vacate, or extend the order until final determination.

(e) Except as provided in subsection (d), an order may not be entered under this section unless there has been:

- (1) appropriate prior notice to the provider;
- (2) opportunity for hearing; and
- (3) written findings of fact and conclusions of law.

(f) The commissioner may vacate or modify an order if the commissioner finds that the conditions that prompted entry have changed or that it is in the public interest to do so.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.131-1988, SEC.6; P.L.1-1992, SEC.114.

IC 23-2-4-9

Offense

Sec. 9. A person who knowingly or intentionally fails to comply with any of the registration or disclosure requirements of sections 3, 4, 5, 6, or 7 of this chapter commits a Class A infraction.

As added by Acts 1982, P.L.145, SEC.1.

IC 23-2-4-10

Conditions of registration; deposit of entrance and refurbishment fees into escrow account; limitations

Sec. 10. (a) Except as provided by section 11 of this chapter, the commissioner shall require, as a condition of registration, that:

- (1) the provider establish an interest-bearing escrow account with a bank, trust company, or other escrow agent approved by the commissioner; and
- (2) any entrance fees received by the provider prior to the date the resident is permitted to occupy the living unit in the continuing care retirement community be placed in the escrow account, subject to release as provided by subsection (b).

(b) If the entrance fee gives the resident the right to occupy a living unit that has been previously occupied, the entrance fee and any income earned thereon shall be released to the provider when the living unit is first occupied by the new resident. If the entrance fee applies to a living unit that has not been previously occupied by any resident, the entrance fee and any income earned thereon shall be released to the provider when the commissioner is satisfied that:

- (1) aggregate entrance fees received or receivable by the provider pursuant to executed continuing care agreements, plus:
 - (A) anticipated proceeds of any first mortgage loan or other long term financing commitment; and
 - (B) funds from other sources in the actual possession of the provider;

are equal to at least fifty percent (50%) of the aggregate cost of constructing, purchasing, equipping, and furnishing the continuing care retirement community and equal to at least fifty

percent (50%) of the estimate of funds necessary to fund startup losses of the continuing care retirement community, as reported under section 4(12) of this chapter; and

(2) a commitment has been received by the provider for any permanent mortgage loan or other long term financing described in the statement of anticipated source and application of funds to be used in the purchase or construction of the continuing care retirement community under section 4(12) of this chapter, 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 continuing care retirement community, have been substantially satisfied.

(c) If the funds in an escrow account under this section and any interest earned thereon are not released within the time provided by this section or by rules adopted by the commissioner, then the funds shall be returned by the escrow agent to the persons who made the payment to the provider.

(d) An entrance fee held in escrow shall be returned by the escrow agent to the person who paid the fee in the following instances:

(1) At the election of the person who paid the fee, at any time before the fee is released to the provider under subsection (b).

(2) Upon receipt by the escrow agent of notice from the provider that the person is entitled to a refund of the entrance fee.

(e) This section does not require a provider to place a nonrefundable application fee charged to prospective residents in escrow.

(f) A provider is not required to place a refurbishment fee of a prospective resident in escrow if a continuing care agreement provides that the prospective resident:

(1) will occupy the living unit within sixty (60) days after the refurbishment fee is paid; and

(2) will receive a refund of any portion of the refurbishment fee not expended for refurbishment if the continuing care agreement is cancelled before occupancy.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.234-1985, SEC.3; P.L.153-2009, SEC.10.

IC 23-2-4-11

Letter of credit, negotiable securities, or bond instead of escrow account

Sec. 11. In lieu of establishing an escrow account under section 10 of this chapter, a provider may, with the commissioner's permission, post a letter of credit from a financial institution, negotiable securities, or a bond by a surety authorized to do business in Indiana. The letter of credit, negotiable securities, or bond must be:

(1) approved by the commissioner as to form;

(2) for an amount not to exceed the total amount of all entrance fees received by the provider before the date the resident is permitted to occupy the living unit; and

(3) executed in favor of the commissioner on behalf of individuals who may be found entitled to a refund of entrance fees.

As added by Acts 1982, P.L.145, SEC.1.

IC 23-2-4-12

Entrance fees; use

Sec. 12. Any money or property received by a provider as an entrance fee to a continuing care retirement community constructed or purchased after August 31, 1982, or any income earned thereon, may be used by the provider only for purposes directly related to the construction, maintenance, or operation of that particular continuing care retirement community. A continuing care retirement community in operation on September 1, 1982, may not use the entrance fees or income earned thereon after August 31, 1982, for the construction, operation, or maintenance of another continuing care retirement community constructed or purchased after August 31, 1982.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.153-2009, SEC.11.

IC 23-2-4-13

Retirement home guaranty fund; creation and expiration; purpose; levy

Sec. 13. (a) There is established the Indiana retirement home guaranty fund. The purpose of the fund is to provide a mechanism for protecting the financial interests of residents and contracting parties in the event of the bankruptcy of the provider.

(b) To create the fund, a guaranty association fund fee of one hundred dollars (\$100) shall be levied on each contracting party who enters into a continuing care agreement after August 31, 1982, and before July 1, 2009. The fee shall be collected by the provider and forwarded to the commissioner within thirty (30) days after occupancy by the resident. Failure of the provider to collect and forward such fee to the commissioner within that thirty (30) day period shall result in the imposition by the commissioner of a twenty-five dollar (\$25) penalty against the provider. In addition, interest payable by the provider shall accrue on the unpaid fee at the rate of two percent (2%) a month.

(c) Any money received by the commissioner under subsection (b) shall be forwarded to the treasurer of state. The fund, and any income from it, shall be held in trust, deposited in a segregated account, invested and reinvested by the treasurer of state in the same manner as provided in IC 20-49-3-10 for investment of the common school fund.

(d) All reasonable expenses of collecting and administering the fund shall be paid from the fund.

(e) Money in the fund at the end of the state's fiscal year shall remain in the fund and shall not revert to the general fund.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.2-2006, SEC.180; P.L.153-2009, SEC.12.

IC 23-2-4-14

Fund; board of directors; membership; compensation

Sec. 14. (a) There is established a board of directors to administer the fund. The board of directors of the fund shall consist of five (5) members to be appointed by the governor, from a list submitted by the secretary of state, as follows:

- (1) one (1) provider;
- (2) two (2) residents;
- (3) one (1) individual with expertise in insurance; and
- (4) one (1) individual with expertise in banking and finance.

In addition, the commissioner shall serve as an ex officio member of the board. Directors shall serve such terms as are established in the plan of operation under section 15 of this chapter.

(b) Members of the board of directors are not entitled to compensation for their services. However, each member is entitled to the following:

- (1) Reimbursement for traveling and other expenses incurred as members of the board, as provided in the state travel policies and procedures, established by the Indiana department of administration and approved by the budget agency.
- (2) Reimbursement for expenses related to one (1) meal provided each year in connection with the board's annual meeting.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.177-1991, SEC.9.

IC 23-2-4-15

Board; submission and approval of plan of operation; contents of plan; adoption of rules

Sec. 15. (a) The board of directors shall submit to the commissioner a plan of operation, and such subsequent amendments to the plan as are necessary to assure the fair, reasonable, and equitable administration of the fund. The plan of operation is effective upon the commissioner's approval, which must be in writing.

(b) If the board of directors fails to submit by September 1, 1983, a plan of operation considered suitable by the commissioner, or, if at any other time the board of directors fails to submit amendments to the plan considered necessary by the commissioner, the commissioner shall adopt rules under IC 4-22-2 necessary to carry out this chapter. The rules continue in force until modified by the commissioner or superseded by a plan submitted by the board of directors and approved by the commissioner.

(c) The plan of operation shall establish:

- (1) procedures for handling the assets of the fund;
- (2) the method of reimbursing members of the board of directors under section 14 of this chapter;
- (3) regular places and times for meetings of the board of directors;
- (4) recordkeeping procedures for all financial transactions

relating to the fund and the board of directors; and
(5) any additional provisions necessary for the execution of the powers and duties of the board of directors.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.3-2008, SEC.166.

IC 23-2-4-16

Termination of bankrupt home; payments to residents from fund; subrogation rights of board

Sec. 16. (a) If a continuing care retirement community is bankrupt and the operation of the continuing care retirement community is terminated, the board of directors shall, subject to the approval of the commissioner, distribute from the guaranty association fund established in section 13 to the living residents of the continuing care retirement community an aggregate amount not to exceed one-half (1/2) of the amount in the fund at the time of disbursement. The amount each living resident is entitled to receive shall be prorated, based on the total amount paid on behalf of the resident by the contracting party under the continuing care agreement. In no event may the amount paid to an individual resident under this section exceed the total amount paid on behalf of that resident under the continuing care agreement, less the total value of services received under the agreement.

(b) Any living resident of the continuing care retirement community shall be eligible to receive distributions under subsection (a), regardless of whether any contribution to the guaranty association fund has been made on behalf of the resident.

(c) A resident compensated under this section assigns the resident's rights under the continuing care agreement, to the extent of compensation received under this section, to the board of directors on behalf of the fund. The board of directors may require an assignment of those rights by a resident to the board, on behalf of the fund, as a condition precedent to the receipt of compensation under this section. The board of directors, on behalf of the fund, is subrogated to these rights against the assets of a bankrupt or dissolved provider. Any monies or property collected by the board of directors under this subsection shall be deposited in the fund.

(d) The subrogation rights of the board of directors, on behalf of the fund, have the same priority against the assets of the bankrupt or dissolved provider as those possessed by the resident under the continuing care agreement.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.234-1985, SEC.4; P.L.153-2009, SEC.13.

IC 23-2-4-17

Fund; examination and regulation by commissioner; reports

Sec. 17. The fund is subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner before May 1 of each year:

(1) a financial report for the preceding calendar year, in a form

approved by the commissioner; and
(2) a report of its activities during the preceding calendar year.
As added by Acts 1982, P.L.145, SEC.1.

IC 23-2-4-18

Fund; exemption from certain fees and taxes

Sec. 18. The fund is exempt from payment of all fees and taxes levied by Indiana or any of its political subdivisions.
As added by Acts 1982, P.L.145, SEC.1.

IC 23-2-4-19

Repealed

(Repealed by P.L.234-1985, SEC.5.)

IC 23-2-4-20

Disclosure statements; liability of provider

Sec. 20. (a) If:

(1) a provider enters into a continuing care agreement:

(A) in violation of section 3 of this chapter; or

(B) without having first delivered to the contracting party and the prospective resident the disclosure statements as required by section 7 of this chapter; or

(2) a provider delivers to the prospective resident and the contracting party a disclosure statement that makes an untrue or misleading statement of material fact or omits a material fact; the provider is liable to the individual who entered into the continuing care agreement for the repayment of all entrance fees, application fees, periodic charges, or other fees paid by that person to the provider less the reasonable value of care and lodging provided the resident until the untrue statement, misstatement, or omission was actually or should reasonably have been discovered by the resident or the contracting party, together with interest thereon at the legal rate for judgments, costs, and reasonable attorney's fees.

(b) Liability of the provider under this section for any untrue statement, misstatement, or omission in the disclosure statement shall exist only if the provider had actual knowledge of or, in the exercise of reasonable care, should have known of the untrue statement, misstatement, or omission.

(c) An action may not be maintained by any individual to enforce liability under this section unless commenced within:

(1) two (2) years after the execution of the continuing care agreement that gave rise to the violation;

(2) two (2) years after the failure to deliver the disclosure statement; or

(3) two (2) years after the delivery of the disclosure statement containing an untrue statement, misstatement, or omission of a material fact;

whichever occurs later.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.16-1983, SEC.14.

IC 23-2-4-21

Commissioner; petition for appointment of receiver

Sec. 21. If the commissioner has reason to believe that a continuing care retirement community is insolvent, the commissioner may petition the superior or circuit court of the county in which the continuing care retirement community is located, or the superior or circuit court of Marion County, for the appointment of a receiver to assume the management and possession of the continuing care retirement community and its assets.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.153-2009, SEC.14.

IC 23-2-4-22

Commissioner; powers; hearings and investigations

Sec. 22. The commissioner, or his designated representative, may:

- (1) conduct under IC 4-21.5-3 hearings necessary to carry out this chapter;
- (2) hear evidence;
- (3) conduct investigations to determine whether any person has violated or is about to violate this chapter or a rule or order issued under this chapter; and
- (4) compel the production of any item relevant to an investigation under this chapter.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.7-1987, SEC.104.

IC 23-2-4-23

Violations; cease and desist orders; actions for injunctive relief

Sec. 23. (a) If the commissioner determines, after notice and hearing, that any person has violated any provision of this chapter or any rule or order issued under this chapter, the commissioner may issue an order requiring the person to cease and desist from the unlawful practice or to take such affirmative action as in the judgment of the commissioner will carry out the purposes of this chapter.

(b) If the commissioner makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing a cease and desist order, it may issue a temporary cease and desist order which shall include in its terms a provision that, upon request, a hearing shall be held within ten (10) days of such request to determine whether the order becomes permanent. A temporary cease and desist order shall be served on the person subject to it by certified mail, return receipt requested.

(c) If it appears that a person has engaged in an act or practice constituting a violation of any provision of this chapter or of a rule or order issued under this chapter, the commissioner may, with or without prior administrative proceedings, bring an action in the circuit court to enjoin such acts or practices or to enforce compliance with this chapter or any rule or order issued under this chapter. Upon proper showing, injunctive relief or temporary restraining orders shall

be granted. The commissioner shall not be required to post a bond in any court proceeding.

As added by Acts 1982, P.L.145, SEC.1.

IC 23-2-4-24

Rules

Sec. 24. The commissioner shall adopt under IC 4-22-2 rules necessary to carry out the provisions of this chapter.

As added by Acts 1982, P.L.145, SEC.1.