CHAPTER 647

CONTINUING CARE CONTRACTS

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Cross-reference: See definitions in ss. 600.03 and 628.02.
Cross-reference: See also s. Ins 10.10, Wis. adm. code.

647.01 Definitions. In this chapter:

(2) "Continuing care contract" means a contract entered into on or after January 1, 1985, to provide nursing services, medical services or personal care services, in addition to maintenance services, for the duration of a person's life or for a term in excess of one year, conditioned upon any of the following payments:

(a) An entrance fee in excess of $10,000.

(b) Providing for the transfer of at least $10,000 if the amount is expressed in dollars or 50 percent of the person's estate if the amount is expressed as a percentage of the person's estate to the service provider upon the person's death.

(3) "Entrance fee" means an initial or deferred transfer to a provider of a sum of money or other property, made or promised to be made by a person entering into a continuing care contract, that guarantees a person services under a continuing care contract.

(4) "Facility" means one or more places in which a provider undertakes to provide a person with nursing services, medical services or personal care services, in addition to maintenance services, under a continuing care contract.

(5) "Maintenance services" means food, shelter and laundry services.

(6) "Medical services" means those services pertaining to medical or dental care that are performed on behalf of patients by or at the direction of a physician licensed under ch. 448 or a dentist licensed under ch. 447.

(7) "Nursing services" means those services pertaining to the curative, restorative and preventive aspects of nursing care that are performed by or under the supervision of a nurse licensed under ch. 441, but does not include nursing services provided only on an emergency basis.

(8) "Personal care services" means assistance with meals, dressing, movement, bathing or other personal needs or maintenance, or other direct supervision and oversight of the physical and mental well-being of a person.

(9) "Provider" means a person who provides services under a continuing care contract.

(10) "Refund schedule" means a schedule of the varying amounts of an entrance fee that are refundable during specified periods of time.

(11) "Resident" means a person who resides in a facility.

History: 1983 a. 358; 1987 a. 264; 1989 a. 187.

647.02 Permits. (1) No person may enter into a continuing care contract as a provider unless the person obtains a permit from the commissioner.

(2) The commissioner shall issue a permit to each applicant who has met all requirements of law and satisfies the commissioner that its methods and practices and the character and value of its assets will adequately safeguard the interests of its residents and the public, and who submits all of the following:

(a) An application, in the manner required by the commissioner, signed by the applicant; or, if the applicant is a corporation, by the chief executive officer of the applicant; or, if the applicant is a limited liability company, by a member or manager.

(b) The fee required under s. 601.31.

(c) A copy of the proposed form of the continuing care contract to be entered into with residents.

(d) Audited financial statements for the most recent fiscal year of the applicant including an income statement, a balance sheet and accompanying notes, all prepared in accordance with generally accepted accounting principles on a basis consistent with prior years.

(e) A copy of the applicant's schedule of entrance and other fees.

(f) A copy of the applicant's refund schedule.

(g) The figure to be used by the provider as the actual or projected length of a resident's stay in the facility in the formula in the contract provision required under s. 647.05 (1m) (i) and supporting information showing how the figure was determined.

(h) A list of each administrative, civil or criminal action, order and proceeding to which the applicant or any of the applicant's directors or principal officers have been subjected during the preceding 5 years due to an alleged violation of any state or federal law, regulation or rule, if any of the following occurs:

1. The alleged violation constitutes a felony; or

2. The alleged violation relates to the finances of a continuing care facility, a retirement community or a nursing home in any jurisdiction.

(i) If the applicant has acted as a provider for fewer than 5 years, a detailed history and a projection of the operating results anticipated at the end of the first 5 years of operation based on available data or, if data are unavailable, on reasonable assumptions of entrance fees and other income, operating expenses and acquisition costs.

(j) Any other information the commissioner reasonably requires by rule.

(3) Permits issued under this section are not transferable. If a facility is transferred to any person who seeks to act as a provider, the person shall comply with the requirements specified in sub. (2) in order to receive a permit as a provider. A permit issued under this section remains in effect until revoked, after a hearing, upon written findings of fact by the commissioner that any of the following has occurred:

(a) The provider has violated any applicable law, rule or order.

(b) The facility has been placed in receivership or liquidation under s. 647.06 (1).

History: 1983 a. 358; 1993 a. 112; 2007 a. 20.

647.03 Powers and duties of the commissioner. The commissioner may:

(1) Promulgate rules that the commissioner finds are necessary to carry out the intent of this chapter.

(2) Use the authority granted under s. 601.41 (4) to ensure that a provider has sufficient financial resources to meet the

needs of that provider and to meet the terms of its continuing care contracts and other obligations.

History: 1983 a. 358.

647.04 Duties of providers. Each provider shall:

(1) Submit to the commissioner the fees required under s. 601.31 (1).

(2) Annually within 120 days after the close of the provider's fiscal year, submit to the commissioner audited financial statements for the provider's most recent fiscal year, including an income statement, a balance sheet and accompanying notes, all prepared in accordance with generally accepted accounting principles on a basis consistent with prior years.

(3) Submit a copy of the schedule of all entrance and other fees to the commissioner within 30 days after any change is made in the schedule.

(4) Submit a copy of the refund schedule to the commissioner within 30 days after any change is made in the schedule.

(5) Inform the commissioner of any change in the figure used by the provider as the actual or projected length of a resident's stay in the facility in the formula in the contract provision required under s. 647.05 (1m) (i) within 30 days after the change is made and submit supporting information showing how the change was determined.

(6) Make available to any resident or prospective resident, upon request, a copy of audited financial statements for the provider's most recent fiscal year, any examination reports on the provider prepared by the commissioner in the previous 12 months and a 5-year summary of the facility's entrance and other fee increases. If the facility has not been in operation for 5 years, the provider shall make available a summary of the fee increases for the years in which the facility has been operating and a summary of projected entrance and other fee increases for the next years so that there is a summary available spanning a 5-year period.

(7) Establish and use an internal grievance procedure for grievances between the provider and residents of his or her facility. The provider shall submit a copy of the grievance procedure to the commissioner for approval and shall at least annually inform each resident of the grievance procedure. Each grievance procedure shall, at minimum, provide for all of the following:

(a) The opportunity for any resident to submit a written grievance in any form.

(b) Prompt investigation of the grievance and its cause, and a hearing in situations in which one is needed.

(c) Participation in the procedure by one or more individuals who are authorized by the provider to take corrective action.

(d) Participation in the procedure by one or more residents in addition to the resident who submitted the grievance.

(dm) Participation by residents in the establishment of and the vote to elect members of a grievance panel that shall consist entirely of residents of the facility, shall present grievances on behalf of a resident to the facility's staff or administrator, to public officials or to any other person without fear of reprisal, and that shall join with other residents or individuals within or outside of the facility to work for improvements in resident care.

(e) Notification to the resident who submitted the grievance of the disposition of his or her grievance and any corrective action that was ordered.

(8) Inform the commissioner of any proposed transfer of property if the total amount that would be transferred during any 12-month period exceeds 10 percent of the provider's assets.

(9) Comply with all applicable rules promulgated by the commissioner.

History: 1983 a. 358; 1985 a. 29; 1989 a. 359; 2007 a. 20.

647.05 Continuing care contract provisions. (1m) A provider may not enter into a continuing care contract unless the contract:

(a) Is coherent, written in commonly understood language, legible, appropriately divided and captioned and presented in a meaningful manner. Each provider shall submit to the commissioner a copy of the form of the continuing care contract within 30 days after any change is made in that continuing care contract.

(b) Specifies what services are provided to the resident under the continuing care contract and what services are provided at an additional cost to the resident.

(c) Contains information about the status of a resident's claim against the facility's assets if the facility were to be liquidated.

(d) Includes a refund schedule.

(e) Specifies the circumstances and consequences of termination of the contract by either the provider or the resident.

(f) Provides that if a resident dies or the continuing care contract is terminated prior to occupancy or within the first 30 days after occupancy, the provider will refund at least the entrance fee less the cost of any reasonable refurbishing and less the cost of any care actually received by the resident that was not included in other charges by the provider.

(g) Provides that if a resident dies or the continuing care contract is terminated after the first 30 days of occupancy, but within the first 90 days of occupancy, the provider will refund at least 90 percent of the amount computed under par. (f).

(h) Provides that if the resident terminates the continuing care contract after the first 90 days of occupancy, the provider will refund to the resident a portion of the resident's entrance fee that is no less than the amount of refund indicated on the refund schedule that is in effect under the terms of the resident's continuing care contract.

(i) Provides that if the provider terminates the continuing care contract after the first 90 days of occupancy for reasons other than willful violation of the continuing care contract by the resident, the provider will refund to the resident a portion of the resident's entrance fee that is no less than the amount determined by subtracting the quotient of the resident's actual length of stay divided by the actual or projected average length of stay of residents in the facility from 1.0 and multiplying the result obtained by the resident's entrance fee, as those figures are specified in the resident's continuing care contract. This subsection does not apply if the provider terminates the continuing care contract because of the death of the resident.

(2m) Subject to s. 49.455, a continuing care contract may require that, before a resident applies for medical assistance, the resident must spend on his or her care the resources declared for purposes of admission to the facility.

History: 1983 a. 358; 2007 a. 20.

647.06 Receivership or liquidation. (1) A petition for appointment of a receiver or liquidator for a facility may be filed by a resident, a resident's guardian or the commissioner in the circuit court for the county in which the facility is located. If the court determines, after notice to the provider and a hearing, that a provider is not able to meet the terms of its continuing care contracts and other obligations, the court may appoint a receiver or liquidator and may set forth the powers, duties, compensation and liabilities of the receiver or liquidator.

(2) Any provider who voluntarily seeks to liquidate a facility shall notify the commissioner in advance.

History: 1983 a. 358.

647.07 Penalties. Any provider who intentionally violates this chapter or rules promulgated under this chapter or who submits an application for a permit under s. 647.02 that intentionally

contains a misstatement of fact is subject to a fine not to exceed $10,000 or imprisonment not to exceed 9 months or both.

History: 1983 a. 358.

647.08 Inapplicable. This chapter does not apply to a provider that operates a facility that is created by and operated in accordance with a will and that is under the continuing supervision of a circuit court.

History: 1983 a. 358.