

STATE OF IDAHO
IDAHO CONTINUING-CARE
DISCLOSURE ACT



(UNOFFICIAL COPY)

DEPARTMENT OF FINANCE

Amended through 2005

IDAHO CONTINUING-CARE DISCLOSURE ACT

CHAPTER 37, TITLE 26, IDAHO CODE

26-3701. SHORT TITLE. This chapter shall be known and may be cited as the "Idaho Continuing-Care Disclosure Act."

26-3702. STATEMENT OF PURPOSE. The legislature recognizes that continuing care communities have become an important and necessary alternative for the long-term residential, social and health maintenance needs for many of the state's elderly citizens.

The legislature finds and declares that tragic consequences can result to citizens of the state when a provider of services under a continuing care agreement becomes insolvent or unable to provide responsible care. The legislature recognizes the need for full disclosure with respect to the terms of agreements between prospective residents and the provider and the operations of such providers. Accordingly, the legislature has determined that these providers should be regulated in accordance with the provisions of this chapter. The provisions of this chapter apply equally to for-profit and not-for-profit provider organizations. The provisions of this chapter shall be the minimum requirements to be imposed upon any person, association or organization offering or providing continuing care as set forth in this chapter.

26-3703. DEFINITIONS. As used in this chapter:

(1) "Continuing care" means the furnishing to an individual, other than an individual related by blood, marriage, or adoption to the person furnishing the care, of lodging together with nursing services, medical services, or other health related services, pursuant to an agreement requiring an entrance fee.

(2) "Department" means the department of finance.

(3) "Director" means the director of the department of finance or his authorized designee.

(4) "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 as full or partial consideration for acceptance of a specified individual as a resident in a facility. A fee which is less than the sum of the regular periodic charges for six (6) months of residency will not be considered to be an entrance fee for the purposes of this chapter.

(5) "Facility" means the place or places in which a person undertakes to provide continuing care to an individual.

(6) "Living unit" means a room, apartment, cottage or other area within a facility set aside for the exclusive use or control of one (1) or more identified individuals.

(7) "Provider" means the promoter, developer, or owner of a continuing care facility, whether a natural person, partnership, unincorporated association, trust, or corporation, or any other person, or that person's successors or assigns that solicits or undertakes to provide continuing care to the public under a continuing care facility contract.

(8) "Resident" means an individual entitled to receive continuing care in a facility.

26-3704. REGISTRATION -- ANNUAL FEE. Each provider who provides continuing care services in this state shall register with the director on forms provided by the department and

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shall pay an annual registration fee. Such registration fee shall be fixed by the director but shall not exceed five hundred dollars (\$500) per facility. No provider shall be allowed to operate a facility until so registered and until the provider has filed with the director a disclosure statement as set forth in section 26-3705, Idaho Code. All fees received by the director shall be deposited into the finance administrative account pursuant to section 67-2702, Idaho Code.

26-3705. DISCLOSURE STATEMENT OF FINANCIAL RESPONSIBILITY. As a condition to registration with the department, each provider must file evidence of financial responsibility. Said evidence shall be on registration forms provided by the director. The registration forms shall request such information as the director, in his discretion, shall deem appropriate to carry out the functions of this chapter. The director shall require, however, the following information to be included on the provider's statement of financial responsibility:

(1) The names and business addresses of the officers, directors, trustees, managing or general partners, any person having a ten percent (10%) or greater equity or beneficial interest in the provider, and any person who will be managing the facility on a day-to-day basis, and a description of these persons' interests in or occupations with the provider.

(2) Information as follows on all persons named in response to the information required in subsection (1) of this section:

(a) A description of the business experience of this person, if any, in the operation or management of similar facilities;

(b) The name and address of any professional service, firm, association, trust, partnership, or corporation in which this person has, or which has in this person, a ten percent (10%) or greater interest and which it is presently intended shall currently or in the future provide goods, leases, or services to the facility, or to residents of the facility, of an aggregate value of five hundred dollars (\$500) or more within any year, including a description of the goods, leases, or services and the probable or anticipated cost thereof to the facility, provider, or residents or a statement that this cost cannot presently be estimated; and

(c) A description of any matter in which the person: (i) has been convicted, or found guilty of, or received a withheld judgment for a felony, or been held liable, or enjoined in a civil action by final judgment, which civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property; or (ii) is subject to a currently effective injunctive or restrictive court order in any action involving fraud, embezzlement, fraudulent conversion, or misappropriation of property; or (iii) within the past five (5) years, had any local, state or federal license or permit suspended or revoked as a result of fraud, embezzlement, fraudulent conversion, or misappropriation of property.

(3) A statement as to whether the provider is, or is not affiliated with, an eleemosynary or other nonprofit organization, the extent of the affiliation, if any, the extent to which the affiliate organization will be responsible for the financial and contract obligations of the provider, and the provision of the federal Internal Revenue Code, if any, under which the provider or affiliate is exempt from the payment of income tax.

(4) A detailed description of all fees required of residents, including the entrance fee and periodic charges, if any. The description shall include, but not be limited to:

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- (a) The circumstances under which the resident will be permitted to remain in the facility in the event of financial difficulties of the resident;
 - (b) The terms and conditions under which a contract for continuing care at the facility may be canceled by the provider or by the resident, and the conditions under which all or any portion of the entrance fee will be refunded in the event of cancellation of the contract by the provider or by the resident or in the event of the death of the resident prior to or following occupancy of a living unit;
 - (c) The manner by which the provider may adjust periodic charges or other recurring fees and the limitations on these adjustments, if any; and, if the facility is already in operation, or if the provider or manager operates one (1) or more similar continuing care locations within this state, tables shall be included showing the frequency and average dollar amount of each increase in periodic charges, or other recurring fees at each facility or location for the previous five (5) years, or such shorter period as the facility or location may have been operated by the provider or manager.
- (5) The health and financial conditions required for an individual to be accepted as a resident and to continue as a resident once accepted, including the effect of any change in the health or financial condition of a person between the date of entering a contract for continuing care and the date of initial occupancy of a living unit by that person.
- (6) The provisions that have been made or will be made to provide reserve funding or security to enable the provider to perform its obligations fully under contracts to provide continuing care at the facility, including the establishment of escrow accounts, trusts, or reserve funds, together with the manner in which these funds will be invested, and the names and experience of any individuals in the direct employment of the provider who will make the investment decisions.
- (7) Certified financial statements of the provider, including (i) a balance sheet as of the end of the most recent fiscal year, and (ii) income statements for the three (3) most recent fiscal years of the provider or such shorter period of time as the provider shall have been in existence. The director shall only accept certified financial statements that have been prepared and certified by or under the direction of a certified public accountant. If the provider's fiscal year ended more than one hundred twenty (120) days prior to the date the disclosure statement is recorded, interim financial statements as of a date not more than ninety (90) days prior to the date of recording the statement shall be included, but need not be certified.
- (8) A summary of a report of an actuary, updated every five (5) years, that estimates the capacity of the provider to meet its contract obligation to the residents. Disclosure statements of continuing care facilities established prior to January 1, 1988, do not need an actuary report or summary until January 1, 1993.
- (9) If operation of the facility has not yet commenced, a detailed and itemized statement of the anticipated source and application of the funds used or to be used in the purchase or construction of the facility. Said statements shall also include a detailed and itemized estimate of the funds, if any, that 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 contracts for the provision of continuing care.
- (10) Pro forma annual income statements and balance sheets for the facility for a period of not less than five (5) fiscal years with supporting documentation as the director may, in his discretion, require.

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(11) All material information relevant to a decision of a prospective resident to enter into a continuing care contract with the provider, whether or not specifically requested by the director.

(12) All other information required by the director.

(13) The cover page of the disclosure statement shall state, in a prominent location and in boldface type, the date of the disclosure statement, the last date through which that disclosure statement may be delivered if not earlier revised, and that the delivery of the disclosure statement to a contracting party before the execution of a contract for the provision of continuing care is required by this chapter but that the disclosure statement has not been reviewed or approved by any government agency or representative to ensure accuracy or completeness of the information set out.

(14) A copy of the standard form of contract for continuing care used by the provider shall be attached to and be considered a part of the disclosure statement.

26-3706. SPECIFICATION FOR RESIDENCE CONTRACTS. (1) In addition to such other provisions as may be considered proper to effectuate the purpose of any continuing care agreement, each agreement executed on and after the date of the adoption of this chapter shall be written in nontechnical language easily understood by a layperson and shall:

(a) Show the value of all property transferred, including donations, subscriptions, fees and any other amounts paid or payable by, or on behalf of, the resident or residents;

(b) Specify in detail all services which are to be provided by the provider to each resident;

(c) Describe the health and financial conditions upon which the provider may have the resident relinquish his space in the designated facility;

(d) State the fees and conditions that will apply if the resident marries while at the designated facility;

(e) Provide that the agreement may be canceled upon the giving of notice of cancellation of at least thirty (30) days by the resident. An agreement may be canceled by the provider if there has been a good faith determination in writing, signed by the medical director and the administrator of the facility, that a resident is a danger to himself or others;

(f) Provide in print no smaller than the largest type used in the body of said agreement, the terms governing the refund of any portion of the entrance fee;

(g) State the terms under which an agreement is canceled by the death of the resident. The agreement may contain a provision to the effect that, upon the death of the resident, the moneys paid for the continuing care of such resident shall be considered earned and become the property of the provider;

(h) Provide for advance notice to the resident, of not less than thirty (30) days, before any change in fees or charges or the scope of care or services may be effective, except for changes required by state or federal assistance programs;

(i) Provide that charges for care paid in one (1) lump sum shall not be increased or changed during the duration of the agreed upon care, except for changes required by state or federal assistance programs.

(2) A resident shall have the right to rescind a continuing care agreement, without penalty or forfeiture, within seven (7) days after making an initial deposit or executing the agreement. A resident shall not be required to move into the facility designated in the agreement before the expiration of the seven (7) day period.

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(3) If a resident dies before occupancy date, or through illness, injury or incapacity is precluded from becoming a resident under the terms of the continuing care agreement, the agreement is automatically rescinded and the resident or his legal representative shall receive a full refund of all moneys paid to the facility, except those costs specifically incurred by the facility at the request of the resident and set forth in writing in a separate addendum, signed by both parties to the agreement.

(4) No agreement for care shall permit dismissal or discharge of the resident from the facility providing care prior to the expiration of the agreement, without just cause for such a removal. Just cause may include, but not be limited to, a good faith determination in writing, signed by the medical director and the administrator of the facility that a resident is a danger to himself or others while remaining in the facility. Dismissal for just cause shall not affect the resident's qualification for a refund under the contract.

(5) No act, agreement or statement of any resident, or of any individual purchasing care for a resident under any agreement to furnish care to the resident, shall constitute a valid waiver of any provision of this chapter intended for the benefit or protection of the resident or the individual purchasing care for the resident.

26-3707. ESCROW -- TRUST -- SURETY BOND -- COLLECTION OF DEPOSITS. (1) A provider shall establish an escrow account with a bank or a trust company, that is located in Idaho, agreed upon by the provider and the resident. The terms of this escrow account shall provide that the total amount of any entrance fee received by the provider prior to the date the resident is permitted to occupy a living unit in the facility be placed in this escrow account. These funds may be released only as follows:

(a) If the entrance fee applies to a living unit that has been previously occupied in the facility, the entrance fee shall be released to the provider when the living unit becomes available for occupancy by the new resident;

(b) If the entrance fee applies to a living unit which has not been previously occupied by any resident, the entrance fee shall be released to the provider when the escrow agent is satisfied that:

(i) Construction or purchase of the living unit has been completed and an occupancy permit, if applicable, covering the living unit has been issued by the local government having authority to issue such permits;

(ii) A commitment has been received by the provider for any permanent mortgage loan, long-term financing or other source of capital and any conditions of the commitment prior to disbursement of funds thereunder have been substantially satisfied; and

(iii) Aggregate entrance fees received or receivable by the provider pursuant to binding continuing care retirement community contracts, plus the anticipated proceeds of any first mortgage loan, long-term financing commitment, or other source of capital, are equal to not less than ninety percent (90%) of the aggregate cost of constructing or purchasing, equipping and furnishing the facility plus not less than ninety percent (90%) of the funds estimated in the statement of anticipated source and application of funds submitted by the provider as that part of the disclosure statement required in section 26-3705, Idaho Code, to be necessary to fund start-up losses and assure full performance of the obligations of the provider pursuant to continuing care retirement community contracts.

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(2) Upon receipt by the escrow agent of a request by the provider for the release of these escrow funds, the escrow agent shall approve release of the funds within five (5) working days unless the escrow agent finds that the requirements of subsection (1) of this section have not been met and notifies the provider of the basis for this finding. The request for release of the escrow funds shall be accompanied by any documentation the fiduciary requires.

(3) If the provider fails to meet the requirements for release of funds held in this escrow account within a time period the escrow agent considers reasonable, these funds shall be returned by the escrow agent to the persons who have made payment to the provider. The escrow agent shall notify the provider of the length of this time period when the provider requests release of the funds.

(4) An entrance fee held in escrow may be returned by the escrow agent to the person who made payment to the provider at any time upon receipt by the escrow agent of notice from the provider that this person is entitled to a refund of the entrance fee.

(5) In addition to the escrow requirement of this section, each provider shall provide a surety bond or an irrevocable letter of credit in a form acceptable to the department. Any surety bond offered as evidence of financial responsibility must be written by a company authorized to do business in this state. The bond must be in effect at any time that funds remain in escrow under the provisions of this section and shall be an amount not less than the aggregate value of all outstanding amounts in escrow.

26-3708. CROSS-COLLATERALIZATION PROHIBITED. No part of the entrance fee placed in escrow may be pledged by the provider as collateral for the purpose of securing loans for any purpose other than providing for the care of the resident.

26-3709. AUDITS. Each provider upon annual renewal of registration shall provide to the director certified audited reports of the financial condition of the facility and shall amend the disclosure required by section 26-3704, Idaho Code, as necessary. The annual audited reports shall be prepared by or under the supervision and direction of a certified public accountant according to generally accepted accounting principles and shall contain such additional information as may be required by the director. The annual renewal of registration shall be filed with the director not later than ninety (90) days after the close of the provider's fiscal year as used for state income tax purposes.

26-3710. CIVIL LIABILITY. (1) Any person who, as a provider, or on behalf of a provider:

- (a) Enters into a contract for continuing care at a facility which has not registered under this chapter;
- (b) Enters into a contract for continuing care at a facility without having first delivered a disclosure statement meeting the requirements of this chapter to the person contracting for such continuing care;
- (c) Enters into a contract for continuing care at a facility with a person who has relied on a disclosure statement which contains a misstatement of a material fact or which omits a material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they are made, not misleading; or

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(d) Engages in any fraudulent or deceptive practices in the provision of services to the resident, or prospective resident;

shall be deemed to have violated the terms of this chapter and shall be liable to the person contracting for such continuing care for damages and repayment of all fees paid to the provider, facility or person in violation of the provisions of this chapter, less the reasonable value of care and lodging provided to the resident by or on whose behalf the contract for continuing care was entered into prior to discovery of the violation, misstatement or omission or the time the violation, misstatement or omission should reasonably have been discovered, together with interest thereon at the legal rate for judgments and court costs and reasonable attorney's fees.

(2) Liability under this section shall exist regardless of whether or not the provider or person liable had actual knowledge of the misstatement or omission.

(3) A person may not file or maintain an action under this section if the person, before filing the action, received an offer, approved by the director, to refund all amounts paid the provider, facility or person in violation of the provisions of this chapter together with interest from the date of payment, less the reasonable value of care and lodging provided prior to the receipt of the offer and the person failed to accept the offer within thirty (30) days of receipt. At the time a provider makes a written offer of rescission, the provider shall file a copy with the director. The rescission offer shall recite the provisions of this section.

(4) An action shall not be maintained to enforce a liability created under this chapter unless brought before the expiration of six (6) years after the execution of the contract for continuing care which gave rise to the violation.

(5) Except as expressly provided in this chapter, civil liability in favor of a private party shall not arise against a person, by implication, from or as a result of the violation of this chapter or a rule or order promulgated or issued under this chapter. This chapter shall not limit a liability which may exist by virtue of any other statute or under common law if this chapter were not in effect.

26-3711. INJUNCTIONS. Whenever it appears to the director that any person has engaged in, or is about to engage in, any act or practice constituting a violation of any provision of this chapter or any rule or order hereunder, the director may:

(1) Issue an order directed at any such person requiring such person to cease and desist from engaging in such act or practice.

(2) Bring an action in any court which has appropriate jurisdiction to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order hereunder. Upon a showing that a person has engaged or is about to engage in an act or practice constituting a violation of this chapter or any rule or directive of the director promulgated hereunder, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The director shall not be required to post a bond.

26-3712. DENIAL, SUSPENSION, REVOCATION OF REGISTRATION -- GROUNDS. The director may by order deny, suspend or revoke registration of any provider:

(1) If he finds the order is in the public interest; or

(2) Any of the conditions described in section 26-3705(2)(c), Idaho Code, apply to the provider.

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In addition the director may impose an administrative fine in an amount not to exceed five thousand dollars (\$5,000) for each violation of the provisions of this chapter.

Prior to the revocation or suspension of any registration, the provider shall be given an opportunity for an appropriate contested case in accordance with the provisions of chapter 52, title 67, Idaho Code. Judicial review of the final order of the director shall be governed by chapter 52, title 67, Idaho Code.

26-3713. OATHS -- SUBPOENAS -- PUNISHMENT -- EXEMPTION FROM CRIMINAL PROSECUTION FOR TESTIMONY. For the purpose of any investigation or proceeding under this chapter the director or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the director deems relevant or material to the inquiry.

(1) In case of contumacy or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the director, may issue to that person an order requiring him to appear before the director or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence relating to the matter under investigation or in question and any failure to obey such order of the court may be punished by the court as a contempt of court.

(2) No person is excused from attending and testifying, from producing any document or record before the director or from obeying the subpoena of the director or any officer designated by him or in any proceeding instituted by the director on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify, except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

26-3714. CRIMINAL PENALTIES. (1) Any person who willfully and knowingly violates any provision of this chapter, or any rule or order under the chapter, shall be guilty of a misdemeanor and be sentenced to pay a fine of not more than one thousand dollars (\$1,000) or imprisonment for not more than one (1) year in the county jail or both for each violation.

(2) The director may refer such evidence as is available concerning violations of the provisions of this chapter or of any rule or order hereunder to the attorney general or the proper prosecuting attorney who may, with or without such a reference, institute the appropriate criminal proceedings under this chapter.

(3) Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime under any other statute.

26-3715. REGULATORY AUTHORITY. The director shall have the authority to adopt, amend or repeal such rules as are reasonably necessary for the enforcement of the provisions of this chapter.