State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Jim Doyle, Governor
Jorge Gomez, Commissioner

Wisconsin.gov

125 South Webster Street • P.O. Box 7873
Madison, Wisconsin 53707-7873
Phone: (608) 266-3585 • Fax: (608) 266-9935
E-Mail: information@oci.state.wi.us
Web Address: oci.wi.gov

February 28, 2005

Ms. Laura Rose, Deputy Director
Wisconsin Legislative Council
One East Main Street
Suite 401
Madison, WI 53703-3382

Dear Ms. Rose:

The Special Committee on Tax Exemptions for Residential Property has inquired about regulation of Continuing Care Facilities by the OCI. This letter will provide a review of the OCI's statutory responsibilities. I have also attached a listing of all of the facilities that have obtained permits from OCI to issue Continuing Care Contracts.

OCI's primary regulatory responsibility under the statute is reviewing the financial solvency of the facility and the continuing care contract itself. The Statute has not addressed, or made distinction between for-profit or non-profit facilities and the issue of residential property taxes. Both types of entities been granted permits by OCI to enter into continuing care contracts.

Chapter 647 (attached) of the Wisconsin State Statutes provides the framework for the regulation of continuing care contracts. Providers wishing to enter into continuing care contracts must obtain a permit from the Commissioner. To obtain a permit, providers submit an application along with the required fee. Additionally, the applicant must submit a copy of the proposed continuing care contract, audited financial statements, a fee schedule, a refund schedule, its refund calculation methodology, a listing of any past administrative, report any civil or criminal actions that qualify as felonies or if the action relates to the finances of the facility for the previous five years. Permits are not transferable.

Providers who obtain a permit from the Commissioner must file an annual audited financial statement to OCI, submit a fee, and notify OCI if any changes are made to its fee or refund schedules. Providers must also make copies of audited financial statements, OCI exam reports, and a summary of fee increases for the past five years to any resident or prospective resident who requests the information. Finally, providers must establish a grievance procedure to provide an opportunity for residents to submit written grievances.

The continuing care contracts that are submitted to OCI are required to be coherent, specific as to the services provided, describe a resident's claim status in the event of a liquidation, include a refund schedule, include specifics for contract termination, detail refund procedures in the event of premature death of a resident in the first 30 or 90 days, and provide refund details on contract termination by either a provider or a resident.

Finally, Chapter 647 describes a petition for the appointment of a receiver or liquidator, describes penalties for violations and also includes an exception for a provider that operates a facility that is created in accordance with the terms of a will under the supervision of a circuit court.

Additionally, Administrative Code Chapter INS 10 (attached) further interprets Chapter 647. The rule includes deemer clauses that presume approval of continuing care contracts unless disapproved by the Commissioner within 30 days of application. The rule lays out standards for marketing of continuing care contracts. The rule also further details contract format, style and provisions that are necessary for approval by OCI.

I hope this letter provides more insight into your question and OCI is always available to provide more information if desired.

Sincerely,

Jim Guidry
Legislative Liaison

JG
Encl.

All Saints Cottages and Condos, Inc.
Brian Cain
702 S High Point Rd
Madison, WI 46550

Tudor Oaks Retirement Center
S77 W12929 MCSHANE RD
HALES CORNERS, WI 53130-0901

St. John's Home of Milwaukee
1840 N PROSPECT AVE
MILWAUKEE, WI 53202-1960

Newcastle Place, Inc.
2449 N Downer Ave
Milwaukee, WI 53211

Alexian Village of Milwaukee
9301 N 76th St
Milwaukee, WI 53223

Friendship Village
7300 W DEAN RD Apt 2100
MILWAUKEE, WI 53223-2637

San Camillo, Inc.
10200 W BLUEMOUND RD
WAUWATOSA, WI 53226

Clement Manor, Inc.
9339 W HOWARD AVE
GREENFIELD, WI 53228

Hillsboro Development Company, LLC
8605 Fairway Pl. Ste 100
Middleton, WI 53562

Meriter Retirement Services, Inc.
110 S HENRY ST
MADISON, WI 53703-3172

Masonic Village on the Square, Inc.
David Oines
410 Main St
Dousman, WI 53118-9349

Fairhaven Corporation
435 W STARIN RD
WHITEWATER, WI 53190-1125

Eastcastle Place, Inc.
2449 N Downer Ave
Milwaukee, WI 53211

Milwaukee Catholic Home
2462 N PROSPECT AVE
MILWAUKEE, WI 53211-4462

Freedom Village, Inc.
8616 N 72ND ST
MILWAUKEE, WI 53223-0172

Luther Manor Terrace
4545 N 92ND ST
MILWAUKEE, WI 53225-4807

Methodist Manor, Inc.
3023 S 84TH ST
MILWAUKEE, WI 53227-3703

Attic Angel Nursing Home
8301 Old Sauk Rd
Middleton, WI 53562

Senior Housing of Middleton
6720 Century Ave
Middleton, WI 53562

Oakwood Village Apartments, Inc.
6209 MINERAL POINT RD
MADISON, WI 53705

Oakwood Village East Apartment Homes, Inc.
5565 Tancho Dr
Madison, WI 53718

Ridgeview Heights Independent Living Corporation
2090 RIDGEWAY DR
REEDSBURG, WI 53959

Evergreen Retirement Community, Inc.
P O BOX 1720
OSHKOSH, WI 54902-1720

Middleton Glen, Inc.
Deb Green
C/O ESSEX CORP
11606 NICHOLAS ST STE 100
OMAHA, NE 68154

CHAPTER 647

CONTINUING CARE CONTRACTS

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% 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 (9) 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.

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.

Unofficial text from 03–04 Wis. Stats. database. See printed 03–04 Statutes and 2005 Wis. Acts for official text under s. 35.18 (2) stats. Report errors to the Revisor of Statutes at (608) 266–2011, FAX 264–6978, http://www.legis.state.wi.us/rsb/

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 (9) 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% 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.

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

(1) 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.

(2) 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.

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

(4) Includes a refund schedule.

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

(6) 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.

(7) 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% of the amount computed under sub. (6).

(8) 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.

(9) 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.

History: 1983 a. 358.

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.

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

Chapter Ins 10

CONTINUING CARE FACILITIES

Ins 10.10 Continuing care contracts. **(1)** PURPOSE. The purpose of this section is to interpret s. 100.18 and ch. 647, Stats., by establishing guidelines and standards for the filing and review of continuing care contracts.

(2) SCOPE. This section applies to all contracts entered into by providers subject to ch. 647, Stats.

(3) DEFINITIONS. The definitions in s. 647.01, Stats., apply to this section.

(4) FILING AND APPROVAL OF CONTINUING CARE CONTRACT FORMS. (a) No provider may enter into a continuing care contract with any resident or prospective resident unless the contract form prepared for general use has been filed with and approved by the commissioner. A contract form filed with the commissioner need not include the rules, regulations and procedures the provider uses for the day–to–day operation of the facility. The filing shall be deemed approved if it is not disapproved within 30 days after filing. The commissioner may disapprove a contract form upon a finding that it violates a statute or a rule promulgated by the commissioner.

(b) A provider shall file each amended contract form with the commissioner within 30 days after any change is made in that contract.

(5) CONTRACT FORMAT AND STYLE; PROHIBITIONS. (a) No continuing care contract may contain any agreement or incorporate any provision not fully set forth in the contract or in an application or other document attached to and made part of the contract at the time of its delivery.

(b) The text of a continuing care contract shall be printed in not less than 10 point type of a style in general use. Captions and summary paragraphs shall be printed in not less than 12 point type of a style in general use.

(c) A continuing care contract may not be deceptive or obscure, encourage misrepresentation or in any other way be contrary to ss. 100.18 and 647.05, Stats.

(6) CONTRACT PROVISIONS. Each contract and any amendment of the contract, in addition to compliance with s. 647.05, Stats., shall do all of the following:

(a) Clearly identify the entities who are party to the contract and the entities who may be providing the services under the contract.

(b) Contain a schedule clearly setting forth all fees including, without limitation by reason of enumeration, advance fees, entrance fees, periodic service fees and any other charges or costs to be assumed by the resident under the contract. The contract shall also contain an explanation of the manner in which the amount of any refundable portion of the entrance or advance fee will be determined and an explanation of those fees and charges which are nonrefundable.

(c) Contain a summary description in a format substantially the same as that shown in Appendix A, of the maintenance, medical, nursing and personal care services that are provided to the resident under the contract at no additional cost and also a description of any other such services that are to be available to the resident at an additional cost. The summary description may also contain a listing of other significant services.

(d) Under a separate and appropriate heading, contain a description of the resident's right, if any, to nursing home care or access to a nursing home and, if known, the name of the nursing home, the conditions under which the care or access will be available, a description of the care and benefits to be provided and the manner in which the charge for the service is to be determined.

(e) Contain a notice on the first page of the contract in not less than 12 point bold face type that the contract does not include any purchase of insurance or real estate.

(f) Be complete and contain a clear statement of the obligations and responsibilities of each of the parties to the contract including, if any, the obligations and responsibilities for future services and future payments. The effective dates and termination dates of the contract shall be clearly described.

(7) GRIEVANCE PROCEDURES. If not contained in the continuing care contract, the provider shall file with the commissioner for approval the internal grievance procedure established pursuant to s. 647.04 (7), Stats. The filing shall be deemed approved if not disapproved within 30 days after filing. The commissioner may disapprove the filing upon a finding that it violates a statute or a rule promulgated by the commissioner.

(8) ADVERTISING, BROCHURES AND PROMOTIONAL MATERIAL. (a) No continuing care contract advertisement, brochure or promotional material may be delivered or issued for delivery in this state unless it is not misleading, deceptive or obscure, does not encourage misrepresentation or is not in any other way contrary to this section or s. 100.18 or ch. 647, Stats.

(b) Each provider shall maintain at its principal office a complete file containing every printed, published or prepared advertisement of its contracts, including the script of any advertisement used in broadcast media, disseminated in this or any other state, whether or not licensed in the other state. A notation shall be attached to each advertisement in the file indicating the manner and extent of distribution and the form number of any contract form advertised. A copy of the contract advertised shall be included in the file with each advertisement. The file shall be subject to regular and periodic inspection by the office of the commissioner. All advertisements subject to this paragraph shall be maintained in the file for 3 years.

(9) APPLICABILITY. This section applies to all contracts and amendments of contracts, and to advertisements, brochures and promotional material issued or used on and after July 1, 1991.

History: Cr. Register, April, 1991, No. 424, eff. 5–1–91.

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

Ins 10.10 APPENDIX A
CONTINUING CARE CONTRACT OUTLINE OF SERVICES

These services are included in your basic continuing care contract at no additional charge				
These services are available to you at additional cost				

(1) "Maintenance services" means food, shelter and laundry services.
(2) "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, Stats., or a dentist licensed under ch. 447, Stats.
(3) "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, Stats., but does not include nursing services provided only on an emergency basis.
(4) "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.
(5) Any other significant service.