

**Department of Human Resources
Senior and Disabled Services Division
OREGON ADMINISTRATIVE RULES**

**Chapter 411
Division 067**

CONTINUING CARE RETIREMENT COMMUNITY

411-067-0000 Definitions

As used in Oregon Revised Statutes Chapter 101, and OAR 411-067-000 to 411-67-090 the following terms mean:

- (1) "Act" means the Continuing Care Retirement Community Provider Registration Act, ORS Chapter 101.
- (2) "Adjacent" means abutting or, separated by, not more than a street or roadway.
- (3) "Application for Registration" means an application completely filled out with required attachments on a form designed and distributed by the Division to register continuing care retirement community providers. The application includes the application and disclosure form and required attachments.
- (4) "Assisted Living" means assistance with daily living as defined in these rules.
- (5) "Assistance With Daily Living" means , but is not limited to, assistance with dressing, feeding, toileting, bathing, grooming, mobility, and can also include housekeeping, laundry service, making appointments, managing money, transportation, meal preparation, recreational activities, or assistance with responding to emergencies.
- (6) "Audited Financial Statement" means the financial statements of the provider that have been audited by an independent certified public accountant.
- (7) "Boldface Type" means any method of highlighting the type so that it

clearly stands out from any other type that is used in the document.

- (8) "Certificate of Registration" means an order of registration issued to a provider for a continuing care retirement community.
- (9) "Division" means the Senior and Disabled Services Division of the Department of Human Resources.
- (10) "Existing Providers" means an owner or operator of a continuing care retirement community established prior to January 1, 1990, which community has one or more residents living there pursuant to residency agreements entered into prior to January 1, 1990.
- (11) "Facility" means physical structure(s) of a continuing care retirement community on one site or adjacent property and operating under the same name and managed as a part of the same community. This definition does not apply to facilities of an existing provider which were occupied by residents on December 31, 1989.
- (12) "Generally Accepted Accounting Principles (GAAP)" means the most current accounting principles or standards generally accepted in the U.S., including, but not limited to, Accounting Principles Board Opinions as published by the American Institute of Certified Public Accountants, and Statements of Financial Accounting Standards and interpretations thereof as published by the Financial Accounting Standards Board.
- (13) "Hospitality Services" includes, but is not limited to, providing housing, providing housekeeping, providing laundry service, making appointments, managing money, providing transportation, providing meals, arranging or conducting recreational activities, providing an emergency alert or response system, providing nursing, providing assistance with daily living, or providing other health-related services.
- (14) "Liquid Reserves" means those cash, marketable securities, and net receivables that can be easily converted to cash.
- (15) "Long Term Financing" means funds acquired by borrowing, or sale of bonds, that are not required to be paid back in the current fiscal year.
- (16) "Nonresident" means a person who may, but has not yet, entered into a residency agreement with a provider to receive continuing care in a community.

- (17) "Other Care Facilities" means any licensed or regulated facilities, including, but not limited to, residential care facilities, assisted living facilities, adult foster homes, intermediate care facilities, or skilled nursing facilities.
- (18) "Other Health-Related Services" includes, but is not limited to, providing health, long term care or disability insurance, performing nutritional analysis, providing massages, or providing physical exercise programs.
- (19) "Prospective Resident" means nonresident.
- (20) "Start-Up Losses" means the excess of expenses over revenues that occur or are anticipated to occur.
- (21) "Temporary Registration Order" means an order issued by the Division after an application for registration has been received by the Division from Continuing Care Retirement Communities established before January 1, 1990. The temporary registration order shall remain in effect until the Division issues a Certificate of Registration or issues a final order of rejection of registration.

Stat. Authority: ORS Chapter 101 & 410
Stats. Implemented: ORS 101.020

411-067-0010 Registration Required

- (1) Providers who operate a Continuing Care Retirement Community as defined in ORS 101.020, shall register with the Division.
- (2) If a provider operates more than one continuing care retirement facility, each facility must be separately listed on the disclosure statement and Certificate of Registration.

Stat. Authority: ORS Chapter 101 & 410
Stats. Implemented: ORS 101.030

411-067-0020 Fees And Application For Registration

- (1) Application and Fees:
 - (a) Application for registration shall be made to the Division on forms

prescribed by the Division. The application shall include the initial disclosure statement and other such information as the Division may require in the forms.

- (b) The initial application for registration shall be accompanied by a fee of \$500 per facility.
 - (c) The application is not considered to be complete until all required information and the application fee are received by the Division.
 - (d) Subsequent to the original application for registration, the provider shall submit annually:
 - (A) Fees of \$250 per facility;
 - (B) The annual disclosure statement;
 - (C) The reserve requirement statement; and
 - (D) Any other such information as the Division may require in the forms.
 - (e) Failure to submit any of the required information or fees shall be considered a violation of the Act.
- (2) The application for registration must be signed and notarized by the provider, or a corporate officer with authority to act on behalf of the corporation, or a partner with authority to act on behalf of the partnership.

Stat. Authority: ORS Chapter 101 & 410
Stats. Implemented: ORS 101.030 & 101.040

411-067-0030 Issuance of Registration

- (1) If the provider submits the application and disclosure statement, fees, and any other required information, as required by ORS Chapter 101 and these rules, the Division shall issue a Certificate of Registration to the provider.
- (2) The Certificate of Registration shall include:

- (a) The name and address of the provider;
 - (b) The names and addresses of all facilities owned and operated by the provider;
 - (c) The effective date of the registration;
 - (d) Payment of the fee; and,
 - (e) A statement in a prominent location and typeface that, "A certificate of registration does not constitute approval, recommendation or endorsement of the community by the Senior and Disabled Services Division, and this registration does not evidence the accuracy or completeness of the information set forth in the disclosure statement."
- (3) A provider shall not advertise, represent or imply that a continuing care retirement community has been inspected or approved by the State of Oregon or the Division.

Stat. Authority: ORS Chapter 101 & 410
Stats. Implemented: ORS 101.030

411-067-0040 Initial Disclosure Statement

- (1) The Certificate of Registration shall constitute the cover sheet required by ORS 101.050(1)(j). The provider shall attach a copy of the Certificate to the initial disclosure statement made available to any resident or prospective resident.
- (2) Before entering into a residency agreement, all providers shall prepare a notice to each prospective resident which clearly states the prospective resident's right to review the current disclosure statement and that copies of the disclosure statement will be made available by the provider upon request. This notice shall be included in the primary promotional material of the provider.
 - (a) Before entering into a residency agreement, the prospective resident and the provider, or a representative of the provider, shall sign and date a statement which verifies that the notice required in Section (2) of this rule was received by the prospective resident.

- (b) A copy of the statement shall be given to the prospective resident by the provider and the original statement retained by the provider.
- (3) The provider must list in **boldface** type on the residency agreement and disclose in the initial disclosure statement, the percentage of the entrance fee to be refunded and the manner in which the percentage of the entrance fee to be refunded is calculated.

Stat. Authority: ORS Chapter 101 & 410
Stats. Implemented: ORS 101.050 & 101.080

411-067-0050 Annual Disclosure Statement

- (1) All providers shall file annually with the Division, on forms prescribed by the Division, on an annual disclosure statement as required by ORS 101.130.
- (2) The annual disclosure statement must be submitted with the documents and fee required in Rule 411-067-0020, Section (1) (d) (A) through (D).
- (3) If a Certificate of Registration is issued six (6) months or more prior to the provider's fiscal year end, then the next annual disclosure statement and fees will be due by the fourth month following the first fiscal year end, after the issuance date of the Certificate of Registration.
- (4) If a Certificate of Registration is issued less than six (6) months prior to the provider's fiscal year end, then the next annual disclosure statement and fees will be due by the fourth month following the second fiscal year end, after the issuance date of the Certificate of Registration.

Stat. Authority: ORS Chapter 101 & 410
Stats. Implemented: ORS 101.050, 101.080 & 101.130

411-067-0060 Reserve Requirements

- (1) Existing providers shall establish the liquid reserves required in ORS 101.060, in annual increments of 10%. Providers shall

establish the first 10% increment on or before January 1, 1991, with increments of 10% annually thereafter, and shall establish and maintain the full liquid reserves on or before January 1, 2000.

- (2) If the existing provider is unable to establish reserves in annual increments of 10% per year, the provider may request an exemption of this requirement from the Division. Such a request shall be considered by the Division if:
 - (a) The provider demonstrates through documentation that the provider will incur undue hardship if required to comply with the annual increments; and
 - (b) The provider submits a plan of corrective action which will put the provider in compliance with the incremental reserve requirements as soon as is reasonably possible, but no later than 1995.
- (3) A request for an exemption is subject to approval or rejection by the Division. In making a determination to approve or deny such a request, the Division shall base its decision on the welfare of the residents of the community and the long term financial viability of the provider. If the plan of corrective action is for longer than a one year period, it shall be subject to annual review and approval by the Division.
- (4) All providers, including those who have obtained an exemption, shall maintain 50% of the required reserves on or before January 1, 1995.
- (5) All providers shall submit annually, with the Annual Disclosure Statement, on a "Reserve Requirement Statement" form, the following:
 - (a) The total of all principal and interest payments due during the provider's previous fiscal year on account of any mortgage loans or other long term financing;
 - (b) Any refinancing anticipated and/or any change in principal and interest payments expected during the next 12 months;
 - (c) The amount of liquid reserves maintained by the provider; and

- (d) Three months projected operating expenses. (6) A provider shall determine the three months projected operating expenses by taking the provider's previous year's audited financial statement and adding any projected increases or decreases in expenses for the next year, excluding depreciation and payments on long term financing.
- (7) New providers must maintain their full reserves from the beginning.
- (8) Providers who build or purchase or operate a new facility must meet the full reserve requirement for that facility immediately.

Stat. Authority: ORS Chapter 101 & 410
Stats. Implemented: ORS 101.060

411-067-0070 **Requirement for Establishment of Escrow Accounts by New CCRCs**

- (1) Prior to a Certificate of Registration being issued to a provider for a new community or new facility, the provider must establish an escrow account with a bank, trust company, or licensed escrow agent. The provider must deposit upon receipt, all entrance fees received by the provider, prior to a resident being allowed to occupy the living unit in the new community or new facility, direct into the escrow account. The provider must maintain a current list which identifies the name and address of each person who paid the entrance fee and the amount paid.
- (2) Written escrow instructions shall be filed with the escrow agent which apply to all funds deposited into the escrow account, and which require that:
 - (a) Funds in the escrow account shall be placed in an interest bearing account;
 - (b) Funds in the escrow account shall be released to the provider only after the escrow agent receives written authorization from the Division that the provider has complied with the requirements of ORS 101.070. If the funds are authorized to be released to the provider by the Division, the accumulated interest shall be paid to the provider, and the provider shall be

responsible for paying the escrow fee;

- (c) An entrance fee, which has been deposited in the escrow account, and earned interest less a proportionate share of the escrow fee shall be released to a person who paid the entrance fee upon written authorization from the provider that the person is entitled to a refund of the entrance fee. The written authorization shall contain the name and address of the person entitled to the refund and the amount of the entrance fee paid by the person; and
 - (d) If all entrance fees have not been released by thirty-six (36) months after the date the escrow account is established, all entrance fees in the account, and earned interest, less a proportionate share of the escrow fee, shall be returned to the person who paid the fee, unless the Division notifies the escrow agent in writing, prior to the thirty-sixth month, that an extension has been granted. The written Notice of Extension from the Division shall contain additional instructions for the escrow agent.
- (3) A copy of the escrow agreement shall be submitted to the Division with the application and disclosure statement or with the annual disclosure statement, if the provider is already registered.
 - (4) When the provider has fulfilled all conditions of ORS 101.070(2), the provider may file a request for release of the funds in the escrow account on a form prescribed by the Division. Provider must attach sufficient documentation to demonstrate that all conditions have been met.
 - (5) The Division shall review the request within thirty (30) days and issue an order accepting or rejecting the request.
 - (a) If the Division approves the request, the Division shall send an "Authorization For the Release of Escrow Account" form to the escrow agent and a copy to the provider.
 - (b) If the Division rejects the release of escrow accounts:
 - (A) The Division shall issue an order rejecting the request. The order shall include the findings of fact upon which

the order is based.

- (B) The provider may request a contested case hearing in writing, within twenty (20) days after the date of the order.
- (6) The provider may apply to the Division for an extension of time for the escrow account to remain open. The request for an extension must be made in writing to the Division before the thirty-fifth month after the date the escrow account was opened.
- (a) The provider's request for an extension must contain documentation which demonstrates that the requirements of Subsection (6)(c) of this rule have been met or the request will not be considered to be timely.
 - (b) An extension may be granted by the Division only if the provider can establish that the requirements of ORS 101.070(2) will be met within 60 additional days and that a majority of the persons, who have paid entrance fees which were deposited in the escrow account, have consented in writing to a 60 day extension.
 - (c) The Division shall review all timely requests for extension within 14 days of the receipt of the request. If the Division grants an extension, it will send a Notice of Extension to the escrow agent.
 - (d) If the funds in the escrow account have not been released by thirty-five (35) months after the date the escrow account was opened, the provider shall deliver to the escrow agent a copy of the list required by Section (1) of this rule.
- (7) A provider shall not be required to establish an escrow account if the provider constructs one or more new physical structures or remodels or expands an existing continuing care retirement community's facility on the same or adjacent site.

Stat. Authority: ORS Chapter 101 & 410
Stats. Implemented: ORS 101.070

411-067-0080 Transfer of Ownership

- (1) A Certificate of Registration is not transferable.
- (2) A registered provider who wishes to sell, transfer ownership, or lease any continuing care retirement community or facility shall obtain approval from the Division. Approval shall be granted when the requirements of Sections (3) and (4) of this rule have been met.
- (3) Prior to taking over ownership or operation of the community or facility, the new provider must obtain a Certificate of Registration in its name.
- (4) If the purchasing provider already has a Certificate of Registration, then the purchasing provider's Certificate of Registration must be amended to include the newly purchased community or facility prior to taking over ownership or operation of the newly purchased community or facility.

Stat. Authority: ORS Chapter 101 & 410
Stats. Implemented: ORS 101.100

411-067-085 Temporary Registration

In order to obtain a temporary Certificate of Registration, existing providers must file an application for registration with the Division. An existing provider must first file for a temporary Certificate of Registration before:

- (1) Entering into a residency agreement with a nonresident;
- (2) Extending the terms of a resident's existing residency agreement; or
- (3) Soliciting either a resident or nonresident to pay an application fee or execute a residency agreement.

Stat. Authority: ORS Chapter 101 & 410
Stats. Implemented: ORS 101.030 & 101.150

411-067-0090 Complaints, Investigations and Remedies

- (1) Complaints and Investigations Required. The Division will investigate all complaints made to it regarding violations of the Continuing Care Retirement Community Provider Registration Act,

rules or orders. Investigations will be carried out as soon as practicable by the Division staff or representatives of the Division. Investigators may interview pertinent witnesses including employees of the provider and review the provider's documents and records. Except as prohibited by the Elder Abuse Act, ORS 410.610-410.700, the provider will be notified within seven (7) working days of any complaint and given an opportunity to respond.

- (2) When the documents and records are requested under Section (1) of this rule, the provider shall make the requested materials available to the investigator for review and copying.
- (3) The Division may issue a cease and desist order or revoke a provider's Certificate of Registration if, after notice and hearing the Division finds the provider guilty of violating any provision of the Act, rules, or order adopted under the Act.
- (4) The Division may issue a cease and desist order, apply for injunctive relief or a temporary restraining order if it appears a person has engaged, or is about to engage, in an act or practice which constitutes a violation of any provision of the Act, rules, or order under the Act.
- (5) The provider shall not take any retaliatory action against any complainant, including, but not limited to the provider's management and staff and residents of the provider's facilities.
- (6) The provider is responsible for violations of the Act committed by its employees, subcontractors, or agents. Any cease and desist order for a violation of the act committed by the employee, subcontractor, or agent shall be issued to the provider and the person who violated the Act.

Stat. Authority: ORS Chapter 101 & 410

Stats. Implemented: ORS 101.110 & 101.120