

**RULES AND REGULATIONS
PERTAINING TO
CONTINUING CARE PROVIDER REGISTRATION
AND DISCLOSURE**

(R23-59-CONT/R)

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Health

September 1989

As amended:

January 1990

January 1990 (E)

April 1990

February 1991

**January 2002 (re-filing in accordance
with the provisions of section 42-35-
4.1 of the Rhode Island General
Laws, as amended)**

INTRODUCTION

These Rules and Regulations Pertaining to Continuing Care Provider Registration and Disclosure (R23-59-CONT/R) are promulgated pursuant to the authority conferred under section 23-59-14 of the General Laws of Rhode Island, 1956, as amended, and are established for the purpose of adopting minimal requirements for the registration of Continuing Care Providers in Rhode Island pursuant to statutory provisions and because these rules are necessary to insure the accuracy and reliability of the financial stability of providers of continuing care through disclosure information statements and to insure that providers are able to fulfill their contractual obligations to residents of continuing care. Absent such regulations, the Director of Health is unable to discharge his responsibilities to protect residents or prospective residents from entering into contractual agreements for continuing care with financially unstable providers and would be unable to protect the health, safety and welfare of the public.

Pursuant to the provisions of section 42-35-3(c) of the General Laws of Rhode Island, 1956, as amended, the following were given consideration in arriving at the regulations: (1) alternative approach to the regulations; (2) duplication or overlap with other state regulations; and (3) significant economic impact placed on facilities through these amended regulations. No alternative approach, overlap, duplication or significant economic impact was identified based on available information.

These rules and regulations shall supercede any other rules and regulations pertaining to continuing care provider registration and disclosure promulgated by the Department of Health and filed with the Secretary of State.

TABLE OF CONTENTS

	Page
PART I	1
1.0	Definitions
2.0	General Requirements
3.0	Credentials of Certified Public Accountant
4.0	Application for Registration
5.0	Registration Approval
6.0	Financial Instability / Cease and Desist Orders - Injunctions
7.0	Investigations and Subpoenas
8.0	Sale or Transfer of Ownership or change in Management
PART II	6
9.0	Availability of Disclosures
10.0	Resident's Contract
11.0	Rights of Residents
12.0	Civil Liabilities
PART III	7
13.0	Waiver
14.0	Violations
15.0	Practices and Procedures
16.0	Severability

PART I *Registration Procedures And Definitions*

Section 1.0 *Definitions*

Wherever used in these rules and regulations the following terms shall be construed as follows:

- 1.1 "**Act**" refers to Chapter 23-59 of the General Laws of Rhode Island, 1956, as amended, entitled, "Continuing Care Provider Registration and Disclosure".
- 1.2 "**Continuing Care**" means providing or committing to provide board, lodging and nursing services to an individual, other than an individual related by blood or marriage: (i) pursuant to an agreement effective for the life of the individual or for a period in excess of one year, including mutually terminable contracts, and (ii) in consideration of the payment of an entrance fee and/or periodic charges. A contract shall be deemed to be one offering nursing services, irrespective of whether such services are provided under such contract, if nursing services are offered to the resident entering such contract either at the facility in question or pursuant to arrangement specifically offered to residents of the facility.
- 1.3 "**Certified Public Accountant**" means an individual licensed in Rhode Island pursuant to the provisions of chapter 5-3 of the General Laws of Rhode Island, 1956, as amended or licensed in another state with similar standards for such licensure which are acceptable to the state agency who meets the criteria set forth in section 3.0 herein.
- 1.4 "**Department**" means the Rhode Island State Department of Health.
- 1.5 "**Director**" refers to the Director of the Rhode Island Department of Health or his designee.
- 1.6 "**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 in advance or at some future time 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 one year of residency shall not be considered to be an entrance fee.
- 1.7 "**Facility**" means the place or places in which a person (Continuing Care Provider) undertakes to provide continuing care to an individual pursuant to contractual arrangement(s) with a facility(ies) licensed under the provisions of Chapter 23-17 of the General Laws of Rhode Island, 1956, as amended.
- 1.8 "**Provider**" means any person, corporation, partnership or other entity that provides or offers to provide continuing care to any individual in an existing or proposed facility in this state. Two or more related individuals, corporations, partnerships or other entities may be treated as a single provider, if they cooperate in offering services to the residents of a facility.
- 1.9 "**Resident**" means an individual entitled to receive continuing care in a facility.
- 1.10 "**Solicit**" means all actions of a provider or his agent in seeking to have individuals enter into continuing care agreement by any means such as, but not limited to, personal,

telephone or mail communication or any other communication directed to and received by an individual, and any advertisements in any media distributed to communicate by any means to an individual. The term "solicit" shall not include marketing or feasibility studies, or any communication with an individual at the request of, or initiated by, that individual in regard to a continuing-care contract not intended to be executed in this state.

Section 2.0 *General Requirements*

- 2.1 No provider shall engage in the business of providing or offering to provide continuing care at a facility in this state unless the provider is registered with the Department with respect to such facility in accordance with the statutory provisions of reference 1 and the regulatory provisions herein, and, any other applicable statutory and/or regulatory provisions, unless exempt pursuant to section 23-59-13 of the Act.
- 2.1.1 Furthermore, prior to submitting an application for registration as a continuing care provider, an applicant must obtain a determination from the Director regarding the acceptability of the Certified Public Accountant whom the provider intends to retain to review and certify materials to be submitted with the application in accordance with section 4.0 herein.
- 2.1.2 If the Department finds the CPA to meet the criteria of section 3.0 herein, the Department shall notify the applicant within ten (10) days of the acceptability of the CPA.

Section 3.0 *Credentials of the Certified Public Accountant*

- 3.1 An applicant seeking registration as a continuing care provider must submit notarized verification to the Director that the certified public accountant to be retained by the provider meets the following criteria:
- a) is licensed in this state pursuant to Chapter 5-3 of the General Laws of Rhode Island, 1956, as amended or is licensed as a CPA in another state with similar standards for such licensure which are acceptable to the state agency;
 - b) the CPA and/or his or her immediate family have no financial interest in the Continuing Care Provider confirmed by a notarized statement filed by the CPA attesting to same;
 - c) has no legal actions pending regarding his or her ethical and/or professional practices; and
 - d) such other evidence of professional competency as the Director may deem necessary.

Section 4.0 *Initial Registration*

- 4.1 For the initial registration as a Continuing Care Provider, ten (10) completed copies of the application form, as prescribed by the Department, with accompanying registration and disclosure information signed by the legally authorized person shall be submitted to the

Department. Such information shall consist of no less than:

- a) an application for registration signed by the duly legally authorized person(s);
- b) the initial disclosure information statement as required in accordance with section 23-59-3 of the Act;
- c) in instances where the applicant cannot submit its audited financial statement(s) as a component of its disclosure statement because said entity's operations have not been ongoing for such a period, a signed statement from the approved CPA attesting to the accuracy and full disclosure of information as required pursuant to the statutory and regulatory provisions herein for a "compilation report" consistent with the standards of the American Institute of Certified Public Accountants;
- d) such other information as may be deemed necessary by the Director.

Section 5.0 *Annual Registration*

Each registered provider shall file a disclosure statement with the department on an annual basis.

- 5.1 Non-operational registered providers - An annual disclosure statement meeting all the requirements of section 4.0 herein and section 23-59-5 of the Act shall be provided to the Department no later than twelve months from the date of the department's written approval of the provider's initial registration.

Section 5.2 *Operational Registered Providers*

Annual disclosure statement must be made to the Department and to each resident, within four (4) months following the end of the provider's fiscal year and in accordance with the requirements of section 23-59-5 of the Act. During the period existing of initial provider operations prior to the availability of audited financial statements as described in section 4.0(c), but in any case not to exceed a period of sixteen (16) months from the initiation of operations, operational providers may satisfy the annual registration requirements by complying with the requirements of section 5.1.

Section 6.0 *Registration Approval*

- 6.1 Upon receipt of an initial application for registration or receipt of the annual registration, the Director shall, within ninety (90) days of the filing date, confirm the registration of the applicant, if the applicant meets the statutory requirements of the Act and regulatory requirements herein. Within four (4) months following the end of the provider's fiscal year, each provider shall make available by written notice to each resident at no cost an annual disclosure statement which contain the information required for the disclosure of section 4.0 or 5.0 herein and section 23-59-5 of the Act.
- 6.2 If the Department determines that the disclosure statement does not comply with the provision of the Act and the regulations herein, it shall have the right to take action pursuant to section 7.0 herein.

6.3 Registration shall be deemed approved, if the Department fails to notify the applicant, within ninety (90) days of filing, of its registration determination.

Section 7.0 ***Financial Instability / Cease and Desist Orders - Injunctions***

7.1 The Department may act as authorized in section 23-59-16 of the Act to protect residents or prospective residents when the Department determines that:

- a) a provider has been or will be unable, in such a manner as may endanger the ability of the provider to fully perform its obligations pursuant to its continuing care contracts, to meet the pro forma income or cash flow projections previously filed by the provider; or
- b) a provider is bankrupt, insolvent, under reorganization pursuant to federal bankruptcy laws or in imminent danger of becoming bankrupt or insolvent.

7.2 Whenever it appears to the Department that any person has engaged in or is about to engage in, any act or practice constituting a violation of the Act or any regulation or order issued under this Act, the Department may pursuant to section 23-59-16 of the Act:

- a) issue an order directed at any such person requiring him or her to cease and desist from engaging in such act or practice; and/or
- b) by application to a court of competent jurisdiction seek a permanent or temporary injunction, or a restraining order to enforce compliance with this Act or any rule, regulation or order issued under this Act.

Section 8.0 ***Investigations and Subpoenas***

8.1 The Department may make public or private investigations within or outside of this state it deems necessary to determine whether any person has violated any provision of the Act or any rule, regulations or order promulgated by the Department.

8.2 For the purpose of any investigation or proceeding under the Act, the Department or any officer designated by it may administer oaths and affirmations, subpoena witness, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the Department deems relevant or material to the inquiry.

Section 9.0 ***Sale or Transfer of Ownership or Change in Management***

9.1 No provider and no person or entity owning a provider shall sell or transfer, directly or indirectly, more than fifty percent (50%) of the ownership of the provider or of a continuing care facility without giving the Department written notice of the intended sale or transfer at least thirty (30) days prior to the consummation of the sale or transfer. A series of sales or transfers to one (1) person or entity, consummated within a six (6) month period that constitutes, in the aggregate, a sale or transfer of more than fifty percent (50%) of the ownership of a provider or of a continuing care facility shall be subject to the foregoing notice provisions.

9.2 A provider or continuing care facility that shall change its chief executive officer, or its management firm if managed under a contract with a third party, shall promptly notify the Department and the residents of each such change.

PART II *Provisions Pertaining To Residents*

Section 10.0 *Availability of Disclosures*

10.1 At least three (3) days prior to the execution of a continuing care contract or the transfer of any money or other property to a provider by or on behalf of a prospective resident, whichever first occurs, the provider shall deliver to the person with whom the contract is to be entered into a copy of a disclosure statement with respect to the facility in question meeting all requirements of the Act and the regulations as of the date of its delivery.

Section 11.0 *Resident's Contract*

11.1 In addition to other provisions considered proper to effect the purpose of any continuing care contract as determined by the Director, each contract executed on or after the effective date of these regulations shall be consistent with the provisions of section 23-59-6 of the Act.

Section 12.0 *Rights of Residents*

12.1 Residents shall have the right of self-organization in accordance with the provisions of section 23-59-11 of the Act.

Section 13.0 *Civil Liabilities*

13.1 A person contracting with a provider for continuing care may terminate the continuing care contract and such provider shall be liable to the person contracting for continuing care for repayment of all fees paid to the provider, facility or person violating this Act, together with interest thereon at the legal rate for judgments, court costs and reasonable attorney's fees, less the reasonable value of care and lodging provided to the resident prior to the termination of the contract and for damages if after June 18, 1987, such provider or a person acting on his behalf, with or without actual knowledge of the violation, entered into a contract with such person for those specific circumstances as set forth in section 23-59-12 of the Act.

PART III ***Waiver, Violations, Practices And Procedures, Penalties***

Section 14.0 ***Waiver***

14.1 No Act, agreement or statement of any resident or by 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 the Act intended for the benefit or protection of the resident or the individual purchasing care for the resident.

Section 15.0 ***Violations***

15.1 Any person who willfully and knowingly violates any provision of the Act, or any rule, regulations or order issued under the provisions of the Act shall be subject to the penalties set forth in section 23-59-17 of the Act.

Section 16.0 ***Rules Governing Practices and Procedure***

16.1 All hearings and reviews under the provisions of the statutory and regulatory provisions herein shall be held in accordance with the provisions of the rules and regulations promulgated by the Rhode Island Department of Health, entitled, "Rules and Regulations Governing The Practices and Procedures Before the Rhode Island Department of Health" (R42-35-PP).

Section 17.0 ***Severability***

17.1 If any provision of these rules and regulations or the application thereof to any facility or circumstances shall be held invalid, such invalidity shall not affect the provisions or application or the regulations which can be given effect, and to this end the provisions of the regulations are declared to be severable.