

CONTINUING CARE COMMUNITY DISCLOSURE ACT (EXCERPT)
Act 448 of 2014

554.945 Funds to be held in trust account; deposit with escrow agent; conditions; temporary suspension order; return of escrowed funds; escrow agreement and account; requirements; release of funds.

Sec. 45.

(1) If a member pays funds to a continuing care community before occupancy, the funds shall be held in a trust account unless this requirement is waived or modified by the department. Any interest or other income from the investment of the funds held in the trust account shall accrue to the benefit of the member. The department may, by rule or order, determine the conditions of the trust account. Funds placed with a continuing care community for continuing care at home are not subject to the requirements of this subsection.

(2) The department may require a deposit with an escrow agent acceptable to the department of an amount the department considers necessary for the continuing care community to fulfill its obligations if both of the following apply:

(a) The department finds 1 or more of the following:

(i) The financial condition of the continuing care community may materially jeopardize the care of members.

(ii) The continuing care community is insolvent or in jeopardy of becoming insolvent.

(iii) The continuing care community is not meeting its pro forma financial plan.

(b) The department determines the escrow to be necessary and appropriate to protect prospective members.

(3) If subsection (2)(a) and (b) applies, the department may summarily order the temporary suspension of a continuing care community's approval to offer continuing care agreements pending a hearing under section 69(2).

(4) The department may direct the escrow agent to return all the funds escrowed under subsection (2) to the members if any of the following apply:

(a) The department finds that any condition of an escrow agreement has not been satisfied or that any provision of this act or rules promulgated under this act has not been complied with.

(b) The registration or exemption of the continuing care community is revoked.

(5) An escrow agreement required under this section shall comply with all of the following:

(a) Be executed by the escrow agent and continuing care community.

(b) State that its purpose is to protect the members, that the escrow is for the benefit of each member in the amount paid by each member, and that all funds subject to the escrow shall be deposited, held, or guaranteed under the arrangement to remain the property of the respective members for whose account the proceeds were deposited and not subject to any liens or charges by the escrow agent or to judgments, garnishments, or creditor's claims against the continuing care community until the funds are released pursuant to this section.

(c) State that the department is authorized to inspect the records of the escrow agent relating to the escrow account.

(d) State that, upon order of the department or a court of competent jurisdiction, the escrow agent shall release and pay over the funds, or a portion thereof, to the continuing care community or member as ordered.

(e) Include on its face an acknowledgment executed by the department indicating approval of the form and content of the escrow agreement. The acknowledgment does not make the department a party to the escrow agreement.

(f) Specify 1 of the following methodologies to be used to determine the amount of funds that may be released pursuant to a request under subsection (7):

(i) An amount up to 75% of the funds as a result of occupancy of at least 75% of living units in the continuing care community. The continuing care community may request release of an additional 5% of the funds in proportion to each 5-percentage-point increase in occupancy. Upon achieving 90% occupancy of living units, the continuing care community may request and the department may authorize release of all the funds. For purposes of this subparagraph and subparagraph (ii), occupancy shall be measured by the total number of living units of the entire continuing care community designated for occupancy under continuing care agreements.

(ii) An amount equal to 1-1/2% per month of the total entrance fees escrowed, with amortization beginning as of the date of occupancy of a living unit by the member. Upon achieving 90% occupancy of living units, the continuing care community may request and the department may approve release of all funds subject to the escrow arrangement.

(6) An escrow account under this section shall comply with all of the following:

(a) Checks shall be made payable to the depository approved by the department.

(b) The account shall be established with an escrow agent acceptable to the department and the funds shall be kept and maintained in an account separate and apart from any depository account of the continuing care community.

(c) All proceeds deposited in escrow remain the property of the respective members for whose account the

proceeds were deposited and are not subject to a lien or charge by the escrow agent or to a judgment, garnishment, or creditor's claim against the continuing care community until the funds are released to the continuing care community as provided in this section.

(d) If required by the department, a quarterly statement indicating the status of the escrow account shall be furnished by the escrow agent to the department.

(7) A request for release of escrow funds under subsection (2) or for the discontinuance or modification of an escrow arrangement under subsection (2) shall be submitted by the administrator. The request shall include the following documentation, unless the documentation was previously provided in the most recent registration application or unless waived or modified, in whole or in part, by the department in the reasonable exercise of its discretion:

(a) The methodology under subsection (5)(f) for calculating the amount of funds to be released and supporting documentation.

(b) A statement by the continuing care community that the funds were placed in escrow as required by an order of the department imposing the escrow arrangement and pursuant to the terms and conditions of the escrow agreement.

(c) A statement by the continuing care community that it has satisfied all obligations for release of funds from escrow.

(d) If required by the department, a statement by the escrow agent, signed by an appropriate officer, setting forth the aggregate amount of escrowed funds placed with the escrow agent.

(e) The name of each member and the amount held in escrow for the account of the member.

(f) A pro forma financial plan that complies with section 43.

(g) Documentation evidencing availability of adequate resources to fund the continuing care community's capital expenditures, debt service, refund of entrance fees, operating costs, continuing care community maintenance, and other costs and expenses projected for not less than 3 years.

(h) Audited financial statements for the continuing care community's most recent 4 fiscal years and financial statements for any portion of the current fiscal year ending within 120 days after the date of filing.

(i) Commitments for construction and permanent loan financing together with a copy of an adequate construction bond.

(j) Irrevocable lines or letters of credit, other irrevocable instruments of credit, confirmations of deposits of proceeds of sales of securities, leases, or evidences of any other valid commitments or income.

(k) Assumptions and the basis of schedules for attrition rates, occupancy rates, refund of entrance fees, debt service, operating expenses, and operating income.

(l) A commitment to notify the department promptly in writing of a material change in the information submitted under this subsection.

(8) The amount released shall be based on the methodology specified in the escrow agreement pursuant to subsection (5)(f), unless a switch to the alternative methodology specified in subsection (5)(f) is requested by the continuing care community and approved by the department.

(9) After submission of a request for release of funds pursuant to subsection (7), the department may approve release to the continuing care community of funds held in escrow pursuant to subsection (2). An order issued by the department approving the release of funds held in escrow under subsection (2), in whole or in part, or for modification or discontinuance of an escrow arrangement imposed pursuant to subsection (2), shall include authorization for the escrow agent to release to the continuing care community those amounts of the escrowed funds applicable to a specified member as stated in the order.

History: 2014, Act 448, Eff. Apr. 2, 2015