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COMMITTEE REPORT

February 24, 2022

**H. 4983**

Introduced by Rep. Sandifer

S. Printed 2/24/22--H.

Read the first time February 16, 2022.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (H. 4983) to amend Section 37‑11‑20, Code of Laws of South Carolina, 1976, relating to definitions for purposes of the licensing and regulation of continuing care retirement communities, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

WILLIAM E. SANDIFER III for Committee.

**A** **BILL**

TO AMEND SECTION 37‑11‑20, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS FOR PURPOSES OF THE LICENSING AND REGULATION OF CONTINUING CARE RETIREMENT COMMUNITIES, SO AS TO DEFINE THE TERM “RESERVATION DEPOSIT”; TO AMEND SECTION 37‑11‑30, RELATING TO THE LICENSING OF CONTINUING CARE RETIREMENT COMMUNITIES, SO AS TO ADD THAT A CONTINUING CARE RETIREMENT COMMUNITY MUST NOT BE ADVERTISED OR COLLECT A RESERVATION DEPOSIT UNLESS THE APPROPRIATE LICENSE IS OBTAINED FIRST, AND TO ADD INFORMATION REQUIRED TO BE SET FORTH IN AN APPLICATION FOR A PRELIMINARY LICENSE; TO AMEND SECTION 37‑11‑35, RELATING TO CONTINUING CARE CONTRACT REQUIREMENTS, SO AS TO PROVIDE THE REQUIREMENTS ALSO APPLY TO RESERVATION AGREEMENTS, AND TO PROVIDE ADDITIONAL MINIMUM REQUIREMENTS FOR CONTRACTS AND AGREEMENTS; TO AMEND SECTION 37‑11‑40, RELATING TO A DETERMINATION BY THE DEPARTMENT OF CONSUMER AFFAIRS AS TO THE FINANCIAL RESPONSIBILITY OF AN APPLICANT FOR A CONTINUING CARE RETIREMENT COMMUNITY LICENSE, SO AS TO ALLOW THE DEPARTMENT TO CONSIDER A PROJECT FEASIBILITY DOCUMENT; TO AMEND SECTION 37‑11‑50, RELATING TO LICENSING ELIGIBILITY FOR CONTINUING CARE RETIREMENT COMMUNITIES, SO AS TO PROVIDE THAT THE DEPARTMENT SHALL ISSUE A PRELIMINARY LICENSE TO AN APPLICANT IF CERTAIN DETERMINATIONS ARE MADE; TO AMEND SECTION 37‑11‑90, RELATING TO CERTAIN ENTRANCE FEES REQUIRED TO BE PLACED IN AN ESCROW ACCOUNT, SO AS TO ALSO REQUIRE THAT RESERVATION DEPOSITS BE PLACED IN AN ESCROW ACCOUNT, AND TO PROVIDE FOR THE CONDITIONS OF RELEASE OF RESERVATION DEPOSITS HELD IN ESCROW; AND TO AMEND SECTION 37‑11‑135, RELATING TO EXEMPTIONS FROM THE REQUIREMENTS OF THIS CHAPTER, SO AS TO PROVIDE THAT A FACILITY THAT HAS OBTAINED A LETTER OF NONAPPLICABILITY FROM THE DEPARTMENT MAY NOT HOLD ITSELF OUT TO BE A CONTINUING CARE RETIREMENT COMMUNITY.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 37‑11‑20 of the 1976 Code is amended by adding an appropriately numbered item to read:

“( ) ‘Reservation deposit’ means a portion of an entrance fee paid in advance of signing a continuing care contract.”

SECTION 2. Section 37‑11‑30 of the 1976 Code is amended to read:

“Section 37‑11‑30. (A) A continuing care retirement community must not be operated or advertised, and a reservation deposit or an entrance fee must not be collected unless ~~a~~ the appropriate license is obtained first from the department as provided in this chapter and any regulation promulgated pursuant to it. Unless otherwise specified, all references to a license in this chapter include both a preliminary license and a final license. The department shall establish reasonable licensing fees not to exceed the cost of administering this chapter. Licenses issued under this chapter expire ~~one year after the date of issuance or annually upon dates as the department may prescribe by regulation~~ on August thirty‑first of each year. Licenses may be issued only for the premises and persons named in the application and are not transferable or assignable.

(B) Applications for licenses must be in a form and under conditions as may be prescribed by the department and must set forth:

(1) the name and business address of the operator and a statement of whether the operator is a partnership, corporation, or other type of legal entity;

(2) the names and business addresses of the officers, directors, trustees, managing or general partners, any person having a five percent or greater equity or beneficial interest in the continuing care retirement community, 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 operator. The following information on all persons named in response to this item is required:

(a) a description of the business experience of the 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 five percent or greater interest and which is providing or in the future shall provide goods, leases, or services to the facility or to residents of the facility of an aggregate value determined by regulation within any year, including a description of the goods, leases, or services and their probable or anticipated cost to the facility, operator, or residents, or a statement that this cost presently cannot be estimated;

(c) a description of any matter in which the person:

(i) has been convicted of a felony or pleaded nolo contendere to a felony charge, or held liable or enjoined in a civil action by final judgment, if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property; or

(ii) is subject to a currently effective injunctive or restrictive court order or within the past five years, had a state or federal license or permit suspended or revoked as a result of an action brought by a governmental agency or department;

(3) a statement as to the operator’s affiliation with a religious, charitable, or other nonprofit organization, the extent of the affiliation, if any, the extent to which the affiliate organization is responsible for the financial and contractual obligations of the operator, and the provision of the Federal Internal Revenue Code, if any, under which the operator or affiliate is exempt from the payment of income tax;

(4) the location and description of the physical property of the facility, existing or proposed, and to the extent proposed, the estimated completion date, whether construction has begun, and the contingencies subject to which construction may be deferred;

(5) the services provided or proposed to be provided pursuant to contracts for continuing care at the facility, including the extent to which medical care is furnished, and a clear statement of which services are included for specified basic fees for continuing care and which services are made available at or by the facility at extra charge;

(6) a description of all fees required of residents, including the entrance fee and periodic charges, if any. The description must include:

(a) a statement of the fees charged if the resident marries while at the facility and a statement of the terms concerning the entry of a spouse to the facility and the consequences if the spouse does not meet the requirements for entry;

(b) the circumstances under which the resident is permitted to remain in the facility if he has financial difficulties;

(c) the terms and conditions under which a contract for continuing care at the facility may be canceled by the operator or by the resident, and the conditions, if any, under which all or a portion of the entrance fee is refunded if the contract is canceled by the operator or by the resident if the resident dies before or following occupancy of a living unit;

(d) the conditions under which a living unit occupied by a resident may be made available by the facility to a different or new resident;

(e) the manner by which the operator may adjust periodic charges or other recurring fees and the limitations on these adjustments, if any. If the facility is already in operation or if the operator or manager operates one or more similar continuing care locations within this State, tables must 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 years, or for all of the years in operation if less than five years;

(7) the health and financial conditions required for a person to be accepted as a resident and to continue as a resident once accepted, including the effect of a change in the health or financial condition of a person between the date of entering a contract for continuing care and the date or initial occupancy of a living unit by that person;

(8) the provisions that have been made or will be made, if any, to provide reserve funding or security to enable the operator 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 individuals in the direct employment of the operator who will make the investment decisions;

(9) certified financial statements of the operator, including a balance sheet as of the end of the most recent fiscal year and income statements for the three most recent fiscal years of the operator or for all of the years in existence if less than three years. If the operator’s fiscal year ended more than one hundred twenty days before the date the application for a license is filed, interim financial statements as of a date not more than ninety days before the date of filing the application must be included but need not be certified;

(10) if the continuing care contract provides for services for the life of the person or for more than one year including mutually terminable contracts, a summary of a report of an actuary, updated every two years, that estimates the capacity of the operator to meet its contractual obligation to the residents;

(11) if the facility has not begun operations, documentation by the operator that the proposed project is economically feasible, both immediately and long term, and can be accommodated in the patient charge structure without unreasonable increases;

(12) the estimated number of residents of the facility to be provided services by the operator pursuant to the contract for continuing care;

(13) a copy of the standard form of contract for continuing care used by the operator attached to each disclosure statement;

(14) other material information concerning the facility or the operator as the operator wishes to include.

(C) In addition to the information required in subsection (B)(1)‑(8) and (11)‑(14), an application for a preliminary license must set forth:

(1) a copy of the reservation agreement used to collect reservation deposits;

(2) a copy of the applicant’s escrow agreement with a trust institution; and

(3) a representative sample of any advertisements used or to be used for the facility.”

SECTION 3. Section 37‑11‑35 of the 1976 Code is amended to read:

“Section 37‑11‑35. (A) A continuing care contract and a reservation agreement must be in writing and must meet minimum standards for readability established by the department. Standards must include, but are not limited to, standards on general organization of text, text readability, type size, type style, type spacing, and general appearance of the contract. The contracts and agreements shall, at a minimum, be:

(1) printed in one hundred percent black ink with the exception of the operator’s name and business logo;

(2) printed on stock that is at least eleven inches high and seven and one quarter inches wide;

(3) in print no smaller than ten‑point type; and

(4) written in language customarily used and understood by people in the conduct of their personal affairs.

(B)(1) A reservation agreement must be entered into prior to the receipt of a reservation deposit and shall, at a minimum, include:

(a) the location, name, and address of the facility or proposed facility;

(b) information pursuant to Section 37‑11‑30(B)(5)‑(7);

(c) the amount of money received and any rate of interest anticipated to be collected;

(d) a statement that the full reservation deposit and any corresponding interest accrued will be applied to the entrance fee at the time of executing the continuing care contract;

(e) a statement that the prospective resident has a right to cancel the agreement at any time for a full refund;

(f) the method of cancelling, the address where the prospective resident should submit the request to cancel and timeline for distribution of funds, not to exceed ten calendar days;

(g) a statement that the reservation deposit will be held in an escrow account at a trust institution;

(h) the name and contact information for the trust institution where the reservation deposit will be held;

(i) a description of the living unit reserved;

(j) a statement of the continuing care services currently offered by the operator at the time of signing the agreement and the continuing care services proposed to be offered in the future;

(k) a proposed construction schedule, if applicable, and expected date when the reserved living unit will be available for occupancy.

(2) An operator may not receive or agree to a reservation deposit in excess of ten percent of the entrance fee for the prospective resident’s reserved living unit.

(3) Every quarter the operator shall provide to the department and prospective residents who entered into a reservation agreement an update on the progress of facility development and expected date when the facility or reserved unit will be available for occupancy. If any major events occur that will delay the schedule by more than four weeks, the operator shall provide an update to the department and all prospective residents who entered into a reservation agreement no later than ten business days after the operator knew or should have known about the delay.

(C)(1) A continuing care contract clearly must state what portion, if any, of the entrance fee is refundable and nonrefundable. A contract must include a statement that:

(a) the resident has a right to cancel the contract within thirty days after signing~~.~~; and

(b) if a resident dies before occupying a living unit in the facility or, if on account of illness, injury, or incapacity, a resident would be precluded from occupying a living unit in the facility under the terms of the contract for continuing care, the contract is automatically canceled.

(2) If the ~~resident cancels~~ contract is canceled within thirty days, all money or property paid or transferred by the resident must be refunded fully, less those costs incurred by the community. If the living unit was available for occupancy, the community may charge a daily rate based on the usual monthly charge for that unit beginning on the eighth day after signing and ending on the day notice of cancellation is given to the community.”

SECTION 4. Section 37‑11‑40 of the 1976 Code is amended to read:

“Section 37‑11‑40. (A) Within sixty days of the receipt of a completed application for a license, the department shall determine whether the continuing care retirement community is financially responsible and can meet its obligations to residents or prospective residents.

(B) In making this determination for a license, the department may consider the project feasibility document provided pursuant to Section 37‑11‑30(B)(11), which is deemed trade secret and must include at least the following:

(1) a statement of the purpose and need for the facility;

(2) a description of the proposed facility, including the location, size, number of units to be constructed, anticipated completion date, and the proposed construction program;

(3) an identification and evaluation of the primary market areas and assumptions as to the secondary market areas, as well as the proposed unit sales per month;

(4) projected revenues from all sources, including:

(a) anticipated entrance fees;

(b) monthly service fees;

(c) nursing care rates, if applicable; and

(d) the total amount of financing required;

(5) projected expenses, including:

(a) staffing requirements and salaries;

(b) property, plant, and equipment costs, including depreciation expense;

(c) interest expense;

(d) marketing expenses; and

(e) other operating expenses;

(6) current assets and liabilities of the applicant;

(7) expectations of the financial condition of the facility, including the projected cash flow and a projected balance sheet and an estimate of the funds anticipated to be necessary to cover start‑up losses;

(8) the inflation factor, if any, assumed in the study for the proposed facility and how and where it is applied;

(9) financial forecasts or projections prepared in accordance with standards promulgated by the American Institute of Certified Public Accountants, or in accordance with standards for feasibility studies for continuing care retirement communities promulgated by the Actuarial Standards Board, and an independent evaluation and opinion by the consultant who prepared the study of the underlying assumptions used as the basis for the forecasts or projections in the study. The study shall take into account facility costs, marketing projections, resident fees and charges, competition, resident contract provisions, and other factors which affect the feasibility of the study;

(10) an opinion letter prepared by the person who prepared the study as to the financial feasibility of the facility;

(11) the name, address, and telephone number of the person who prepared the feasibility study and the experience of the person in preparing similar studies or otherwise consulting in the field of continuing care; and

(12) a detailed written statement regarding the specific provisions taken, or to be taken, to enable the applicant to perform its obligations fully under contracts to provide continuing care. The provisions may include surety bonds, financial reserves, letters of credit, adequacy of working capital and actual and projected occupancy rates, and other financial arrangements or assurances as permitted in this section.

(C) In making this determination for a final license, the department may consider, ~~but is not limited to~~ without limitation, the following in addition to the items listed in subsection (B):

(1) the financial soundness of the arrangements for board, lodging, or medical, nursing, or health‑related services and the schedule of charges used in connection with them;

(2) the adequacy of working capital;

(3) if the continuing care contract provides for services for the life of the person or for more than one year including mutually terminable contracts, a surety bond, financial reserves, letter of credit, or other financial arrangement to guarantee the performance of contractual obligations;

(4) an agreement with providers for the provision of health care or health‑related services.”

SECTION 5. Section 37‑11‑50 of the 1976 Code is amended to read:

“Section 37‑11‑50.” (A) The department shall issue a preliminary license to a person filing an application pursuant to Section 37‑11‑30 if, upon payment of the application fee, it determines that:

(1) the feasibility study satisfies the requirements in Section 37‑11‑40(B) and demonstrates the project is feasible;

(2) the continuing care contracts and the operator’s disclosure statement meet the requirements prescribed by this chapter;

(3) the facility’s advertising and promotional materials are not deceptive, misleading, or likely to mislead;

(4) the facility has in effect its complaint system;

(5) the applicant has demonstrated the willingness and potential ability to provide health care or health‑related services in a manner that assures availability and accessibility of adequate personnel and facilities, and in a manner that assures continuity of service;

(6) the escrow agreement and any reservation agreement state that all deposits will be held in escrow and released in accordance with Section 37‑11‑90.

(B) The department shall issue a license to a person filing an application pursuant to Section 37‑11‑30 if, upon payment of the application fee, the department is satisfied that:

(1) the persons responsible for the conduct of the affairs of the applicant are competent and trustworthy and possess good reputations;

(2) the continuing care retirement community is financially responsible and can meet its obligations to residents;

(3) the operator has demonstrated the willingness and potential ability to assure that the health care or health‑related services will be provided in a manner to assure both availability and accessibility of adequate personnel and facilities and in a manner assuring availability, accessibility, and continuity of service;

(4) the operator has complied with all requirements of the Department of Health and Environmental Control concerning the furnishing of nursing, medical, or other health‑related services.”

SECTION 6. Section 37‑11‑90 of the 1976 Code is amended to read:

“Section 37‑11‑90. (A) A continuing care retirement community is exempt from the provisions of this section if:

(1) it has been operating for at least five years;

(2) for the previous six months it has maintained at least the minimum occupancy rate estimated in its financial feasibility study to achieve a break‑even cash flow operating level or seventy‑five percent occupancy, whichever is less.

(B) If an entrance fee or reservation deposit is received by the operator before the date the resident is permitted to occupy a living unit in the facility, the total amount must be placed in an escrow account with a trust institution.

(C) ~~These funds~~Entrance fees may be released from escrow to the operator only as follows:

(1) If the entrance fee applies to a living unit that previously has been occupied in the facility, the entrance fee must be released to the operator when the operator provides written certification that the living unit ~~becomes~~is available for occupancy by the new resident.

(2) If the entrance fee applies to a living unit which previously has not been occupied by a resident, the nonrefundable portion, if any, of the entrance fee must be released to the operator when the operator provides written certification that the living unit ~~becomes~~is available for occupancy. The refundable portion, if any, of the entrance fee must be released to the operator when the operator provides certification to the escrow agent ~~is satisfied~~ that the following has occurred:

(a) 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 the permit.

(b) a commitment has been received by the operator for a permanent mortgage loan or other long‑term financing, and conditions of the commitment before disbursement of funds have been satisfied substantially.

(c) aggregate entrance fees received or receivable by the operator pursuant to binding continuing care retirement community contracts, plus the anticipated proceeds of any first mortgage loan or other long‑term financing commitment, are equal to not less than ninety percent of the aggregate cost of constructing or purchasing, equipping, and furnishing the facility plus not less than ninety percent of the funds estimated in the financial feasibility study required by Section 37‑11‑30 to be necessary to fund cash shortages during start‑up and assure full performance of the obligations of the operator pursuant to continuing care retirement community contracts.

(D) A reservation deposit may be released only as follows:

(1) When a prospective resident who has entered into a reservation agreement and paid a reservation deposit later enters into a continuing care contract with the continuing care retirement community, the reservation agreement terminates and the reservation deposit shall be credited in full towards the entrance fee. Thereafter, the funds shall remain in escrow until the requirements of subsection (C) or (E)(3) are met.

(2) Reservation deposits may be refunded to the prospective resident at any time. The operator must provide the form to be used to request disbursement of funds from the trust institution to the prospective resident. The form must list the total disbursement amount and must certify that the prospective resident has sent written notice to the provider requesting a refund and that either:

(a) the prospective resident has rescinded his reservation agreement; or

(b) the reservation agreement has been terminated by the prospective resident or operator in accordance with its stated terms;

~~(C)~~(E)(1) Upon receipt by the escrow agent of a request by the operator for the release of the escrow funds, the escrow agent shall approve release of the funds within five working days unless the escrow agent finds that the requirements of subsection (B) have not been met and notifies the operator of the basis for this finding. The request for release of the escrow funds must be accompanied by documentation the trust institution requires.

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

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

(4) The escrow agent shall be entitled to rely upon the written notices, instructions, and directions of the operator and shall have no liability for any action taken based upon such reliance. However, the escrow agent shall be liable for its own negligence or wilful misconduct.”

SECTION 7. Section 37‑11‑135 of the 1976 Code is amended to read:

“Section 37‑11‑135. A ~~continuing care retirement community which~~ facility that does not require payment of an entrance fee is exempt from the requirements of this chapter. In order to qualify for this exemption, a facility must obtain a letter of nonapplicability from the department. A facility that has obtained a letter of nonapplicability may not hold itself out to be a continuing care retirement community.”

SECTION 8. This act takes effect upon approval by the Governor.

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