

DEPARTMENT OF REGULATORY AGENCIES

Division of Financial Services

RULES AND REGULATIONS OF THE COLORADO DIVISION OF FINANCIAL SERVICES PERTAINING TO LIFE CARE INSTITUTIONS

3 CCR 703-2

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

4.1 Release of Escrows.

According to C.R.S. 12-13-104 (1) (b), the release of escrowed entrance fees for previously unoccupied living units shall occur only after the Commissioner is satisfied that certain conditions exist as identified in C.R.S. 12-13-104 (1)(b)(I)-(III). The provider shall file a letter application for such release which shall include adequate documentation to allow a determination that said conditions exist. The release of said escrows may occur only after the Commissioner has authorized such action in writing to the escrow agent.

4.2 Return of Unreleased Escrows - Time Limit.

Pursuant to C.R.S. 12-13-104 (2), funds in escrow required by C.R.S. 12-13-104 (1) not otherwise released shall be returned to the persons making payment to the provider no later than 180 days after said payment. Persons making said payments may, in writing, grant extensions to the escrow agent to continue holding funds in escrow. No more than two extensions of 180 days each may be granted by such persons making payment. Therefore, the escrow agent shall return all funds held in escrow to the persons making payment no later than 540 days after said funds were received by the escrow agent. Notwithstanding the above, escrowed funds which, pursuant to a written agreement between a provider and prospective resident, are fully returnable to the prospective resident upon demand shall not be subject to the provisions of this regulation.

5.1 Refunds - Time Limit/Legitimate Offsets.

This regulation will clarify terms contained in C.R.S. 12-13-105 (2) concerning refunds to a resident in the event of withdrawal or dismissal. As used in C.R.S. 12-13-105 (2), "reasonable period" may be determined by the Commissioner in each particular case, but in no event may this period exceed 180 days. As used in C.R.S. 12-13-105 (2), "legitimate offsetting items" may include monthly fees and other fees or charges to the resident which have been incurred, but remain unpaid by the resident. They may not include marketing expenses incurred in securing substitute fees, expenditures made to repair normal wear to the living unit of a former resident, or other items not addressed in the agreement between the provider and the resident.

7.1 Approved List of Stocks/Bonds.

Pursuant to C.R.S. 12-13-107 (2) (d), required reserves may include bonds and stocks selected from an approved list, as determined by the Commissioner. Said approved list shall consist of lawfully issued bonds and other evidences of indebtedness:

- (a) Of the United States or any agency or instrumentality thereof;

- (b) Guaranteed or insured as to the payment of principal and interest by the United States or any agency or instrumentality thereof; or
- (c) Of counties, districts, townships, municipalities, and political subdivisions within the states, territories and districts of the United States, provided that said bonds are rated no lower than the second highest grade by any major bond rating service.

8.1 Annual Report to Current/Prospective Residents.

Pursuant to C.R.S. 12-13-108 (3), a provider must make its annual report available to residents upon request. The provider, at least annually, shall provide written notice of the right to receive the annual report to all residents of such provider. The provider also shall make its annual report available to prospective residents upon request. The provider shall provide written notice of this right to all prospective residents in materials distributed during the solicitation of said prospective residents.

10.1 Designation of Auditor to Examine Life Care Institutions.

In accordance with the provisions of C.R.S. 12-13-110, the Commissioner may designate an independent auditor to conduct examinations of a provider. Upon the prior written request of a provider, the Commissioner may designate the same independent auditor engaged by a provider to prepare certified financial statements of the facility, pursuant to C.R.S. 12-13-108 (1). Such a designation shall be effective when the Commissioner approves, in writing, each periodic engagement letter between the independent auditor and the provider. The engagement letter shall clearly state the independent auditor's intention to conduct sufficient tests of the provider's records to be able to assess the provider's level of compliance with all, or specifically stated, sections of Title 12, Article 13 of the Colorado Revised Statutes, as amended, and all or specifically stated Division regulations applicable to life care institutions. The independent auditor must include a statement of the level of compliance with the laws and regulations specifically stated in the engagement letter in the report on the audited financial statements, or in a separate document specifically for that purpose. The failure to provide an adequate statement of the level of compliance may result in the Commissioner's revocation of the independent auditor's designation.

11.1 Notice of Intent to Become Life Care Institution.

Pursuant to C.R.S. 12-13-111 and 112, any person or entity that desires or intends to act in the capacity of a life care institution must notify the Commissioner, in writing, at least 90 days prior to the execution of the initial life care contract or the receipt of any consideration pursuant to said contract, whichever comes first. Said notification must include an affirmation of the provider's intent to comply with Title 12, Article 13 of the Colorado Revised Statutes, as amended. Failure to notify the Commissioner pursuant to this regulation will be considered a violation subject to C.R.S. 12-13-112.

14.1 Required Disclosures to Prospective Residents

Pursuant to C.R.S. 12-13-114, life care contracts must be written in a clear and coherent manner and, among other things, show the value of all property transferred to a life care provider. Also, pursuant to C.R.S. 12-13-116, all printed matter used to solicit or induce persons to enter into a life care contract must clearly state the extent of the financial responsibility assumed by parties interested in or connected with the provider. Therefore, pursuant to C.R.S. 12-13-111, in order to effectuate the above cited provisions, certain disclosures to prospective residents must be provided in writing, and acknowledged in writing, prior to the execution of any life care contract, as defined by C.R.S. 12-13-101 (6). The disclosures shall read as follows:

- (a) I/we, the undersigned, do hereby acknowledge that I/we fully understand that no state or federal government agency guarantees or insures against loss any portion of the entrance fees paid to a life care provider under the terms of a life care contract.

- (b) For questions concerning the regulation of the financial affairs of life care institutions by the State of Colorado, please contact:

Colorado Division of Financial Services
1560 Broadway, Suite 1520
Denver, CO 80202
Phone: (303) 894-2336
Fax: (303) 894-7886

Said disclosures may be included in the main body of the life care contract; if so, they must:

- (a) Be in bold lettering of a type size no smaller than that of the main body of the contract.
- (b) Be contained in a paragraph, section, or subsection entitled "State of Colorado-Required Disclosures"
- (c) Be acknowledged in the paragraph, section, or subsection entitled "State of Colorado - Required Disclosures" by the complete signature or initials of the prospective resident(s).

Said disclosures may be provided to the prospective resident(s) in a document separate from the life care contract, provided that the document is:

- (a) Clearly titled "State of Colorado-Required Disclosures"
- (b) Acknowledged, on its face, by the complete signature or initials of the prospective resident(s).
- (c) Acknowledged by the prospective resident(s) no more than 14 days prior to the execution of a life care contract by the same prospective resident(s).
- (d) Maintained in the files of the life care provider with a copy given the prospective resident(s).

Editor's Notes

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