

Sec. 13. Licensees affected by the enactment of section 9 of this Act are entitled to a refund of the excess taxes paid under section 99D.15, if a claim for refund is filed with the department of revenue and finance by July 1, 1990.

Sec. 14. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved May 24, 1989

CHAPTER 217

RETIREMENT FACILITIES

S.F. 278

AN ACT relating to the disclosure of information by continuing care retirement communities and senior adult congregate living facilities, and providing penalties.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 523D.1 DEFINITIONS.

As used in this chapter, unless the context clearly indicates otherwise:

1. "Senior adult congregate living facility" means any building or buildings, section of a building, or distinct part of a building, residence, private home, boarding home, home for the aged, or other place, other than facilities licensed and operated under chapter 135C, or community supervised living arrangements approved by the department of human services under section 225C.21, whether operated by a for-profit or a not-for-profit organization which undertakes through its ownership or management to provide housing and one or more supportive services for a time period exceeding twenty-four consecutive hours, to ten or more residents, the majority of whom are sixty years of age or older. A person who is furnishing the continuing care and who is related by consanguinity or affinity to the resident living in the facility shall not be included in the capacity calculation.

2. "Senior adult congregate living services" means the services provided to residents in a facility.

3. "Supportive services" includes, but is not limited to, services such as laundry; maintenance; emergency nursing care; activity services; security; dining options; transportation; beauty and barber; personal, including eating, bathing, dressing, and supervised medication administration; and health.

4. "Continuing care retirement community" means a senior adult congregate living facility which furnishes senior adult congregate living services together with nursing services to residents, regardless of whether or not the services are provided at one location, and pursuant to one or more agreements effective for the life of the resident or for a period of time greater than one year.

5. "Continuing care" means the furnishing to residents, the majority of whom are sixty years of age or older, other than a resident related by consanguinity or affinity to the person furnishing the care, of senior adult congregate living services together with nursing services regardless of whether or not the services are provided at one location and pursuant to one or more agreements effective for the life of the resident or for a period of time greater than one year.

6. "Entrance fee" means an initial or deferred transfer which exceeds the lesser amount of five thousand dollars or six times the living unit's monthly fee to a provider of a sum of money or other property made or promised to be made as full or partial consideration for acceptance of a specified individual as a resident in a facility.

7. "Facility" means a senior adult congregate living facility or a continuing care retirement community.

8. "Living unit" means a room, apartment, cottage, or other area within a facility set aside for the exclusive use or control of one or more identified residents.

9. "Provider" means a person undertaking to provide care in a senior adult congregate living facility or continuing care facility.

10. "Resident" means an individual, sixty years of age or older, entitled to receive care in a senior adult congregate living facility or continuing care facility.

Sec. 2. NEW SECTION. 523D.2 FILING WITH DIVISION OF INSURANCE.

A person shall not, as a provider, enter into a contract to provide continuing care or senior adult congregate living services in a facility, or extend the term of an existing contract to provide continuing care or senior adult congregate living services in a facility, if the contract requires or permits the payment of an entrance fee to any person, and the facility is or will be located in this state, or the provider or a person acting on the provider's behalf solicits the contract within this state for a facility located in this state and the person to be provided with continuing care or senior adult congregate living services under the contract resides within this state at the time of the solicitation, unless the person has filed with the division of insurance of the department of commerce, a current disclosure statement which meets the requirements of section 523D.3. The disclosure statement shall be accompanied by a one hundred dollar filing fee as a condition of filing and compliance with this section.

Sec. 3. NEW SECTION. 523D.3 DISCLOSURE STATEMENT.

1. At the time of or prior to the execution of a contract to provide continuing care or senior adult congregate living services, or at the time of or prior to the transfer of any money or other property to a provider by or on behalf of a prospective resident, whichever occurs first, the provider shall deliver a disclosure statement to the person, and to the person's personal representative if one is appointed, with whom the contract is to be entered into, which shall contain all of the following information unless such information is in the contract, a copy of which must be attached to the statement:

a. The name and business address of the provider and a statement of whether the provider is a partnership, corporation, or other type of legal entity.

b. The names and business addresses of the officers, directors, trustees, managing or general partners, and any person having a ten percent or greater equity or beneficial interest in or of the provider and a description of such person's interest in or occupation with the provider.

c. With respect to each person covered by paragraph "b", and if the facility will be managed on a day-to-day basis by a person other than a person directly employed by the provider, a person named in response to paragraph "b", or the proposed manager:

(1) A description of the business experience of the person, if any, in the operation or management of similar facilities.

(2) The name and address of any professional service, firm, association, trust, partnership, or corporation in which the person has, or which has in the person, a ten percent or greater interest and which will or may provide goods, leases, or services to the facility of a value of five hundred dollars or more, within a year, including a description of the goods, leases, or services and their probable or anticipated cost to the facility or provider.

(3) A description of any matter in which the person has been convicted of a felony or pleaded nolo contendere to a felony charge or been 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 similar felonies involving theft or dishonesty.

(4) A description of any matter in which the person is subject to a currently effective injunctive or restrictive order of a court of record, or within the past five years had any state or federal license or permit suspended or revoked as a result of an action brought by a governmental agency or the division of insurance, arising out of or relating to business activity or health care, including, without limitation, actions affecting a license to operate a foster care

facility, health care facility, retirement home, home for the aged, or facility licensed under this chapter or a similar law of another state.

d. A statement as to:

(1) Whether the provider is or ever has been affiliated with a for profit organization or with a religious, charitable, or other nonprofit organization.

(2) The nature of the affiliation, if any.

(3) The extent to which the affiliate organization will be responsible for the financial and contractual obligations of the provider.

(4) The provision of the federal Internal Revenue Code, if any, under which the provider or affiliate is exempt from the payment of federal income tax.

e. The location and description of the physical property or properties of the facility, existing or proposed, and, to the extent proposed, the estimated completion date or dates, whether or not construction has begun, and the contingencies subject to which construction may be deferred.

f. The services provided or proposed to be provided under contracts for continuing care at the facility, including the extent to which medical care is furnished. The disclosure statement shall clearly state which services are included in basic contracts for continuing care and which services are made available at or by the facility at extra charge.

g. A description of all fees required of residents, including the entrance fee and periodic charges, if any. The description shall include the manner by which the provider may adjust periodic charges or other recurring fees and the limitations on such adjustments, if any.

h. The provisions which have been made or will be made, if any, to provide reserve funding or security to enable the provider to fully perform its obligations under contracts to provide continuing care or senior adult congregate living services at the facility, including the establishment of escrow accounts, trusts, or reserve funds, together with the manner in which the funds will be invested and the names and experience of persons who will make the investment decisions.

i. Certified financial statements of the provider, for all parts of an operation covered by the contract, including the health center or nursing home portion of the continuing care retirement community, if those services are included in the contract, but the disclosure statement may exclude services or operations not provided to residents as senior adult congregate living services under their contract, including:

(1) A balance sheet as of the end of the two most recent fiscal years.

(2) Income statements of the provider for the two most recent fiscal years or the shorter period of time in which the provider has been in existence.

j. If operation of the facility has not yet commenced, a statement of the anticipated source and application of the funds used or to be used in the purchase or construction of the facility, including:

(1) An estimate of the cost of purchasing or constructing and equipping the facility, including related costs such as financing expense, legal expense, land costs, occupancy development costs, and all other similar costs which the provider expects to incur or become obligated for prior to the commencement of operations.

(2) A description of any mortgage loan or other long-term financing intended to be used for the financing of the facility, including the anticipated terms and costs of the financing.

(3) An estimate of the total entrance fees to be received from or on behalf of residents at or prior to commencement of operation of the facility.

(4) An estimate of the funds, if any, which are anticipated to be necessary to fund start-up losses and provide reserve funds to assure full performance of the obligations of the provider under contracts for the provision of continuing care or senior adult congregate living services.

(5) A projection of estimated income from fees and charges other than entrance fees, showing individual rates presently anticipated to be charged and including a description of the assumptions used for calculating the estimated occupancy rate of the facility and the effect

on the income of the facility of government subsidies for health care services, if any, to be provided pursuant to the contracts for continuing care or senior adult congregate living services.

(6) A projection of estimated operating expenses of the facility, including a description of the assumptions used in calculating the expenses and separate allowances, if any, for the replacement of equipment and furnishings and anticipated major structural repairs or additions.

(7) Identification of any assets pledged as collateral for any purpose.

(8) An estimate of annual payments of principal and interest required by any mortgage loan or other long-term financing.

k. Other material information, which may include an independent analysis of the actuarial soundness of the financial plan, concerning the facility or the provider as required by the division of insurance or as the provider wishes to include.

l. The cover page of the disclosure statement shall state, in a prominent location and type face, the date of the disclosure statement.

m. A copy of the standard form or forms of contract for continuing care or senior adult congregate living services used by the provider, attached as an exhibit to each disclosure statement.

2. The provider shall file with the division of insurance, annually within five months following the end of the provider's fiscal year, an annual disclosure statement which shall contain the information required by this chapter for the initial disclosure statement. The annual disclosure statement shall also be accompanied by a narrative describing:

a. Any material differences between the pro forma income statement filed pursuant to this chapter either as part of the most recent annual disclosure statement and the actual results of operations during the fiscal year, if the material differences substantially affect the financial safety or soundness of the community.

b. Any material differences between the pro forma balance sheet and the actual results of operations during the fiscal year.

The annual disclosure statement shall also contain a revised pro forma income statement for the next fiscal year.

3. From the date an annual disclosure statement is filed until the date the next succeeding annual disclosure statement is filed with the division of insurance and prior to the provider's acceptance of part or all of any application fee or part of the entrance fee or the execution of the continuing care or senior adult congregate living services contract by the resident, whichever occurs first, the provider shall deliver the current annual disclosure statement to the current or prospective residents with whom the continuing care or senior adult congregate living services contract is or may be entered into and to a resident's or prospective resident's personal representative if one is appointed.

4. In addition to filing the annual disclosure statement, the provider may amend its currently filed disclosure statement at any other time if, in the opinion of the provider, an amendment is necessary to prevent the disclosure statement and annual disclosure statement from containing any material misstatement of fact or omission to state a material fact required to be included in the statement. The amendment or amended disclosure statement shall be filed with the division of insurance before the statement is delivered to a resident or prospective resident and a personal representative of a resident or prospective resident and is subject to all the requirements, including those as to content and delivery, of this chapter.

Sec. 4. NEW SECTION. 523D.4 FALSE INFORMATION.

1. A provider shall not make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement of any sort containing any assertion, representation, or statement which is untrue, deceptive, or misleading.

2. A provider shall not file with the division of insurance or make, publish, disseminate, circulate, or deliver to any person or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or delivered to any person or placed before the public, a financial statement which does not meet generally accepted accounting principles.

Sec. 5. NEW SECTION. 523D.5 ENTRANCE FEE ESCROW FOR NEW CONSTRUCTION.

The provider shall establish an interest-bearing escrow account with a state or federally regulated financial institution for a living unit which has not previously been occupied by a resident for which an entry fee arrangement is used. The escrow account agreement shall be entered into between the financial institution and the provider with the financial institution as the escrow agent and as a fiduciary for the resident or the prospective resident, the agreement shall state that its purpose is to protect the resident or the prospective resident, and the funds deposited in the account shall be kept and maintained in an account separate and apart from the provider's business accounts. These funds may be released only as follows:

1. If the entrance fee applies to a living unit which has not previously been occupied by a resident, the entrance fee shall be released to the provider only when the escrow agent reasonably determines that the following conditions have been satisfied:

a. The facility has a minimum of fifty percent of the units reserved for which the provider is charging an entrance fee.

b. The aggregate amount of the entrance fees received by or pledged to the provider, plus anticipated proceeds from any long-term financing commitment, plus funds from all other sources in the actual possession of the provider, equal not less than ninety percent of the aggregate cost of constructing or purchasing, equipping, and furnishing the facility.

2. Upon receipt by the escrow agent of a request by the provider for the release of these 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 1 have not been met and notifies the provider of the basis for this finding. The request for release of the escrow funds shall be accompanied by any documentation the fiduciary requires.

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

4. An entrance fee held in escrow shall be returned by the escrow agent to the person who made payment to the provider at any time upon receipt by the escrow agent of notice from the provider that this person is entitled to a refund of the entrance fee.

Sec. 6. NEW SECTION. 523D.6 PERSONAL REPRESENTATIVE – CANCELLATION.

1. A prospective resident or resident shall be provided a form to appoint a personal representative to receive copies of all notices, disclosures, or forms required by this chapter to be delivered to a prospective resident or resident. A personal representative appointed under this section shall not have legal authority to make any decision for the prospective resident or resident appointing the person to be a personal representative. The personal representative may advise the prospective resident or resident as to the materials provided. A personal representative shall not be affiliated or associated with a provider or any person identified in section 523D.3, subsection 1, paragraph "b" or "c" and shall not be a prospective resident or resident.

2. A person may cancel a contract for a period equal to the later ending period of the following:

a. Forty-five calendar days after the disclosure statement required by section 523D.3 was delivered to the person and to the person's personal representative if one is appointed.

b. Within three business days after the execution of a contract to provide continuing care or senior adult congregate living services, or at the time of the transfer of any money or other property to a provider by or on behalf of a prospective resident, whichever occurs first.

3. A provider shall furnish to each prospective resident and the prospective resident's personal representative, if one is appointed, at the time section 523D.3 requires delivery of a disclosure statement, a completed form in duplicate, captioned "Notice of Cancellation", which shall be attached to the disclosure statement and easily detachable, and which shall contain in ten point boldface type the following information and statements in the same language as that used in the contract:

Notice of Cancellation

a. Date contract was executed or money or property transferred to the provider, whichever occurs first, if known:

b. Date disclosure statement was delivered:

You may cancel this contract, without any penalty or obligation, within three business days from date in paragraph "a" above, or within forty-five calendar days of date in paragraph "b" above, whichever period ends upon a later date.

If you cancel this contract, any money or property transferred to the provider, any payments made by you will be returned within thirty calendar days following receipt by the provider of your cancellation notice, and any security interest arising out of the transaction will be canceled, except that the provider may retain the reasonable value of care and services actually provided to the resident prior to the resident vacating the provider's facility.

If you cancel this contract, and have already moved into the provider's facility, you must vacate the provider's facility within ten days after receipt by the provider of your cancellation notice.

To cancel this contract, mail by certified mail or hand deliver, a signed and dated copy of this cancellation notice or any other written notice clearly indicating your intent to cancel the contract, or send a telegram, to, (name of provider) at (address of provider's place of business).

I hereby cancel this contract.

.
(Date)

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(prospective resident's or resident's signature)

4. A purchaser's cancellation is effective upon mailing by certified mail, when transmitted by telegraph, or when actual notice is given to the provider, whichever is earlier.

Sec. 7. NEW SECTION. 523D.7 CIVIL LIABILITY.

1. A provider is liable to the person contracting for continuing care or senior adult congregate living services for damages and repayment of all fees paid to the provider, facility, or person violating this chapter, less the reasonable value of care and lodging provided to the resident by or on whose behalf the contract for continuing care or senior adult congregate living services was entered into prior to discovery of the violation, misstatement, or omission, or the time the violation, misstatement, or omission should reasonably have been discovered, together with interest at the legal rate for judgments and court costs and reasonable attorney fees, if the provider does any of the following:

a. Enters into a contract to provide continuing care or senior adult congregate living services at a facility without having first delivered a disclosure statement meeting the requirements of this chapter to the person contracting for continuing care or senior adult congregate living services and to the person's personal representative if one is appointed by the person.

b. Enters into a contract to provide continuing care or senior adult congregate living services at a facility with a person who has relied on a disclosure statement which contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

2. Liability under this section exists regardless of whether or not the provider or person liable had actual knowledge of the misstatement or omission.

3. A person shall not file or maintain an action under this section if the person, before filing the action, received an offer to refund, payable upon acceptance, all amounts paid the provider, facility, or person violating this chapter, together with interest from the date of payment, less the reasonable value of care and lodging provided prior to receipt of the offer, and the person failed to accept the offer within thirty days of its receipt. At the time a provider makes a written offer of refund, the provider shall file a copy with the division of insurance. The refund offer shall refer to the provisions of this section.

4. An action shall not be maintained to enforce a liability created under this chapter unless brought before the expiration of six years after the execution of the contract for continuing care or senior adult congregate living services which gave rise to the violation.

5. Except as expressly provided in this chapter, civil liability in favor of a private party shall not arise against a person, by implication, from or as a result of the violation of this chapter. This chapter does not limit a liability which may exist by virtue of any other statute or under common law if this chapter were not in effect.

Sec. 8. NEW SECTION. 523D.8 CRIMINAL PENALTIES.

1. A person who willfully and knowingly violates a provision of this chapter or a rule adopted or order entered pursuant to this chapter, upon conviction, is guilty of an aggravated misdemeanor.

2. This chapter does not limit the power of the state to punish any person for any conduct which constitutes a crime under any other statute.

Sec. 9. NEW SECTION. 523D.9 INITIAL FILING.

For any facility offering continuing care or senior adult congregate living services contracts prior to the effective date of this Act, initial filings of disclosure statements shall take effect in and for the facility's fiscal year ending after January 1, 1990.

Sec. 10. NEW SECTION. 523D.10 RULES.

The division of insurance may adopt rules pursuant to chapter 17A as necessary and appropriate to implement this chapter, and may make further recommendations to the general assembly for the protection of residents and prospective residents of facilities required to file an annual disclosure statement under this chapter.

Approved May 24, 1989

CHAPTER 218

EMPLOYMENT BENEFITS

H.F. 448

AN ACT relating to certain employment benefit coverages for real estate agents under the workers' compensation law and for persons employed by the natural resource commission under the unemployment compensation law.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 85.61, subsection 2, Code 1989, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. "Worker" or "employee" includes a real estate agent who does not provide the services of an independent contractor. For the purposes of this paragraph a real estate agent is an independent contractor if the real estate agent is licensed by the Iowa real estate commission as a salesperson and both of the following apply:

a. Seventy-five percent or more of the remuneration, whether or not paid in cash, for the services performed by the individual as a real estate salesperson is derived from one company and is directly related to sales or other output, including the performance of services, rather than to the number of hours worked.

b. The services performed by the individual are performed pursuant to a written contract between the individual and the person for whom the services are performed, and the contract provides that the individual will not be treated as an employee with respect to the services for state tax purposes.