

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code section 523D.10, the Insurance Division (the Division) hereby rescinds Chapter 24, “Iowa Retirement Facilities,” and adopts new Chapter 102, “Iowa Retirement Facilities,” Iowa Administrative Code.

The adopted Chapter 102 implements Iowa Code chapter 523D. The rescinded Chapter 24 was reviewed according to Iowa Code section 17A.7(2), and new Chapter 102 updates provisions from rescinded Chapter 24, including, among other things, procedures to allow for more electronic administration of Iowa Code chapter 523D and the associated rules.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 28, 2016, as **ARC 2724C**. A public hearing was held on October 18, 2016, and written comments were accepted through that date. No one attended the public hearing, but one letter of comments was received.

The comment letter suggested replacing the term “certified financial statements” with “audited financial statements,” both in the definition of the term in subrule 102.2(1) and elsewhere in the rule. The term “certified financial statements” is used in Iowa Code section 523D.3(1)“i,” and the term is used in new Chapter 102 specifically as it relates to Iowa Code section 523D.3(1)“i.” Therefore, the Division declined to make the suggested change.

The comment letter also suggested deleting “and practices” from the end of proposed subrule 102.5(1), and the Division made that change in this adopted version of new Chapter 102. Except for that change, these amendments are identical to those published under Notice.

These amendments are subject to waiver consistent with the waiver provisions provided at 191—Chapter 4.

These rules will impose no fiscal impact on the State.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 523D.

These amendments shall become effective December 28, 2016.

The following amendments are adopted.

ITEM 1. Rescind and reserve **191—Chapter 24**.

ITEM 2. Adopt the following new 191—Chapter 102:

CHAPTER 102

IOWA RETIREMENT FACILITIES

191—102.1(523D) Purpose and applicability. This chapter is promulgated to implement and administer Iowa Code chapter 523D, which regulates senior adult congregate living facilities and continuing care retirement communities. This chapter applies to entities of the same kind and in the same manner as set forth in Iowa Code section 523D.2.

191—102.2(523D) Definitions.

102.2(1) Definitions of terms found in Iowa Code chapter 523D and this chapter. The definitions in Iowa Code chapter 523D are incorporated by this reference. In addition, the following definition shall apply to this chapter and shall provide clarification and additional context to Iowa Code chapter 523D.

“*Certified financial statements*,” as used in this chapter and in Iowa Code section 523D.3(1)“i,” means financial statements audited and certified by a certified public accountant in accordance with generally accepted auditing standards.

102.2(2) Definitions of terms used in Iowa Code chapter 523D. The following terms, which are used in Iowa Code chapter 523D, are defined here to provide clarification and additional context.

“*Actuarial forecast*,” as used in Iowa Code section 523D.5(1)“f,” means an analysis which is performed by a qualified actuary or an individual who has demonstrated to the satisfaction of

the commissioner the necessary experience and educational background. Such analysis shall be in accordance with generally accepted actuarial principles and practices and shall include a statement of actuarial opinion, an actuarial balance sheet, a cash flow projection, and a statement of applicable actuarial methodology, formulas, and assumptions. “Qualified actuary” means an individual who is a member of the American Academy of Actuaries.

“*Financial institution*,” as used in Iowa Code section 523D.5(4), means: a state or federally insured bank, savings bank, savings and loan association, or credit union; or a trust company authorized to do business in the state of Iowa.

“*Statement of financial feasibility*,” as used in Iowa Code section 523D.5(1) “d,” means a financial forecast, as defined by the American Institute of Certified Public Accountants (AICPA), of the revenues, expenses, working capital needs, and other financial requirements for the new or expanded facility or an alternative financial study in a form acceptable to the insurance division. The forecast period should include the development or expansion period and extend for five fiscal years from the date of initial occupancy. Unless waived by the commissioner, the statement of financial feasibility shall include a cash flow forecast with underlying assumptions and be presented in accordance with AICPA guidelines. The financial analysis shall be prepared by either a qualified actuary, a certified public accountant, or an individual who has demonstrated to the satisfaction of the commissioner the necessary experience and educational background. “Qualified actuary” means an individual who is a member of the American Academy of Actuaries. “Certified public accountant” means a person who is licensed as a certified public accountant under Iowa Code chapter 542 or under the laws of another state.

“*Statement of the market feasibility*” as used in Iowa Code section 523D.5(1) “e,” means an analysis of the market conditions which:

1. Identifies and evaluates the potential market, including a demographic and economic profile of the population in the facility’s market area;
2. Identifies the existing or proposed facilities or similar businesses offering similar services in the potential market area, including, if available, the occupancy rate for existing facilities for the last three years; and
3. Identifies the name and address 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 or related health care fields.

191—102.3(523D) Forms and filings.

102.3(1) Copies of all required forms and instructions are available on the commissioner’s Web site, www.iid.iowa.gov.

102.3(2) All filings, fees and payments shall be made as directed by the commissioner. Instructions are available at the commissioner’s Web site, www.iid.iowa.gov.

191—102.4(523D) Standards for the disclosure statement.

102.4(1) Readability. Documents required by Iowa Code sections 523D.3, 523D.5 and 523D.6 to be given to residents, prospective residents, and personal representatives, including disclosure statements and residents’ contracts, shall be drafted in accordance with the following standards:

- a. The language used shall be readable by a person of average intelligence and education.
- b. All information presented should be conveyed in a logical sequence and in a clear and direct fashion.
- c. Complex and compound sentences should be avoided.
- d. Words should convey their commonly understood meanings.
- e. Definitions shall be included for words or terms which cannot properly be explained or qualified in the text.
- f. Frequent section headings should be used to permit ease in locating provisions.
- g. Documents shall be printed in a typeface and a point size easily legible to the audience to whom the literature is directed. An upright typeface with at least 10-point type should be used.

102.4(2) Form. Documents shall be typed or printed on paper measuring 8½ by 11 inches. The disclosure statement shall be bound or otherwise securely fastened.

102.4(3) Cover page. The cover page of the disclosure statement shall state, in a prominent location and in boldface type, “Disclosure Statement,” the date of the disclosure statement, and that the delivery of the disclosure statement to a contracting party before the execution of a contract for the provision of supportive services or continuing care is required by Iowa Code chapter 523D, but that the disclosure statement has not been approved by any government agency or representative.

102.4(4) Table of contents. Multipaged documents shall contain a table of contents giving a comprehensive listing of all section headings used in the document. If the table of contents does not appear at the beginning of the document, the location of the table of contents shall be noted on the first page.

102.4(5) Acknowledgment. The last page of the disclosure statement shall consist of a detachable “acknowledgment of receipt” which shall be signed and dated by the resident. A copy of the acknowledgment shall be kept on file in the office of the provider for at least one year from the date of the acknowledgment.

102.4(6) Advertising. The disclosure statement shall contain no sales or advertising materials. Sales or advertising materials may be attached to the disclosure statement or packaged with the disclosure statement if the manner of attachment or packaging does not obfuscate the cover page of the disclosure statement.

191—102.5(523D) Certified financial statements, studies, and forecasts.

102.5(1) Certified financial statements, as required by Iowa Code section 523D.3(1) “i,” shall be prepared in accordance with generally accepted accounting principles (GAAP).

102.5(2) Certified financial statements shall be presented in a format that allows financial analysis of the contracting party undertaking to provide the continuing care. The contracting party may consist of an individual facility or numerous operating units. In some cases, where the financial condition and financial obligations of affiliated legal entities are relevant to the financial condition of the contracting party, preparation on a consolidated basis may be necessary. Certified financial statements shall provide sufficient financial disclosure to the continuing care resident to enable the resident to make an informed decision.

102.5(3) Studies or forecasts must disclose the basic assumptions used.

102.5(4) The following certified financial statements must be filed with the annual disclosure statement:

- a. An income statement or a statement of revenues and expenses;
- b. A statement of changes in equity or changes in fund balances;
- c. A balance sheet; and
- d. A statement of cash flow.

191—102.6(523D) Amendments to the disclosure statement. Changes in the operations of a provider or licensed facility which shall require an amendment to a disclosure statement include, but are not limited to, the following:

102.6(1) New or additional mortgages, security interests, loan commitments, long-term financing arrangements, or leases that materially affect the real property of the licensed facility unless the material terms of such transactions were specifically described as proposed transactions in the disclosure statement.

102.6(2) The sale of the licensed facility to a new provider.

102.6(3) Changes in the provider’s tax status.

102.6(4) A material change in the form of the resident contract.

191—102.7(523D) Records.

102.7(1) A licensed facility or provider shall keep accurate accounts, books and records concerning transactions regulated under Iowa Code chapter 523D.

102.7(2) A licensed facility's or provider's accounts, books and records shall include:

- a.* Copies of all contracts;
- b.* The name and address of each resident, prospective resident, or current or past contract holder;
- c.* Copies of disclosure statements, any amendments thereto, and any supporting documentation for the information included in the disclosure statements and annual disclosure statements pursuant to Iowa Code section 523D.3;
- d.* Copies of documents related to new construction as required by Iowa Code section 523D.5; and
- e.* The dates and amounts of all receipts and expenditures.

102.7(3) A licensed facility or provider shall retain all required accounts, books and records pertaining to each resident or prospective resident contract for at least two years after the expiration of the specified period of time in the contract or for five years if required by Iowa Code section 523D.3(3).

102.7(4) A licensed facility or provider shall make all accounts, books and records concerning transactions regulated under Iowa Code chapter 523D available to the commissioner for the purpose of examination.

102.7(5) A licensed facility or provider discontinuing business in this state shall maintain its records until it furnishes the commissioner with proof satisfactory to the commissioner that the licensed facility or provider has discharged all obligations to contract holders in this state.

191—102.8(523D) Misrepresentations. A licensed facility or provider shall not represent or imply in any manner that the licensed facility or provider has been sponsored, recommended, or approved or that the licensed facility's or provider's abilities or qualifications have in any respect been passed upon by the commissioner, the Iowa insurance division, or the state of Iowa. Nonetheless, if the statements are factually correct, a licensed facility or provider may state that the licensed facility or provider has filed with the Iowa insurance division an annual certification in accordance with Iowa Code section 523D.2A.

191—102.9(523D) Violations. Failure to comply with this chapter or with Iowa Code chapter 523D shall be deemed a violation which shall subject a person or entity to the procedures and penalties set forth in Iowa Code chapter 523D.

These rules are intended to implement Iowa Code chapter 523D.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/23/16.