

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on [upon filing] by the  
Date prior to or same as filing date

Department of Human Services, Seniors and People with Disabilities Division 411

Agency and Division Administrative Rules Chapter Number

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Rules Coordinator Address Telephone  
to become effective [April 1, 2011]. Rulemaking Notice was published in the [March 2011] Oregon Bulletin.\*\*  
Date upon filing or later Month and Year

SPD 8-2011

**RULE CAPTION**

Continuing Care Retirement Communities

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:**

411-067-0065, 411-067-0086

**AMEND:**

411-067-0000, 411-067-0010, 411-067-0020, 411-067-0050, 411-067-0055,  
411-067-0060, 411-067-0070, 411-067-0080, 411-067-0083, 411-067-0090,  
411-067-0100

**REPEAL:**

411-067-0030, 411-067-0087

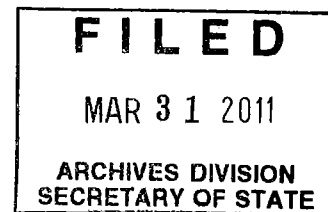
**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 101.150 and 410.090

Other Auth.: House Bill 2138 (2009) and Chapter 201 (2009 Laws)

Stats. Implemented: ORS 101.010 to 101.160



**RULE SUMMARY**

The Department of Human Services, Seniors and People with Disabilities Division is permanently updating the continuing care retirement community rules in OAR chapter 411, division 067.

Signature *Kym Gasper*

Date 3/30/2011

Printed Name KYM GASPER

\*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. \*\*The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday. ARC 930-2005

**DEPARTMENT OF HUMAN SERVICES  
SENIORS AND PEOPLE WITH DISABILITIES DIVISION  
OREGON ADMINISTRATIVE RULES**

**CHAPTER 411  
DIVISION 67**

**CONTINUING CARE RETIREMENT COMMUNITY**

**411-067-0000**

**Definitions**

- (1) "Act" means the Continuing Care Retirement Community Provider Registration Act, ORS Chapter 101.
- (2) "Activities of Daily Living" mean those personal, functional activities required by an individual for continued well-being, which are essential for health and safety. Activities consist of eating, dressing/grooming, bathing/personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), and cognition/behavior.
- (3) "Adjacent Properties" mean two or more pieces of land that are separated by no more than 1000 feet.
- (4) "Affiliated Organization" means any profit or not-for-profit corporation, limited liability company, partnership, sole proprietorship, sponsoring entity, or other form of legal entity:
  - (a) That is the lessor of the real property on which the facilities of the provider are situated;
  - (b) That a provider has identified in the disclosure statement as described in OAR 411-067-0050;or
  - (c) In which any director, executive officer, or manager of a provider has an equity or debtor financial interest in excess of \$10,000.
- (5) "Applicant" means a provider that has submitted an application and disclosure statement to register as a continuing care retirement community.
- (6) "Application Fee" means a fee charged to an individual, prior to execution of a residency agreement, apart from an entrance fee.
- (7) "Assistant Director" means the assistant director of the Division, or the assistant director's designee.
- (8) "Audited Financial Statement" means a provider's financial statement that has been prepared in accordance with the GAAP and audited by an independent certified public accountant in accordance with generally accepted auditing standards. The audited financial statement declares whether the continuing care retirement community was or was not in compliance with its reserve requirements during the audited period.
- (9) "Certificate of Registration" means a document that is issued and signed by the Assistant Director of the Division that indicates the provider is registered as a continuing care retirement community.
- (10) "Closed Bed Long Term Care Facility" means a licensed nursing facility in a continuing care retirement community that is used exclusively by individuals receiving long term care services under a residency agreement.
- (11) "Continuing Care" means directly furnishing or indirectly making available, upon payment of an entrance fee and under a residency agreement, housing and health-related services for a period greater than one year to an individual not related by blood or marriage to the continuing

care retirement community provider that is furnishing care. The term applies regardless of whether the care is provided in the continuing care retirement community or in another setting designated by the residency agreement. Health-related services may be provided at a location that is not a part of the continuing care retirement community.

(12) "Continuing Care Retirement Community (CCRC)" means a provider that agrees to furnish continuing care to a resident under a residency agreement. A continuing care retirement community may consist of one or more facilities.

(13) "Department" means the Department of Human Services.

(14) "Division" means the Seniors and People with Disabilities Division of the Department of Human Services.

(15) "Entrance Fee" means an initial or deferred transfer to a provider of a sum of money or property, made or promised to be made as full or partial consideration, for acceptance of one or more residents in a continuing care retirement community. A fee that is less than the sum of the regular periodic charges for one year of residency is not an entrance fee.

(16) "Facility" means physical structures of a continuing care retirement community, on one site or on adjacent properties, operating under the same name and managed as a part of the same continuing care retirement community.

(17) "Generally Accepted Accounting Principles (GAAP)" mean the accounting principles or standards generally accepted in the United States, including but not limited to the accounting standards codification and interpretations thereof as published by the Financial Accounting Standards Board.

(18) "Health-Related Services" includes but is not limited to providing nursing care, assistance with activities of daily living, long-term care, and rehabilitative services.

(19) "Indirect Ownership" means any profit or not-for-profit corporation, limited liability corporation, partnership, sole proprietor, sponsoring entity, or other form of legal entity with ownership interest in an affiliated organization or an indirect economic interest in the net residual value of the provider or both.

(20) "Liquid Reserve" means cash, marketable securities, and net receivables that may be easily converted to cash.

(21) "Living Unit" means a room, apartment, cottage, or other area set aside for the exclusive use of residents.

(22) "Long Term Financing" means funds acquired by borrowing, or sale of bonds, the balance of which is not required to be paid back during the same fiscal year in which they were borrowed (or "sold" in the case of bonds).

(23) "Manager" means a person, corporation, partnership, association, or other legal entity that enters into a contractual arrangement with the provider to manage the continuing care retirement community. "Manager" does not include individuals employed by the provider, corporations affiliated with the provider, or other legal entities within the provider's supervision or control.

(24) "New Continuing Care Retirement Community" means a continuing care retirement community being initially registered by a provider but does not apply to the remodeling or expansion of an existing continuing care retirement community's facility on the same or an adjacent site or the annual renewal of an existing continuing care retirement community registration.

(25) "Omit a Material Fact" means the failure to state a material fact required to be stated in any disclosure statement or registration.

- (26) "Open Bed Long Term Care Facility" means a licensed nursing facility in a continuing care retirement community that admits individuals who have not signed a residency agreement.
- (27) "Ownership Interest" means the possession of equity in the capital, stock, profits, or residual value of the provider.
- (28) "Provider" means an owner or operator, whether a natural person, partnership, trust, limited liability company, corporation, or unincorporated association, however organized, of a new or existing continuing care retirement community, whether operated for profit or not, that provides, plans to provide, or agrees to provide, continuing care to one or more unrelated residents under a residency agreement.
- (29) "Regular Periodic Charges" mean basic monthly fees charged to a resident on an ongoing basis.
- (30) "Residency Agreement" means a contract between a provider and a resident for the provision of continuing care for a period of greater than one year.
- (31) "Resident" means an individual who enters into a residency agreement with a provider or who is designated in a residency agreement to be provided with continuing care.
- (32) "Residents' Council (Council)" means a body of residents of a continuing care retirement community who are elected by the residents and recognized by the provider as representing the interests of the residents.
- (33) "Residual Value" means the net assets upon the liquidation or dissolution of the provider.
- (34) "Solicit" means all actions of a provider in seeking to have individuals pay an application fee or enter into a residency agreement by any means including without limitation personal, telephone, mail, or any media distributed or communicated by any means.
- (35) "Start-Up Losses" means the excess of expenses over revenues that occur or are anticipated to occur.
- (36) "These Rules" mean the rules in OAR chapter 411, division 067.
- Stat. Auth.: ORS 101.150 & 410.090  
Stats. Implemented: ORS 101.020

#### **411-067-0010**

##### **Registration Required**

- (1) Providers who operate a CCRC must register with the Division.
- (2) If a provider operates more than one CCRC facility, each facility must be registered with the Division and separately listed on the disclosure statement.
- (3) No entity shall claim to be a CCRC in Oregon without being registered pursuant to these rules.
- (4) A new CCRC provider must register with the Division before:
  - (a) Entering into a residency agreement with a nonresident;
  - (b) Soliciting either a prospective resident or nonresident to pay an application fee or execute a residency agreement; or
  - (c) Collecting an entrance fee.
- (5) The provider must apply for registration with the Division on forms prescribed by the Division as described in OAR 411-067-0020. The application must include a disclosure statement as described in OAR 411-067-0050.
- (6) The Division shall issue a notice of filing to the applicant within 10 business days after receipt of the completed application for registration of a new CCRC and the initial registration fee.

(7) The Division shall enter an order registering the provider or rejecting the registration within 60 days of the notice of filing. If no order of rejection is entered within 60 days from the date of notice of filing, the provider shall be considered registered unless the provider and the Division agree in writing to an extension of time. If no order of rejection is entered within the time period as so extended, the provider shall be considered registered.

(8) The Division shall enter an order registering the provider if the Division determines that the requirements of these rules and ORS chapter 101 have been met.

(9) The Division shall notify the applicant that the application for registration must be corrected within 30 days if the Division determines that any of the requirements of these rules and ORS chapter 101 have not been met.

(a) The Division may enter an order rejecting the registration if the applicant does not meet the requirements within 30 days. The order shall include the findings of fact upon which the order is based and which may not become effective until 20 days after the end of the foregoing 30-day period.

(b) During the 20-day period, the applicant may petition for reconsideration and request a contested case hearing pursuant to ORS chapter 183.

(c) If a contested case hearing has been requested, an order of rejection may not take effect, in any event, until a decision is rendered by the administrative law judge that sustains the Division's decision to reject the registration.

Stat. Auth.: ORS 101.150 & 410.090

Stats. Implemented: ORS 101.030

#### **411-067-0020**

##### **Registration**

###### **(1) APPLICATION FOR REGISTRATION:**

(a) Application for registration must be made to the Division on forms prescribed by the Division. The application must include:

- (A) The registration fee as described in section (2) of this rule;
- (B) The annual disclosure statement as described in OAR 411-067-0050; and
- (C) The reserve requirement statement as described in OAR 411-067-0060.

(b) The application is not considered to be complete until the Division receives all required information and the registration fee.

(c) The application for registration must be signed and notarized by the provider or an authorized individual.

(d) Application for registration must be made annually to the Division as described in this section.

###### **(2) REGISTRATION FEE:**

(a) The initial application for registration must be accompanied by a fee of \$500.

(b) After the initial registration, the subsequent annual registration fee shall be \$250 per facility.

###### **(3) ISSUANCE OF REGISTRATION:**

(a) The Division shall issue a certificate of registration to the provider once the provider has:

(A) Submitted a completed application, disclosure statement, registration fee, and other required information;

(B) Met the reserve requirement as described in OAR 411-067-0060; and

(C) Met all other requirements as described in ORS chapter 101 and these rules.

(b) The certificate of registration shall identify the provider as a CCRC and include:

- (A) The name and address of the provider;
  - (B) The names and addresses of all facilities owned and operated by the provider;
  - (C) The effective date of the registration; and
  - (D) The following statement in a prominent location and typeface: "A certificate of registration does not constitute approval, recommendation or endorsement of the community by the Seniors and People with Disabilities, and this registration does not evidence the accuracy or completeness of the information set forth in the disclosure statement."
  - (c) The provider must use a copy of the certificate of registration as the cover page for the disclosure statement as described in OAR 411-067-0050.
- Stat. Auth.: ORS 101.150 & 410.090  
 Stats. Implemented: ORS 101.030 & 101.040

**411-067-0050**

**Disclosure Statement**

- (1) All providers must file a disclosure statement with the Division upon initial application and annually thereafter. The disclosure statement must be on forms prescribed by the Division.
- (2) DISCLOSURE STATEMENT: The disclosure statement must include:
  - (a) The rights and requirements of the residents described in OAR 411-067-0086;
  - (b) The names of the individuals who constitute the provider or, if the provider is a partnership, limited liability company, corporation, or other legal entity, whether for profit or not for profit, the name of the legal entity and each of the officers, directors, trustees, or managing general partners of the legal entity and a description of each individual's duties on behalf of the legal entity;
  - (c) The business address of the provider and a statement of whether the provider is an individual, partnership, limited liability company, corporation, or other affiliated organization;
  - (d) The names and business addresses of any individual having any more than a 10 percent direct or indirect ownership or beneficial interest in the provider, the percentage of the direct or indirect ownership or beneficial interest, and a description of each individual's interest in or occupation with the provider;
  - (e) A statement as to whether the provider is or is not affiliated with any other organization of any kind, the extent of the affiliation, if any, and the extent to which the organization is responsible for the financial and contractual obligations of the provider;
  - (f) The provision of the Internal Revenue Code, if any, under which the provider or any affiliated organization is exempt from the payment of federal income taxes;
  - (g) The location and general description of the CCRC including the location and number of living units and licensed long term care beds considered part of the CCRC, and any other care facilities owned or operated by the provider. The provider must disclose the following about any proposed CCRC or other care facilities:
    - (A) The estimated completion date;
    - (B) A statement as to whether or not construction has begun; and
    - (C) Any contingencies subject to which construction may be deferred;
  - (h) The number of open bed long term care facility beds operated by the CCRC;
  - (i) A description of services provided or proposed to be furnished by the provider under its residency agreements including without limitation:
    - (A) The extent to which medical care, long term care, or health related services are furnished, and the locations where the services shall be furnished. If the services are furnished at a facility

that is not registered as part of the CCRC's campus, the provider must state the location where the services are furnished and any additional fees associated with the services; and

(B) The services made available by the CCRC at an extra charge over and above the entrance fee;

(j) A description of all fees required of each resident including the entrance fee, regular periodic charges, and the manner in which any additional fees or regular periodic charges shall be determined. The description must include:

(A) The circumstances under which the resident shall be permitted to remain in the CCRC in the event the resident is unable to pay regular periodic charges or other fees;

(B) The terms and conditions under which the residency agreement may be canceled by the provider or the resident or in the event of the death of the resident prior to or following occupancy of the living unit;

(C) In boldfaced type, the percentage of the entrance fee refund required by ORS 101.080 and the manner in which this percentage is calculated;

(D) The conditions under which a living unit occupied by a resident may be made available by the provider to another resident other than on the death of the resident executing the residency agreement;

(E) The manner by which the provider may adjust regular periodic charges or other recurring fees;

(F) A statement of the fees to be charged if the resident marries or divorces while at the designated CCRC, the terms concerning a resident's spouse's entry to or departure from a CCRC, and the consequences if a new spouse does not meet the requirements for entry; and

(G) The terms and conditions for the transfer of a resident out of the CCRC;

(k) The provider's most recent audited financial statement. The audited financial statement may not have been prepared more than 16 months prior to the date of the initial application for registration;

(l) A copy of the residency agreement offered to the prospective resident by the provider;

(m) A statement on the cover page in a prominent location and typeface that registration of the CCRC does not constitute approval, recommendation, or endorsement of the CCRC by the Department, and that such registration does not evidence the accuracy or completeness of the information set forth in the disclosure statement;

(n) Copies of the primary written brochures and written promotional materials furnished to prospective residents;

(o) A full description of all contracts that the provider has entered into with affiliated organizations and an explanation of the financial impact that the contracts may have on residents;

(p) An affidavit signed by an authorized representative of the CCRC confirming that the disclosure statement is complete and accurate;

(q) If required, a copy of the escrow agreement as described in OAR 411-067-0070.

(r) Any person or legal entity named in subsection (b) or (d) of this section and any proposed or existing manager must disclose:

(A) Business experience in operation or management of CCRCs or other licensed long term care facilities;

(B) Whether the person or legal entity has been convicted of a crime;

(C) Whether the person has been a party to any civil action in which a judgment for damages was obtained or in which an injunction was issued against the person for fraud, embezzlement, fraudulent conversion, or misappropriation of property;

- (D) Whether the person or legal entity has been a party to any civil action in which a judgment for damages was obtained or in which an injunction was issued against the person or legal entity for fraud, embezzlement, fraudulent conversion, or misappropriation of property;
- (E) Whether the person or legal entity has had any state, federal permits, or licenses, suspended or revoked, or if a state or federal authority has disqualified the person or legal entity from providing services in the Medicare or Medicaid program in connection with the person or legal entity's business activities;
- (F) The identity of any business or professional service entity in which the person or legal entity has a 10 percent or greater ownership interest and which the provider intends to employ to provide goods, services, or any other things of value; and
- (G) The anticipated costs to the provider or a statement that such costs cannot presently be estimated.

(3) INITIAL DISCLOSURE STATEMENT: In addition to complying with all the provisions of section (2) of this rule, the provider must submit on behalf of a new CCRC a statement of the anticipated source and application of funds used or to be used in the purchase or construction of the CCRC including:

- (a) An estimate of the cost of purchasing or constructing and equipping the CCRC that the provider expects to incur or become obligated for prior to the commencement of the operation of the CCRC;
- (b) A description of any mortgage loan or other long term financing intended to be used for the financing of the CCRC;
- (c) An estimate of the total entrance fees to be received from the residents at or prior to the commencement of operation of the CCRC based on projected occupancy at the time the CCRC commences operation; and
- (d) An estimate of the funds, if any, anticipated to be necessary to pay for start-up losses.

(4) ANNUAL DISCLOSURE STATEMENT:

(a) In addition to the information required in section (2) of this rule, the annual disclosure statement must include:

- (A) A copy of the certificate of registration. The certificate of registration must be used as the cover page for the annual disclosure statement;
- (B) A disclosure of any change in ownership or manager;
- (C) The frequency and the dates of the residents' council meetings or meetings with all residents of the CCRC as described in OAR 411-067-0083; and
- (D) Copies of all notices of changes in regular periodic charges or notices of proposed changes in fees or services that were given to residents during the provider's most recently completed fiscal year.

(b) To amend an annual disclosure statement, a provider must file all amended documents and new materials with the Division.

(5) RIGHT OF REVIEW:

- (a) The provider must notify prospective residents of their right to review the initial disclosure statement after entry of an order registering the provider and before the provider enters into any residency agreement with or on behalf of the prospective resident.
- (b) The provider must make the current annual disclosure statement available to each resident and prospective resident.

(c) The provider must make copies of the initial disclosure statement available upon request. The initial disclosure statement must be available during regular business hours in the business office of the CCRC.

**(6) DUE DATE FOR ANNUAL DISCLOSURE STATEMENT:**

(a) If a certificate of registration is issued six months or more prior to the provider's fiscal year end, then the next annual disclosure statement and registration fee is due by the fourth month following the first fiscal year end, after the issuance date of the certificate of registration and annually thereafter.

(b) If a certificate of registration is issued less than six months prior to the provider's fiscal year end, then the next annual disclosure statement and registration fee is due by the fourth month following the second fiscal year end, after the issuance date of the certificate of registration and annually thereafter.

Stat. Auth.: ORS 101.150 & 410.090

Stats. Implemented: ORS 101.050, 101.052, & 101.080

**411-067-0055**

**Residency Agreement**

(1) The provider and the prospective resident must sign and date a residency agreement before CCRC services begin.

(2) A copy of the agreement must be provided to the resident.

(3) The residency agreement must list in boldface type the percentage of the entrance fee to be refunded and the manner in which the percentage of the entrance fee is calculated.

Stat. Auth.: ORS 101.150 & 410.090

Stats. Implemented: ORS 101.030, 101.050, & 101.080

**411-067-0060**

**Reserve Requirements**

(1) A provider must establish and maintain at all times:

(a) A debt service liquid reserve in an amount equal to or exceeding the total of all principal and interest payments due during the next 12 months on account of a mortgage loan or other long term financing of the CCRC taking into consideration any anticipated refinancing; and

(b) An operating liquid reserve in an amount equal to or exceeding the total of the CCRC's projected operating expenses for three months. For the purpose of calculating the amount required for the operating liquid reserve, projected operating expenses include any anticipated expenses associated with providing housing or health related services included under all the residency agreements.

(2) If the provider does not meet the reserve requirements, the Division may require the provider to place the reserves in an escrow account.

(3) The division may allow withdrawal or borrowing from the reserves in an amount not greater than 20 percent of the provider's total required reserves.

(a) The Division shall only approve the borrowing or withdrawal if required:

(A) For making an emergency repair or replacement of equipment;

(B) To cover catastrophic loss that is not able to be covered by insurance; or

(C) For debt service in a potential default situation.

(b) No withdrawal or borrowing may be made from the reserves without the approval of the Division except upon a court order.

- (c) All funds borrowed from the reserves must be repaid to the reserves within 18 months in accordance with a payment plan approved by the Division.
- (4) The reserve requirement statement must identify:
- (a) The total of all principal and interest payments due during the provider's previous fiscal year including any mortgage loans or other long-term financing;
  - (b) Any anticipated refinancing and any change in principal and interest payments expected during the next 12 months;
  - (c) The amount of liquid reserves maintained by the provider; and
  - (d) Three months projected operating expenses. A provider must determine the three months projected operating expenses by taking the provider's previous year's audited financial statement and adding any projected increases or decreases in expenses for the next year, excluding depreciation and payments on long-term financing.
- (5) New providers must determine their three months projected operating expenses by estimating their start-up, marketing, and personnel costs for the year of operation and divide the total costs by four. The projected budget must be provided to the Division. New providers must also submit an audited financial statement to the Division.
- (6) Registered providers who build, purchase, or operate a new facility must immediately meet the full reserve requirements for that facility.
- Stat. Auth.: ORS 101.150 & 410.090  
Stats. Implemented: ORS 101.060

#### **411-067-0065**

##### **Provider Liquidation**

If the provider is liquidated, the claims of the residents arising under residency agreements must be preferred claims that have priority over other unperfected claims against the provider's assets.

Stat. Auth.: ORS 101.150 & 410.090  
Stats. Implemented: ORS 101.065

#### **411-067-0070**

##### **Escrow Accounts**

- (1) **ESCROW ACCOUNT REQUIRED.** Prior to the Division issuing a certificate of registration to a provider for a new CCRC or new CCRC facility, the provider must establish an escrow account with a bank, trust company, or licensed escrow agent. A provider, otherwise in compliance with these rules, may not be required to establish an escrow account if the provider constructs one or more new physical structures, remodels, or expands on an existing CCRC facility on the same or adjacent site.
- (a) The provider must directly deposit all entrance fees into the escrow account upon receipt. Entrance fees must be deposited into the escrow account prior to a resident being allowed to occupy the living unit in the new CCRC or new CCRC facility.
  - (b) The provider must maintain a current list that identifies the name and address of each individual who paid the entrance fee and the amount paid.
- (2) **ESCROW INSTRUCTIONS FILED WITH AGENT.** Written escrow instructions that apply to all funds deposited into the escrow account must be filed with the escrow agent and include the following requirements:
- (a) Funds in the escrow account must be placed in an interest-bearing account.

(b) Funds in the escrow account must be released to the provider only after the escrow agent receives a court order or a written authorization from the Division that the provider has complied with the requirements of ORS 101.070 and this rule. If the funds are authorized to be released to the provider by the Division, the accumulated interest must be paid to the provider or as otherwise directed by a court, and the provider shall be responsible for paying the escrow fee.

(c) An entrance fee that has been deposited in the escrow account and earned interest, less a proportionate share of the escrow fee, must be released to the individual who paid the entrance fee upon written authorization from the provider that the individual is entitled to a refund of the entrance fee. The written authorization must contain the name and address of the individual entitled to the refund and the amount of the entrance fee paid by the individual.

(d) If all entrance fees have not been released by 36 months after the date the escrow account is established, all entrance fees in the account and earned interest, less a proportionate share of the escrow fee, must be returned to the individuals who paid the entrance fees, unless the Division notifies the escrow agent in writing, prior to the 36 months, that an extension has been granted. The written notice of extension from the Division shall contain additional instructions for the escrow agent.

(3) ESCROW AGREEMENT. A copy of the escrow agreement must be submitted to the Division as described in OAR 411-067-0050. .

(4) RELEASE OF FUNDS:

(a) Upon written request by the provider on a form prescribed by the Division, the Division shall approve the release of funds from escrow if the Division is satisfied that:

(A) The provider has received a certificate of occupancy by local authorities and has collected no less than 10 percent of entrance fees for each resident for no less than 50 percent of the total number of units;

(B) Anticipated proceeds of any first mortgage loan or other long term financing commitment plus funds from other sources in the actual possession of the provider are equal to not less than:

(i) 50 percent of the aggregate cost of constructing or purchasing, equipping, and furnishing the CCRC; and

(ii) 50 percent of the funds that the provider estimated in the disclosure statement as described in OAR 411-067-0050, to fund start-up losses of the CCRC; and

(C) A commitment has been received by the provider for any permanent mortgage loan or other long term financing commitment disclosed in OAR 411-067-0050 and any conditions of this commitment, prior to disbursement of funds, have been substantially satisfied other than completion of the construction or closing of the purchase of the CCRC.

(b) The Division shall review the request within 30 days and issue an order accepting or rejecting the request.

(A) If the Division approves the request, the Division shall notify the provider.

(B) If the Division rejects the release of escrow accounts:

(i) The Division shall issue an order rejecting the request. The order shall include the findings of fact upon which the order is based.

(ii) The provider may request a contested case hearing pursuant to ORS chapter 183 within 20 days after the date of the order.

(c) The provider may apply to the Division for an extension of time for the escrow account to remain open. The request for an extension must be made in writing to the Division before the 35th month after the date the escrow account was opened.

(A) The provider's request for an extension must contain documentation that demonstrates the requirements of subsection (4)(a) of this section may be met within 60 additional days and that a majority of the individuals, who have paid entrance fees that were deposited in the escrow account, have consented in writing to a 60-day extension. The provider's request for an extension must meet the requirements of this section or the request may not be considered to be timely.

(B) The Division shall review all timely requests for extension within 14 days of the receipt of the request. If the Division grants an extension, the Division shall send a notice of extension to the escrow agent.

(d) If the funds in the escrow account have not been released by 35 months after the date the escrow account was opened, the provider must deliver a copy of the list required by section (1)(b) of this rule to the escrow agent.

(e) In the event a prospective resident withdraws from the residency agreement prior to occupancy, the entrance fee may not be refunded to the prospective resident until the prospective resident's unit has been resold by the provider.

(f) If the entrance fees in an escrow account are not released within 48 months after the escrow account is opened, the entrance fees paid, less the escrow fee, must be returned to the resident unless an extension is granted by the Division.

(g) The escrow agent may return the entrance fee held in escrow to the individual who paid the entrance fee, upon receipt of notice from the provider that the individual is entitled to a refund of the entrance fee.

Stat. Auth.: ORS 101.150 & 410.090

Stats. Implemented: ORS 101.070

#### **411-067-0080**

##### **Transfer of Ownership**

(1) A certificate of registration is not transferable.

(2) A registered provider who wishes to sell, transfer ownership, or lease any CCRC or CCRC facility must obtain approval from the Division. The Division shall grant approval when the requirements of sections (3) and (4) of this rule have been met.

(3) Prior to taking over ownership or operation of the CCRC or CCRC facility, the purchasing provider must obtain a certificate of registration as described in OAR 411-067-0020.

(4) If the purchasing provider already has a certificate of registration, then the purchasing provider's certificate of registration must be amended to include the newly purchased CCRC or CCRC facility prior to taking over ownership or operation of the newly purchased CCRC or CCRC facility.

Stat. Auth.: ORS 101.150 & 410.090

Stats. Implemented: ORS 101.100

#### **411-067-0083**

##### **Resident Meetings and Notice of Changes**

(1) The governing body or a designated representative of the provider must hold meetings with the residents' council (Council) or all residents of the CCRC at least twice a year for the purpose of free discussion of subjects that may include but are not limited to facility income, expenditures, financial trends, resident concerns, and proposed changes in policy, programs, fees, and services.

(a) The meetings must be open to the designated personal representatives of the residents.

- (b) The provider must present for discussion any issue the Council or any resident of the CCRC identifies orally or in writing 14 days or more prior to the meeting. Any issue presented for discussion must be of general concern to the CCRC and must be communicated to the individual as set forth by CCRC policy.
- (c) The CCRC must report the dates of the meetings in the annual disclosure statement.
- (2) The provider must give residents at least 45 days notice of proposed changes in fees, regular periodic charges, or services. The provider must allow residents a reasonable opportunity to comment on the proposed changes before the changes become effective.
- (3) At least 30 days before an increase in regular periodic charges takes effect, the provider must hold a meeting with the Council or a meeting that is open to all residents of the CCRC to present the reasons for the proposed increase and any data supporting the need for the increase. A meeting as described in section (1) of this rule may be used for this purpose.
- (a) At least 14 days prior to the meeting, the provider must post in a conspicuous location and make available to each resident an agenda for the meeting.
- (b) At the meeting, the provider must make available an accounting of:
- (A) Actual and projected income and expenses for the CCRC's current fiscal year;
- (B) Projected income and expenses for the following fiscal year; and
- (C) The current rates for each living unit in the CCRC and each proposed rate increase. For this rule, "each living unit" means each type of living unit in contrast to every individual unit within the CCRC.
- (4) A provider must review the CCRC budget with the Council or a committee appointed by the Council during the budget planning process.
- (5) At least twice a year, the provider must make available, to the Council or a committee appointed by the Council, a financial statement for the CCRC that compares actual costs to budgeted costs, broken down by expense category.
- (6) The governing body of a provider must allow at least one resident, from each CCRC operated by the provider in Oregon, to participate as a nonvoting resident representative on the governing body or along with the owners or managers.
- (a) The resident representative may be excluded from any executive session and from discussion of confidential matters or matters related to litigation, personnel, competitive advantage, or a resident's personal affairs.
- (b) The resident representative may not be excluded from discussion of matters relating to the annual budget, increases in regular periodic charges, provider indebtedness, or expansion in new or existing CCRC facilities.
- (c) The resident representative and the resident representative's alternate must be elected by a majority vote of the Council of each CCRC or by a majority vote of all residents of the CCRC. The provider may establish the term for the representatives and the procedures for election and replacement of a representative and an alternate. The resident representative is responsible for submitting their name, address, electronic mail address, and telephone number to the provider.
- (d) A provider must send the notice of the meeting and any written materials relevant to the discussions in which the resident representative may participate under this section, to each resident representative and alternate, at the same time and in the same manner as the governing body, owners, or managers.
- (e) A provider must pay all reasonable travel expenses for a resident representative or alternate to attend meetings of the governing body and meetings of the governing body's committees.

(7) A provider must maintain and make available to any resident upon request, minutes of the meetings of the provider's governing body. A provider must retain the minutes for no less than three years from the date the minutes were created.

(a) The provider may remove from the minutes, information regarding any matters discussed in executive session or that relate to litigation, personnel, competitive advantage, or a resident's personal affairs.

(b) The provider may not remove from the minutes, information regarding the annual budget, increases in regular periodic charges, provider indebtedness, or expansion in new or existing CCRC facilities.

(8) Nothing in this rule prohibits a provider from allowing greater resident participation than the minimum requirements set forth in these rules.

Stat. Auth.: ORS 101.150 & 410.090

Stats. Implemented: ORS 101.112

#### **411-067-0086**

##### **Resident Rights**

(1) A provider must assist a resident, upon request, in the exercise of the resident's rights as a citizen of the United States and as a resident of Oregon. A resident has the right to exercise all rights that do not infringe upon the rights or safety of other residents.

(2) A resident has the right to review a provider's disclosure statements.

(3) A provider may not discriminate or impose any requirement or restriction based on sex, marital status, race, color, sexual orientation, or national origin of a resident, a prospective resident, or a resident's visitor.

(4) A provider must make reasonable accommodations to ensure that services are accessible to residents who have disabilities.

(5) A provider must treat each resident with respect and dignity at all times and ensure privacy for each resident during rehabilitation or treatment and when receiving personal care services.

(6) A resident has the right to associate and communicate privately with persons of the resident's choice and to send and receive mail that is not opened by the provider.

(7) A resident has the right to be free from abuse as defined in ORS 124.005 and OAR 411-020-0002.

(8) The Resident Council has the right to meet with the provider as described in OAR 411-067-0083.

(9) A resident has the right to participate in social, religious, and community activities at the discretion of the resident.

(10) A resident has the right to be fully informed, prior to or at the time of admission and during the resident's period of residency, of services available in the CCRC, whether the provider participates in the Medicare or Medicaid programs, and the consequences of the participation or lack of participation by the provider in the Medicare or Medicaid programs.

(11) A resident has the right to refuse medication, treatment, care, or participation in clinical trials or other research.

(12) A resident has the right to obtain treatment, care, and services including but not limited to home health and hospice care, from persons providing health care who have not entered into a contract with or are not affiliated with the provider, subject to policies of the CCRC regarding the provision of services by persons that are not under contract.

(13) A resident has the right to submit grievances and to suggest changes in policies and services either orally or in writing to staff or other individuals without fear of restraint, interference, coercion, discrimination, or reprisal by the provider. A provider must listen to and respond promptly to a grievance or suggestion from a resident.

(14) A resident has the right to be free from harassment by other residents and to peaceful enjoyment of the CCRC without interference from other residents.

(15) A provider must keep clinical and personal records of residents confidential. A resident or the resident's representative has the right to a prompt inspection of the records pertaining to the resident's care. The provider must provide photocopies or electronic copies of a resident's records to the resident or the resident's representative at a reasonable charge.

(16) A resident has the right to receive at least 45 days prior notice of proposed changes in fees or services. The provider must allow residents a reasonable opportunity to comment on the proposed changes before the changes become effective.

Stat. Auth.: ORS 101.150 & 410.090

Stats. Implemented: ORS 101.115

#### **411-067-0090**

##### **Complaints, Investigations, and Remedies**

(1) INVESTIGATIONS REQUIRED. The Division shall investigate all complaints made regarding violations of the CCRC Act, these rules, or orders adopted under the Act.

(a) Division staff or representatives of the Division shall carry out investigations as soon as practicable.

(b) The Division may interview pertinent witnesses including employees of the provider and review the provider's documents and records.

(c) Except as prohibited by the Elderly Persons and Persons with Disabilities Abuse Prevention Act, ORS chapter 124, the Division shall notify the provider within seven working days of any complaint and the provider shall be given an opportunity to respond.

(d) The provider must make the documents and records requested under subsection (b) of this section available to the Division for review and copying.

(e) The provider is responsible for violations of the Act, these rules, or orders adopted under the Act committed by the provider's employees, subcontractors, or agents.

(2) INTERVENTION BY THE DIVISION:

(a) The Division may issue a cease and desist order or revoke a provider's certificate of registration if, after notice and an opportunity for a contested case hearing pursuant to ORS chapter 183, the Division finds the provider guilty of violating any provision of the Act, these rules, or orders adopted under the Act.

(b) The Division may issue a cease and desist order or apply for injunctive relief or a temporary restraining order if it appears a person has engaged, or is about to engage, in an act or practice that constitutes a violation of any provision of the Act, these rules, or orders adopted under the Act.

(c) The Division may issue a cease and desist order for a violation of the Act, these rules, or orders adopted under the Act committed by the provider's employees, subcontractors, or agents. The order shall be issued to the provider and, when deemed appropriate by the Division, to the persons who violated the Act, these rules, or orders adopted under the Act.

(3) RETALIATION PROHIBITED. The provider may not take any retaliatory action against any complainant, including but not limited to the management, staff, and residents of the provider's CCRC facilities.

Stat. Auth.: ORS 101.150 & 410.090

Stats. Implemented: ORS 101.110 & 101.120

**411-067-0100**

**Promotional Material**

(1) PROHIBITION REGARDING ENDORSEMENT CLAIM. A provider may not advertise, represent, or imply that a CCRC has been inspected or approved by the State of Oregon or the Division.

(2) FEE SCHEDULE. All copies of the provider's fee schedule must state that a copy of the annual disclosure statement is available upon request.

(3) OUT-OF-STATE PROVIDER. An organization advertising CCRC services provided in another state may advertise in Oregon without being registered in Oregon only if the advertisement clarifies the state or other government entity through which the organization is licensed or registered.

Stat. Auth.: ORS 101.150 & 410.090

Stats. Implemented: ORS 101.150