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HOUSE BILL NO. 425

Offered January 12, 2022

Prefiled January 11, 2022

A BILL to amend and reenact §§ 38.2-4902 and 38.2-4910 of the Code of Virginia and to amend the Code of Virginia by adding in Article 3 of Chapter 49 of Title 38.2 a section numbered 38.2-4933, relating to continuing care providers; requirements for providers; complaint process; report.

Patrons—Willet; Senator: Barker

Referred to Committee on Commerce and Energy

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-4902 and 38.2-4910 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 3 of Chapter 49 of Title 38.2 a section numbered 38.2-4933 as follows:

§ 38.2-4902. Disclosure statement.

A. The disclosure statement of each facility shall contain all of the following information unless such information is contained in the continuing care contract and a copy of that contract is attached to and made a part of the initial disclosure statement:

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

2. Full information regarding ownership of the property on which the facility is or will be operated and of the buildings in which it is or will be operated.

3. 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 the provider, and a description of such person's interest in or occupation with the provider.

4. For (i) the provider, (ii) any person named in response to subdivision 3 of this subsection or (iii) the proposed management, if the facility will be managed on a day-to-day basis by a person other than an individual directly employed by the provider:

a. A description of any business experience in the operation or management of similar facilities.

b. The name and address of any professional service, firm, association, foundation, trust, partnership or corporation or any other business or legal entity in which such person has, or which has in such person, a 10 percent or greater interest and which it is presently intended will or may provide goods, leases or services to the provider of a value of \$500 or more, within any year, including:

(1) A description of the goods, leases or services and the probable or anticipated cost thereof to the provider;

(2) The process by which the contract was awarded;

(3) Any additional offers that were received; and

(4) Any additional information requested by the Commission detailing how and why a contract was awarded.

c. A description of any matter in which such person:

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

(2) Is subject to an 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 department, arising out of or relating to business activity or health care, including without limitation actions affecting a license to operate a foster care facility, nursing home, retirement home, home for the aged or facility registered under this chapter or similar laws in another state; or

(3) Is currently the subject of any state or federal prosecution, or administrative investigation involving allegations of fraud, embezzlement, fraudulent conversion, or misappropriation of property.

5. A statement as to:

a. Whether the provider is or ever has been affiliated with a religious, charitable or other nonprofit organization, the nature of any such affiliation, and the extent to which the affiliate organization is or will be responsible for the financial and contractual obligations of the provider.

b. Any provision of the federal Internal Revenue Code under which the provider is exempt from the payment of income tax.

6. The location and description of the real property of the facility, existing or proposed, and to the

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59 extent proposed, the estimated completion date or dates of improvements, whether or not construction
60 has begun and the contingencies under which construction may be deferred.

61 7. The *accommodations and services* provided or proposed to be provided under continuing care
62 contracts, including (i) *check-in procedures, resident emergency call systems, and other safety-based*
63 *services and* (ii) the extent to which medical care is furnished or is available pursuant to any
64 arrangement. The disclosure statement shall clearly state which services are included in basic continuing
65 care contracts and which services are made available by the provider at extra charge.

66 8. A description of all fees required of residents, including any entrance fee and periodic charges.
67 The description shall include (i) a description of all proposed uses of any funds or property required to
68 be transferred to the provider or any other person prior to the resident's occupancy of the facility and of
69 any entrance fee, (ii) a description of provisions for the escrowing and return of any such funds, assets
70 or entrance fee, the manner and any conditions of return and to whom earnings on escrowed funds are
71 payable and (iii) a description of the manner by which the provider may adjust periodic charges or other
72 recurring fees and any limitations on such adjustments. If the facility is already in operation, or if the
73 provider operates one or more similar facilities within this Commonwealth, there shall be included tables
74 showing the frequency and average dollar amount of each increase in periodic rates at each facility for
75 the previous five years or such shorter period that the facility has been operated by the provider.

76 9. Any provisions that have been made or will be made to provide reserve funding or security to
77 enable the provider to fully perform its obligations under continuing care contracts, including the
78 establishment of escrow accounts, trusts or reserve funds, together with the manner in which such funds
79 will be invested and the names and experience of persons who will make the investment decisions. The
80 disclosure statement shall clearly state whether or not reserve funds are maintained.

81 10. Certified financial statements of the provider, including (i) a balance sheet as of the end of the
82 two most recent fiscal years and (ii) income statements of the provider for the two most recent fiscal
83 years or such shorter period that the provider has been in existence.

84 11. A pro forma income statement for the current fiscal year.

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

87 a. An estimate of the cost of purchasing or constructing and equipping the facility including such
88 related costs as financing expense, legal expense, land costs, occupancy development costs and all other
89 similar costs that the provider expects to incur or become obligated for prior to the commencement of
90 operations.

91 b. A description of any mortgage loan or other long-term financing intended to be used for any
92 purpose in the financing of the facility and of the anticipated terms and costs of such financing,
93 including without limitation, all payments of the proceeds of such financing to the provider, management
94 or any related person.

95 c. An estimate of the percentage of entrance fees that will be used or pledged for the construction or
96 purchase of the facility, as security for long-term financing or for any other use in connection with the
97 commencement of operation of the facility.

98 d. An estimate of the total entrance fees to be received from or on behalf of residents at or prior to
99 commencement of operation of the facility.

100 e. An estimate of the funds, if any, which are anticipated to be necessary to fund start-up losses and
101 provide reserve funds to assure full performance of the obligations of the provider under continuing care
102 contracts.

103 f. A projection of estimated income from fees and charges other than entrance fees, showing
104 individual rates presently anticipated to be charged and including a description of the assumptions used
105 for calculating the estimated occupancy rate of the facility and the effect on the income of the facility of
106 any government subsidies for health care services to be provided pursuant to the continuing care
107 contracts.

108 g. A projection of estimated operating expenses of the facility, including (i) a description of the
109 assumptions used in calculating any expenses and separate allowances for the replacement of equipment
110 and furnishings and anticipated major structural repairs or additions and (ii) an estimate of the
111 percentage of occupancy required for continued operation of the facility.

112 h. Identification of any assets pledged as collateral for any purpose.

113 i. An estimate of annual payments of principal and interest required by any mortgage loan or other
114 long-term financing.

115 13. A description of the provider's criteria for admission of new residents.

116 14. A *description of the criteria for and requirements and procedures applicable to the transfer of a*
117 *resident between levels of care provided by the provider.*

118 15. A description of the provider's policies regarding access to the facility and its services for
119 nonresidents.

120 ~~15.~~ 16. Any other material information concerning the facility or the provider that may be required

by the Commission or included by the provider.

16. 17. The procedure by which a resident may file a complaint or disclose any concern.

B. The disclosure statement shall state on its cover that the filing of the disclosure statement with the Commission does not constitute recommendation or endorsement of the facility by the Commission.

C. A copy of the standard form or forms for continuing care contracts used by the provider shall be attached as an exhibit to each disclosure statement.

D. If the Commission determines that the disclosure statement does not comply with the provisions of this chapter, it shall have the right to take action pursuant to § 38.2-4931.

§ 38.2-4910. Right of organization; representation on board of directors.

A. Residents shall have the right (i) of self-organization and (ii) to post information regarding residents' rights, including information about the complaint process established pursuant to § 38.2-4933, in facilities of the continuing care retirement community. No retaliatory conduct shall be permitted against any resident for membership or participation in a residents' organization or for filing any complaint. The provider shall be required to provide to the organization a copy of all submissions to the Commission.

B. Every provider shall include on the board of directors or other such governing body of a continuing care retirement community a number of residents that is equal to or greater than 20 percent of the total number of members of the board of directors, or at least one resident, whichever is greater, who shall be elected by the residents of the continuing care retirement community. The provider shall provide a copy of the bylaws of the board of directors or other such governing body to all residents of the continuing care retirement community.

C. The board of directors, its designated representative or other such governing body of a continuing care facility shall hold meetings at least quarterly with the residents or representatives elected by the residents of the continuing care facility for the purpose of free discussion of issues relating to the facility. These issues may include income, expenditures and financial matters as they apply to the facility and proposed changes in policies, programs, facilities and services. Residents shall be entitled to seven days' notice of each meeting.

§ 38.2-4933. Complaints regarding continuing care retirement communities.

A. The Commission shall establish both a toll-free telephone number and an electronic means by which any person may make a complaint regarding any alleged violation of this chapter or the operation of any continuing care retirement community and shall make information regarding the process by which a complaint may be made available on a website maintained by the Commission. Such information shall be easily understandable and readily accessible to the public.

B. The Commission shall establish a process for responding to complaints regarding an alleged violation of this chapter or the operation of any continuing care retirement community, including procedures to ensure that the person who filed the complaint receives information regarding the status of such response and the final resolution of the matter.

C. The Commission shall report annually by October 1 to the Governor and the Chairmen of the House Committees on Appropriations and Labor and Commerce and the Senate Committees on Finance and Appropriations and Commerce and Labor regarding the process by which the Commission receives and responds to complaints received pursuant to this section and (i) the number and types of complaints received and (ii) the outcomes of such complaints.