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STATE CORPORATION COMMISSION
BUREAU OF INSURANCE

November 10 , 1986

ADMINISTRATIVE LETTER 1986-20
(REVISED)

TO: All Continuing Care Providers

RE: New Regulatory Requirements

This letter clarifies and supersedes Administrative Letter 1986-20, dated October 27, 1986. Certain revisions are deemed necessary in order to delineate clearly the dollar amounts of entrance fees to be escrowed under Virginia Code Section 38.2-4904.1. Those areas changed appear underlined below.

The 1986 General Assembly enacted legislation that affected continuing care providers in the following areas:

- A. Who comes under the act;
 - B. entrance fee escrow provisions; and
 - C. the contract.
- A. Excluded from the purview of "continuing care" are all providers whose entrance fee is in the aggregate less than the sum of the regular periodic charges for one year of residency. In addition, those providers which do not charge an entrance fee and only accept assignment of government transfer payments, contributions from charitable organizations and third party health care coverages as their regular periodic charges are specifically excluded. Providers which are now exempt under the amended statute should request the exemption afforded by the definitional changes and provide to the Bureau of Insurance evidence that supports the exemption.
- B. The newly required escrow provisions must be in accordance with Virginia Code Section 38.2 - 4904.1. All entrance fees or portions thereof in excess of \$1,000 per person received by the provider prior to the prospective resident's date of occupancy must be escrowed. "Entrance fee" is defined for the purposes of the section as advanced payment or a series of advanced payments totaling at least \$5,000. The funds must be placed in escrow as the property of the potential resident and shall not be subject to any claim against the provider. The funds become available to the provider when the unit is occupied or is available to the tenant for immediate occupancy.

Funds are to be released to the prospective resident only:

1. When the assets have not been released within three years after placement in escrow, or three years after start of new construction whichever is later, but in any event assets must be released within six years after placement in escrow unless additional time is approved by the Commission;
2. if the prospective resident dies before occupancy in a unit;

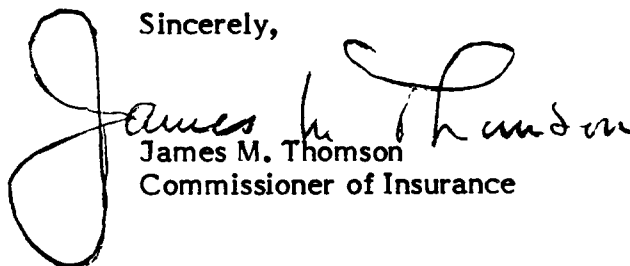
3. if construction of a facility not yet operating is stopped indefinitely before completion; and
4. upon rescission of the continuing care contract pursuant to provisions in the continuing care contract.
Escrowed funds may be held in the form received or invested according to Chapter 18 (Section 2.1 - 327 et. esq.) of Title 2.1. The escrow requirements do not apply to entrance fees for initial occupancy for units under construction June 30, 1986, or to entrance fees not in excess of \$1,000 per person.

C. The contractual requirement for including the estimated current monthly cost to the provider for providing the care set forth in the contract has been deleted. Two new elements of good cause justifying termination of the contract on the part of the provider have been added. Misrepresentation and a material breach of the terms and conditions of the continuing care contracts are now good cause for termination. However, the misrepresentation must be made intentionally or recklessly in the application regarding information which if accurately provided would have resulted in either a failure of the resident to qualify for residency or a material increase in the costs of providing to the resident the care and services under the contract. As of July 1, 1986, and afterward contracts may include a misrepresentation clause and a material breach clause.

On July 1, 1986, applicable disclosure statements to meet approval must contain escrow provisions that satisfy the new statute. The disclosure statement must include the escrow clause after June 30, 1986 in order to be approved.

Those providers whose disclosure statements have been approved prior to July 1, 1986, have 30 days from January 1, 1987 to file amended disclosure statements in accordance with Virginia Code Section 38.2 - 4904. The amended disclosure statement must discuss the required escrow information.

Sincerely,

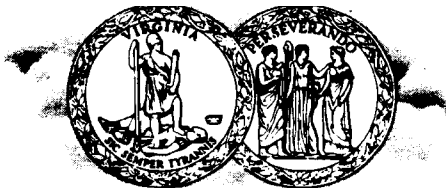


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Commissioner of Insurance

JMT/kjc

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BOX 1157
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**STATE CORPORATION COMMISSION
BUREAU OF INSURANCE**

October 27 1986

ADMINISTRATIVE LETTER 1986-20

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- B. The newly required escrow provisions must be in accordance with Virginia Code Section 38.2 - 4904.1. Any advance payment of \$5,000 or more must be placed in escrow as the property of the potential resident and shall not be subject to any claim against the provider. The funds become available to the provider when the unit is occupied or is available to the tenant for immediate occupancy.

Funds are to be released to the prospective resident only:

1. When the assets have not been released within three years after placement in escrow, or three years after start of new construction whichever is later, but in any event assets must be released within six years after placement in escrow unless additional time is approved by the Commission;
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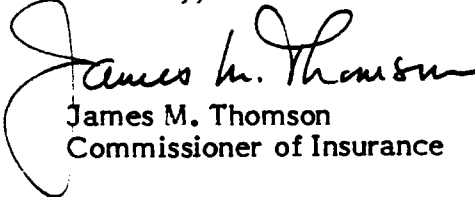
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- C. The contractual requirement for including the estimated current monthly cost to the provider for providing the care set forth in the contract has been deleted. Two new elements of good cause justifying termination of the contract on the part of the provider has been added. Misrepresentation and a material breach of the terms and conditions of the continuing care contracts are now good cause for termination. However, the misrepresentation must be made intentionally or recklessly in the application regarding information which if accurately provided would have resulted in either a failure of the resident to qualify for residency or a material increase in the costs of providing to the resident the care and services under the contract. As of July 1, 1986, and afterward contracts may include a misrepresentation clause and a material breach clause.

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