

## CHAPTER 151. CONTINUING CARE PROVIDERS

Sec.	
151.1.	Purpose.
151.2.	Definitions.
151.3.	Certificates of authority.
151.4.	Statement in support of application.
151.5.	Issuance of certificates of authority.
151.6.	Transfers of ownership.
151.7.	Disclosure statements.
151.8.	Resident's agreement.
151.9.	Standards for disclosure statement and resident's agreement.
151.10.	Investments.
151.11.	Annual statements.
151.12.	Reports of examination.
151.13.	Rehabilitation and liquidation.
151.14.	Fees.

### Source

The provisions of this Chapter 151 adopted March 15, 1985, effective March 16, 1985, 15 Pa.B. 1051.

### § 151.1. Purpose.

The purpose of this chapter is to implement the Continuing Care Provider Registration and Disclosure Act (40 P. S. §§ 3201—3225).

### § 151.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

*Act*—The Continuing Care Provider Registration and Disclosure Act (40 P. S. §§ 3201—3225).

*Affiliate*—A person who directly, or through one or more intermediaries, controls or is controlled by, or is under common control with, a provider or facility.

*Applicant*—A provider who is seeking the issuance of a certificate of authority, a temporary certificate of authority, or an extension of a temporary certificate of authority to engage in the business of continuing care in this Commonwealth.

*Article V*—The act of December 14, 1977 (P. L. 280, No. 92) (40 P. S. §§ 221.1—221.63).

*Biographical affidavit*—A notarized background profile of an affiant, on a prescribed form, which may be obtained from the Department.

*Certificate of authority*—The license issued by the Department authorizing a provider to engage in the business of continuing care in this Commonwealth, including temporary certificates of authority.

*Certified public accountant*—An individual licensed to practice as an accountant, and who is in good standing, under the statutes of the Commonwealth or another state with licensing requirements similar to Pennsylvania. The term includes a chartered accountant. An accountant will be recognized as independent if he conforms to the standards contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and The C.P.A. Law (63 P. S. §§ 9.1—9.16b) or similar statutes.

*Commissioner*—The Insurance Commissioner of the Commonwealth.

*Department*—The Insurance Department of the Commonwealth.

*Facility*—Each separate establishment, complex or campus at which location a provider engages in the business of providing continuing care. Two or more establishments located on the same premises shall be treated as separate facilities if their operations are administratively independent of each other.

*Financial institution*—A bank, bank and trust company or savings and loan association, as defined in sections 102(f) and (g) of the Banking Code of 1965 and section 102(3) of the Savings Association Code of 1967 (7 P. S. §§ 102(f), (g) and 6020-2(3)), which is Federally insured or is Pennsylvania chartered.

*Letter of credit*—A document evidencing a commitment to honor a demand for payment as defined in 13 Pa.C.S. § 5103(a) (relating to definitions and index of definitions). Acceptable letters of credit include only those issued or confirmed by a financial institution authorized to issue them.

*Negotiable securities*—An instrument evidencing an obligation of the issuer as defined in 13 Pa.C.S. § 8103 (relating to lien of issuer). The term includes only United States government obligations and corporate debt obligations rated AA or AAA in a recognized corporate bond rating publication, such as the Moody's Investor's Service, Inc. publication.

*Not-for-profit*—A business entity not organized for a purpose involving pecuniary gain, incidental or otherwise, to its members, shareholders or principals, under 15 Pa.C.S. §§ 7101—7107 (relating to the corporation not-for-profit code).

*Period fee*—A charge payable under a resident's agreement which is assessed on a recurring basis, such as a monthly fee.

*Qualified actuary*—An individual who is a member of the American Academy of Actuaries. The term also includes an individual who has demonstrated to the satisfaction of the Department that he possesses the educational background necessary for the practice of actuarial science and who has not less than 7 years of actuarial experience.

*Resident's agreement*—The contract between a provider and each individual entitled to receive continuing care in a facility.

*Settlement date*—The proposed date for the completion of the transfer of a controlling interest in a facility.

*Transfer of ownership*—The disposition of a controlling interest in a provider or a facility, whether by sale or otherwise.

**Source**

The provisions of this § 151.2 adopted March 15, 1985, effective March 16, 1985, 15 Pa.B. 1051.

**Notes of Decisions**

In determining whether a retirement facility makes the type of “other periodic charges” to its residents, so as to bring the facility within the authority of the Continuing Care Provider Registration and Disclosure Act, courts are not constrained to limit the language “other periodic charges” to monthly fees. *Moravian Manors, Inc. v. Insurance Department*, 521 A.2d 524 (Pa. Cmwlth. 1987).

The language “other periodic charges” is not to be interpreted to mean solely a monthly fee and the Continuing-Care Provider Registration and Disclosure Act clearly contemplates additional charges for services not covered by the entrance fee. *Moravian Manors, Inc. v. Insurance Department*, 521 A.2d 524 (Pa. Cmwlth. 1987).

**Cross References**

This section cited in 31 Pa. Code § 151.10 (relating to investments).

**§ 151.3. Certificates of authority.**

(a) A provider shall apply for, and obtain, a certificate of authority for each separate facility operated by the provider in this Commonwealth.

(b) A certificate of authority authorizes and empowers only the provider named therein to conduct the business of continuing care, and may not be transferable.

(c) Each applicant shall file an application for a certificate of authority on a prescribed form, which may be obtained from the Department.

(d) Each application for a certificate of authority shall be accompanied by the documents referenced in the following:

- (1) Section 151.4 (relating to statement in support of application).
- (2) Section 151.7 (relating to disclosure statements).
- (3) Section 151.8 (relating to resident’s agreement).
- (4) Section 151.14 (relating to fees).

**Source**

The provisions of this § 151.3 adopted March 15, 1985, effective March 16, 1985, 15 Pa.B. 1051.

**Cross References**

This section cited in 31 Pa. Code § 151.6 (relating to transfers of ownership).

**§ 151.4. Statement in support of application.**

(a) Each applicant shall file a statement in support of an application for a certificate of authority, which shall contain the following information and appendices:

- (1) *Occupancy status.* A description of whether the facility is ready for occupancy. If the facility is already occupied and in operation, indicate the date the facility commenced business. If the facility is under construction, indicate the estimated construction completion date.

(2) *Financing of facility.* A statement detailing existing or proposed mortgages, liens, security interests or loan commitments on the real property of the facility. Provide the name and address of mortgagees or other lenders and a copy of mortgages, liens, security interests or loan commitment documents. If other long term financing arrangements have been arranged or are contemplated, such as tax-free debentures, a complete description of the arrangement shall be provided and all pertinent contracts and documents shall be attached. If the facility is subject to a lease agreement, provide the name and address of interested parties and a copy of a lease.

(3) *Fiscal year.* A specification of the applicant's fiscal year.

(4) *Tax exempt status.* If the applicant claims tax exempt status under the Internal Revenue Code of 1954 (26 U.S.C.A. §§ 1—9602) provide a ruling or other document evidencing qualification for tax exempt status. If the applicant claims it is not subject to the capital stock tax or corporate net income tax imposed by the Tax Reform Code of 1971 (72 P. S. §§ 7101—10004) provide the appropriate documentation demonstrating qualification for the exemption.

(5) *Feasibility study.* If operation of a facility has not yet commenced, provide a feasibility study prepared to secure financing for the proposed facility. If a feasibility study was not required to obtain financing, a study is not required to be produced under this subsection. The study should include:

(i) A description of the proposed facility including location, size, anticipated completion date and proposed construction program.

(ii) An identification and evaluation of the potential market, including a demographic and economic profile of the population in the facility's market area.

(iii) An identification of other existing or proposed facilities in the potential market area, including, if available, the occupancy rate for existing facilities for the last 3 years.

(iv) An estimate of net receipts from entrance fees, other than those included in the statement of source and application of funds, less estimated entrance fee refunds and a description of the actuarial bases and methods of calculation for the projection of entrance fee receipts.

(v) 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.

(6) *Financial analysis.* A financial analysis prepared for the purpose of determining that the facility has—or if the facility is proposed, will have—sufficient revenue and funds, including reserves. The analysis shall include a cash flow projection, a review of the adequacy of current pricing structures, and an examination of the long-term relationship between the facility's assets and liabilities. The analysis shall be prepared by either a qualified actuary or a certified public accountant.

(7) *Affiliates.* An organizational chart describing the relationship between the applicant and its affiliates, indicating the state of domicile of the entity and the primary business of each.

(8) *Previous licenses.* A statement indicating whether the applicant has ever applied for a certificate of authority for a facility in this Commonwealth or sought licensure in another jurisdiction. Indicate the status of the application—issued, refused, or pending. If a previous license was issued, provide the name and address of the facility licensed, the name of the issuing authority, the date of issuance, and the date of and reason for termination.

(9) *Organizational filings.* The documents described in this paragraph pertaining to the applicant shall be attached to the statement:

(i) If the applicant is a corporation, a copy of the charter shall be attached.

(ii) If the applicant is a partnership or other unincorporated association, a copy of the partnership agreement, articles of association or other membership agreement shall be attached.

(iii) If the applicant is a trust, a copy of the trust agreement or instrument shall be attached.

(iv) If the applicant uses a trade name which is required to be registered under 54 Pa.C.S. §§ 301—332 (relating to Fictitious Names Act), a copy of the fictitious name registration shall be attached.

(10) *Entrance fees.* The relevant documents described in this paragraph shall be attached to the statement.

(i) If the applicant proposes to use an entrance fee escrow account, provide the name and address of the escrow agent and a copy of the escrow agreement.

(ii) If the applicant proposes to provide a letter of credit in lieu of using an entrance fee escrow account, identify the name and address of the financial institution providing the letter of credit, and provide a copy of the letter of credit executed in favor of the Commissioner.

(A) The letter of credit shall stipulate that the beneficiary need only draw a sight draft and present it to obtain the funds, and that no other document need be presented.

(B) The letter of credit shall indicate that it is not subject to conditions or qualifications outside the letter of credit.

(C) The letter of credit shall contain a clause which prevents the expiration of the letter of credit without notice—minimum 30 days—from the issuer to the Commissioner.

(iii) If the applicant proposes to deposit negotiable securities in lieu of using an entrance fee escrow account, acceptable negotiable securities executed in favor of the Commissioner shall be deposited at the time an application for a certificate of authority is made.

(iv) If the applicant proposes to post a bond issued by a surety company authorized to do business in this Commonwealth in lieu of using an entrance fee escrow account, provide the name and address of the surety company and a copy of the surety bond.

(11) *Biographical affidavits.* Biographical affidavits shall be filed by the following persons:

(i) For applicants, the managers or proposed managers shall file. If the manager is a corporation, provide biographical affidavits for the board of directors and all officers. If the manager is a partnership, provide biographical affidavits for the managing or general partners.

(ii) For corporate applicants, the corporation's board of directors and officers shall file.

(iii) For partnership applicants, managing or general partners shall file.

(iv) For unincorporated association applicants, officers and directors shall file.

(v) For trust applicants, administrators or trustees shall file.

(b) In addition to the information described in subsection (a), applicants may be requested to provide the Department with other pertinent material that is deemed necessary to complete the Department's review of the application.

#### Source

The provisions of this § 151.4 adopted March 15, 1985, effective March 16, 1985, 15 Pa.B. 1051.

#### Cross References

This section cited in 31 Pa. Code § 151.3 (relating to certificates of authority).

### § 151.5. Issuance of certificates of authority.

(a) If the Commissioner determines that all of the statutory and regulatory requirements for the issuance of a certificate of authority have been met, a certificate of authority shall be issued within the time prescribed by section 4(c) of the act (40 P. S. § 3204(c)), or an extension thereof under section 4(d) of the act (40 P. S. § 3204(d)).

(b) The certificate of authority shall certify that the provider named therein has complied with the act, and authorize and empower the provider to transact the business of continuing care in compliance with the statutes of the Commonwealth and this title.

(c) If the Commissioner determines that the statutory or regulatory requirements have not been met, an order rejecting the application for a certificate of authority will be issued under section 4(d) of the act (40 P. S. § 3204(d)). Orders denying an application for a certificate of authority shall not become final and appealable until after an administrative hearing conforming to 2 Pa.C.S. §§ 501—508 (relating to practice and procedure of Commonwealth agencies) has been held. Final orders entered after a hearing upon an applicant's petition for

reconsideration of the denial shall be adjudications within the meaning of 2 Pa.C.S. § 101 (relating to definitions).

(d) If the Commissioner determines that the issuance of a temporary certificate of authority is authorized under section 4(e) of the act (40 P. S. § 3204(e)), a temporary certificate of authority will be issued authorizing and empowering the provider to transact the business of continuing care in compliance with the statutes of the Commonwealth and this title for a stated period of time, which shall not exceed 2 years from the date of issuance of the temporary certificate of authority.

(e) Upon petition of a provider, if the Commission determines that an extension of a temporary certificate of authority is authorized under section 4(f) of the act (40 P. S. § 3204(f)), an extended temporary certificate of authority shall be issued authorizing and empowering the provider to transact the business of continuing care in compliance with the statutes of the Commonwealth and this title for a stated period of time, which shall not exceed 3 years from the date of issuance of the extended temporary certificate of authority.

**Source**

The provisions of this § 151.5 adopted March 15, 1985, effective March 16, 1985, 15 Pa.B. 1051.

**§ 151.6. Transfers of ownership.**

(a) *Transfer of ownership of a facility.*

(1) A provider intending to undertake a transfer of ownership of a facility shall notify the Department at least 30 days in advance of the proposed settlement date.

(2) A notice of intention to transfer ownership of a facility may be in the form of a letter, addressed to the Department, and shall contain the following information:

(i) Name and address of the licensed provider from whom ownership will be transferred.

(ii) Name and address of the person intending to acquire the ownership interest.

(iii) Name and address of a facility whose ownership is being transferred.

(iv) Proposed settlement date.

(3) No transfer of ownership of a facility shall be consummated until the person to whom ownership is being transferred obtains a certificate of authority.

(4) When a person to whom ownership is being transferred files an application for a certificate of authority, in addition to the information specified in § 151.3(d) (relating to certificates of authority), the person shall file a statement containing the following information:

(i) The terms and conditions of the transfer of ownership.

(ii) The source of funds to be used to finance the transfer of ownership and, if the funds are to be borrowed, the name of a lender and a summary of the terms and conditions of the loan transactions.

(iii) The plans, arrangements, understandings and intentions of the transferee for the future business and management of the facility, including plans as to the sale of assets or material change in business, corporate structure or management.

(5) A certificate of authority will not be issued under this subsection unless the transferee has agreed in writing to assume the contractual obligations imposed on the current provider by its existing resident agreements.

(b) *Change in control of a provider.*

(1) For purposes of this subsection, control shall be defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a provider or facility, whether through the equitable or beneficial ownership of voting securities or otherwise. Control of a provider or facility shall be presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10% or more of the voting securities of the provider or facility. This presumption may be rebutted by a showing that control does not exist in fact.

(2) Upon a change in control of a provider, the provider shall notify the Department within 30 days of the change.

(3) Notice of change in control of a provider may be in the form of a letter, addressed to the Department, and shall contain the following information:

(i) Name and address of the licensed provider affected by the change in ownership or control.

(ii) Name and address of each person acquiring a controlling interest in the provider, and an explanation of the nature of the acquirer's interest.

(iii) Plans, arrangements, understandings and intentions of the acquirer for the future business and management of a facility affiliated with the provider, including plans as to the sale of assets or material change in business, corporate structure or management.

#### Source

The provisions of this § 151.6 adopted March 15, 1985, effective March 16, 1985, 15 Pa.B. 1051.

### § 151.7. Disclosure statements.

(a) Disclosure statements shall contain the information required by section 7 of the act (40 P. S. § 3207) and the information required by this section.

(b) The first page of the disclosure statement shall be a cover page, which shall contain the information required by section 7(a)(12) of the act (40 P. S. § 3207(a)(12)).

(c) The disclosure statement shall include a page containing a summary of the information presented in the statement, as outlined in paragraphs (1)—(8):



- (1) The name and address of the facility.
  - (2) The name and address of the licensed provider.
  - (3) The name, location and telephone number of the person to be contacted to discuss admissions.
  - (4) A description of the physical property of the facility, including the following facts:
    - (i) A designation of the facility as urban, suburban or rural.
    - (ii) The number of acres occupied by the facility.
    - (iii) A specification of the type of residential units available—such as high-rise apartments, single level buildings, two-story townhouses, and the like.
  - (5) A specification of the minimum age for admission, including exceptions for spouses/companions.
  - (6) A disclosure of the provider's or facility's affiliation with religious, fraternal, charitable or other nonprofit organizations with an identification of the affiliated organizations.
  - (7) A statement of the current resident population.
  - (8) A sample of the fees charged to residents based upon occupancy of a one bedroom unit by one and two persons, including entrance and periodic fees. The information summary shall be provided in numbered paragraph form, as specified in this subsection, so that consumers can easily compare the disclosure statements of several facilities. Additionally, the summary data will be used by the Department in compiling information for its publication of a consumer's guide to continuing care facilities and its annual directory of continuing care facilities.
- (d) The certified financial statements required to be contained in disclosure statements, under section 7(a)(9) of the act (40 P. S. § 3207(a)(9)), shall be prepared in accordance with Chapter 147 (relating to annual audited insurers' financial report required).
- (e) Amendments to disclosure statements may be filed with the Department at any time. A filing should be accompanied by a cover letter briefly outlining the sections of the disclosure statement amended. Changes in the operation of a provider or facility which require an amendment to a disclosure statement include, but are not limited to, the following:
- (1) Changes in the board of directors, officers, managing or general partners, administrators or trustees and managers which affect the management of a facility. Biographical affidavits by these individuals shall be filed with the Department at the time an amended disclosure statement is filed.
  - (2) New or additional mortgages, liens, security interests, loan commitments, long-term financing arrangements or leases, which transaction materially affects the real property of the facility. A copy of all pertinent documents evidencing the transactions shall be filed with the Department at the time an amended disclosure statement is filed.

(3) Other material changes in the financial or factual information contained in the disclosure statement or statement in support of the provider's original application for a certificate of authority. Explanatory material and copies of pertinent documents concerning the material changes shall be filed with the Department at the time an amended disclosure statement is filed.

(f) Every provider shall maintain copies of all disclosure statements filed with the Department, including amended disclosure statements, for at least 4 years, or until the conclusion of the next succeeding examination by the Department, whichever is later.

#### Authority

The provisions of this § 151.7 amended under the Continuing Care Provider Registration and Disclosure Act (40 P. S. §§ 3201—3225).

#### Source

The provisions of this § 151.7 adopted March 15, 1985, effective March 16, 1985, 15 Pa.B. 1051; amended August 20, 2004, effective August 21, 2004, 34 Pa.B. 4598. Immediately preceding text appears at serial pages (212768) to (212770).

#### Cross References

This section cited in 31 Pa. Code § 151.3 (relating to certificates of authority).

### § 151.8. Resident's agreement.

(a) Each resident's agreement shall contain the information required by section 14 of the act (40 P. S. § 3214) and the information required by this section.

(b) A valid and binding resident's agreement shall be signed by the provider and each resident who will be admitted to the facility. An authorized representative may sign the resident's agreement on behalf of either party.

(c) If the resident has agreed to purchase, at an additional price, optional products or services beyond those included in the entrance and periodic fees, a separate page shall be attached specifying the product or service purchased, and the cost of each including installation charge. The page shall be executed by the parties identified in subsection (b).

(d) Each resident's agreement shall contain a provision whereby the provider agrees that the resident shall not be liable to a health care provider for services rendered under a resident's agreement. In the event a health care provider seeks payment from the resident, the continuing care provider shall assume liability for payment of the health care services rendered, if the health care services rendered are services which a provider agreed to furnish to a resident in consideration of the resident's payment of entrance and periodic fees. Health care providers shall include persons rendering services to a resident as employees of the provider or facility, on a fee-for-service basis, or otherwise.

(e) Amendments to the resident's agreement may be filed with the Department at any time. The filing should be accompanied by a cover letter briefly outlining the sections of the resident's agreement amended.

(f) The resident's agreement shall be distributed as follows:

(1) A copy of the current resident's agreement shall be attached as an appendix to each disclosure statement or amended disclosure statement filed with the Department.

(2) A copy of the current resident's agreement shall be attached to each disclosure statement given to a prospective resident, unless the individual previously received a disclosure statement with a resident's agreement attached thereto, and the resident's agreement has not been amended subsequent to that time.

(3) A copy of the current resident's agreement need not be given to current residents.

(4) If a resident's agreement is not attached to the disclosure statement, as authorized under paragraphs (2) and (3), a separate page shall be attached stating that a copy of the resident's agreement was omitted.

(g) Every provider shall maintain copies of each resident's agreement until the conclusion of the next succeeding examination by the Department following the date the agreement ceases to be in force.

#### Source

The provisions of this § 151.8 adopted March 15, 1985, effective March 16, 1985, 15 Pa.B. 1051.

#### Cross References

This section cited in 31 Pa. Codes § 151.3 (relating to certificates of authority).

### § 151.9. Standards for disclosure statement and resident's agreement.

(a) *Drafting.* Disclosure statements and resident's agreements shall be drafted in consideration of the amount and nature of the information to be relayed to prospective residents.

(b) *Readability.* Documents given to residents and prospective residents, including disclosure statements and resident's agreements, shall be drafted in accordance with the following standards:

(1) The language used shall be readable by a person of average intelligence and education.

(2) Information presented should be conveyed in a logical sequence and in a clear and direct fashion.

(3) Complex and compound sentences should be avoided.

(4) Words should convey their commonly understood meanings.

(5) Definitions shall be included for words or terms which cannot properly be explained or qualified in the text.

- (6) Frequent section headings should be used to permit ease in locating provisions.
- (7) Documents shall be printed in easily legible typeface. A sample of typefaces which meet minimum standards of legibility may be found in § 64.9 (relating to legibility).
- (8) Documents shall be printed in type-size easily legible to the audience to whom the literature is directed. Upright type at least as large as 10-point type should be used.
- (c) *Index.* Multipaged documents shall contain an index giving a comprehensive listing of all section headings used in the document. If the index does not appear at the beginning of the document, the location of the index shall be noted on the first page.
- (d) *Pre-existing conditions.* If pre-existing conditions are excluded, or limited as to coverage, from the medical care and services available from the provider, whether or not available at an additional charge, the term pre-existing conditioning shall not limit coverage beyond that stated in the following definition: "A pre-existing condition is a disease, illness, sickness or physical condition for which medical care, advice or treatment was recommended by or received from a physician within the 5 year period preceding the date of admission to a facility."
- (e) *Rescission.* A prospective resident shall have the right to rescind the resident's agreement, without penalty or forfeiture, within 7 days after each of the following times:
- (1) The initial date funds are deposited with or remitted to a provider or facility.
  - (2) The date of execution of a resident's agreement.
- (f) *Form.* The disclosure statement and resident's agreement shall have attached a separate page notifying prospective residents of their right to rescind the resident's agreement as follows:

#### NOTICE OF RIGHT TO RESCIND

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date rescission period begins

You may rescind and terminate your resident's agreement, without penalty or forfeiture, within 7 days of the above date. You are not required to move into the continuing care facility before the expiration of this 7 day period. No other agreement or statement you sign shall constitute a waiver of your right to rescind your agreement within the seven (7) day period.

To rescind your resident's agreement, mail or deliver a signed and dated copy of this notice, or any other dated written notice, letter or telegram, stating your desire to rescind to (name of provider/facility) at (business address) not later than midnight of (last day for rescission).

Pursuant to this notice, I hereby cancel my resident's agreement.

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DATE

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PROSPECTIVE RESIDENT'S  
SIGNATURE

**Source**

The provisions of this § 151.9 adopted March 15, 1985, effective March 16, 1985, 15 Pa.B. 1051.

**§ 151.10. Investments.**

(a) Funds of a provider which are permitted or required to be invested under the act shall be invested in good faith and with the degree of care that an ordinarily prudent individual in a like position would exercise under similar circumstances.

(1) Funds which are required to be invested shall include the entrance fees maintained in an escrow account, under section 12 of the act (40 P. S. § 3212).

(2) Funds which are permitted to be invested shall include liquid reserves established under section 9 of the act (40 P. S. § 3209), and reserve fund escrow accounts established under section 10 of the act (40 P. S. § 3210).

(b) The exercise of due care and prudence requires consideration of the following factors:

(1) The protection of the principal invested.

(2) The liquidity of the invested funds.

(3) The relationship between the maturity date of invested funds and the current liabilities.

(4) The anticipated investment yield.

(c) Liquid investments may include:

(1) Cash held in an interest-bearing account of a financial institution.

(2) The following if the instrument is easily converted to cash within a reasonable period of time:

(i) Certificates of deposit issued by a financial institution.

(ii) Money-market funds issued by a regulated investment company, as defined by section 405(b.1) of the Insurance Company Law of 1921 (40 P. S. § 505(b.1)) (Repealed).

(iii) Acceptable negotiable securities as defined in § 151.2 (relating to definitions).

(iv) Commercial paper in the form of promissory obligations of an issuer with an original maturity date not exceeding 9 months from the date of issuance, having the highest rating in a recognized rating publication.

- (3) Securities which the provider can demonstrate are saleable with reasonable promptness at a price corresponding reasonably to fair value.
- (d) For the purpose of determining whether the amounts held in investments satisfy the minimum amounts required by the act, liquid investments shall be valued at market value.

**Source**

The provisions of this § 151.10 adopted March 15, 1985, effective March 16, 1985, 15 Pa.B. 1051.

**§ 151.11. Annual statements.**

- (a) At the time the annual disclosure statement is filed, each provider shall submit to the Department an annual statement detailing its financial status as of the close of business on the last day of the provider's fiscal year.
- (b) Providers holding one or more certificates of authority to operate facilities organized as separate and distinct legal entities from the provider shall file an annual statement for each separate facility.
- (c) Annual statements shall be filed on a prescribed form, which is available from the Department.
- (d) Providers may be requested to submit additional information to the Department to supplement their annual statement.

**Source**

The provisions of this § 151.11 adopted March 15, 1985, effective March 16, 1985, 15 Pa.B. 1051.

**§ 151.12. Reports of examination.**

- (a) Upon completion of a financial examination of a provider as authorized by section 19 of the act (40 P. S. § 3219), a report of the examination will be prepared.
- (b) The report of examination shall be submitted to the provider examined, who shall have the privilege of objecting to the report within 30 days from the receipt thereof.
- (c) Objections to a report of examination shall be made in compliance with the requirements of § 58.2 (reserved).
- (d) In the event the examined provider raises an objection, the Commissioner will grant a hearing and issue a final adjudication before making the report available for public inspection. Prior to the final adjudication, a report of examination shall not be a public document available under the act of June 21, 1957 (P. L. 390, No. 212) (65 P. S. §§ 66.1—66.4)
- (e) The procedures set forth in § 58.3 (relating to hearing procedure) will be followed for all hearings granted to consider objections to a report of examination.
- (f) Upon acceptance of a report of examination by the provider examined, or upon issuance of an adjudication after a hearing has been held to consider objec-

tions, the Commissioner, if he deems it in the interest of the public to do so, may publish all or any portion of the report in a manner he deems appropriate.

**Source**

The provisions of this § 151.12 adopted March 15, 1985, effective March 16, 1985, 15 Pa.B. 1051.

**§ 151.13. Rehabilitation and liquidation.**

(a) Whenever the Commissioner has been appointed the rehabilitator of, or has been authorized to appoint a trustee to rehabilitate, a provider or facility under section 16 of the act (40 P. S. § 3216), the rehabilitation shall be conducted in compliance with the act and pertinent standards and procedures contained in Article V.

(b) Whenever the Commissioner has been appointed the liquidator of, or has been authorized to appoint a trustee to liquidate, a provider or facility under section 16 of the act (40 P. S. § 3216), the liquidation shall be conducted in compliance with the act and pertinent standards and procedures contained in Article V.

(c) In applying Article V standards and procedures to a rehabilitation or liquidation under the act, the following phrases in Article V shall have the following meanings:

(1) A reference to insurer in Article V shall be deemed a reference to the provider or facility for whom a rehabilitator or liquidator has been appointed.

(2) A reference to policyholder, certificate holder or insured in Article V shall be deemed a reference to a resident, or prospective resident who has transferred money or other property to a provider.

(3) A reference to a policy or coverage in Article V shall be deemed a reference to a resident's agreement.

(4) A reference to a premium in Article V shall be deemed a reference to the entrance fee, periodic fees or other charges payable by a resident or prospective resident to a provider.

(5) If the provisions of Article V are determined to be in conflict with the act, the requirements of the act shall control.

(d) Upon liquidation, the distribution of unsecured claims from the provider's or facility's estate shall be made in the order of priority set forth in this subsection. Every claim in each class shall be paid in full or adequate funds retained for payment before the members of the next class receive payment. No subclasses shall be established within a class.

(1) Debts due to employees for services performed to the extent they do not exceed \$1,000 and represent payment for services performed within 1 year before the filing of the petition for liquidation. Officers and directors shall not be entitled to the benefit of this priority.

(2) Costs and expenses of administration of the liquidation, including but not limited to, the following:

- (i) Actual and necessary costs of preserving or recovering the assets of the provider or facility.
  - (ii) Compensation for services rendered in the liquidation.
  - (iii) Necessary filing fees.
  - (iv) Fees and mileage payable to witnesses.
  - (v) Reasonable attorney's fees for the defense and appeal of a proceeding under this section, subject to the approval of the administrative or judicial body having jurisdiction over the proceeding. The reasonableness of attorney's fees shall include an evaluation of the time expended and rates charged in light of the provider's or facility's assets at the time a petition for liquidation was filed.
- (3) Claims under a resident's agreement, including claims for refunds by residents of the liquidated provider or facility or prospective residents who have transferred money or other property to a provider. Claims for which indemnification is provided by other benefits or advantages recovered by the claimant shall not be included in the class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support.
- (4) Claims of general creditors.
- (5) Claims of the Federal, State or local government. Claims, including those of a governmental body, for a penalty or forfeiture shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of these claims shall be postponed to the class of claims under paragraph (7).
- (6) Claims filed late and claims or portions of claims the payment of which is provided by other benefits or advantages recovered by the claimant.
- (7) Claims for surplus or contribution notes or similar obligations and claims for penalties or forfeitures postponed from paragraph (5).
- (8) Claims of shareholders or other owners.

**Source**

The provisions of this § 151.13 adopted March 15, 1985, effective March 16, 1985, 15 Pa.B. 1051.

**§ 151.14. Fees.**

- (a) Upon each application for a certificate of authority, the applicant shall pay a fee of \$750 to the Commonwealth.
- (b) Upon each petition for an extension of a temporary certificate of authority, the applicant shall pay a fee of \$100 to the Commonwealth.
- (c) Upon each filing of an annual disclosure statement as required by section 7(b) of the act (40 P. S. § 3207(b)), the provider shall pay a fee of \$750 to the Commonwealth. This fee is not applicable to disclosure statements accompanying an application for a certificate of authority.



(d) A fee may not be charged for an amendment to an application for a certificate of authority, or for an amendment to or update of a disclosure statement or resident's agreement.

(e) Providers shall be subject to the fees set forth in The Administrative Code of 1929 (71 P. S. §§ 51—732), including but not limited to, the fees contained in section 612-A of The Administrative Code of 1929 (71 P. S. § 240.12A).

(f) Whenever an investigation, examination or rehabilitation is undertaken as authorized by the act, or as otherwise authorized by statute, the provider shall be assessed the expenses incurred by the Department, including compensation of Department employees or consultants, agents or trustees acting on behalf of the Department, and the expenses of these persons for travel, lodging and food, which amounts shall be assessed under 4 Pa. Code Chapter 40 (relating to travel and subsistence).

(g) Fees specified in this section shall be assessed and billed to providers in accordance with established Department procedures and this title.

#### **Authority**

The provisions of this § 151.14 amended under 45 Pa.C.S. §§ 502, 503, 729—731; and sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412).

#### **Source**

The provisions of this § 151.14 adopted March 15, 1985, effective March 16, 1985, 15 Pa.B. 1051; amended April 12, 1996, effective April 13, 1996, 26 Pa.B. 1705. Immediately preceding text appears at serial pages (121764) to (121765).

#### **Cross References**

This section cited in 31 Pa. Code § 151.3 (relating to certificates of authority).

[Next page is 152-1.]

151-18

(212778) No. 259 Jun. 96

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