

**COMMUNITY AFFAIRS**

**DIVISION OF CODES AND STANDARDS**

**Continuing Care Retirement Communities**

**Rights of Residents**

**Proposed Amendments: N.J.A.C. 5:19-1.1, 1.3, 4.1, 4.2, 6.2, 6.3, 6.4, and 6.5**

**Proposed Recodification with Amendments: N.J.A.C. 5:19-9 as 5:19-13**

**Proposed New Rules: N.J.A.C. 5:19-9.1, 9.2, 10, 11, and 12**

**Proposed Repeal: N.J.A.C. 5:19-2.12**

Authorized By: Richard E. Constable, III, Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-358.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2014-193.

Submit written comments by January 16, 2015, to:

Gabrielle N. Gallagher

Department of Community Affairs

PO Box 800

Trenton, New Jersey 08625

Fax No. (609) 984-6696

[gabrielle.gallagher@dca.state.nj.us](mailto:gabrielle.gallagher@dca.state.nj.us)

The agency proposal follows:

### **Summary**

The below amendments, repeal, and new rules are proposed in order to implement the "Bill of Rights for Continuing Care Retirement Community Residents in Independent Living Act," P.L. 2013, c. 167. This Act establishes rights of the residents and requires that each continuing care retirement facility post and distribute a statement of residents' rights. The Act also requires that the facility supply residents with financial information, including fees for services not covered and the facility's annual disclosure statement. Additionally, the Act provides for the cancellation of the continuing care agreement by the resident or by the facility. The proposed amendments, repeal, and new rules incorporate the rights of residents established by the Act into the Continuing Care Retirement Community rules.

1. N.J.A.C. 5:19-1.1: The proposed amendments add a reference to the Bill of Rights for Continuing Care Retirement Community Residents in Independent Living Act and also add a statement to make it clear that these rules do not supersede those promulgated by other agencies.

2. N.J.A.C. 5:19-1.3: The proposed amendments add a reference to the Bill of Rights for Continuing Care Retirement Community Residents in Independent Living Act to the definition of "Act," add a definition for "Bill of Rights for Continuing Care Retirement Community Residents in Independent Living," add a reference to the rule for the determination of a reasonable application fee to the definition of "application fee," and replace "household unit" with "one or more persons" in the definition of "living unit."

3. N.J.A.C. 5:19-2.12 is proposed for repeal. The provisions contained in this section have been included in the proposed amendments to N.J.A.C. 5:19-13.2 and are generally applicable to violations of the Act or regulations.

4. N.J.A.C. 5:19-4.1 and 4.2: The proposed amendments add references to the Bill of Rights for Continuing Care Retirement Community Residents in Independent Living Act (hereinafter referred to as "the Act") and its requirements.

At N.J.A.C. 5:19-4.1(b), the proposed amendments also change "plain English" to "clear and plain" language and establish a requirement that the disclosure statement reflect the terms of the Act, including an explanation of the rights and responsibilities of residents.

At N.J.A.C. 5:19-4.2(a)12, 13, and 14, the provisions regarding the contents of the disclosure statement are proposed to be amended to add a reference to the Bill of Rights, to require that the notice include the right to review and to cancel the agreement within 30 days after signing and the right to a refund, and to state that, as part of the disclosure, the facility's rules and regulations are be provided to the resident and that these rules must be consistent with the Bill of Rights for Continuing Care Retirement Community Residents in Independent Living.

The proposed amendments also add language to N.J.A.C. 5:19-4.1(c) to state explicitly that the obligation of full and fair disclosure is ongoing and applies to all of those involved in the ownership or management of the facility and that the disclosure statement must be clear (amendments to subsections (b) and (c)).

Finally, a new N.J.A.C. 5:19-4.2(a)15 is proposed to cover other information that may be included.

5. N.J.A.C. 5:19-6: The proposed amendments to N.J.A.C. 5:19-6.2, Notice of rescission, provide that language be added stating that expenses incurred by the provider at the

resident's request must be itemized and supported by appropriate documentation. Additionally, the right to cancellation and to a full or partial refund of the entrance fee is added to the notice. Additionally, there is a proposed amendment to N.J.A.C. 5:19-6.2 to require that the notice be in 12-point boldface type or larger, instead of the current 10-point boldface type or larger.

N.J.A.C. 5:19-6.3(a) provides, in part, that occupancy of the living unit by the resident prior to the expiration of the 30-day rescission period shall not be construed as a waiver of any part of said rescission period. The subsection is amended to provide that, if desired, the resident may wait until the end of the 30-day rescission period to take occupancy, without waiver or penalty. A new N.J.A.C. 5:19-6.3(c) is added requiring that the amount of the entrance fee, the method by which the provider has calculated the amounts refundable, and the amounts thereof that are refundable (including any conditions that may affect the amount of any refund) shall be set forth in a clear and conspicuous manner, in plain and easily understood language in the contract.

The requirements for the content of the continuing care agreement, at N.J.A.C. 5:19-6.4(a), replace "plain English" with "clear and plain" language; require that the notice include the ability of the facility to cancel a resident's continuing care agreement for a violation of the facility's rules or regulations and that this 60-day notification may be waived for just cause; and delete an obsolete reference to the original effective date. The proposed amendments also add the resident's right to request a hearing to challenge cancellation of the agreement. The word "conspicuous" is proposed to be added with regard to the entrance fee and refund of any portion of the entrance fee, and finally, the need to give a prospective resident notice of the terms of the Bill of Rights, including placing the right of rescission, of cancellation and the right to a refund,

in bold or larger type in the agreement at or near the signature line in order to ensure that it is visible to the prospective resident.

At N.J.A.C. 5:19-6.5, Rescission and removal, a reference to the application fee is proposed to be added to subsection (a) to reflect the fact that the application fee is not required to be refunded. At subsection (e), the right to remain until the outcome of a hearing, in instances where the resident has requested a hearing, except under specific circumstances, is proposed to be included. A new N.J.A.C. 5:19-6.5(h) is proposed to reflect the provisions of the Act applicable to cancellation of the continuing care agreement and a new N.J.A.C. 5:19-6.5(i) is proposed to address accounting for any deductions from the resident's entrance fee.

6. N.J.A.C. 5:19-9 through 12: New Subchapters 9, Notice of Rights; 10, Cancellation of Continuing Care Agreement; 11, Transfer of Residents; and 12, Notices, are proposed to codify the rights established by the Act and the requirements for the facility to inform residents of those rights and the requirements for exercise of those rights by the residents.

At N.J.A.C. 5:19-9.2(a)8, the ability of the resident to request that a complaint remain anonymous is added to further protect the resident.

In N.J.A.C. 5:19-9.2(a)20, “or other charges” is proposed to be added to the statutory language to ensure that residents are notified of all charges.

In N.J.A.C. 5:19-9.2(a)27, the phrase “without undue delay and without cost” is proposed to be added to the statutory requirement that the resident be provided with a fee schedule for any uncovered service. The same phrase is proposed to be added to N.J.A.C. 5:19-9.2(a)28 containing the resident’s right to a copy of the facility’s annual disclosure statement, including certified financial statements.

At N.J.A.C. 5:19-9.2(a)30, notification of any right to appeal is proposed to be added to the statutory language regarding the resident's right to remain despite financial difficulty.

At N.J.A.C. 5:19-10.1(b), specific language setting forth the contents of a notice of cancellation is proposed to be added. This includes factual representations regarding just cause and the right of the resident to request a hearing.

At N.J.A.C. 5:19-10.1(c), a cross reference to the rules for rescission and removal, at N.J.A.C. 5:19-6.5, is proposed to be added. Such a cross reference also is proposed to be added at N.J.A.C. 5:19-10.2(c).

At N.J.A.C. 5:19-10.2(a), addressing refunds, "or as otherwise provided by law" is proposed to be added to the reference to the continuing care agreement. And the "method of determining the amount refundable" is proposed to be required as part of the continuing care agreement.

In N.J.A.C. 5:19-12, Notices, rules are proposed to establish standards for notices given by a resident and for notices given by the facility in the exercise of a right under the Act or regulations.

7. N.J.A.C. 5:19-13: Existing Subchapter 9 has been recodified as Subchapter 13. The following amendments are proposed: In proposed N.J.A.C. 5:19-13.1 and 13.3 (current N.J.A.C. 5:19-9.1 and 9.3), the name of the Division is corrected. In proposed N.J.A.C. 5:19-13.2 (current N.J.A.C. 5:19-9.2), amendments are proposed to reflect the provisions of N.J.S.A. 52:27D-351 with regard to violations and penalties; the provisions formerly contained in N.J.A.C. 5:19-2.12 are included here. The statutory changes include a requirement that there be a written request for a hearing made within five business days following issuance of a temporary cease and desist order and that any temporary or permanent cease and desist order be served by

certified mail. In proposed N.J.A.C. 5:19-13.6 (current N.J.A.C. 5:19-9.6), the provisions contained in paragraphs (a)1, 2, and 4, with regard to applicability and referencing the date when the regulations first took effect, are proposed for deletion as they are now obsolete, and references to the Act are added, including a statement in proposed new paragraph (a)2 that the requirements incorporated pursuant to the Act were effective as of the Act's effective date, May 1, 2014.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The proposed amendments, repeal, and new rules codify the rights of residents of continuing care retirement communities established in the Act. These proposed amendments and new rules are expected to have the beneficial effect of providing for the enforcement by the Department of these residents' rights.

### **Economic Impact**

Inasmuch as the proposed amendments, repeal, and new rules reflect rights and requirements established by the Act, it may be argued that there is no economic impact attributable to this rulemaking. In the long term, the enforcement of these rights may be expected to have a positive economic impact for the residents of continuing care retirement communities in that there are provisions for stating the costs of additional services and for accounting for any deductions from funds paid by residents and refunding the balance. The Act and proposed amendments and new rules also address the situation of residents who become unable to pay.

### **Federal Standards Statement**

No Federal standards analysis is required because these amendments, repeal, and new rules are not being proposed in compliance with, or in order to implement, any Federal law or rules or any State law referencing any Federal law or rules.

### **Jobs Impact**

The Department does not anticipate that the proposed amendments, repeal, and new rules will result in the creation or loss of any jobs.

### **Agriculture Industry Impact**

The Department does not anticipate that the proposed amendments, repeal, and new rules would have any impact on the agriculture industry.

### **Regulatory Flexibility Analysis**

The proposed amendments, repeal, and new rules incorporate the provisions for residents' rights contained in the Bill of Rights for Continuing Care Retirement Community Residents in Independent Living Act, P.L. 2013, c. 167. These rights are established for all residents and the requirements of the Act apply to all continuing care retirement facilities regardless of whether they are “small businesses,” as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments and new rules impose requirements for providing information to residents, including the posting and distribution of a statement of the residents' rights and the sharing of financial information. There are also requirements for the cancellation of the continuing care agreement, including attendant accounting requirements that must be met by the facility. These requirements are established by the Act and do not result from the

proposed amendments and new rules. The proposed amendments and new rules are not otherwise expected to impose any reporting, recordkeeping, or compliance requirements on small businesses or to require them to engage any professional services they would not otherwise need to engage.

### **Housing Affordability Impact Analysis**

The proposed amendments, repeal, and new rules are not expected to have any impact on the production of affordable housing. The proposed amendments, repeal, and new rules incorporate into the Continuing Care Retirement Community rules the rights of residents established under the Act, and the Act's requirements concerning facilities posting and distributing a statement of residents' rights and supplying residents with financial information, and the requirements for the cancellation of the continuing care agreement by the resident or by the facility.

### **Smart Growth Development Impact Analysis**

The proposed amendments, repeal, and new rules are not expected to have any impact upon housing production within Planning Areas 1 and 2 or within designated centers under the State Development and Redevelopment Plan. The proposed amendments, repeal, and new rules incorporate into the Continuing Care Retirement Community rules the rights of residents established under the Act, and the Act's requirements concerning facilities posting and distributing a statement of residents' rights and supplying residents with financial information, and the requirements for the cancellation of the continuing care agreement by the resident or by the facility.

**Full text** of the rule proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 5:19-2.12.

**Full text** of the proposed amendments and new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

## SUBCHAPTER 1. GENERAL PROVISIONS

### 5:19-1.1 Purpose

The Continuing Care Retirement Community Regulation and Financial Disclosure Act (P.L. 1986, c. 103, N.J.S.A. 52:27D-330 et seq.) became effective March 2, 1987. **The Bill of Rights for Continuing Care Retirement Community Residents in Independent Living Act (P.L. 2013, c. 167, N.J.S.A. 52:27D-360.1 et al.) became effective on May 1, 2014.** The rules contained in this chapter are intended to enable the Department of Community Affairs to implement the Act and to enable affected providers to more easily and more fully comply with the requirements of the Act. **These rules are intended to supplement and not to supersede any applicable regulations enforced by the New Jersey Department of Health, the New Jersey Department of Human Services, the Office of the Ombudsman for the Institutionalized Elderly, or by other State or Federal agencies having jurisdiction.**

### 5:19-1.3 Definitions

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

"Act" means the Continuing Care Retirement Community Regulation and Financial Disclosure Act (P.L. 1986, [Chapter] c. 103[,]; N.J.S.A. 52:27D-330 et seq.), **and the Bill of Rights for Continuing Care Retirement Community Residents in Independent Living Act (P.L. 2013, c. 167; N.J.S.A. 52:27D-360.1 et al.)**, together with any amendatory or supplementary acts.

...

"Application fee" means the fee an individual is charged, in addition to an entrance fee or any other fee, to cover the provider's reasonable cost for processing the individual's application to become a resident at the facility. **A reasonable application fee shall be determined pursuant to N.J.A.C. 5:19-6.3.**

**"Bill of Rights for Continuing Care Retirement Community Residents in Independent Living"** means, pursuant to N.J.S.A. 52:27D-360.1, N.J.S.A. 52:27D-360.1 through 360.7.

...

"Living unit" means a room, apartment, cottage, or other area within a facility set aside for the exclusive use or control of one [person or of persons constituting a household unit] **or more persons.**

...

**5:19-2.12 (Reserved)**

#### SUBCHAPTER 4. DISCLOSURE STATEMENT

5:19-4.1 Disclosure statement required

(a) (No change.)

(b) The disclosure statement shall be in [plain English and in] **clear and plain** language understandable by a lay person and **shall** combine simplicity and accuracy in order to fully advise residents of their rights, privileges, obligations, and restrictions. **The disclosure described in this section shall also reflect all of the terms required pursuant to the Bill of Rights for Continuing Care Retirement Community Residents in Independent Living Act (P.L. 2013, c. 167, N.J.S.A. 52:27D-360.1 et al.) and N.J.A.C. 5:19-9, including a clear explanation of the rights and responsibilities of the residents of the facility.**

(c) The Department may require the provider to alter or amend the proposed disclosure statement in order to assure full and fair disclosure to prospective residents and may require the revision of a disclosure statement which it finds to be unnecessarily complex, confusing, **unclear**, or illegible. **The obligation of full and fair disclosure shall be a continuing obligation of the facility and its operators, contractors, and principals.**

(d)-(e) (No change.)

#### 5:19-4.2 Contents of disclosure statement

(a) The disclosure statement shall contain the following information [unless the information is contained in the contract]:

1. – 11. (No change.)

12. [Other material information concerning the facility or the provider as required by the Department or as the provider wishes to include.] **The “Bill of Rights for Continuing Care Retirement Community Residents in Independent Living,” in such terms and in such form as required by this chapter;**

**13. Notice that the prospective resident shall have 30 days to review the disclosure statement and written explanation of residents' rights and responsibilities prior to executing the contract;**

**14. Notice of the resident's right to cancel the agreement within 30 days after signing and then to receive a full refund, except for the application fee. This notice shall also advise that the prospective resident may wait to occupy a unit until the end of the 30-day rescission period;**

**15. A copy of the rules and regulations of the facility regarding the resident's responsibilities and conduct acceptable to the facility, which rules and regulations shall not limit, restrict, or be otherwise inconsistent with the rights set forth in the "Bill of Rights for Continuing Care Retirement Community Residents in Independent Living"; and**

**16. Other material information concerning a specific facility or provider as the provider wishes.**

## **SUBCHAPTER 6. CONTRACTS**

### **5:19-6.2 Notice of rescission**

Every contract or agreement shall contain the following notice in [10] **12-point bold face type** or larger, directly above the space provided for the signature of the resident.

**NOTICE TO THE RESIDENT: YOU HAVE THE RIGHT TO CANCEL THIS CONTRACT OR AGREEMENT BY SENDING OR DELIVERING WRITTEN NOTICE OF CANCELLATION TO THE PROVIDER BY MIDNIGHT OF THE 30TH CALENDAR DAY FOLLOWING THE DAY ON WHICH IT WAS EXECUTED BY BOTH PARTIES, OR AN**

INITIAL DEPOSIT WAS MADE. SUCH CANCELLATION IS WITHOUT PENALTY, AND ALL DEPOSITS MADE BY YOU SHALL BE PROMPTLY REFUNDED, EXCEPT FOR **THE APPLICATION FEE AND FOR EXPENSES INCURRED BY THE PROVIDER AT THE RESIDENT'S SPECIFIC REQUEST, PROVIDED THAT SUCH EXPENSES ARE ITEMIZED AND SUPPORTED BY APPROPRIATE DOCUMENTATION.**

**AFTER THIS 30-DAY CANCELLATION PERIOD, YOU RETAIN THE RIGHT TO CANCEL THIS CONTRACT FOR ANY REASON, UPON 60 DAYS' WRITTEN NOTICE. IF YOU CANCEL THE CONTRACT IN THIS MANNER, YOU MAY BE ENTITLED TO A FULL OR PARTIAL REFUND OF YOUR ENTRANCE FEE, AS PROVIDED ELSEWHERE IN THE CONTRACT.**

5:19-6.3 Deposits and application fees

(a) All deposits, [downpayments] **down payments**, or other funds paid to a provider by a purchaser shall be held in an interest bearing separate trust account in a banking or similar institution located within this State or deposited with an attorney licensed to practice law in this State, or until occupancy or cancellation of the contract, as governed by N.J.A.C. 5:19-7.4. Occupancy of the living unit by the resident prior to the expiration of the 30-day rescission period shall not be construed as a waiver of any part of said rescission period. **If desired, the resident may wait until the end of the 30-day rescission period to take occupancy, without waiver or penalty.**

(b) (No change.)

(c) **The amount of the entrance fee, the method by which the provider has calculated the amounts refundable, and the amounts thereof that are refundable (including any**

**conditions that may affect the amount of any refund) shall be set forth in a clear and conspicuous manner, in plain and easily understood language in the contract.**

5:19-6.4 Provisions required

(a) A continuing care agreement [executed on or after March 2, 1987] shall be written [in plain English, and] in **clear and plain** language understandable by a lay person, and shall include, but not be limited to, the following:

1. – 6. (No change.)

7. A statement [providing] **in clear, bold type at least as large as the largest type in the contract:**

**i. Advising the resident** that the agreement may be cancelled upon giving at least 60 days' notice by the provider or the resident, except that if an agreement is cancelled by the provider because there has been a good faith determination in writing, signed by the medical director and the administrator of the facility, that a resident is a danger to himself or others, only notice that is reasonable under the circumstances is required;

**ii. Advising that the resident shall be provided at least 60-days' written notice from the facility if the resident's continuing care agreement is being cancelled due to a violation of the facility's rules or regulations and that this notification may be waived if the facility can demonstrate just cause for terminating the continuing care agreement in accordance with N.J.A.C. 5:19-6.5(c); and**

**iii. Advising that the resident may challenge the facility's notice of cancellation by requesting a hearing in the same manner as for a hearing in a contested case pursuant to section 9 of P.L. 1968, c. 410 (N.J.S.A. 52:14B-9);**

8. A statement providing in clear, **conspicuous**, and understandable language, in print no smaller than the largest type used in the body of the agreement, **the amount of the entrance fee, and** the terms governing the refund of any portion of the entrance fee;

9. A statement of the terms under which an agreement is cancelled by the death of the resident[,which statement may contain a provision stating that upon the death of the resident the moneys paid for the continuing care of the resident shall be considered earned and become the property of the provider]; [and]

10. A statement providing for at least 30-days' advance notice to the resident before any change in fees or changes in the scope of care or services are effective, except for changes required by State or Federal assistance programs[.]; **and**

**11. Notice to the prospective resident of the terms of the "Bill of Rights for Continuing Care Retirement Community Residents in Independent Living," including a specific description in bold or larger type of the right of rescission or cancellation provided by N.J.S.A. 52:27D-360.2 and 360.7. In the event that the particular terms of the "Bill of Rights for Continuing Care Retirement Community Residents in Independent Living" are incorporated by reference to an attachment to the contract, the notice of the right of rescission and of cancellation, including the right to a refund, shall nevertheless be specifically described in the body of the agreement in bold or larger type in the agreement at or near the signature lines and shall not be merely incorporated by reference.**

5:19-6.5 Rescission and removal

(a) A resident has the right to rescind a continuing care agreement without penalty or forfeiture, except **for the application fee and** those costs specifically incurred by the facility at the request of the resident and set forth in writing in a separate addendum signed by both parties to the agreement, within 30 days after making an initial deposit or executing the agreement. A resident shall not be required to move into the facility designated in the agreement before the expiration of the 30-day period.

(b)-(c) (No change.)

(d) If a facility dismisses a resident for just cause, the resident shall be entitled to a refund of [his] **the resident's** unearned entrance fee, if any, in the same manner as provided in (f) below.

(e) A resident may request a hearing to contest a facility's decision to dismiss or discharge the resident. The hearing shall be held pursuant to the Administrative Procedure Act (P.L. 1968, [c.410] **c. 410**, N.J.S.A. 52:14B-1 et seq.) and the Uniform Administrative Practice Rules, N.J.A.C. 1:1[-1 et seq]. **If a resident has requested a hearing, the resident may not be removed prior to the outcome of the said hearing unless earlier removal is both warranted and required due to documented medical or other emergent needs to protect the resident, other residents, or employees of the facility or for other reasons expressly permitted by law.**

(f)-(g) (No change.)

**(h) The following concern cancellation of a continuing care agreement:**

**1. A resident may, upon 60-days' written notice, cancel the continuing care agreement for any reason.**

**2. Upon cancellation of the continuing care agreement by either the resident or the facility, the resident shall have the right to receive a refund of the amount of any entrance fee as provided in the continuing care agreement. The amount of the entrance fee shall be set forth in a clear and conspicuous manner in the continuing care agreement.**

**3. A resident shall be provided at least 60-days' written notice from the facility if the resident's continuing care agreement is being cancelled due to a violation of the facility's rules or regulations. Notification may be waived if the facility can demonstrate just cause for terminating the continuing care agreement in accordance with (c) above. The resident may challenge the facility's notice of continuing care agreement cancellation by requesting a hearing in the same manner as for a hearing in a contested case pursuant to section 9 of P.L. 1968, c. 410 (N.J.S.A. 52:14B-9). If a resident has requested a hearing, the resident may not be removed prior to the outcome of the said hearing unless earlier removal is both warranted and required due to documented medical or other emergent needs to protect the resident, other residents, or employees of the facility or for other reasons expressly permitted by law.**

**4. In a continuing care agreement that provides for a refundable entrance fee, when a resident permanently vacates the facility, or, in the case of two residents occupying the same residence, when both vacate at the same time, the facility shall provide to the resident or residents or the legal representative of the resident's estate, whichever is applicable, a refund of the refundable entrance fee amount without interest, as set forth in the agreement. Any unpaid fees or charges incurred by the resident including unpaid monthly service fees, as well as the amount of any charitable assistance that the facility has provided to the resident, may also be deducted from the remaining balance of the refund of**

**the entrance fee. Any balance due to the resident shall be payable within 60 days from the date the residence is resold and the entrance fee from the new resident has been received.**

**5. When an entrance fee deposit is refundable, it shall be paid to either the resident, the resident's named beneficiary, or the legal representative of the resident's estate, whichever is applicable. A resident shall have the right to change, in writing, the named beneficiary for the entrance fee refund at any time.**

**(i) In any circumstance in which the facility retains or proposes to retain any portion of a resident's entrance fee or to deduct any amounts from any refund of an entrance fee due to the resident, the facility, prior to retaining or deducting such amounts, shall provide the resident (or the resident's legal representative) with written notice itemizing all such amounts and specifying the method by which such amounts were determined.**

Recodify existing (h) – (i) as (j) – (k) (No change in text.)

## **SUBCHAPTER 9. NOTICE OF RIGHTS**

### **5:19-9.1 Provision of notice of rights**

**(a) Each continuing care retirement facility is required to distribute to each resident not less than annually, a statement of residents' rights, entitled "Bill of Rights for Continuing Care Retirement Community Residents in Independent Living," as provided in P.L. 2013, c. 167 (N.J.S.A. 52:27D-360.1 et al.) and any rules and regulations relating to residents' responsibilities and conduct.**

**1. This statement shall also be posted in a conspicuous public place in the facility and in any common room, recreation area, or dining room where residents gather, exclusive of hallways, stairwells, offices, restrooms, or other private areas.**

**2. The statement of residents' rights shall be prepared, distributed, and posted in a form approved by the Department. The facility shall inform each resident, a member of the resident's immediate family (but only at the resident's request), and the resident's legal representative, if applicable, of the resident's rights, provide explanations if needed, and ensure that each resident or legal representative of the resident has been encouraged to read the statement of residents' rights, and sign a copy of the statement to demonstrate that it has been read and understood.**

**3. The facility shall also be responsible for making this statement available to each resident (or the resident's legal representative) within a reasonable time upon request and without cost.**

**4. The facility shall be responsible for undertaking the actions in this section with respect to all new and existing residents. This shall be a continuing obligation of the facility and its operators, contractors, and principals. In particular cases, the Department in its discretion may require documentation of compliance.**

**5. The facility shall prepare, distribute, and post the "Bill of Rights for Continuing Care Retirement Community Residents in Independent Living" in a form approved by the Department. If a resident is visually impaired or otherwise unable to read the "Bill of Rights," the facility's obligation may be met by having a competent staff member personally read the "Bill of Rights" aloud to the resident and, if necessary, to a representative or family member.**

#### **5:19-9.2 Content of notice of rights**

**(a) Each resident shall be provided with a document entitled “Bill of Rights for Continuing Care Retirement Community Residents in Independent Living,” which document shall, in 12-point or larger type, contain each of the rights described below.**

**1. Unless a resident has violated the continuing care agreement or facility rules, or the facility has cancelled the agreement with sufficient notice and cause, or if the facility for sound business reasons decides to raze or to otherwise cease operating the structure, or the part of it, in which the resident’s unit is located, a resident may occupy the resident’s chosen unit for as long as the resident can function independently, with or without the assistance of an aide or aides. Any determination that the resident can no longer function independently, with or without the assistance of an aide or aides, shall be made by the director of medical services of the facility and be subject to the requirements of section 4 of P.L. 2013, c. 167 (N.J.S.A. 52:27D-360.4) and N.J.A.C. 5:19-11. The facility shall also timely notify the resident in writing of any right that the resident may have to appeal that determination.**

**2. Each resident shall have privacy within the resident’s unit, except that personnel must be admitted for contracted services or to respond to an emergency or complaint.**

**3. Any resident may serve or participate in a local, State, or national residents’ association, or other similar organization without discrimination or reprisal.**

**4. Each resident shall retain and be able to exercise all constitutional, civil, and other rights to which the resident is entitled by law.**

**5. Each resident shall be treated with respect, courtesy, consideration, and dignity.**

**6. Any resident or legal representative of the resident may refuse medication or treatment after being fully informed of the possible benefits or risks.**

**7. Each resident has the right to express complaints without fear of interference, discharge, or reprisal, and the right to contact the Office of the Ombudsman for the Institutionalized Elderly, or any advocate or agency which provides health, social, legal, or other services to advocate on behalf of residents if the resident feels that the rights of the resident or of other persons are being violated.**

**8. Each resident has the right to expect the facility to investigate promptly and try to resolve all concerns the resident expresses. A record shall be kept of all written complaints made to the facility's senior management concerning residents' rights. This record shall be available to only the particular resident or the resident's legal representative, immediate family members, the residents' physicians, and agents of the State of New Jersey or other appropriate governmental agency. Each resident may file a complaint with any agency, including the appropriate State office, without fear of reprisal from the facility. Residents may also request that their complaints remain anonymous.**

**9. The facility shall not modify or reduce the scope of provided services, with the exception of modifications required by State or Federal assistance programs, without providing the residents with a minimum of 30-days' prior notice of the modification or reduction. All services to be provided shall be listed in a form designated by the Department pursuant to N.J.A.C. 5:19-6.4(a)2.**

**10. Each resident is entitled to 30-days' advance written notice prior to the increase of any fees.**

**11. A resident may choose any outside physician as the resident's primary care physician.**

**12. A resident may hire a private caregiver or companion at the resident's own expense and responsibility, as long as the caregiver or companion complies with the facility's policies and procedures.**

**13. Each resident is entitled to view or receive a copy of the resident's own medical record, free of charge.**

**14. Each resident may participate personally, or through a legal representative, in all decisions regarding the resident's own health care.**

**15. Each resident or legal representative of the resident shall receive, upon request, a complete explanation of the resident's medical condition, any recommended treatment, and the possible benefits or risks involved.**

**16. A resident may appoint a legal representative with a durable power of attorney to handle financial matters if the resident is unable to do so.**

**17. Pursuant to section 4 of the "New Jersey Advance Directives for Health Care Act," P.L. 1991, c. 201 (N.J.S.A. 26:2H-56), a resident may execute an advance directive concerning the use of life-sustaining treatment, and may appoint a legal representative with a durable power of attorney to act on behalf of the resident with regard to health care decisions. The resident has the right to expect that the provisions of the advance directive will be executed to the fullest extent possible.**

**18. Each resident shall receive every service, as contracted in the continuing care agreement that was executed upon the resident's admission, unless waived in writing by the resident, with the exception of changes required by State or Federal law or permitted in the continuing care agreement.**

**19. A resident shall have the right to receive guests and visitors at the facility, and the right to allow guests to stay for a reasonable temporary period of time in a guest apartment or unit in the facility, subject to reasonable policies and procedures of the facility.**

**20. A resident may leave and return to the resident's independent living unit at will, provided the resident informs the facility if the resident will be temporarily absent overnight, or for a longer period of time. The facility shall notify residents in writing as to whether they will be charged a per diem fee or other charges during any such time that they are absent from the facility.**

**21. A resident has the right to refuse to perform work or services for the facility without coercion, discrimination, or reprisal by the facility.**

**22. No resident shall be requested or required to accept any restriction of the rights or privileges of a resident as set forth in this section.**

**23. A resident may request from the facility, and shall receive without undue delay and without cost, a copy of the rights of nursing home residents, as provided in section 5 of P.L. 1976, c. 120 (N.J.S.A. 30:13-5).**

**24. A resident may request from the facility, and shall receive without undue delay and without cost, a copy of the rights of residents of assisted living facilities, as provided in section 1 of P.L. 2011, c. 58 (N.J.S.A. 26:2H-128).**

**25. A resident may request from the facility, and shall receive without undue delay and without cost, a copy of the “Bill of Rights for Continuing Care Retirement Community Residents in Independent Living,” as provided in section 5 of P.L. 2013, c. 167 (N.J.S.A. 52:27D-360.5).**

**26. A resident who is insured by a health maintenance organization has the right to be referred by the resident’s primary care physician to the nursing care unit that is part of the resident’s facility instead of any other unit, provided that the unit has the capacity to provide the services needed and that it is in the best interests of the resident, and further provided that the facility accepts the applicable reimbursement rate. This right also applies to any resident being discharged from a hospital or similar facility.**

**27. A resident shall receive, upon request without undue delay and without cost, a fee schedule for any uncovered service before agreeing to the performance of that service.**

**28. Each resident shall have the right to receive a copy of the facility’s annual disclosure statement, including certified financial statements, once they have been filed with the Department without undue delay and without cost.**

**29. A resident who is experiencing financial difficulties may thoroughly investigate with the facility any financial assistance which may be available to allow the resident to remain at the facility. The facility shall provide sustaining charitable assistance, unless the facility can demonstrate that:**

**i. Providing this assistance would adversely affect the financial health of the facility;**

**ii. The resident has violated the terms of the continuing care agreement or providing this assistance would violate the terms of the continuing care agreement; or**

**iii. Providing this assistance would cause the facility to violate a covenant in a loan agreement.**

**30. A resident may remain in a facility despite financial difficulty until the facility demonstrates to the Department that the entrance fee the resident paid, if applicable, has been fully earned by the facility, using the formula set forth under the Department regulations for rescission and removal, pursuant to N.J.A.C. 5:19-6.5(f). A resident shall not be permitted to remain at the facility if the financial difficulty is due to the resident's misrepresentation to the facility about the extent of the resident's assets or income or if the resident gives away significant assets while residing at the facility. The facility shall notify the resident in writing of any right that the resident may have to appeal that determination.**

**31. Each resident shall be informed of Medicare and Medicaid program benefits and shall receive assistance in accessing these benefits to the extent that they are available at the facility.**

## **SUBCHAPTER 10. CANCELLATION OF CONTINUING CARE AGREEMENT**

### **5:19-10.1 Notice of cancellation of continuing care agreement**

**(a) Each resident may, upon 60-days' written notice, cancel the resident's continuing care agreement for any reason.**

**(b) Each resident shall be provided at least 60-days' written notice from the facility if the resident's continuing care agreement is being cancelled due to a violation of the facility's rules or regulations. Notification may be waived if the facility can demonstrate just cause for terminating the continuing care agreement in accordance with N.J.A.C. 5:19-6.5(c). The resident may challenge the facility's notice of continuing care agreement cancellation by requesting a hearing in the same manner as for a hearing in a contested case pursuant to section 9 of P.L. 1968, c. 410 (N.J.S.A. 52:14B-9). Any notice of cancellation by the facility shall include the following:**

- 1. Specific factual representations constituting just cause, if any;**
- 2. Notice of the resident's right to challenge the facility's notice of cancellation by requesting a hearing; and**
- 3. Notice of the resident's right to a prompt full or partial refund of the resident's entrance fee to the extent provided in the continuing care agreement or as provided by law.**

**(c) Any cancellation of a continuing care agreement shall nevertheless be subject to the provisions of N.J.A.C. 5:19-6.5, Rescission and removal, except as otherwise provided in this chapter, in the Act, or in other applicable law.**

#### **5:19-10.2 Refunds**

**(a) Upon cancellation of the continuing care agreement by either the resident or the facility, the resident shall have the right to receive a refund of the amount of any entrance fee as provided in the continuing care agreement or as otherwise provided by law. The amount of the entrance fee and the method of determining the amount refundable shall be set forth in a clear and conspicuous manner in the continuing care agreement.**

**1. When a resident permanently vacates the facility, or, in the case of two residents occupying the same residence, when both vacate at the same time, the facility shall provide to the resident or residents or the legal representative of the resident's estate, whichever is applicable, a refund of the refundable entrance fee amount without interest, as set forth in the agreement.**

**2. Any unpaid fees or charges incurred by the resident including unpaid monthly service fees, as well as the amount of any charitable assistance that the facility has provided to the resident, may also be deducted from the remaining balance of the refund of the entrance fee.**

**3. Any balance to the resident shall be payable within 60 days from the date the residence is resold and the entrance fee from the new resident has been received.**

**(b) When an entrance fee deposit is refundable, it shall be paid to either the resident, the resident's named beneficiary, or the legal representative of the resident's estate, whichever is applicable. A resident shall have the right to change, in writing, the named beneficiary for the entrance fee refund at any time.**

**(c) The facility's obligation with respect to refunds following the cancellation of a continuing care agreement or the death or removal of a resident shall nevertheless be subject to the provisions of N.J.A.C 5:19-6.5, Rescission and removal, and any other applicable law.**

## **SUBCHAPTER 11. TRANSFER OF RESIDENTS**

### **5:19-11.1 Transfer, reassignment of resident**

**(a) A resident may be temporarily or permanently assigned to an assisted living unit or a licensed nursing unit if the facility determines that the resident's physical or mental health requires that level of care. The determination shall be made in consultation with the resident's attending physician if available, the medical director, a member of the resident's immediate family but only at the resident's request, and the resident or legal representative of the resident.**

**(b) Transfer of a resident to a hospital of their choice may take place at the request of the resident or legal representative of the resident, or when deemed to be medically necessary by the director of medical services of the facility after consultation with both the resident's attending physician and the resident or legal representative of the resident.**

## **SUBCHAPTER 12. NOTICES**

### **5:19-12.1 Notices given by resident**

**In the event that a resident is required or permitted to give written notice to the facility as a condition of exercising any right under the continuing care contract, the Act, or this chapter, the facility must honor any such written notice, if the terms of the notice are reasonably clear and timely mailed or delivered to the facility or a representative thereof. In addition to other forms of actual or constructive notice, mailing or hand delivery to any management or supervisory employee of the facility shall constitute valid notice. If the facility requires such notices to be given on a particular form, the facility must make such forms easily accessible and available to each resident. Failure to provide such forms to the residents shall render invalid and moot any requirement for such a form.**

## **5:19-12.2 Notices given by the facility**

- (a) In the event that the facility is required or permitted to give written notice to a resident as a condition of exercising any right under the Act or this chapter, the facility shall provide such notices in clear, understandable language and suitable type, font, and format. The notice shall clearly specify the factual and legal basis for the notice and the particular regulatory, statutory, or contractual provision upon which it is based or permitted. In the event that the basis for the notice is subject to the resident's right to a hearing or an appeal, the particular procedural and time requirements thereof must be stated in the notice. Notices must be mailed, via certified mail, or express courier requiring a receipt or by hand-delivery to the resident and must also be sent via certified mail or express courier requiring a receipt to the resident's legal representative, if one has been designated.**
- (b) Notwithstanding (a) above, if a different form of notice or different method of service is required or permitted by applicable statute, regulation, or court ruling, the applicable statute, regulation, or court ruling shall govern.**

## **SUBCHAPTER [9.] 13. ADMINISTRATION**

### **5:19-[9.1]13.1 Enforcing agency designated**

The Division of [Housing and Development] **Codes and Standards** in the Department of Community Affairs shall administer and enforce these rules. Within the Division, responsibilities for administration and enforcement of these rules shall be vested in the Bureau of Homeowner Protection. All powers and responsibilities vested in the Commissioner shall be executed by the Chief, Bureau of Homeowner Protection, with the exception of the power to promulgate rules and the power to issue final decisions in administrative hearings.

5:19-[9.2]13.2 Complaints and investigations; **violations; enforcement; penalties**

(a) Any person may, at any time, file a complaint with the Department concerning any matter subject to the Act or these rules. Said complaint may be written or oral. Nothing contained herein shall prevent the Department from instituting an investigation on its own initiative.

(b) **If the Department determines or has cause to believe that a person has engaged in any act or practice which constitutes a violation of P.L. 1986, c. 103 (N.J.S.A. 52:27D-330 et seq.) or P.L. 2013, c. 167 (N.J.S.A. 52:27D-360.1 et al.), the Department may take any or all of the following actions, as appropriate:**

**1. Issue a temporary cease and desist order upon the determination by the Department in writing, and based upon a finding of fact, that the public interest will be irreparably harmed by delay in issuing an order, including therein a provision that, upon written request made within five business days following issuance of the order, a hearing will be held within 10 days of that request to determine whether or not the temporary cease and desist order shall become permanent. A copy of any temporary or permanent cease and desist order shall be sent to the person by certified mail;**

**2. Issue an order requiring such affirmative action as, in the judgment of the Department, will carry out the purposes of the Act or these rules;**

**3. Bring an action in the Superior Court to enjoin the act or practice and to enforce compliance with P.L. 1986, c. 103 (N.J.S.A. 52:27D-330 et seq.) and P.L. 2013, c. 167 (N.J.S.A. 52:27D-360.1 et al.) if it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of P.L. 1986, c. 103 (N.J.S.A. 52:27D-330 et seq.) or P.L. 2013, c. 167 (N.J.S.A. 52:27D-360.1 et al.), or a rule or order of**

**the Department. Upon a proper showing, the court may grant a permanent or temporary injunction, restraining order, or writ of mandamus and may appoint a receiver or conservator for the defendant or the defendant's assets. The Commissioner shall not be required to post a bond; or**

**4. Levy and collect civil penalties in the amount of not less than \$250.00, and not more than \$50,000, for each violation of P.L. 1986, c. 103 (N.J.S.A. 52:27D-330 et seq.) or P.L. 2013, c. 167 (N.J.S.A. 52:27D-360.1 et al.), or any rule adopted pursuant thereto or order issued thereunder, and compromise and settle any claim for a penalty in such amount in the discretion of the Commissioner as may appear appropriate and equitable under the circumstances of the violation. Each day during which a violation continues after the effective date of a notice to terminate issued by the Commissioner shall constitute an additional, separate, and distinct violation. If an administrative order levying a civil penalty is not satisfied within 30 days of its issuance, the Commissioner may sue for and recover the penalty with costs in a summary proceeding under the “Penalty Enforcement Law of 1999,” P.L. 1999, c. 274 (N.J.S.A. 2A:58-10 et seq.) in the Superior Court.**

**i. Except as set forth below, the initial penalty levied for any violation shall not exceed \$250.00 per violation, or \$250.00 per unit in the case of any violation of Department rules for facility certification, and a subsequent penalty for the same act or omission shall not exceed 10 times the amount of the last previous penalty or the statutory maximum, whichever is less.**

**ii. The limitations set forth in (b)4i above shall not apply to any violation involving either dishonesty in dealings with residents or prospective residents, or willful disregard of the rights of residents.**

(c) For the purposes of actions that the Department may take under (b) above, the following shall have the same effect as a violation of P.L. 1986, c. 103 (N.J.S.A. 52:27D-330 et seq.) or sections 1 through 7 of P.L. 2013, c. 167 (N.J.S.A. 52:27D-360.1 et al.):

1. Directly, or through an agent or employee, knowingly engaging in false, deceptive, or misleading advertising, promotional, or sales methods to offer or dispose of a unit;

2. Making any material change in the plan of disposition of the continuing care retirement community subsequent to the certificate of authority without obtaining prior approval from the Department;

3. Disposing of any unit, which is capable of being certified, or interest in a continuing care retirement community which has not been certified with the Department;

or

4. Violating any lawful order or rule of the Department.

5:19-[9.3]13.3 Rights to a hearing

Any applicant aggrieved by an order or determination of the Department issued under these rules shall be entitled to a hearing as provided by law, provided a written request for such hearing is filed within 20 days of the receipt of the order or determination. Hearing requests shall be addressed to the Hearing Coordinator, Division of [Housing and Development] **Codes and Standards**, P.O. Box 802, Trenton, New Jersey 08625-0802.

Recodify existing N.J.A.C. 5:19-9.4 and 9.5 as **13.4 and 13.5** (No change in text.)

5:19-[9.6]**13.6** Applicability

(a) These rules shall be applicable as follows:

[1. A provider who is offering but not providing continuing care on March 2,1987 may be given a reasonable time, not to exceed one year from the date of promulgation of these rules, within which to comply with the requirements of the Act and obtain a certificate of authority.

2. A facility which has not entered into any agreements for continuing care pursuant to the Act since 1965, is not subject to the provisions of the Act; but this exclusion shall not apply if that facility enters into one or more agreements for continuing care on or after March 2, 1987.]

[3.] **1.** A facility which has fewer than 50 residents who are under continuing care agreements on the date of enactment of the **Continuing Care Retirement Community Regulation and Financial Disclosure Act (P.L. 1986, c. 103; N.J.S.A. 52:27D-330 et seq.)** is not subject to the provisions of [the] **this** Act; but this exclusion shall not apply if that facility increases the number of its residents under continuing care agreements to 50 or more, after the date of enactment of [the] **this** Act.

**2. The requirements in this chapter that duplicate the requirements in the Bill of Rights for Continuing Care Retirement Community Residents in Independent Living Act (P.L. 2013, c. 167; N.J.S.A. 52:27D-360.1 et al.), inclusive of the obligation of the facility to provide each resident with notification of the “Bill of Rights for Continuing Care Retirement Community Residents in Independent Living,” were effective May 1, 2014, the effective date of this Act, irrespective of the time of inception of the contract or the population of the facility and apply to all continuing care retirement communities or other facilities or institutions providing such services as the same may be defined in N.J.S.A. 52:27G-2.f or in 52:27D-332.f.**

[4. A provider who is offering continuing care on the effective date of the Act shall be given a reasonable time, not to exceed one year from the date of promulgation of this chapter, within which to comply with the requirements of the Act and obtain a Certificate of Authority.]

Recodify existing N.J.A.C. 5:19-9.7 through 9.9 as **13.7 through 13.9** (No change in text.)