ARTICLE 2. SUPERVISION OF CONTINUING CARE CONTRACTS

Rule 1. Definitions
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Rule 1. Definitions

710 IAC 2-1-1 Definitions

710 IAC 2-1-1 Definitions

Authority: IC 23-2-4-24
Affected: IC 23-2-4-1

Sec. 1. As used in 710 IAC 2, the term:

"Commissioner" means the securities commissioner as provided in IC 23-2-1-15(a) *[IC 23-2-1 was repealed by P.L.27-2007, SECTION 37, effective July 1, 2008.]*.

"Health facility" shall have the same meaning as provided in IC 16-10-4-2 *[IC 16-10 was repealed by P.L.2-1993, SECTION 209, effective July 1, 1993.]*.

"Manager" means any person, other than employees of the provider, who contracts with the provider to perform managerial services in a home. *(Securities Division; 710 IAC 2-1-1; filed Jan 30, 1985, 9:33 am: 8 IR 610; readopted filed May 31, 2002, 11:34 p.m.: 25 IR 3462; readopted filed Dec 2, 2008, 9:01 a.m.: 20081224-IR-710080819RFA; readopted filed Sep 23, 2015, 2:54 p.m.: 20151021-IR-710150280RFA; readopted filed Sep 27, 2021, 11:04 a.m.: 20211027-IR-710210374RFA)*

Rule 2. Applications for Registration

710 IAC 2-2-1 Filing date
710 IAC 2-2-2 Contents of application for registration
710 IAC 2-2-3 Amendments

710 IAC 2-2-1 Filing date

Authority: IC 23-2-4-24
Affected: IC 23-2-4-3

Sec. 1. For purposes of IC 23-2-4-3(d), an application shall not be considered filed until all required forms and fees are received by the commissioner. *(Securities Division; 710 IAC 2-2-1; filed Jan 30, 1985, 9:33 am: 8 IR 610; readopted filed May 31, 2002, 11:34 p.m.: 25 IR 3462; readopted filed Dec 2, 2008, 9:01 a.m.: 20081224-IR-710080819RFA; readopted filed Sep 23, 2015, 2:54 p.m.: 20151021-IR-710150280RFA; readopted filed Sep 27, 2021, 11:04 a.m.: 20211027-IR-710210374RFA)*

710 IAC 2-2-2 Contents of application for registration

Authority: IC 23-2-4-24
Affected: IC 23-2-4-4

Sec. 2. An application for registration under IC 23-2-4 shall contain:

(1) the following information on the form prescribed by the commissioner:

(A) the name and address of the home;
(B) the name and address of the provider;
(C) the name and address of a person to whom correspondence may be directed;
(D) the current and maximum occupancy of the home;
(E) the date on which the fiscal year of the home ends;
(F) the name and address of any other home currently or previously operated by the provider or manager of the home;
(G) the name and address of the escrow agent for deposit of entrance fees and a copy of the escrow agreement;

(H) if the operation of the home has not begun, a statement of the anticipated source and application of funds to be used in the purchase or construction of the home, and the estimate of the funds, if any, which are anticipated to be necessary to pay for start-up losses;

(I) a copy of the forms of agreement for continuing care used by the provider.

(2) an initial disclosure statement in compliance with IC 23-2-4-4 and 710 IAC 2-3;

(3) the provider's articles of incorporation or association, if not already on file with the secretary of state; and

(4) any code of rules or by-laws to which a resident must agree to abide.

(Securities Division; 710 IAC 2-2-2; filed Jan 30, 1985, 9:33 am: 8 IR 610; readopted filed May 31, 2002, 11:34 p.m.: 25 IR 3462; readopted filed Dec 2, 2008, 9:01 a.m.: 20081224-IR-710080819RFA; readopted filed Sep 23, 2015, 2:54 p.m.: 20151021-IR-710150280RFA; readopted filed Sep 27, 2021, 11:04 a.m.: 20211027-IR-710210374RFA)

710 IAC 2-2-3 Amendments

Authority: IC 23-2-4-24
Affected: IC 23-2-4-3

Sec. 3. (a) An application for registration shall be amended within 30 days after any change (other than a change in occupancy) in the information required by 710 IAC 2-2-2.

(b) An application may be amended by filing a copy of the form prescribed for applications, with appropriate changes. *(Securities Division; 710 IAC 2-2-3; filed Jan 30, 1985, 9:33 am: 8 IR 611; readopted filed May 31, 2002, 11:34 p.m.: 25 IR 3462; readopted filed Dec 2, 2008, 9:01 a.m.: 20081224-IR-710080819RFA; readopted filed Sep 23, 2015, 2:54 p.m.: 20151021-IR-710150280RFA; readopted filed Sep 27, 2021, 11:04 a.m.: 20211027-IR-710210374RFA)*

Rule 3. Initial Disclosure Statement

710 IAC 2-3-1	Form of initial disclosure statement
710 IAC 2-3-2	Pictorial or graphic representations; sales material
710 IAC 2-3-3	Material information
710 IAC 2-3-4	Initial disclosure statement to be kept current
710 IAC 2-3-5	Contents of an initial disclosure statement
710 IAC 2-3-6	Delivery of initial disclosure statement

710 IAC 2-3-1 Form of initial disclosure statement

Authority: IC 23-2-4-24
Affected: IC 23-2-4-4

Sec. 1. An initial disclosure statement shall be printed or typed on paper 8 1/2 inches by 11 inches. The statement shall be bound, stapled, or otherwise securely fastened. *(Securities Division; 710 IAC 2-3-1; filed Jan 30, 1985, 9:33 am: 8 IR 611; readopted filed May 31, 2002, 11:34 p.m.: 25 IR 3462; readopted filed Dec 2, 2008, 9:01 a.m.: 20081224-IR-710080819RFA; readopted filed Sep 23, 2015, 2:54 p.m.: 20151021-IR-710150280RFA; readopted filed Sep 27, 2021, 11:04 a.m.: 20211027-IR-710210374RFA)*

710 IAC 2-3-2 Pictorial or graphic representations; sales material

Authority: IC 23-2-4-24
Affected: IC 23-2-4-4

Sec. 2. (a) An initial disclosure statement shall contain no photographic reproductions, drawings or artist's renderings, other than actual plans of the home. No inaccurate or misleading photograph or diagram shall be contained in any initial disclosure statement.

(b) No sales or advertising material shall appear in the initial disclosure statement.

(c) The provider shall keep and maintain a file of all advertisements, pamphlets, circulars, letters, articles, or communications published in any newspaper, magazine, or periodical; scripts of any recording, radio, or television announcement; and any sales kits or literature to be used in solicitation of persons to enter into a continuing care agreement. The file shall be kept with the records of

the home. Documents shall be kept in the file for at least two years. *(Securities Division; 710 IAC 2-3-2; filed Jan 30, 1985, 9:33 am: 8 IR 611; readopted filed May 31, 2002, 11:34 p.m.: 25 IR 3462; readopted filed Dec 2, 2008, 9:01 a.m.: 20081224-IR-710080819RFA; readopted filed Sep 23, 2015, 2:54 p.m.: 20151021-IR-710150280RFA; readopted filed Sep 27, 2021, 11:04 a.m.: 20211027-IR-710210374RFA)*

710 IAC 2-3-3 Material information

Authority: IC 23-2-4-24
Affected: IC 23-2-4-4

Sec. 3. (a) An initial disclosure statement shall contain all material information not expressly required, that is necessary, under the circumstances, to make the statements made not misleading.

(b) An initial disclosure statement shall be amended at any time if necessary to prevent the statement from containing any material misstatement of fact or omission of a material fact.

(c) The provider may file a sworn petition requesting that the commissioner rule as to the materiality of any information. The commissioner's ruling shall be based solely on the representations contained in such petition and shall be valid and effective only to the extent that such representations are true and complete.

(d) If the commissioner rules that information is material, such information shall be included in the initial disclosure statement. If the commissioner rules that the information is not material, the initial disclosure statement shall not be deemed in violation of 710 IAC 2-3 by virtue of the omission of such information. *(Securities Division; 710 IAC 2-3-3; filed Jan 30, 1985, 9:33 am: 8 IR 611; readopted filed May 31, 2002, 11:34 p.m.: 25 IR 3462; readopted filed Dec 2, 2008, 9:01 a.m.: 20081224-IR-710080819RFA; readopted filed Sep 23, 2015, 2:54 p.m.: 20151021-IR-710150280RFA; readopted filed Sep 27, 2021, 11:04 a.m.: 20211027-IR-710210374RFA)*

710 IAC 2-3-4 Initial disclosure statement to be kept current

Authority: IC 23-2-4-24
Affected: IC 23-2-4-4

Sec. 4. (a) An initial disclosure statement dated more than one year prior to the date of delivery shall not comply with the requirements of 710 IAC 2-3.

(b) An initial disclosure statement shall be amended no less frequently than once each year. *(Securities Division; 710 IAC 2-3-4; filed Jan 30, 1985, 9:33 am: 8 IR 611; readopted filed May 31, 2002, 11:34 p.m.: 25 IR 3462; readopted filed Dec 2, 2008, 9:01 a.m.: 20081224-IR-710080819RFA; readopted filed Sep 23, 2015, 2:54 p.m.: 20151021-IR-710150280RFA; readopted filed Sep 27, 2021, 11:04 a.m.: 20211027-IR-710210374RFA)*

710 IAC 2-3-5 Contents of an initial disclosure statement

Authority: IC 23-2-4-24
Affected: IC 23-2-4

Sec. 5. The initial disclosure statement shall contain the following information:

(1) Cover Page. The following information shall appear on the cover page of the initial disclosure statement:

(A) In bold face, the words "INITIAL DISCLOSURE STATEMENT."

(B) The name and address of the home.

(C) The name and address of the provider, if different from that of the home.

(D) If the provider is affiliated with a religious, charitable, or other nonprofit organization, a statement to that effect and the name and address of such organization.

(E) The following statement, in at least ten (10) point type:

NOTICE TO PROSPECTIVE RESIDENTS

"ALL PROSPECTIVE RESIDENTS SHOULD READ THIS DISCLOSURE STATEMENT IN ITS ENTIRETY BEFORE ENTERING INTO ANY CONTRACT OR WRITTEN AGREEMENT OR PAYING ANY FEE. ADDITIONALLY, A REPRESENTATIVE OF THE PROVIDER IS AVAILABLE DURING NORMAL BUSINESS HOURS TO ANSWER ANY QUESTIONS

RELATING TO THIS DISCLOSURE STATEMENT AND THE REPRESENTATIONS CONTAINED HEREIN."

(2) Table of Contents, containing at least the following headings in the following order: The Provider, The Manager, Management's Discussion and Analysis of Financial Condition, The Home, Services, Cancellation of the Contract, Management and Principal Owners of the Provider, Management and Principal Owners of the Manager, Litigation, Opinion of Independent Accountants, Financial Statements, Form of Continuing Care Agreements.

(3) The Provider. Information concerning the provider, including but not limited to:

(A) date and form of organization;

(B) affiliation with any religious, charitable, or other nonprofit organization;

(C) description of the provider's business, including the name and address of any other home or health facility owned or operated, any property in which the provider owns a twenty-five percent (25%) interest and on which a home or health facility is intended to be located, and a description of any other business not related to continuing care or health care; and

(D) a statement as to whether, within ten (10) years prior to the date of the initial disclosure statement, he:

(i) was convicted of a crime;

(ii) was a party to any civil action for fraud, embezzlement, fraudulent conversion, or misappropriation of property that resulted in a judgment against him;

(iii) had a prior discharge in bankruptcy or was found insolvent in any court action; and

(iv) had any state or federal licenses or permits suspended or revoked in connection with any health care or continuing care activities, or related business activities.

This clause does not require a negative disclosure.

(4) The Manager. The same information required for the provider under subdivision (3).

(5) Management's Discussion and Analysis of Financial Condition:

(A) Liquidity. Discuss the provider's ability to generate cash adequate to meet its needs for cash. In particular, discuss on both a long-term and a short-term basis any known trends that are reasonably likely to result in the provider's liquidity increasing or decreasing in a material way. If a cash shortage is identified, indicate the course of action the provider has taken or proposes to take to remedy the shortage and identify and separately describe both internal and external sources of cash.

(B) Capital Resources. Describe the provider's commitments for capital expansion, renovation, and other expenditures. Indicate the anticipated source of funds needed to fulfill such commitments. Discuss any expected changes in the mix of equity, debt, and any off-balance sheet financing arrangements.

(C) Results of Operations. Discuss the provider's results of operations during the past three (3) years, using year-to-year comparisons when practical. Describe any unusual or infrequent events or transactions or any significant economic changes that materially affected the amount of reported income from continuing operations and, in each case, indicate the extent to which income was so affected. Also describe any known trends or uncertainties that have had or that the provider reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operation.

(D) Other. Discuss any other information necessary to an understanding of the provider's financial condition, changes in financial condition, and results of operations. Focus specifically on material events and uncertainties known to management that would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. This would include descriptions and amount of:

(i) matters that would have an impact on future operations and have not had an impact in the past; and

(ii) matters that have had an impact on reported operations and are not expected to have an impact upon future operations.

(6) The Home. A description of the home and its facilities, including a description of any other health care facility, the services of which the resident may be entitled to under the continuing care agreement, including:

(A) general physical description of the home;

(B) the number of residents of the home;

(C) facilities for meals, laundry, and transportation;

(D) recreational facilities;

(E) medical service facilities;

(F) a description of the staff of the home, including a statement as to whether any professional persons are on the staff; and

(G) a description of the community in which the home is located.

(7) Services. A description of all services to be provided by the provider under its continuing care agreements with contracting parties, and a description of all fees for those services, including any conditions under which the fees may be adjusted. Services described must include:

(A) meal services;

(B) laundry services;

(C) transportation services;

(D) nursing services; and

(E) medical services.

(8) Cancellation of the Contract. A description of the terms and conditions under which the continuing care agreement can be cancelled, and a description of the terms and conditions under which fees may be refunded.

(9) Management and Principal Owners of the Provider:

(A) The name and business address of any person having a five percent (5%) or greater ownership interest in the provider.

(B) For each officer, director, trustee, partner, manager, or person holding a similar position of the provider, the following information:

(i) His name, title, and duties.

(ii) His business experience, including all employments for the last ten (10) years.

(iii) A statement as to whether, within ten (10) years prior to the date of the initial disclosure statement, he:

(AA) was convicted of a crime;

(BB) was a party to any civil action for fraud, embezzlement, fraudulent conversion, or misappropriation of property that resulted in a judgment against him;

(CC) had a prior discharge in bankruptcy or was found insolvent in any court action; and

(DD) had any state or federal licenses or permits suspended or revoked in connection with any health care or continuing care activities, or related business activities.

This item does not require a negative disclosure.

(10) Management and Principal Owners of the Manager. The same information required for the provider in subdivision (9).

(11) Litigation. A statement as to whether the provider or manager is party to any pending litigation involving claims under IC 23-2-4, or any litigation the result of which may materially affect the financial condition of the provider.

(12) Opinion of Independent Accountants. The report of an independent certified public accountant, based on an examination of the issuer's financial statements in accordance with generally accepted auditing standards, including such tests of the accounting records and such other auditing procedures as considered necessary under the circumstances, and an opinion that such financial statements fairly present the financial position of the issuer and the results of its business operations for the periods stated therein.

(13) Financial Statements. The provider's financial statements, prepared in accordance with generally accepted accounting principles, including a balance sheet as of the provider's last fiscal year, and income statements for the last three (3) fiscal years, or such shorter period of time as the provider has been in operation.

(14) Form of Continuing Care Agreements. A copy of the continuing care agreement proposed by the provider. The copies must be bound in the initial disclosure statement but may be detachable for execution by the parties.

(15) Any other information the commissioner may require by order.

(Securities Division; 710 IAC 2-3-5; filed Jan 30, 1985, 9:33 a.m.: 8 IR 612; filed Dec 5, 1988, 8:20 a.m.: 12 IR 918; errata filed Feb 21, 1989, 9:45 a.m.: 12 IR 1558; readopted filed May 31, 2002, 11:34 p.m.: 25 IR 3462; readopted filed Dec 2, 2008, 9:01 a.m.: 20081224-IR-710080819RFA; readopted filed Sep 23, 2015, 2:54 p.m.: 20151021-IR-710150280RFA; readopted filed Sep 27, 2021, 11:04 a.m.: 20211027-IR-710210374RFA)

710 IAC 2-3-6 Delivery of initial disclosure statement

Authority: IC 23-2-4-24

Affected: IC 23-2-4-7

Sec. 6. A provider shall not be deemed to have complied with IC 23-2-4-7 unless the initial disclosure statement complies with 710 IAC 2-3-4 and 710 IAC 2-3-5, and the initial disclosure statement is delivered not later that *[sic.]* the earliest of:

(1) 24 hours prior to the execution of the continuing care agreement; and

(2) the payment of any application fee, entrance fee, deposit or any other charge, by the contracting party.

(Securities Division; 710 IAC 2-3-6; filed Jan 30, 1985, 9:33 am: 8 IR 613; readopted filed May 31, 2002, 11:34 p.m.: 25 IR 3462; readopted filed Dec 2, 2008, 9:01 a.m.: 20081224-IR-710080819RFA; readopted filed Sep 23, 2015, 2:54 p.m.: 20151021-IR-710150280RFA; readopted filed Sep 27, 2021, 11:04 a.m.: 20211027-IR-710210374RFA)

Rule 4. Annual Disclosure Statement

710 IAC 2-4-1 Annual disclosure statement

710 IAC 2-4-1 Annual disclosure statement

Authority: IC 23-2-4-24
Affected: IC 23-2-4-5

Sec. 1. The annual disclosure statement required to be filed under IC 23-2-4-5 shall be accompanied by the form prescribed by the commissioner for applications for registration under 710 IAC 2-2-2. *(Securities Division; 710 IAC 2-4-1; filed Jan 30, 1985, 9:33 am: 8 IR 613; readopted filed May 31, 2002, 11:34 p.m.: 25 IR 3462; readopted filed Dec 2, 2008, 9:01 a.m.: 20081224-IR-710080819RFA; readopted filed Sep 23, 2015, 2:54 p.m.: 20151021-IR-710150280RFA; readopted filed Sep 27, 2021, 11:04 a.m.: 20211027-IR-710210374RFA)*

Rule 5. Escrow of Entrance Fees; Letters of Credit

710 IAC 2-5-1 Application fees
710 IAC 2-5-2 Escrow accounts
710 IAC 2-5-3 Letters of credit, bonds, negotiable securities

710 IAC 2-5-1 Application fees

Authority: IC 23-2-4-24
Affected: IC 23-2-4-1; IC 23-2-4-10

Sec. 1. An application fee not exceeding $250 shall be presumed to cover the provider's reasonable costs in processing applications. Application fees exceeding $250 shall not be charged unless the provider first files with the commissioner an itemized statement of all costs incurred in processing applications, and the commissioner approves the statement by order. *(Securities Division; 710 IAC 2-5-1; filed Jan 30, 1985, 9:33 am: 8 IR 613; readopted filed May 31, 2002, 11:34 p.m.: 25 IR 3462; readopted filed Dec 2, 2008, 9:01 a.m.: 20081224-IR-710080819RFA; readopted filed Sep 23, 2015, 2:54 p.m.: 20151021-IR-710150280RFA; readopted filed Sep 27, 2021, 11:04 a.m.: 20211027-IR-710210374RFA)*

710 IAC 2-5-2 Escrow accounts

Authority: IC 23-2-4-24
Affected: IC 23-2-4-10

Sec. 2. All escrow accounts required under IC 23-2-4-10 shall comply with the following:

(1) An escrow agreement shall be entered into between the provider and a bank or trust company, or any other person approved by the commissioner by order, as escrow agent. The agreement shall state that its purpose is to protect the contracting party, and provide for the escrow agent to release and pay over the funds to the provider or contracting party as required under IC 23-2-4-10.

(2) Checks shall be made payable to the escrow agent; or endorsed to the escrow agent for deposit only by the provider.

(3) The account shall be established with an escrow agent, and the funds shall be kept and maintained in an account separate and apart from the provider's business accounts.

(4) All proceeds so deposited shall remain the property of the contracting party and shall not be subject to any liens or charges

by the escrow agent, or judgments, garnishments, or creditor's claims against the provider until released pursuant to IC 23-2-4-10.

(5) The escrow agent shall provide a statement of the escrow account to the commissioner at his request.

(Securities Division; 710 IAC 2-5-2; filed Jan 30, 1985, 9:33 am: 8 IR 613; readopted filed May 31, 2002, 11:34 p.m.: 25 IR 3462; readopted filed Dec 2, 2008, 9:01 a.m.: 20081224-IR-710080819RFA; readopted filed Sep 23, 2015, 2:54 p.m.: 20151021-IR-710150280RFA; readopted filed Sep 27, 2021, 11:04 a.m.: 20211027-IR-710210374RFA)

710 IAC 2-5-3 Letters of credit, bonds, negotiable securities

Authority: IC 23-2-4-24
Affected: IC 23-2-4-10; IC 23-2-4-11

Sec. 3. (a) Letters of credit, surety bonds, and negotiable securities proposed to be filed with the commissioner in lieu of establishment of an escrow account under IC 23-2-4-10, shall be in an amount reasonably anticipated to be equal to or in excess of the maximum amount of entrance fees which might be otherwise subject to escrow requirements.

(b) Surety bonds proposed to be filed shall be issued by a surety company authorized to do business in Indiana.

(c) Letters of credit proposed to be filed shall be issued by a bank or trust company authorized to do business in Indiana.

(d) Letters of credit shall be drawable on the commissioner's sight draft, accompanied by the commissioner's certification that contracting parties have been found to be entitled to refund of entrance fees.

(e) Letters of credit, surety bonds, and negotiable securities must be accompanied by the undertaking of the provider not to accept any entrance fee which would make the amount of fees otherwise subject to escrow requirements exceed the amount of the letter of credit, surety bond, or negotiable securities. *(Securities Division; 710 IAC 2-5-3; filed Jan 30, 1985, 9:33 am: 8 IR 614; readopted filed May 31, 2002, 11:34 p.m.: 25 IR 3462; readopted filed Dec 2, 2008, 9:01 a.m.: 20081224-IR-710080819RFA; readopted filed Sep 23, 2015, 2:54 p.m.: 20151021-IR-710150280RFA; readopted filed Sep 27, 2021, 11:04 a.m.: 20211027-IR-710210374RFA)*

Rule 6. Financial Condition of Provider

710 IAC 2-6-1 Financial condition

710 IAC 2-6-1 Financial condition

Authority: IC 23-2-4-24
Affected: IC 23-2-4-8

Sec. 1. For purposes of IC 23-2-4-8(a)(6), the commissioner may find that the financial condition of a provider may jeopardize the care of the residents if:

(1) the report of an independent public accountant, based upon an examination of the provider's financial statements in conformity with generally accepted accounting principles, expresses doubt that the provider will be able to continue in business or is qualified due to uncertainties arising from recurring operating losses, working capital deficiency, negative cash flow, default on a loan agreement, loss of key personnel, work stoppages or other labor difficulties, or an uninsured catastrophe; or

(2) the provider is in default on the payment of principal or interest on any debt which is secured by a mortgage on the real estate on which the home is located.

(Securities Division; 710 IAC 2-6-1; filed Dec 5, 1988, 8:20 a.m.: 12 IR 920; readopted filed May 31, 2002, 11:34 p.m.: 25 IR 3462; readopted filed Dec 2, 2008, 9:01 a.m.: 20081224-IR-710080819RFA; readopted filed Sep 23, 2015, 2:54 p.m.: 20151021-IR-710150280RFA; readopted filed Sep 27, 2021, 11:04 a.m.: 20211027-IR-710210374RFA)

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