COMPLIANCE ALERT

TO: All Registered Indiana Continuing Care Retirement Communities

FROM: Alex Glass, Indiana Securities Commissioner

DATE: April 13, 2017

RE: Annual Filings

A Continuing Care Retirement Community ("CCRC") is registered and regulated by the Indiana Secretary of State, Securities Division ("Division"). Under Ind. Code § 23-2-4-5, CCRCs are required to complete an Annual Filing ("Filing") with the Division within four months of the provider's fiscal year-end. A Filing includes an Annual Disclosure Statement ("Statement"), $100 filing fee, application form, audited financial statements, and a blank copy of all residency agreements offered at the CCRC.

In recent years there has been a decline in the quality of Filings, specifically many Statements are not meeting statutory and regulatory requirements. Ind. Code § 23-2-4-7 requires that a Statement be delivered to the contracting party before execution of a continuing care agreement and current residents upon request. It is critical that the Statement contain all current required information.

This Compliance Alert serves as a notification of what is required each year and the process to follow when completing those requirements. The Division expects strict compliance with these standards.

ANNUAL FILINGS

All Indiana CCRCs are required to submit a Filing to the Division in order to maintain registration. Filings are due within four months following the CCRC's fiscal year-end. If a CCRC expects delays in submitting the Filing, the CCRC may request an extension. The CCRC should comply with the following guidelines regarding the Filing and requests for an extension:

1. If a delay is expected, the CCRC must request a filing extension in writing before the required due date. The request should include the reason for the delay as well as the requested extension date. If the CCRC is unable to submit the Filing by the extended due date, another extension must be requested in writing.

2. Once the Division approves the extension request, the CCRC must provide updates in writing to the Senior Accountant every 60 days until the complete Filing is submitted. If an extension is approved for less than 60 days after the required due date, no updates are required. The responsibility of providing periodic updates rests solely with the CCRC.

3. The CCRC must submit all parts of the Filing together. A complete Filing must include a $100 filing fee, application form, updated Statement, audited financial statements, and a blank copy of all residency agreements offered at the CCRC.

4. A Filing is not complete until all parts are received by the Division.

ANNUAL DISCLOSURE STATEMENT

The Statement is of critical importance in describing the provider and its business operations. Therefore, the Statement should be reviewed and specifically approved by the board of directors of the provider and the approval should be documented in the minutes of the board. The review by the directors provides meaningful internal control and enhances compliance with statutory and regulatory requirements.

The portion of the Statement that is consistently incomplete is the Management's Discussion and Analysis of Financial Condition ("MDA"). The MDA must be updated using the final draft of the current year's audited financial statements. The requirements for the MDA are set forth in 710 Ind. Admin. Code § 2-3-5(5). The MDA is designed to allow the reader to look at the provider's business operations "through the eyes of management." The MDA must be more than a listing of information from the financial statements. It should discuss and describe the provider's business operations with reference to the specified items. 710 Ind. Admin. Code § 2-3-5(5) has four subsections that must be specifically addressed. A copy of the MDA provision is enclosed.

Questions regarding this Alert should be directed to Doreen Fuery, Senior Accountant, by telephone (317) 232-0737 or e-mail at dfuery@sos.in.gov.

710 IAC 2-3-5(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. (Emphasis added.)

(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.