80D.04 DISCLOSURE STATEMENT.

Subdivision 1. **Generally.** Before the execution of a contract to provide continuing care, or before the transfer of any money or other property to a provider by or on behalf of a prospective resident, whichever occurs first, the provider shall deliver a disclosure statement to the person with whom the contract is to be entered into or, the person's legal representative, the text of which shall contain, to the extent not clearly and completely set forth in the contract for continuing care attached as an exhibit thereto, at least the following information:

(a) the name and business address of the provider and a statement of whether the provider is a partnership, corporation, or other type of legal entity;

(b) the names of the officers, directors, trustees, or managing or general partners of the provider, and any person having a ten percent or greater equity or beneficial interest in the provider, and a description of the person's interest in or occupation with the provider;

(c) with respect to the provider, any person named pursuant to paragraph (b) and the proposed manager of the facility if the facility will be managed on a day to day basis by a person other than the provider,

(1) a description of the person's business experience, if any, in the operation or management of similar facilities;

(2) the name and address of any professional service, firm, association, trust, partnership or corporation in which the person has, or which has in the person, a ten percent or greater interest and which will or may provide goods, leases, or services to the facility of a value of $500 or more within any year, including a description of the goods, leases, or services and the probable or anticipated cost thereof to the facility or provider or a statement that the cost cannot presently be estimated; and

(3) a description of any matter in which the person has been convicted of a felony or pleaded nolo contendere to a felony charge, or been held liable or enjoined in a civil action by final judgment if the felony or civil action involved fraud, embezzlement, fraudulent conversion or misappropriation of property; or is subject to a currently effective injunctive or restrictive order of a court of record, or within the past five years has had any state or federal license or permit suspended or revoked as a result of an action brought by a governmental agency or department, arising out of or relating to business activity or health care, including without limitation actions affecting a license to operate a foster care facility, nursing home, retirement home, home for the aged, or facility subject to this section or a similar act in another state;

(d) a statement as to whether or not the provider is, or is affiliated with, a religious, charitable or other nonprofit organization; the extent of the affiliation, if any; the extent to which the affiliate organization is responsible for the financial and contract obligations of the provider; and the provision of the federal Internal Revenue Code under which the provider or affiliate is exempt from the payment of income tax, if any;

(e) the location and description of the physical property of the facility, existing or proposed; and to the extent proposed, the estimated completion date or dates, whether or not construction has begun and the contingencies subject to which construction may be deferred;

(f) the goods and services provided or proposed to be provided under contracts for continuing care at the facility, including the extent to which medical care is furnished. The disclosure statement shall clearly state which goods and services are included in basic contracts for continuing care and which goods and services are made available at or by the facility at extra charge and whether they are provided by an affiliate;

(g) a description of all fees required of residents, including the entrance fee and periodic charges, if any. The description shall include:

(1) a statement of the fees that will be charged if the resident marries while at the facility, and a statement of the terms concerning the entry of a spouse to the facility and the consequences if the spouse does not meet the requirement for entry;

(2) the circumstances under which the resident will be permitted to remain in the facility in the event of possible financial difficulties of the resident;

(3) the terms and conditions under which a contract for continuing care at the facility may be canceled by the provider or by the resident; and the conditions under which all or any portion of the entrance fee will be refunded in the event of cancellation of the contract by the provider or by the resident or in the event of the death of the resident prior to or following occupancy of a living unit;

(4) the conditions under which a living unit occupied by a resident may be made available by the facility to a different or new resident other than on the death of the original resident; and

(5) the manner by which the provider may adjust periodic charges or other recurring fees and the limitations on these adjustments, if any. If the facility is already in operation, or if the provider or manager operates one or more similar facilities within this state, there shall be included tables showing the frequency and average dollar amount of each increase in periodic rates at each facility for the previous five years or for whatever period that the provider or manager has operated the facility if this period is less than five years;

(h) the health and financial conditions required for an individual to be accepted as a resident and to continue as a resident once accepted, including the effect of any change in the health or financial condition of a person between the date of entering a contract for continuing care and the date of initial occupancy of a living unit by that person;

(i) the provisions that have been made or will be made to provide reserve funding or security to enable the provider to fully perform its obligations under contracts to provide continuing care at the facility, including the establishment of escrow accounts, trusts or reserve funds, together with the manner in which the funds will be invested and the names and experience of persons who will make the investment decisions;

(j) financial statements of the provider which shall be prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant who shall express an opinion thereon and shall include a balance sheet as of the end of the most recent fiscal year and income statements for the three most recent fiscal years of the provider or for whatever period the provider has operated the facility if this period is less than three years. If the provider's fiscal year ended more than 90 days prior to the date the application is filed, interim financial statements as of a date not more than 90 days prior to the filing shall be included, but need not be certified;

(k) if operation of the facility has not yet commenced, a statement of the anticipated source and application of the funds used or to be used in the purchase or construction of the facility, including:

(1) an estimate of the cost of purchasing or constructing and equipping the facility including such related costs as financing expense, legal expense, land costs, occupancy development costs, and all other similar costs that the provider expects to incur or become obligated for prior to the commencement of operations;

(2) a description of any mortgage loan or other long-term financing intended to be used for the financing of the facility, including the anticipated terms and costs of the financing;

(3) an estimate of the total entrance fees to be received from residents at or prior to commencement of operation of the facility; and

(4) an estimate of the funds, if any, that are anticipated to be necessary to fund start-up losses and provide reserve funds to assure full performance of the obligations of the provider under contracts for the provision of continuing care;

(l) pro forma annual income statements for the facility for a period of not less than five fiscal years, including:

(1) a beginning cash balance consistent with the certified income statement required by clause (j) or, if operation of the facility has not commenced, consistent with the statement of anticipated source and application of funds required by clause (k);

(2) anticipated earnings on cash reserves, if any;

(3) estimates of net receipts from entrance fees, other than entrance fees included in the statement of source and application of funds required by clause (k), less estimated entrance fee refunds, if any. A description of the actuarial basis and method of calculation for the projection of entrance fee receipts shall be included;

(4) an estimate of gifts or bequests to be relied on to meet operating expenses and the basis therefor;

(5) a projection of estimated income from fees and charges other than entrance fees, showing individual rates presently anticipated to be charged and including a description of the criteria used for calculating the estimated occupancy rate of the facility and the effect on the income of the facility of government subsidies for health care services to be provided pursuant to the contracts for continuing care;

(6) a projection of estimated operating expenses of the facility, including a description of the assumptions used in calculating the expenses, and separate allowances, if any, for the replacement of equipment and furnishings and anticipated major structural repairs or additions; and

(7) an estimate of annual payments of principal and interest required by any mortgage loan or other long-term financing; and

(m) other material information concerning the facility or the provider that is required by the commissioner or that the provider wishes to include.

Subd. 2. **Cover page disclosures.** The cover page of the disclosure statement shall state, in a prominent location and in boldface type, the date of the disclosure statement, the last date through which that disclosure statement may be delivered if not earlier revised, and that delivery of the disclosure statement to a contracting party before the execution of a contract for the provision of continuing care is required by sections 80D.01 to 80D.16 but that the disclosure statement has not been reviewed or approved by any government agency or representative to insure accuracy or completeness of the information set out.

Subd. 3. **Contract forms.** A copy of the standard form or forms of contract for continuing care used by the provider shall be attached as an exhibit to each disclosure statement. Each contract shall provide that:

(a) the party contracting with the provider may for any reason rescind the contract within ten days following the later of the execution of the contract or the receipt of the disclosure statement, in which event any money or property transferred to the provider shall be returned in full. The resident to whom the contract pertains is not required to move into the facility before the expiration of the ten-day period; and

(b) if a resident dies before occupying a living unit in the facility, or if on account of illness, injury or incapacity would be precluded from occupying a living unit in the facility under the terms of the contract for continuing care, the contract is automatically canceled and the resident or legal representative of the resident shall receive a refund of all money or property transferred to the provider, less (a) those costs specifically incurred by the provider or facility at the request of the resident and described in the contract or an addendum thereto signed by the resident; and (b) a reasonable service charge, if set out in the contract, not to exceed the greater of $350 or two percent of the entrance fee.

Subd. 4. **Plain language.** The disclosure statement required by this section shall be written in language easily readable and understandable by a person of average intelligence and education.

Subd. 5. **Acknowledgment.** The last page of the disclosure statement shall consist of a detachable "acknowledgment of receipt" which shall be signed and dated by the prospective resident and a copy of which shall be kept on file in the office of the provider for four years from the date of the acknowledgment.

Subd. 6. **Waivers of liability prohibited.** (a) A contract between a facility and resident or resident's representative must not include a waiver of facility liability for the health and safety or personal property of a resident while the resident is under the facility's supervision. A contract must not contain a provision that the facility knows or should know to be deceptive, unlawful, or unenforceable under state or federal law, nor any provision that requires or implies a lesser standard of care or responsibility than is required by law.

(b) This subdivision applies to new admissions to facilities on and after October 1, 1989. This subdivision does not require the execution of a new admission contract for a resident who was residing in a facility before August 1, 1989. However, provisions of the admission contract that are inconsistent with or in conflict with this subdivision are voidable at the sole option of the resident. Residents must be given notice of the changes in admission contracts according to this subdivision and must be given the opportunity to execute a new contract that conforms to this subdivision.

History: *1980 c 516 s 6; 1981 c 135 s 5; 1989 c 285 s 1*