CHAPTER 80D

CONTINUING CARE FACILITIES

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80D.01 SHORT TITLE.

Sections 80D.01 to 80D.16 may be cited as the "Continuing Care Facility Disclosure and Rehabilitation Act."

History: *1980 c 516 s 3; 1981 c 135 s 1*

80D.02 DEFINITIONS.

Subdivision 1. **Scope.** As used in sections 80D.01 to 80D.16, the terms defined in this section have the meanings given them.

Subd. 2. **Continuing care.** "Continuing care" means the furnishing to an individual, other than an individual related by blood or marriage to the person furnishing the care, of board, lodging, and nursing service, medical service or other health-related service, regardless of whether or not the lodging and service are provided at the same location, pursuant to a written agreement effective for the life of the individual or for a period in excess of one year, which is conditioned upon the payment of an entrance fee in excess of $100 and the payment of regular periodic charges for the care provided.

Subd. 2a. **Life care.** "Life care" means "continuing care" as defined in subdivision 2.

Subd. 3. [Repealed, 1981 c 135 s 14]

Subd. 4. **Entrance fee.** "Entrance fee" means the total of any initial or deferred transfer to or for the benefit of a provider of a sum of money or other property made or promised to be made as full or partial consideration for acceptance or maintenance of a specified individual as a resident in a facility.

Subd. 5. **Facility.** "Facility" means the place in which a person undertakes to provide continuing care to an individual.

Subd. 6. **Living unit.** "Living unit" means a room, apartment, cottage or other area within a facility set aside for the exclusive use or control of one or more identified individuals.

Subd. 7. **Provider.** "Provider" means a person undertaking to provide continuing care in a facility.

Subd. 8. **Resident.** "Resident" means an individual entitled to receive continuing care in a facility.

Subd. 9. **Minimum deposit.** "Minimum deposit" means a deposit equal to or greater than five percent of the entrance fee.

Subd. 10. **Person.** "Person" means any individual, corporation, business trust, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest or any legal or commercial entity.

Subd. 11. **Affiliate of another person.** "Affiliate of another person" means any person directly or indirectly controlling, controlled by or under common control with such other person.

Subd. 12. **Offer.** "Offer" includes every inducement, solicitation or attempt to encourage a person to enter into a subscription or residency agreement.

History: *1980 c 516 s 2,4; 1981 c 135 s 2,3*

80D.03 CONTRACT REGULATION.

Subdivision 1. **Required filings.** A provider shall not enter into a contract that requires or permits the payment of an entrance fee in consideration for a promise to provide continuing care in the facility, if the facility is or will be located in this state, or if the provider or a person acting on the provider's behalf solicits the contract within this state and the person to be provided with continuing care under the contract resides within this state at the time of the solicitation, unless the provider has filed in the office of the county recorder of the county in which the facility is or will be located, a current disclosure statement which meets the requirements of section 80D.04, a verified statement of the escrow agent to the effect that the escrow required by section 80D.05 or 80D.06 has been established, and a filing fee in the amount of $100 has been paid.

Subd. 2. **Acts constituting solicitation in state.** A contract to provide continuing care is solicited in this state if, during the 12-month period preceding the date the contract is signed or accepted by either party, information concerning the facility or availability of the contract is given:

(a) by personal, telephone or mail contact or other communication directed to and received by a person at a location in this state; or

(b) in a paid advertisement published or broadcast from within this state other than in a periodical more than two-thirds of the circulation of which is outside this state.

Subd. 3. [Repealed, 1981 c 135 s 14]

Subd. 4. [Repealed, 1981 c 135 s 14]

History: *1980 c 516 s 5; 1981 c 135 s 4*

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*

80D.05 ENTRANCE FEE ESCROW.

Subdivision 1. **Escrow account; release of fees.** Prior to soliciting or entering into any contract for the provision of continuing care, the provider shall establish with a bank or trust company having its principal place of business in this state, as an escrow agent, an entrance fee escrow pursuant to which the provider shall deposit with the escrow agent, within 72 hours of receipt by the provider, each entrance fee or portion of an entrance fee received by the provider from or on behalf of a resident prior to the date the resident is permitted to occupy a living unit in the facility, subject to release as follows:

(a) if the entrance fee applies to a living unit that has been previously occupied in the facility, the entrance fee shall be released to the provider at the time the living unit becomes available for occupancy by the new resident, or shall be returned to the resident or the resident's personal representative under the conditions described in section 80D.04, subdivision 3, if the escrow agent has received written demand for return of the entrance fee prior to the release thereof to the provider;

(b) if the entrance fee applies to a living unit which has not previously been occupied by any resident, the entrance fee shall be returned to the resident or the resident's legal representative under the conditions described in section 80D.04, subdivision 3, if the escrow agent receives written demand for return of the entrance fee prior to release thereof to the provider, or the entrance fee shall be released to the provider at the time all of the following conditions have been met:

(1) the facility has 65 percent of its units reserved as determined by signed written agreements and minimum deposits received; or if the written agreement requires a minimum deposit of more than one-third of the entrance fee, then the facility may have 50 percent of the units reserved and 50 percent of the facility must be completely constructed; and

(2) the sum of entrance fees received or receivable by the provider pursuant to binding contracts for continuing care, plus the anticipated proceeds of any first mortgage loan or other long-term financing commitment, plus funds from other sources in the actual possession of the provider, equals or exceeds the sum of 90 percent of the aggregate cost of constructing or purchasing, equipping and furnishing the facility plus 90 percent of the funds estimated in the statement of anticipated source and application of funds submitted

by the provider as part of its permit application, to be necessary to fund start-up losses of the facility plus 90 percent of the amount of the reserve fund escrow, if any, required to be maintained by the provider pursuant to section 80D.06; and

(3) a commitment has been received by the provider for any permanent mortgage loan or other long-term financing described in the statement of anticipated source and application of funds included in the current disclosure statement on file pursuant to section 80D.04, and any conditions of the commitment prior to disbursement of funds thereunder, other than completion of the construction or closing of the purchase of the facility, have been substantially satisfied; and

(4) if construction of the facility has not been substantially completed, all governmental permits or approvals necessary prior to the commencement of construction have been obtained; and a maximum price contract has been entered into between the provider and a general contractor responsible for construction of the facility; a bond covering the faithful performance of the construction contract by the general contractor and the payment of all obligations arising thereunder has been issued by an insurer authorized to do business in this state with the provider as obligee; a loan agreement has been entered into by the provider for an interim construction loan in an amount which, when combined with the amount of entrance fees then held in escrow under the provisions of this section plus the amount of funds from other sources then in the actual possession of the provider, will equal or exceed the estimated cost of constructing, equipping and furnishing the facility; not less than ten percent of the amount of the construction loan has been disbursed by the lender for physical construction or site preparation work completed; and orders at firm prices have been placed by the provider for not less than 50 percent in value, including installation charges if applicable, of items necessary for equipping and furnishing the facility in accordance with the description set forth in the disclosure statement required by section 80D.04; or

if construction or purchase of the facility has been substantially completed, an occupancy permit covering the living unit has been issued by the local government having authority to issue these permits.

Subd. 2. **Limitation.** The aggregate amount of entrance fees which may be released to the provider pursuant to subdivision 1, clause (b) prior to the date on which any reserve fund escrow under section 80D.06 is established shall not exceed the aggregate amount of entrance fees then received or receivable by the provider pursuant to binding contracts for continuing care less the amount of the entrance fees received or receivable which will be required to be initially maintained in the reserve fund escrow.

Subd. 3. **Fee returned after 36 months.** If an entrance fee to which subdivision 1, clause (b) applies is not released pursuant thereto within a period of 36 months from receipt of the entrance fee by the provider or within a greater time that has been specified by the provider in the disclosure statement delivered, pursuant to section 80D.04, to the person with whom the contract for continuing care to which the entrance fee pertains was made, then the fee shall be returned by the escrow agent to the persons who had paid them to the provider.

Subd. 4. **Nonrefundable application fees.** Nothing in this section requires the escrow of any nonrefundable application fee that does not exceed two percent of the entrance fee and is clearly designated as such in the contract for continuing care.

Subd. 5. **Accrued interest.** Interest accrued on entrance fees or deposits held in escrow is the property of the provider only if the funds are ultimately released to the provider.

Subd. 6. **Resident copy of escrow agreement.** The provider shall provide each prospective resident who has signed a contract for continuing care with a copy of the escrow agreement referred to in subdivision 1, which agreement shall set forth the name, address, and telephone number of the escrow agent.

History: *1980 c 516 s 7; 1981 c 135 s 6*

80D.06 RESERVE FUND ESCROW.

Subdivision 1. **Escrow account; release of funds.** At the time a facility is first occupied by any resident and thereafter, the provider shall establish and maintain on a current basis, in escrow with a bank or trust company having its principal place of business in this state, as an escrow agent, a portion of all entrance fees received by the provider in an aggregate amount of up to the total of all principal and interest payments due during the next 12 months on account of any first mortgage loan or other long-term financing of the facility. The funds in the escrow account may be invested with the earnings thereon payable to the provider. If the provider requests and sets forth its reasons in writing, the escrow agent shall release up to 1/12 of the original principal balance of the escrow account. A release of funds shall not be made more than once during any calendar month, and then only after the escrow agent has given written notice of the release and the reasons therefor to any resident or association of residents, or the legal representative of a resident or association of residents, that has requested it at least ten days prior to the release.

Any person or affiliate of any person that controls any part of the reserve escrow fund comprised in part or totally of funds removed from the provider's resources, is liable for the debts of the provider up to the amount of the provider's contribution to the fund plus any prorated interest the fund may earn.

Subd. 2. **Facilities established prior to 1975.** In those instances where a provider has been offering continuing care in a facility since prior to January 1, 1975, the following shall apply. The provider shall establish a reserve escrow fund and shall contribute to it 15 percent of each new entrance fee received by the provider after December 31, 1981. The funds thereby received shall be permitted to accumulate until there is in the reserve fund an amount equal to the total of all principal and interest payments due during the next 12 months on account of any first mortgage loan or other long-term financing obligation of the facility.

History: *1980 c 516 s 8; 1981 c 135 s 7*

80D.07 ENTRANCE FEE REIMBURSEMENT AFTER OCCUPANCY.

Any resident may terminate the residency agreement at any time after assuming residency. A residency agreement may not require more than 120 days' written notice by any resident desiring to terminate; nor require any additional fees for termination of residency.

The termination terms and provisions for reimbursement shall be stated in the residency agreement.

History: *1980 c 516 s 9; 1986 c 444*

80D.08 LIEN ON BEHALF OF RESIDENTS.

Effective at the time a facility is first occupied by any resident, there shall exist a lien on the real and personal property of the provider or facility to secure the obligations of the provider pursuant to existing and future contracts for continuing care. A lien under this section is effective for a period of ten years. The lien may be foreclosed upon the liquidation of the facility or the insolvency or bankruptcy of the provider, and in that event the proceeds shall be used in full or partial satisfaction of obligations of the provider pursuant to contracts for continuing care then in effect.

History: *1980 c 516 s 10; 1981 c 135 s 8*

80D.09 REVISED DISCLOSURE.

Annually within 120 days following the end of the provider's fiscal year, the provider shall file with the county recorder of the county in which the facility is or will be located a revised disclosure statement setting forth, as of the end of the fiscal year, information meeting the requirements of section 80D.04, and pay a $100 filing fee. The revised disclosure statement shall include a narrative describing any material differences between (a) the pro forma income statements filed in response to section 80D.04, subdivision 1, clause (l) as a part of the disclosure statement filed most immediately subsequent to the start of the provider's most recently completed fiscal year and (b) the actual results of operations during the fiscal year together with the revised pro forma income statements being filed as a part of the revised disclosure statement. A provider may, upon payment of a $100 filing fee, revise its disclosure statement on file with the county recorder at any other time if, in the opinion of the provider, revision is necessary to prevent the disclosure statement from containing a material misstatement of fact or omitting to state a material fact required to be stated therein. Only the most recently filed disclosure statement with respect to a facility, and in any event only a disclosure statement dated within 120 days prior to the date as of which the determination is made, shall be deemed current for purposes of sections 80D.01 to 80D.16 or be delivered pursuant to section 80D.04. In addition, the provider shall make the revised disclosure statement available for inspection by residents during regular business hours.

History: *1980 c 516 s 11; 1981 c 135 s 9*

80D.10 [Repealed, 1981 c 135 s 14]

80D.11 REHABILITATION OR LIQUIDATION.

Subdivision 1. **Appointment of trustees.** If (a) a portion of a reserve fund escrow required under section 80D.06 has been or is proposed to be released, or (b) a provider has been or will be unable, in a manner as may endanger the ability of the provider to fully perform its obligations pursuant to contracts for continuing care or to meet the pro forma income or cash flow projections previously filed by the provider, or (c) a provider is bankrupt or insolvent or has filed for protection from creditors under any federal or state bankruptcy or insolvency law, then any resident or association of residents, or the legal representative of a resident or association of residents, may apply to a district court of this state, or to the federal bankruptcy court which may have previously taken jurisdiction over the provider or facility for an order directing the appointment of a trustee to rehabilitate or liquidate a facility.

Subd. 2. **Rehabilitation.** An order to rehabilitate a facility shall direct the trustee to take possession of the property of the provider and to conduct the business thereof, including the employment of such managers or agents as the trustee may deem necessary, and to take steps as the court may direct toward removal of the causes and conditions which have made rehabilitation necessary.

Subd. 3. **Termination of rehabilitation; return of facility to provider.** If the court finds, upon petition of the trustee or the provider, or on its own motion, that the objectives of an order to rehabilitate a provider have been accomplished and that the facility can be returned to the provider's management without further jeopardy to the residents of the facility, creditors, owners of the facility, or to the public, the court may, upon a full report and accounting of the conduct of the facility's affairs during the rehabilitation and of the facility's current financial condition, terminate the rehabilitation and by order return the facility and its assets and affairs to the provider's management.

Subd. 4. **Liquidation.** If, at any time, the trustee determines that further efforts to rehabilitate the provider would be useless, it may apply to the court for an order of liquidation.

Subd. 5. **Rehabilitation attempt not necessary prior to liquidation.** An order to liquidate a facility may be issued whether or not there has been issued a prior order to rehabilitate the facility. The order shall appoint a trustee to marshall and liquidate all of the provider's assets located within this state. Effective upon the entry of an order to liquidate a facility, no additional contracts for the provision of continuing care at that facility shall be made by any person.

Subd. 6. **Consideration of welfare of residents.** In connection with an application for an order to rehabilitate or liquidate a facility, a court shall give due consideration to the manner in which the welfare of persons who have previously contracted with the provider for continuing care may be best served. In furtherance of this objective, the proceeds of any lien pursuant to section 80D.08 may be used in full or partial payment of entrance fees, on behalf of residents of a facility being liquidated, to other facilities then in compliance with the provisions of sections 80D.01 to 80D.16.

History: *1980 c 516 s 13; 1981 c 135 s 10*

80D.12 [Repealed, 1981 c 135 s 14]

80D.13 CIVIL LIABILITY.

Subdivision 1. **Violations, misstatements, or omissions.** Any person who, as or on behalf of a provider, enters into a contract for continuing care at a facility without having first delivered a disclosure statement meeting the requirements of section 80D.04 to the person contracting for the continuing care, or enters into a contract for continuing care at a facility with a person who has relied on a disclosure statement that omits to state a material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they are made, not misleading, is liable to the person contracting for the continuing care for damages and repayment of all fees paid to the provider, facility or person violating sections 80D.01 to 80D.11, less the reasonable value of care and lodging provided to the resident by or on whose behalf the contract for continuing care was entered into prior to discovery of the violation, misstatement or omission or the time the violation, misstatement or omission should reasonably have been discovered, together with interest thereon at the legal rate for judgments, and court costs and reasonable attorney fees.

Subd. 2. **Knowledge of act required.** Liability under this section for any violation, misstatement or omission exists only if the provider or person liable knew or should have known of the violation, the misstatement or omission.

Subd. 3. **Other remedies.** Nothing contained in sections 80D.01 to 80D.16 shall be construed to limit the remedies a person has under any other law.

History: *1980 c 516 s 15; 1981 c 135 s 11; 1987 c 384 art 2 s 1*

80D.14 [Repealed, 1981 c 135 s 14]

80D.15 [Repealed, 1981 c 135 s 14]

80D.16 CRIMINAL PENALTIES.

Any person who willfully and knowingly violates any provision of sections 80D.03 to 80D.16 shall upon conviction be fined not more than $20,000 or imprisoned not more than 364 days, or both.

Nothing in sections 80D.03 to 80D.16 limits the power of the state to punish any person for any conduct which constitutes a crime under any other statute.

History: *1980 c 516 s 18; 1981 c 135 s 12; 1984 c 628 art 3 s 11; 2023 c 52 art 6 s 16*

80D.17 [Repealed, 1981 c 135 s 14]

80D.18 [Repealed, 1981 c 135 s 14]

80D.19 ANNUAL FINANCIAL STATEMENT REQUIRED.

A provider shall prepare and distribute an annual financial statement to the residents of a facility. The statement shall be prepared in accordance with generally accepted accounting principles and shall be distributed within four months of the end of the provider's fiscal year. The statement must reflect all of the income and expense attributable to the facility for the fiscal year covered. The statement must account for all receipts and disbursements from whatever source derived, to whatever source paid, arising from the operation of the facility.

All entrance and maintenance fees, actual interest received and paid, and loan proceeds received, and interest and principal paid thereon, must be accounted for whether or not included in separate accounts because of trust, escrow, or other requirements. Items of income and expense to be allocated between a facility and another accounting entity must be allocated in accordance with generally accepted accounting principles. The allocation must be noted in the statement. The statement must be in sufficient detail to be meaningful but must be easily readable by, and understandable to, a person of average intelligence and education. The statement must include comparable data for the fewer of: each of the last five years; or for each year since the first receipts or disbursements, arising out of the facility project. If comparable data does not exist and cannot be created for a past year, the variation must be noted and explained in the statement.

History: *1984 c 641 s 7*

80D.20 RESIDENTS' REVIEW OF BUDGET; MONTHLY STATEMENTS.

Subdivision 1. **Formation of association.** The residents of a facility may form a residents' association to deal with common interests related to their residency. The association may be organized in any way so long as each resident is given an equal opportunity to participate and an equal vote in the association's decisions including those delegating authority to the association's officers, board, and committees, if any.

Subd. 2. **Annual budget review.** Upon notification to it of the existence of a residents' association, the provider must present its annual budget to the association for comment before its adoption. The budget must be in sufficient detail to be meaningful, but must be readable by, and understandable to, a person of average intelligence and education. The budget must reflect the projected collection and disbursement of receipts of any kind, for any purpose by the provider, or any person related in business to the provider, attributable to residents of the facility, including interest income, and trust assets, during the budget year.

Subd. 3. **Review of monthly expenditure statements.** Throughout the budget year, the provider must give the association timely monthly statements of current income and expense showing year-to-date relationship to the annual budget, and explanations for a deviation from the budget. The association or its representative may comment on, or raise questions about, the monthly statements, to the provider.

Subd. 4. **Criminal penalties.** The penalty provisions of section 80D.16 shall apply to provider actions in Laws 1984, chapter 641, sections 2 and 3.

History: *1984 c 641 s 8*