

Rev Date: 11/13/2009

From: Indiana Securities Commissioner
To: Operators of Continuing Care Facilities
Beneficiaries of Continuing Care Contracts
Re: HEA 2009-1572

**INDIANA SECRETARY OF STATE
SECURITIES DIVISION**

**STATEMENT OF POLICY REGARDING
RECENT CHANGES TO THE
INDIANA CONTINUING CARE ACT**

The Indiana Secretary of State and the Securities Commissioner (“Commissioner”) have determined that it is appropriate and in the public interest to issue a Statement of Policy clarifying the Securities Division’s interpretation of certain new provisions of the Indiana Continuing Care Act.

The Indiana Continuing Care Act is a statute that provides for the registration and regulation of facilities offering continuing care contracts by the Indiana Secretary of State, Securities Division (“Division”). In these contracts, a resident pays an entrance fee of at least twenty five thousand dollars (\$25,000), and the facility provides accommodations, meals, and health services to the resident for life.

Background

House Enrolled Act 1572 was passed by the 2009 General Assembly and made several changes to the Indiana Continuing Care Act. While the majority of the amendments are clear, some aspects of the updated statute require additional explanation. House Enrolled Act 1572 (HEA 1572) amending the Indiana Continuing Care Act (Ind. Code 23-2-4) (“Act”) took effect on July 1, 2009, but three (3) of those amendments require additional explanation.

1. Ind. Code § 23-2-4-3(2) states that a provider must register only if it has entered into a continuing care agreement with at least twenty-five percent (25%) of the individuals living in the continuing care retirement community. Many of the registered continuing care retirement communities have large nursing home and assisted living sections. It is unclear whether those nursing and assisted living residents are to be included in counting the twenty-five percent (25%). The Commissioner has interpreted that the intent of the statute is to include only those residents currently residing in independent living facilities.

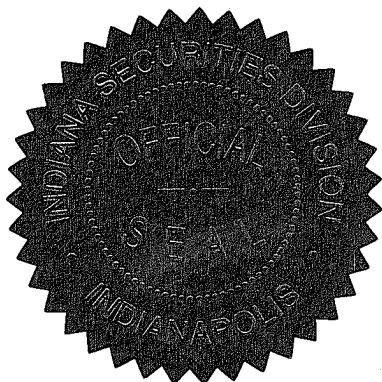
2. HEA 1572 removed the requirement that continuing care retirement communities deposit one hundred dollars (\$100) with the state to a fund that helps offset the loss to residents in cases where the community may declare bankruptcy. Residents who enter into continuing care agreements after July 1, 2009, will not have a right to access the fund. However, residents who were already in continuing care agreements before these amendments will have that right to access the guaranty fund for the duration of their contracts. Under the Act after the adoption of HEA 1572, some facilities with residents who have a right to access the guaranty fund would not be required to register with the Division because of the twenty-five percent (25%) requirement discussed above. The Commissioner has decided that it is necessary to continue requiring registration of those facilities to oversee the financial stability of those facilities. If a facility has a resident who entered into a continuing care agreement before July 1, 2009, it must continue to register with the Division.

3. A third and final point of clarification from HEA 1572 is the section of the Continuing Care Act on terminations of contracts in Ind. Code § 23-2-4-7.5. This section provides that a continuing care agreement may be terminated for a number of reasons that are listed in the Act. The section applies to continuing care retirement communities that became registered after July 1, 2009, but it does not apply to communities that became registered before July 1, 2009.

Policy

1. In calculating the percentage of residents for the twenty-five percent (25%) registration requirement under Ind. Code § 23-2-4-3(2), only residents in independent living facilities are to be counted.
2. For as long as a continuing care retirement community has any residents who have access to the Guaranty Fund, it is to annually renew its registration with the Indiana Secretary of State, Securities Division.
3. Ind. Code § 23-2-4-7.5 concerning terminations of contracts applies to continuing care retirement communities that became registered after July 1, 2009, and not to communities that were already registered prior to July 1, 2009.

DATED at Indianapolis, Indiana, this 13TH day of NOVEMBER, 2009.



TODD ROKITA
SECRETARY OF STATE

CHRIS NAYLOR
SECURITIES COMMISSIONER