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BULLETIN

Docket Number INS NO. 09-044-AB

TO: All Continuing Care Retirement Communities; Including Those Licensed under RSA 161-J

FROM: Roger A. Sevigny

DATE: July 7, 2009

RE: Licensing Requirement Pursuant to RSA 420-D; Continuing Care Retirement Communities

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The Department has had inquiries from consumers and facilities concerning licensing requirements under RSA 420-D for retirement communities that provide housing for residents on an annual contract basis, but do not promise to care for the resident for the resident's life.

Any facility that provides "continuing care" or "life care" in New Hampshire must be licensed with the Insurance Department as a Continuing Care Retirement Community (CCRC) pursuant to RSA 420-D.

Continuing care or life care is defined at RSA 420-D:1, III:

> "[F]urnishing to a person, other than one who is related by consanguinity or affinity up to, but not including, the third degree, services that shall include board or lodging, or both, and may include nursing services, medical services, or other health related services, irrespective of whether the lodging and services are provided at the same location or provided by a third party, pursuant to a contractual agreement extending for the life of such person or for a period of a year or more in consideration of payment of an entrance fee which may also include additional periodic charges for the services provided and including contracts which are terminable by either party."

Under this definition, a facility that charges an "entrance fee" (and may also charge additional periodic charges for services provided) under a contract for a period of at least one year, and provides board or lodging or both, is providing "continuing care" and must be licensed as a CCRC.

"Entrance fee" is defined at RSA 420-D:1, V and *excludes* the payment of a sum of money that is less than either: (1) $10,000 or (2) the yearly total of all "periodic payments" (i.e. the monthly payment made by the resident). The entrance fee may be returned to the resident should the resident decide to leave the facility, see RSA 420-D:1, XIV defining "earned portion of entrance fee" and "unearned portion of entrance fee."

Therefore, based on the plain meaning of the definition of "continuing care" and "entrance fee" set forth in RSA 420-D:1, a facility providing housing must be licensed as a CCRC if an entrance fee that exceeds the limits set forth in RSA 420-D:1,V is required under a contract for at least a year, *even if the facility is not providing nursing care or other services*. Similarly, the facility must be licensed if it provides housing and charges an entrance fee that exceeds the limits set forth in RSA 420-D:1,V under a contract for at least a year, *even if the facility does not promise to care for the resident for the rest of the resident's life.* Further, the facility must be licensed if it provides housing and charges an entrance fee that exceeds the limits set forth in RSA 420-D:1,V under a contract for at least a year, *even if the facility contracts to return the entrance fee to the resident when the resident leaves the facility.*

The Department is aware that there are facilities operating in New Hampshire that require residents to pay an entrance fee that exceeds the limits set forth in RSA 420-D:1,V under a contract extending for a year, but these facilities are not licensed under RSA 420-D. The Department understands there has been confusion in regard to the definition of "continuing care" and the licensing requirements under RSA 420-D. However, the Department is issuing this bulletin to make clear that any facility providing services that meet the statutory definition of "continuing care" must be properly licensed as a CCRC. Licensing in conformity with RSA 420-D is required of any facility providing housing under a contract lasting for at least one year if the facility requires the resident pay as a condition of admission, an entrance fee that exceeds the statutory limits.

Any facility that is required to be licensed under RSA 420-D, but is not so licensed, must come into compliance on or before December 31, 2009. Due to the confusion related to the meaning and intent of RSA 420-D, the Department does not intend to bring enforcement action against any facility that is not currently properly license under RSA 420-D, so long as the facility acts in good faith to obtain a license by the December 31, 2009, deadline.

Any questions regarding this Bulletin should be directed to Michael Wilkey, Director, Life, Accident, Health Division, 603-271-2261.